# PUL 201: CONSTITUTIONAL LAW I

## TOPIC: CREATION OF STATES

### A. DEFINITION:

Creation of States is the process and act of carving out new States out of existing ones.

### B. HISTORY OF CREATION OF STATES IN NIGERIA

Agitations for creation of States in Nigeria are as old as the formation of Nigeria itself. Not long after the amalgamation of the Northern and Southern protectorates in 1914, minority ethnic groups began to agitate for the creation of their own separate States. These agitations were fuelled by the fear of domination of the minority ethnic groups by the majority tribes – namely – the Hausa/Fulani, the Igbo and the Yoruba. It should be noted that there are over 250 different ethnic groups in Nigeria which speak over 400 different languages.

Due to the growing dissatisfaction of minorities in Nigeria and the atmosphere of mutual distrust and suspicion among the various tribes, agitations for creation of more States were part of the agenda of the series of constitutional conferences that eventually gave birth to the country known today as Nigeria.

### C. MINORITIES AGITATIONS FOR NEW STATES AND THE HENRY WILLINK'S COMMISSION

The intensity of minorities' demands for States creation forced the then colonial administration to set up a commission headed by Sir Henry Willink, with Gordon Hadow, Philip Mason and J.B. Shearer, as members. The Commission which became popularly known as the Willink's Commission was set up to look into the fears of the minorities who at that time demanded the creation of the Calabar-Ogoja-River State, the Mid-West State and the Middle Belt States. The ethnic groups comprised in the territories demanding these States were afraid of being dominated politically and marginalised in the public and civil service by the three major tribes.

**For instance:**

- The proposed Calabar-Ogoja-River State which comprised the present Cross River, Akwa Ibom, Rivers and Bayelsa States entertained the fear of being dominated by the Igbo dominated Eastern Region of Nigeria.
- The proposed Mid-West State which comprised present-day Edo and Delta States entertained fear of domination by the Yoruba-dominated Western Region.
- The proposed Middle Belt State which comprised the present Kogi, Kwara, Plateau, Nasarawa, and Benue, etc States entertained the fear of being dominated by the Hausa/Fulani-dominated Northern Region.

**NOTE:** At this time, Nigeria was governed along regional lines. The Richards Constitution of 1946 laid the foundation for Nigeria's regionalism. Nigeria was made up of three regions – namely – the Northern, the Eastern and the Western regions respectively.

It should be noted that the Willink's Commission rejected these demands for States creation but rather recommended the inclusion of fundamental rights provisions in the 1960 Independence Constitution as a means of allaying the fears expressed by the minorities. Also, the Commission recommended the establishment of the Niger Delta Development Board as a special intervention agency to address the special developmental needs of the minorities, especially the minorities within the area called the Niger Delta.

## D. CREATION OF MID-WESTERN REGION IN 1964

Despite the recommendation of the Willink's Commission and its implementation in the 1960 Independence Constitution, agitations by minorities for the creation of their own states did not abate. Thus, in 1964, the Mid-Western Region comprising present-day Edo and Delta States were created out of the defunct Western Region. Till date, this happens to be the only Region/State creation exercise carried out be any civilian administration in Nigeria, although Nigeria operated regional federating units at the time.

## E. STATES CREATION UNDER THE MILITARY ADMINISTRATIONS

The military seized power through a bloody coup d'etat in Nigeria on 15th January 1966. The chronological order of States creation under successive military administrations in Nigeria are given below:

- In 1967, General Yakubu Gowon created twelve States out of the four regions in operation at the time. These States are: North-Western State, North-Eastern State, Kwara State, Mid-Western State, East Central State, Rivers State, South-Eastern State, Western State and Lagos State.
- In 1976, General Murtala Mohammed created seven more States which were: Anambra, Bauchi, Benue, Imo, Niger, Ogun and Ondo.
- In 1987, General Ibrahim Badamosi Babangida created two additional States, namely: Akwa Ibom and Katsina States.
- In 1991 General Babangida created nine new States bringing the total number of States in the country to thirty. The nine new States are: Abia, Enugu, Delta, Jigawa, Kebbi, Osun, Kogi, Taraba and Yobe.
- The last States creation exercise in Nigeria took place under General Sani Abacha in 1996 when he created six additional States, bringing the total number of States in the country to the present 36-State structure. The six additional States are: Ebonyi, Bayelsa, Nasarawa, Gombe, Zamfara, and Ekiti.

## F. CREATION OF STATES UNDER THE 1999 CONSTITUTION

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the procedure for creation of new States in Nigeria. A state can only be created by an Act of the National Assembly. See **S. 8(1) CFRN 1999**

Note that the President must give his assent to a bill for the creation of a new State before such bill will become an Act of the National Assembly creating the State. **See S. 58(1)**

## G. PROCEDURES FOR CREATION OF STATES

A proposal for creation of a new State must pass through four stages before it becomes effective. These stages are discussed below:

**Stage 1: Proposal or Request Stage**

- A request for creation of a new State (formally known as a Proposal) must first be prepared by those seeking the creation of a new State.
- The request must be supported by at least two-thirds majority of members representing the area demanding the new State in each of the following bodies:
  i. The Senate and the House of Representatives,
  ii. The House of Assembly in respect of the area, and
  iii. The Local Government Council in respect of the area.
- The request supported by members representing the area in the bodies and in the proportion stated above, must be received by the National Assembly (ie, the proponents of State creation must submit their request/Proposal to the National Assembly).

**Stage 2: Referendum Stage**

After the National Assembly has received the request/Proposal for creation of a new State from the proponents:

- The proposal must be subjected to a referendum (ie, a Yes or No vote) by the people of the area demanding the creation of a new State. **S.8(1)(b)**;
- At least, two-thirds majority of the people of the area demanding the new State must vote in support of the request/proposal for the creation of the new State. **See S. 8(1)(b)**

**Stage 3: State Executive Council and State House of Assembly Approval Stage**

If the proposal scales through stage 2, it then proceeds as follows:

- The result of the referendum (which must have received not less than two/thirds **'Yes Votes'**) is then approved by a simple majority of all the States of the Federation (ie, nineteen States out of 37 States, including the Federal Capital Territory, Abuja which by **S. 299 of the CFRN** is to be treated as one of the States of the Federation); and

- The approval of the result of the referendum by a simple majority of all the States in Nigeria must be supported by a simple majority of the Houses of Assembly of all the 36 States of the Federation (ie, at least 19 out of the 37 States, including the Federal Capital Territory, Abuja which by **S. 299 of the CFRN** is to be treated as one of the States of the Federation) – **S. 8(1)(c)**

It should be noted that reference to, "all the States of the Federation" in the first limb of S. 8(1)(c) of the CFRN means reference to the State Executive Councils established under S. 193(1) of the CFRN comprising the Governor, the Deputy-Governor, Commissioners of the Government of the State, and the Secretary to the Government of the State. In the case of the FCT, Abuja, the Federal Executive Council will function as its State Executive Council for purposes meeting the requirement under S.8(3)(c) of the CFRN. This is because Ss. 299(a) and 301(a) of the CFRN stipulates that the President shall act as the Governor of the FCT.

It should also be noted that by virtue of Ss. 299(a) and 301(a) of the CFRN and the decision of the Supreme Court in **Obi v. INEC & Ors (No. 1) (2024)**, the FCT, Abuja is counted as one of the States of the Federation. Therefore, the National Assembly is the House of Assembly for the FCT, Abuja, for purposes of complying with the second limb of S. 8(3)(c) of the CFRN.

**Stage 4: National Assembly Approval Stage**

If the proposal succeeds at stage 3, then it continuous as follows:

- The proposal is approved by a resolution passed by two-thirds majority of members of each House of the National Assembly.

**Note:** that each House of the National Assembly must pass its resolution separately. Joint sitting of both Houses and passing of a joint resolution is not permitted.

**Note:** Also, that the resolution must be passed by two-thirds majority of all the members of each House and not by members who are present and voting.

**Note:** that by the present configuration of membership of the Senate and the House of Representatives, two-thirds of the Senate (109 members) would be at least 72 members; while two-thirds of the House of Representatives (360 members) would be at least 240 members. On

what constitutes two-thirds majority of all the members of each House of the National Assembly as well as separate sitting, see **National Assembly v President (2003) 9 NWLR (Pt. 824) I04 (Ratios 2 and 7).**

**FACTORS TO CONSIDER IN DEMAND FOR CREATION OF NEW STATE**

Before the people of an area will demand for the creation of a new State, the following factors must be considered:

i. Economic viability: This means the ability of the new State to survive on its own in terms of the capacity to fund its operations and the machinery of government.

**Note:** It should be noted that under the current lopsided federal structure, only Lagos State and maybe Rivers State could be said to be economically viable. The remaining States may struggle to survive and must depend on the federal government bail outs to survive.

However, in an ideal federation, all the States are usually economically viable. Each of the 36 States in Nigeria has one resource or the other which if harnessed effectively can sustain each State financially. However, this is hampered by the lopsided federal arrangement established under the 1999 Constitution, under which virtually all money-making ventures and activities are placed on the exclusive legislative list reserved exclusively for the federal government, while the less lucrative areas are left for the States. See the Second Schedule to the 1999 Constitution for items on the Exclusive Legislative List and the Concurrent Legislative List.

ii. Homogeneity: This means that the people demanding for creation of a new State should be the same people with similar geographical, cultural and linguistic ties.

**TOPIC: LOCAL GOVERNMENT MATTERS**

## A. MEANING OF LOCAL GOVERNMENT

There is no generally acceptable definition of the concept 'Local Government'. Neither the 1999 Constitution nor any other law offers a comprehensive definition of the term. We are therefore compelled to search for the definition of the term from other sources. The Black's Law Dictionary (8th edn), defines local government as "the government of a particular locality, such as a city or county: a governing body at a lower level than a state government'.

Local government has also been defined as:

> Government at local level exercised through representative councils established by law to exercise powers within defined areas … has substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services … and to ensure that local initiative and response to local needs and conditions are maximised.

(Kehinde Mowoe quoting the 1976 Local Government Reforms)

From the foregoing, it can be concluded that local government is a government or tier of government established at the local level with substantial control over its apparatuses of administration and finances, and for purposes of bringing government closer to the people, provision of services of a local nature, training of leaders and fostering the development of the local communities.

## B. FEATURES OF LOCAL GOVERNMENT

Local Governments have the following essential attributes:

- Territory: A local government must have clearly defined area over which it exercises administrative control.
- Population: No local government can exist without a population of people over which it exercises administrative control.
- Institutional structure: A local government must have an administrative mechanism or management composed of elected or appointed officers by which it discharges its administrative duties.

- Separate identity: A local government must have a separate or independent existence. It must not function merely as an appendage of the Central or State governments.
- Autonomy: Local government must be able to administer its territory without external control, except as may be necessary for its smooth functioning. Thus, a local government ought to have autonomy over its funds, election and appointment of its administrative structure and discharge of its duties.
- Provision of public services: Local governments are created primarily to provide public services of a local nature to the local communities.
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## C. EVOLUTION OF LOCAL GOVERNMENT ADMINISTRATION IN NIGERIA

The history of local government administration in Nigeria can be broken down into three epochs or phases, namely: the colonial era, the 1976 local government reform, and the fourth republic.

### The Colonial Era

This was the era under colonial rule. During this period, local government was known as Native Authority or Native Administration which was a form of indigenous rule where the chiefs and other traditional rulers were given authority to administer the natives under the superior control of the colonial officers. The major drawbacks of this epoch were that:

- Local administration was undemocratic as the chiefs were arbitrarily and capriciously handpicked to serve the interests of the colonial overlords.
- The native authority system lacked legislative power and had no clientele service delivery system.
- It lacked executive power to initiate and execute policies to assist the local and rural poor.

This system of local government administration continued under successive colonial administrations with minor modifications adopted here and there. Sadly, none of the reforms brought the native administration system to what a local government should be. This continued into independence. At this time, local government administration was regulated on regional basis.

As a result, there was the absence of a uniform local government administration in the whole country.

**The Local Government Reform of 1976**

The Local Government Reform of 1976 took place under the then General Olusegun Obasanjo and was informed by the need to address the defects of the native administration system. Four major areas of reform featured under this era. These are:

i. Provision of a uniform and standardised local government administration structure throughout the federation.
ii. Introduction of democratically elected as opposed to appointed local government councils as separate (third) tier of government with constitutional recognition.
iii. Separation of traditional rulers from local government administration. Traditional rulers were constituted into a separate council known as the traditional or emirate council, as the case may be.
iv. More funding and financial control.

It is to be noted that these reforms were reflected in the 1979 Constitution and the provisions are the same as those of the 1999 Constitution.

**The Era of the Fourth Republic**

The Fourth Republic which began on 29th May 1999 was ushered in by the 1999 Constitution. The provisions of Section 7 of the 1999 Constitution on local government are the *ipsissima verba* (verbatim reproduction) of the provisions of the 1979 Constitution. However, there have been some attempts to further reform the local government system in Nigeria to grant more autonomy to local governments and to extricate them from the apron strings of the State governments. These have resulted in efforts at constitution amendments which have always been aborted by the State governments.

## D. LEGAL BASIS FOR LOCAL GOVERNMENT ADMINISTRATION IN NIGERIA

The 1999 constitution is the source and origin of local government administration in Nigeria. Section 7 of the 1999 Constitution guarantees the establishment of democratically elected local government councils in Nigeria. The said Section 7 provides:

7. (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

(2) The person authorised by law to prescribe the area over which a local government council may exercise authority shall-

(a) define such area as clearly as practicable; and

(b) ensure, to the extent to which it may be reasonably justifiable that in defining such area regard is paid to –

(i) the common interest of the community in the area;

(ii) traditional association of the community; and

(iii) administrative convenience.

(3) It shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the State.

(4) The Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to House of Assembly shall have the right to vote or be voted for at an election to a local government council.

(5) The functions to be conferred by Law upon local government council shall include those set out in the Fourth Schedule to this Constitution.

(6) Subject to the provisions of this Constitution –

(a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation; and

(b) the House of Assembly of a State shall make provisions for statutory allocation of public revenue to local government councils within the State.

## E. SETTING UP OF LOCAL GOVERNMENT CARETAKER COMMITTEES

The position of the law is that only democratically elected local government councils are established and guaranteed by Section 7(1) of the 1999 Constitution. Thus, local government councils by appointment or appointed local government councils are not permitted and are unknown to the 1999 Constitution. There are four implications of this position, namely:

- Local Government Caretaker Committees are illegal, unconstitutional and null and void.
- The Governor of a State lacks the vires to dissolve democratically elected Local Government Councils before the expiration of the tenures prescribed in the State Local Government Law. See **Governor of Ekiti State v. Olubunmo & 13 Ors (2017) 3 NWLR (Pt. 1551) 1 (Ratios 2-7);** See also **Federal Republic of Nigeria v Solomon (2018) 7 NWLR (Pt. 1618) 201 (Ratio7);** See further **In re: Maduike (2019) 7 NWLR (Pt. 1671) 255 (Ratio 8)**
- State Laws which give State Governors power to dissolve democratically elected local government councils are unconstitutional, null and void and of no effect.
- State Laws which give State Governors power to appoint caretaker committees in place of democratically elected local government councils are unconstitutional, null and void and of no effect. See **Akpan v Umah (2002) 7 NWLR (Pt. 767) 701 (Ratios 1-3)**

## F. STATUTORY ALLOCATION OF PUBLIC REVENUE TO LOCAL GOVERNMENT COUNCILS AND CONTROL OVER DISTRIBUTION OF ALLOCATED FUNDS TO LGAs

The 1999 Constitution makes prevision for statutory allocation of public revenue to local government councils. Section 7(6)(a) empowers the National Assembly to enact a law for the statutory allocation of public revenue to local government councils in the federation, while Section 7(6)(b) empowers a State House of Assembly to enact a law for the purpose of making provisions for statutory allocation of public revenue to local government councils within the State.

Similarly, Section 162 of the 1999 Constitution provides for the formula for sharing statutory allocations among the three tiers of government, namely: Federal, State and Local Government Areas. Section 162(3) provides:

> (3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

Section 162(4) provides that the National Assembly shall have the power to prescribe the term and manner of distributing the amount standing to the credit of the States in the Federation Account among the States. It provides:

> (4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.

It is the responsibility of the National Assembly to allocate to the States for the benefit of their respective Local Government Councils, the amount standing to the credit of the Local Government Councils of the Federation, on the terms and in the manner prescribed by an Act of the National Assembly. This is the purport of Section 162(5) which provides that:

> (5) The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the State for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.

Section 162(6) mandates each State to maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the Local Government Councils

of the State from the Federation Account and from the Government of the State. Also, Section 162(7) mandates each State to pay to Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

However, Section 162(8) provides that the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

The Supreme Court of Nigeria has held that by a community reading of Section 7(6)(b) and Section 162(8), it is the House of Assembly of a State that has constitutional competence to enact laws regulating the distribution of public allocation of revenue to local government councils within a State and not the National Assembly. See **Attorney-General of Abia State & 2 Ors v Attorney-General of the Federation & 33 Ors (2006) 16 NWLR (Pt. 1005) 265 (Ratios 7, 8, 9, 11, 12, 13, 19, 20 and 22).** In the above case, **t**he National Assembly enacted the Monitoring of Revenue Allocation to Local Government Act 2005 which established a State Joint Local Government Account Allocation Committee and purported to prescribe the terms and manner in which the amount standing to credit of Local Government Councils (LGCs) in a State would be allocated to such LGCs. The Plaintiffs (Attorneys-General of Abia, Delta and Lagos States) challenged the constitutional validity of the Act on the grounds that:

(1) Except as regards the prescription of the terms on which the amount standing to the credit of the Federation will be distributed among the Federal Government, the States and the Local Government Councils, prescription of the terms upon which any amount standing to the credit of LGCs in the Federation Account is to be allocated to the States for the benefit of the LGCs is the function of a State House of Assembly and not that of the National Assembly; and
(2) Except as regards the establishment of the FCT Joint Area Council Allocation Committee and the FCT Joint Area Council Committee, it is the State House of Assembly and not the National Assembly that has power to make a law prescribing the terms and manner in which the amount standing to the credit of LGCs in a State shall be distributed.

The Supreme Court held that certain sections of the Act are *ultra vires* the powers of the National Assembly in that it is a State House of Assembly and not the National Assembly that has the legislative *vires* to make laws prescribing the terms and manner in which the amount standing to the credit of LGCs in a State is to be distributed to the affected LGCs.

In **Attorney-General of Bendel State v Attorney-General of the Federal and 22 Ors (1982) 3 NCLR 1,** the Attorney-General of Bendel State challenged the constitutional validity of the Allocation of Revenue (Federal Account, Etc) Bill 1980 on the grounds that:

(1) Certain sections of the Act conflicted with Sections 7(6), 149(4) and (5) of the 1979 Constitution (substantive defect); and

(2) The Act was not passed in accordance with the provisions of the Constitution (procedural defect) in that the Senate and the House of Representatives passed different versions of the bill and that though a Joint Conference Committee of both Houses met and approved the Senate version by majority votes, the bill was not sent back to each House to be passed again by EACH HOUSE of the National Assembly as required by the 1979 Constitution. The Supreme Court invalidated the entire Act on that ground.

## H. POWER TO LEGISLATE OVER LOCAL GOVERNMENT ELECTION MATTERS

It is the State House of Assembly that has the constitutional *vires* to make laws to regulate elections into Local Government Councils and not the National Assembly. Any such law made by the National Assembly will be a legislative transgression and an incursion into the legislative duties of the State House of Assembly. See **Attorney-General of Abia State & 35 Ors v Attorney-General of the Federation (2002) 6 NWLR (Pt. ) 267 (Ratios 5, 8, 9, 16) .**

## I. FUNCTIONS OF LOCAL GOVERNMENT COUNCILS IN NIGERIA

Section 7(5) of the 1999 Constitution provides that the functions to be conferred by law upon a local government council shall include those specified in the Fourth Schedule to the Constitution. The word 'include' means that a State Local Government Law may confer additional functions on local government councils.

**Note: refer to the Fourth Schedule for the functions of Local Government Councils.**

**Query:** Can a State government perform a function statutorily or constitutionally vested in a local government council? A State government can neither carry out a function expressly granted to local government councils under a law nor perform any of the functions exclusively reserved for local government councils in the Fourth Schedule to the 1999 Constitution. See **Knight Frank and Rutley (Nig) Ltd. v Attorney-General of Kano State (1985) 2 NWLR (Pt. 6) 211** where the court held that:

> Once the state passes a legislation assigning the function of valuation of tenement rates to the local government as the constitution on has directed, only the local government council will have the power to deal with the

subject matter. The state has no power to deal with the matter and the local government council cannot, even if it wants to, divest itself of those powers.

**Query: Are local government councils performing their functions?**

## I. CREATION OF NEW LOCAL GOVERNMENT AREAS

The procedure for creation of a new local government area is similar to the procedure for the creation of a new State. It should be noted that under the 1999 Constitution, a new local government area can be created by a law of a State House of Assembly only. **See S. 8(3)**

**Procedure for Creation of New LGAs**

**Stage 1**

- A request (proposal) is received by the House of Assembly of the State praying for the creation of a new LGA.
- The request (proposal) is supported by at least two-thirds majority of members representing the area demanding the creation of a new LGA in each of the following:
  (i) the State House of Assembly in respect of the area; and
  (ii) the Local Government Councils in respect of the area. **S. 8(3) (a)**

**Stage 2**

- The proposal is to be thereafter approved in a referendum by at least two-thirds majority of the people of the local government area from which the demand for the proposed LGA originated. **S. 8(3)(b)**

**Stage 3**

- The result of the referendum is then approved by a simple majority of the members in each LGA in a majority of all the LGAs in the State. **S. 8(3)(c)**

  **NOTE:** that there are two conjunctive requirements that must be met here.

  **(i)** The referendum must be approved by a simple majority of the members of each LGA in the affected State; and

  **(ii)** The simple majority vote must be attained in the majority of all the LGAs in the affected State. (For instance, in the case of Rivers State with 23 LGAs, majority of all the LGAs

will be 12 LGAs). This means that if 12 LGAs each vote by a simple majority of the members of their respective Legislative Assemblies, the threshold requirement of Stage 3 would have been met.

**Stage 4**

- The result of the referendum is approved by a resolution passed by two-thirds majority of members of the House of Assembly of the affected State. **S. 8(3)(d)**

**Stage 6**

A bill for a Law for the creation of the affected LGA(s) is then proposed and passed by the relevant House of Assembly. See **S. 8(3)**

**Stage 7**

The bill as passed by the House of Assembly is presented to the Governor of the State for assent. The bill becomes a Law after the Governor's assent. **See S. 100(1)-(3).**

**Stage 8**

- The House of Assembly makes returns to each House of the National Assembly for the purpose of making consequential alterations to relevant parts of the 1999 Constitution in order to reflect the newly created LGAs as well as adjust existing boundaries and headquarters of the LGAs in line with the new reality. **S. 8(6)**
- The National Assembly upon receipt of the returns enacts an Act to make necessary amendments in Parts I and II of the First Schedule to the 1999 Constitution. **S. 8(5)**

## POWER OF NATIONAL ASSEMBLY IN CREATION OF NEW LGA

Under the 1999 Constitution, a State House of Assembly is granted the legislative competence to create a new local government area by means of a law enacted for that purpose. See S. 8(3). However, by Section 8(5) of the 1999 Constitution, the National Assembly is empowered to enact an Act for the purpose of making consequential provisions as to the names and headquarters of the new LGAs as contained in Parts I and II of the First Schedule to the Constitution.

To enable the National Assembly to enact the Act as aforesaid, a State House of Assembly upon creating a new LGA, is under obligation to make adequate returns to each House of the National Assembly. The relevant provisions of Section 8(5) and (6) state as follows:

> (5) An Act of the National Assembly passed in accordance with this section shall make consequential provisions with respect to the names and headquarters of State or Local government areas as provided in section 3 of this Constitution and in Parts I and II of the First Schedule to this Constitution.
>
> (6) For the purpose of enabling the National Assembly to exercise the powers conferred upon it by subsection (5) of this section, each House of Assembly shall, after the creation of more local government areas pursuant to subsection (3) of this section, make adequate returns to each House of the National Assembly.

The implication of these provisions is that two things must happen after a State House of Assembly has created a new LGA. These are:

- The relevant House of Assembly must make adequate returns to **EACH House** of the National Assembly. This involves informing each House of the National Assembly of the whole process of creation of the new LGA, including records of all the stages required by Section 8(3) and evidence that those requirements were complied with. A copy of the Law creating the affected LGA(s) will also be included in the returns made to each House of the National Assembly.

  **NOTE:** that the returns are to be made to EACH House of the National Assembly.
- Upon receipt of the returns from the relevant House of Assembly, the National Assembly is required to enact an Act making consequential alterations to Parts I and II of the First Schedule to the 1999 Constitution. The purpose of the consequential alterations is to reflect the newly created LGAs and adjust the existing LGAs and headquarters as appear in Parts I and II of the First Schedule to the 1999 Constitution in line with the new reality.

**Note:** that until the National Assembly enacts the relevant Act, an LGA created by a Law of a State House of Assembly remains inchoate, ineffective, in abeyance and not recognised by the

1999 Constitution. Not being a creation of the Constitution, such inchoate LGA has no right to participate in the distribution of the funds standing to the credit of Local Government Councils in the Federation Account. **See Attorney-General of Lagos State v. Attorney-General of the Federation (2004) 18 NWLR (Pt. 904).**