LOCAL GOVERNMENT COUNCIL AS A CONSTITUENT OF THE NIGERIAN FEDERATION: BENEFITS AND CONSTITUTIONAL CONSTRAINTS*

Abstract
The Local Government Council as a system of governance in Nigeria is provided for in the Constitution of Nigeria,[1] even though it did not make it part of the federating unit of Nigeria. The benefit of making it a constituent part of the federation are enormous, because being the government closest to the people, especially the rural community, they know the immediate needs of the people and are better able to meet same. They are both cost effective and even more efficient in implementing laws, especially revenue and tax laws, and consequently, bring development to the people.

Keywords: *Local Government Council, Nigerian Federation, Benefits, Constitutional Constraints.*

1. Introduction

There is need to make the Local Government Councils/Areas (referred to as LGAs) part of the federating units and grant them full autonomy over their laws, turf, finance and expenditure *inter alia*. LGAs as presently constituted is the third tier administrative structure created in Nigeria to decentralize governance, bring government closer to the people at the grassroots and render social services pivotal in engendering national development and are purposefully located and responsible for the governance of about 70 percent of the estimated 170 million people of the Nigerian population.

2. Constitutional Empowerment and Impediments of Constituting the Local Government Council as part of the Federating Unit

Section 7 of the 1999 Constitution of Nigerian (as amended),[2] (referred to as Constitution) guarantees a system of local government by democratically elected local government councils and admonished the Government of every State to ensure their existence under a law that provides for its establishment, structure, composition, finance and functions. This is the first impediment to the autonomy, independence and incorporation of the Local Government Councils as part of the federating units, having made them subject to the State Government's authority. The import of the above section is that the drafters of the Constitution appreciates the important role the LGCs can play in governance and development, hence, advocating for the need that they be established, with a structure, finance and spelt out functions. In further practical demonstration of the need to have LGCs, Section 7 (6) (a) & (b) of the Constitution mandates the National Assembly to make provisions for statutory allocation of public revenue to them and the State Houses of Assembly to do same with respect to the ones within the State.

This issue of autonomy of the local government albeit, financial autonomy was further given credence to by Engr Elias Mbam, the then Chairman Revenue Mobilisation Allocation and Fiscal Commission (referred to as RMAFC) who canvassed for the direct funding of Local Government Area Councils in the country to make them more viable and better positioned to address the developmental challenges at the grassroots, adding that LGCs in Nigeria being the government closest to the people occupy a peculiar position as promoters of grassroots mobilization and participation in governance, and catalyst

*By **C I OBIKA, LLM, BL, PhD**, Lecturer, Faculty of Law, Enugu State University of Science & Technology (ESUT), Enugu State. Email- cyril.obika@esut.edu.ng; +234 803 500 1837.

1. Constitution of the Federal Republic of Nigeria 1999, s. 7, CAP C 23 LFN, 2004 (as amended 2010).

2. *Ibid.*

for rural development.[3] Accordingly, and in agreement with the Chairman of RMAFC, no meaningful national transformation can take place without a well-managed and functional Local Government Area system. Engr Mbam recalled that Local Government Administration in Nigeria has from time immemorial been an integral part of the country's governance structure even before national independence; he states that it has remained central in Nigeria's political history from the colonial era through the military regimes to the post-military democracies.[4] He also noted that even though Section 7 (1) of the Constitution of Nigeria[5] guaranteed the existence of a Local Government system, and states that the Government of every State shall subject to Section 8 of the Constitution, [6] ensure their existence under a law which provides for the establishment, structure, composition, finance and function of such council, that certain provisions of the same Constitution has constituted a clog in the wheel of progress hampering the smooth running of Local Councils in the country. For example, according to Engr Mbam, the Local Government Councils are not Members of the Federation Account Allocation Committee (FAAC) even though they are beneficiaries of the money shared by FAAC. Sections 162 (5), (6) and (7) of the Constitution of Nigeria provides as follows: Section 162 (5) of the Constitution states that the amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be provided by the National Assembly. The Constitution hereof sounds like it does not know these LGCs and therefore, has to rely on the States to get their funds to them. Section 3 (6) of the Constitution mandates that they shall be seven hundred and sixty-eight (768) LGCs and listed them according to the various States in the Second Column of Part 1 of the First Schedule to the Constitution, whereas, that of the Federal Capital Territory that made them seven hundred and seventy-four (774) LGCs is listed in Part 11 thereof. Having stated these constitutional facts, it is curious, why the drafters of the Constitution, did not state that the funds of the LGCs be directly paid to them.

Section 162 (6) of the Constitution states that each State shall 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. The same point above is applicable here. Their funds should be paid to them in their individual accounts. The Hon Courts of law have also followed suit and in *Attorney General of Bendel State v The Attorney General of the Federation* [7] Mohammed Bello, JSC (as he then was) held that the law enjoins the National Assembly to distribute the entire amount standing to the credit among the States and does not empower the National Assembly to set aside any portion of the amount as a trust to be administered or expended by the Federal Government for the benefit of the benefiting States at the absolute discretion of the Federal Government. It could be contended in favour of the court that their duty is merely to interpret the law and nothing more, but they are also Judge made laws, that come about by judicial activism, which they are all enjoined to participate in.

Section 162 (7) of the Constitution states that each State shall pay to LGCs in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the

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[3]. Revenue Mobilisation, Allocation and Fiscal Committee (RMAFC) Canvasses for Direct Funding of Local Government Councils at the National Workshop organized by the Senate Committee on States and Local Governments Administration with the theme, "Positioning Local Government as Hubs for National Transformation" assessed on 15 August, 2014 and culled from http://www.rmafc.gov.ng/RMAFC%20CANVASSES%20FOR%20DIRECT%20FUNDING%20OF%20LGAs.pdf.

[4]. *Ibid.*

[5]. CAP C23 LFN 2004 (as amended 2010).

[6]. *Ibid.*

[7]. (1983) LPELR-3153(SC); (1983) All N.L.R 208.

National Assembly. This provision is rather ridiculous, in that, the States have not remitted the federally allocated revenue to the LGCs, how much more, "dream about the States, allocating its revenue to the LGCs". This is notwithstanding that the Hon Court deprecates such conduct as in the matter of *Attorney-General, Plateau State v Goyol,*[8] the Honourable Court held that although the State Governments have power to superintend the funds accruing to the Local Governments, they do not have the liberty to misapply such funds. [9] The Hon Court in exercising its power of judicial activism should have gone ahead to suggest payment of the money directly to the LGCs, albeit, *obiter dictum.*

Engr Elias Mbam stated that information at the disposal of the Revenue Mobilisation, Allocation and Fiscal Commission on how the State Joint Local Government Account is operated in various States of the Federation show that the allocations from the Federation Account most times do not actually reach the LGCs as allocated, with numerous allegations of manipulation of the Account at the point of disbursement adding that States hardly make their own contributions as stipulated by Section 162 (7) of the Constitution. He stated that it is the position of the RMAFC that Local Governments should be granted financial autonomy by ensuring that all monies due to them/statutory allocations from the Federation Account are all paid directly to their coffers and the State Joint Local Government Account be abolished. National Assembly should live up to its responsibilities by taking every necessary step to undertake constitutional amendments geared towards strengthening the structure, functions and operations of the Local Governments in Nigeria in order to reposition them as fulcrum of national development.

In other words, finance is essential in enabling local governments transform the lives of the rural dwellers through the provision of social services and rural infrastructures like the construction and maintenance of rural roads, markets, schools, health centers, etc. Despite the fact that the funding of local governments in Nigeria is an important aspect of fiscal federalism and intergovernmental relations, it has suffered setbacks, thus, circumventing development at the grassroots. This ugly trend is usually associated with or provoked by certain underlying factors like overdependence on statutory allocations from the Federation Account, corruption, tax evasion from citizens at the grassroots, creation of non-viable local government councils in terms of the capacity to generate finance internally and effectively utilize it for development purposes, and lack of financial autonomy. [10]

The present arrangement of monthly revenue allocation does not and has not yet guaranteed the local governments in Nigeria financial viability, though it is common knowledge that some State Governments hide under the toga of State Joint Local Government Account to short change the said local government of the allocated revenue.[11] In the light of this, there is every need for financial autonomy and viability of the local governments or municipal governments which will over time lead to effective management of resources, eradication of corruption, public accountability, fiscal autonomy, staff motivation etc which are imperatives in building capacity and sustainable development at the grassroots. This is the reason that they are said to be in a vintage position to aggregate and articulate the needs of the majority of Nigerians and facilitate rural development through the application of the needed

[8]. [2007] NWLR (Pt. 1059) 57 at 95.
[9]. *A-G., Abia State v. A-G., Federation* [2006] 16 NWLR (Pt. 1005) p. 265.
[10]. M S Agba *et al*, 'Local Government Finance in Nigeria: Challenges and Prognosis for Action in a Democratic Era (1999-2013)', Journal of Good Governance and Sustainable Development in Africa, vol. 2, No. 1, Jan 2014.
[11]. Constitution of the federal Republic of Nigeria 1999, CAP 23 LFN 2004 (as amended 2010) s. 162 (6).

financial and human resources in their operations,[12] and thus reduce rural-urban migration, thereby encouraging agricultural development.

The Constitution of the Federal Republic of Nigeria strategically positioned the local governments to provide public goods and services whose benefits and impacts are localized in nature.[13] It is however, deductible from the foregoing that local government councils in Nigeria being the closest to the people occupy a peculiar position as promoters of grassroots mobilization and participation in governance. It is the catalyst for rural transformation and development and where and when it is well-managed and administered, the local government system shall prove to be an essential component to national transformation and development.

Local government financial viability and independence cannot be over emphasised, thus the issue of how local governments in Nigeria generate fund to meet their financial obligations in the course of discharging their constitutional functions and duties stands out as a very important issue. There are basically two major sources of local government finance in Nigeria, namely, internally generated revenue (which is revenue generated within the local government area of administration) and externally generated revenue which refers to the local government funds generated outside the local government area of administration, including allocation from other federating units.[14]

The Local Government Council being incorporated as one of the federating units alongside the federal and state governments implies the adoption of the Constitutional provision that Nigeria should be a federation as contained in Section 2 (2) of the Constitution. Federalism is principally concerned with the division of powers between a central government and the other federating units, states or regional governments. Consequently, fiscal federalism deals with the division of financial powers between central and other federating units or governments, including the local or municipal governments as are being advocated for herein, to ensure their financial independence, ability to make and implement laws meant to achieve same. In a federation, this division of powers between the federal/central government and the other federating units/governments is usually very well outlined in the Constitution, in such a way that the right to self-governance of the component states and local governments (where applicable, as is advocated in this work) is usually constitutionally entrenched and committedly guaranteed. These component entities will also possess their own constitutions which are a little elevated over the present States' laws and local government bye-laws currently in operation, and they are at liberty to amend it as they deem fit. In almost all federations the federal/central government enjoys the powers of foreign affairs/policy, national defense, immigration, currencies, banks, customs, telecommunications and national issues applicable to all the federating units, without which the federation would not be a single sovereign state.

Wherever there is a practice of true federalism, the central or federal government does not have any business with provision of the following:

i. Health, education, water and agriculture;

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[12]. A A Adedokun, 'Local Government Tax Mobilization and Utilization in Nigeria: Problems and Prospects', http://visar.csustan.edu/aaba/Adedokun.pdf. on 4 July, 2014.

[13]. F O Egwaikhide, 'Intergovernmental Fiscal Relations in Nigeria'; In Egwaikhide, F. O. (eds. 2004), *Intergovernmental Relations in Nigeria,* Ibadan: Programme on Ethnic and Federal Studies, 1-23 at p 2.

[14]. E N Alo, 'Fiscal Federalism and Local Government Finance in Nigeria', (2013) *World Journal of Education*, 2
(5): 19-27, p. 23.

ii. Matters that concern mineral resources other than those that are related to the production of arms, ammunition and security of the nation generally;
iii. Taxation of incomes, profits and capital gains (with the exception of members of the armed forces, officers of the Nigerian Foreign Service, residents of the Federal Capital Territory, Abuja and persons resident outside Nigeria who derive income or profit from Nigeria) which should be left to States and Local Governments.

The Exclusive Legislative List of the Constitution should be amended in such a way that the Federal Government of Nigeria should only be limited to the following powers/items, while the rest be expropriated and divested to the State and Local Government Councils as being advocated in this work, to wit: Item 2, Arms, ammunition and explosives; Item 9, Citizenship, naturalisation and aliens; Item 15, Currency, coinage and legal tender; Item 16, Customs and excise duties; Item 17, Defence; Item 18, Deportation of persons who are not citizens of Nigeria; Item 20, Diplomatic, consular and trade representation; Item 21, Drugs and poisons (distinct from provision of primary health care); Item 22, Election to the offices of President and Vice-President; Item 24, Exchange control; Item 25, Export duties; Item 26, External affairs; Item 27, Extradition; Item 30, Immigration into and emigration from Nigeria; Item 31, Implementation of treaties relating to matters on this list; Item 35, Legal proceedings between Governments of States or between the Government of the Federation and Government of any State; Item 36, Maritime shipping and navigation, etc; Item 37, Meteorology; Item 38, Military (Army, Navy and Air Force) including any other branch of the armed forces of the Federation; Item 41, Nuclear energy; Item 42, Passports and visas; Powers of the National Assembly, and the privileges and immunities of its members; Item 48, Prisons; Item 49, Professional occupations as may be designated by the National Assembly; Item 50, Public debt of the Federation; Item 51, (National) Public holidays; Item 52, Public relations of the Federation; Item 53, Public service of the Federation including the settlement of disputes between the Federation and officers of such service; Item 54, Quarantine; Item 56, Formation and regulations of political parties; Item 59, Taxation of incomes, profits and capital gains, of armed forces personnel, residents of Federal Capital Territory, non-resident individuals, *ejusdem generis;* Item 62, Trade and commerce, etc; Item 63, Traffic on Federal trunk roads; Item 64, Water from such sources as may be declared by the National Assembly to be sources affecting more than one state; Item 66, Wireless, broadcasting and television other than broadcasting and television provided by the Government of a state; allocation of wave-lengths for wireless, broadcasting and television transmission;

> Item 67, any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution. Item 68, Any matter incidental or supplementary to any matter mentioned elsewhere in this list.

Summarily, the study proposes divestment of a whole lot of power by the federal government and retention of basically those powers that are national in nature and affects every unit generally; powers that have to do with national security (with the exception of Police, where the states or other federating units can form their own smaller units of neighbourhood/homeland Police, to complement the Federal Police) and such like.

There should be amendment of the extant laws where necessary in order to achieve this onerous but deserving objective of incorporating the LGCs as part of the federating unit. Section 7 (1) of the Constitution of Nigeria should be amended so as to recognize the municipal or local government as a full and independent arm of government with powers *inter alia* to make laws, impose and collect revenues and especially taxes only on those activities carried out in its turf. Section 7 (3) and paragraph

1 of the fourth Schedule of the Constitution of Nigeria should be amended to read that the Local Government Council by its (bye) law, should establish an Economic Planning Board saddled with the responsibility of economic planning and development of the area without the involvement or interference of any other federating unit and especially the States.

Furthermore, Section 318 of the Constitution interprets the word "government" to include the government of the federation, or of any state or of a local government council or any person who exercises power or authority on its behalf. The local government authority should be liberated and allowed to really function as a "government" as stipulated and defined by the Constitution of Nigeria. The law should make provision for the percentage of the tax the local government shall retain and work with and the percentage it shall send to the state government, who in turn shall aggregate all its income from all sources and also remit a percentage to the federal or central government, or from the LGCs directly to the central/federal government. This is the fastest way to grow this economy as everyone will be left to develop at their own pace, pay wages and salaries according to their income and resources and not lazily wait for Abuja and the Federal Accounts and Allocation Committee (FAAC) to monthly give them handouts to run their LGCs and the States.

Section 44 (3) of the Constitution of Nigeria mandates that the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. This directive is an emphatic and imperative one and means that no State or Local Government not to talk of persons has any right whatsoever, to meddle into any land or territorial waters even though within its territory to mine, exploit or excavate any minerals, mineral oils and natural gas. The more reason why the campaign for fiscal autonomy, resource control etc is being advocated is that the pitfall and consequence of these humongous and plethora of power given to the Federal/Central Government, is that if it fails to exploit a particular mineral in a particular local government or state, that is *nunc dimittis* so far as that mineral and locality is concerned. The examples of these abound everywhere in Nigeria, and amounts to the exact reason why our economy is not diversified. If the localities where these minerals are situated, be they local government or state government are allowed to exploit same and pay an agreed percentage of the revenue realised to the Federal/Central Government, by now our economy would have been highly diversified. This is because even the entities that lack the needed fund to exploit their mineral deposits would have been challenged by the steps taken by others to seek means and ways of doing same including partnering with local or foreign investors. Even the Taxes and Levies Schedule Amendment Order 2015, that empowers states to collect Mining, Milling and Quarrying fees, needs strengthening by vesting of minerals etc on the government of the area, as it cannot be said to have impliedly amended this constitutional provision.

The Minerals and Mining Act [15] has been repealed by Nigerian Mineral and Mining Act [16] but is silent as to the status of the Minerals and Mining Act (Schedules) [17] which contains various Minerals and Mining Forms for prospecting rights grant. It merely empowers and directs the Minister of the Federal Republic of Nigeria on how to issue the prospecting right, to whom it can be issued, duration of grant, the locality it should operate and minerals upon which it can be granted like Gold, Diamond etc. The

[15]. CAP M12 LFN 2004 (repealed).
[16]. No 20 2007.
[17]. CAP M12 LFN 2004.

Nigerian Mineral and Mining Act [18] like Section 44 (3) of the Constitution of Nigeria vests all rights and property in the minerals in the Federal Government. In Section 1 [19] thereof it states that the entire property in and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf, and all rivers, streams and water courses throughout Nigeria, any area covered by its territorial waters or constituency and the exclusive economic zone, is and shall be vested in the government of the federation, for and on behalf of the people of Nigeria. Sub-section (2) mandates that all lands upon which minerals are found in commercial quantity shall be acquired by the government of the federation in accordance with the provisions of the Land Use Act. [20] All these are impediments to achieving true fiscal federalism, fiscal autonomy for the states and will also affect the local government council even when they are finally integrated as part of the federating unit as is being proposed in this work, and thus, should be amended.

The Fourth Schedule of the Constitution further stipulates what the functions of the Local Government Council are, which are all subservient and subject to the powers of the State Government, and ought to be amended.

3. Local Government in Brazil and Spain [21]

This South American country of Brazil gained its independence in 1822 in 1889 the country became a republic. [22] The Federal Republic of Brazil includes the Union, States, Federal District and Counties, all autonomous. This simply means that they are politically and financially independent, self-governing, self-regulating and ability to make decisions and act on them independently. There are 26 states, over 5, 500 municipalities, with the capital city called Brasilia. [23] The states and municipalities of Brazil are divided up as such mainly for geographical and administrative purposes with each municipality representing an average of about 35,000 residents and each state has an average of 214 municipalities. [24] The administrations, or local governments, are autonomous, granting them a measure of independence from the political regions around them. They can create their own laws (within reason), collect taxes from their residents and receive funds from the state. [25]

Each municipality is headed by an elected mayor and a legislative body that handles the legal aspects of running the municipal area with its political power limiting it from any judicial matters or actions as the courts are only organised at a state level. [26]

The Constitution of Brazil provides in Article 18 that "The political and administrative organization of the Federative Republic of Brazil includes the Union, States, Federal District, and Counties, all autonomous, as provided for in this Constitution". The import is that it *ab initio* granted autonomy to the federating units.

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[18]. No 20 2007.
[19]. The Nigerian Mineral and Mining Act No 20 2007.
[20]. *Ibid.*
[21]. E Fossas & F Velasco, 'Local Government in Spain' (2005), http://www.kas.de/wf/doc/kas_8271-544-2-30.pdf accessed on 3 August, 2015.
[22]. Brazil - States and Municipalities, culled from http://www.brazil.org.za/states-and-municipalities.html, accessed on 3 August, 2015.
[23]. Brazil Constitution of 1988 (rev. (revised) 2014), Title 111, Chapter 1, Art 18 §1°.
[24]. *Ibid.*
[25]. *Ibid.*
[26]. *Ibid.*

Whereas Art 24 of the Constitution [27] on the other hand talks about concurrent power to legislate and states that the Union, States and Federal District shall have concurrent power to legislate on: tax, financial, penitentiary, economic and urban planning law; the budget; production and consumption; etc The Union in Brazil has only 29 items for which it can exclusively exercise power and authority upon, compared to 68 items in the Exclusive Legislative List of the Constitution of Nigeria in addition to some matters in the Concurrent Legislative List, making it a total of 82 items for the Nigerian Federal Government.

The crusade and proposition for an autonomous local government as part of the federating unit in Nigeria is given more bite by the example of Spain. The fact is that the governance system in Spain is quite different from that of the old federations, not only because Spain does not work as a federal system in many ways, but also because the constitutional recognition of local government in those systems is a modern phenomenon, yet it appreciates the essence of autonomy to its units. The Public authority in Spain is vested in four levels of government which are the central state (referred to as the state), the Autonomous Communities, provinces and municipalities. The Spanish Autonomous Communities are 17, the Provinces are 50 and Municipalities are 8,108. The structures established in the Spanish Constitution of 1978 can only be understood completely if one takes into account the organisation of the dictatorial regime that existed from 1939 to 1975. The military dictatorship of General Franco, in power until 1975, initiated a clear centralisation of public authority eliminating all forms of regional autonomy with the exception of the provinces and the municipalities. The democratic transition embodied by the Spanish Constitution [28] did not radically change the territorial organisation but, rather supplemented and readjusted it by creating the Autonomous Communities and reorienting the local bodies (provinces and municipalities) towards democratic local self-government. Section 137 of the Spanish Constitution [29] provides that 'The State is organised territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests'. The above cited section depicts the importance attached to self-governance and by inference independence of the various units making up the State for the management of their respective interests including their laws, finances and expenditure.

The Constitution guarantees the autonomy of municipalities. These shall enjoy full legal entity. Their government and administration shall be vested in their Town Councils, consisting of Mayors and councilors. Councilors shall be elected by residents of the municipality by universal, equal, free, direct and secret suffrage, in the manner provided for by the law. The Mayors shall be elected by the councilors or by the residents. The law shall lay down the terms under which an open council of all residents may proceed. The governance and administration of the Municipalities is vested in the Town Councils consisting of Mayors and Councilors elected by the residents of the municipality. This can be referred to as the equivalent of our local government areas in Nigeria, which is governed by the Local Government Chairman (Mayor) and the Councilors.

Furthermore, the structuring of the Spanish State into municipalities, provinces and Autonomous Communities implies that the municipalities and provinces are no longer merely internal divisions of the Autonomous Communities, but rather part and parcel of the State as a whole.

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[27]. *Ibid.*
[28]. Spanish Constitution (Constitución Española) 1978.
[29]. *Ibid.*

4. Benefits of Constituting the Local Government Councils as Part of the Federating Units

This work relies on the fact that if there is autonomy in the federating units especially with the inclusion of the local government as one of the federating units (being closer to the people), because it knows the immediate and remote needs of the rural dwellers. They are better placed and positioned to more cost efficiently and effectively implement the revenue and tax laws too, which will bring about realisation of more revenue and in turn engender healthy competition and development. There is so much concentration of power and resources at the center to the extent that there is under-utilization and abuse of resources through wasteful spending to outright embezzlement and corruption. The benefits derivable from incorporating the Local Government Council as part of the federating unit is better seen in practical terms from the implementation of these tax laws used as examples below.

The Capital Gains Tax Act[30] (hereinafter referred to as CGTA) is an Act made to provide for the taxation of capital gains accruing to persons, corporations, entities etc on disposal of assets in Nigeria and also outside the country subject to some provisos.[31] This tax has a lot to do with individuals as stated above, to that extent it is better left for the people in the locality that are close to the persons concerned and have easier access to them to handle same. Even at that, it will be hectic tracking the said transactions because of its nature and magnitude of the number of transactions involved on daily basis, evidenced by the number of persons that earn their income and sustenance through same, which shows that it is not only lucrative but also a huge enterprise. The Federal Government through its collecting agency, the Federal Inland Revenue Services (FIRS) are not and can never optimize the collection of this tax as they do not have the capacity in terms of manpower, spread and ability to reach the persons concerned. The FIRS at most has just one (1) office per state of the federation with a couple of staff, they are not situated in the various LGCs headquarters where majority of the people live not to talk of the hinterland area. So how can they adequately monitor these transactions that go on, on a daily basis. Even if they know and decide to pursue same, they will certainly be overwhelmed by the enormity and plethora of same.

The state governments on their own part are not even collecting one-tenth ($^1/_{10}$) of the CGTA because of the afore stated reasons. The CGTA that the States collect are gotten only when the entities concerned had transacted on a landed property and they come to register the property in the various lands registries. So what happens to those that does not show up to register their interest in the lands registry. Some others transfer their interest from one person to the other without registering same, which tantamount to loss of revenue to the states involved. The huge sums involved in registration of interests in properties is not helping matters either, and may have pushed some Lawyers into encouraging and aiding tax evasion. This evasion of tax happens when Mr. A has sold property to Mr. B, Mr. B sells to Mr. C who in turn sells same to Mr. D. Since Mr. A, B & C did not register their interest and therefore did not pay the CGTA, some crafty Lawyers will prepare the title documents to read that Mr. A sold same directly to Mr. D which implies that they do not recite the full history of the property and consequently deny the concerned government of their revenue, (though they smartly prepare some other documents showing the devolution and transfer of the property between the parties in order to protect the interest of their client).

Section 7 of the CGTA gives credence to the above stated fact as it leaves the reader very curious and wondering how the FIRS really and honestly intends to follow up and collect the said CGTA. In Section

[30]. CAP P8 LFN 2011.
[31]. *Ibid*.

7 (1) of the CGTA that deals with a person acquiring an asset and the disposal of it and determination of the consideration payable on same, how will the FIRS or even the State Internal Revenue Services that are mostly located in the state capitals even get wind or knowledge of the transaction and requesting for the particulars of the person from whom the asset was acquired, the consideration paid etc as provided for in Section 44 of the CGTA not to talk of assessing the entity to tax and follow up on the collection of same. Even the Local Governments through their Local Government Revenue Committee that the Researcher is advocating that they be allowed to collect same will have their plates full in actualisation of this, how much more the federal and state governments. Furthermore, Section 7 (2) of the CGTA makes provision for where a person disposes by way of a gift an asset acquired by way of a gift or otherwise and under sub-section 7 deals with an asset acquired by a creditor in satisfaction of his debt or part thereof; Section 26 (2) (a) provides for a situation where a property held on trust ceases to be so held wherein the trustees are treated as if they had disposed of it and immediately re-acquired it, thereby subjecting any gain on the disposal of these and other transactions to CGTA tax etc., how can these transactions and others not mentioned be ever collected not to talk of being easily tracked and brought into the tax net by a very distant revenue or tax authority as provided by the extant law.

The Companies Income Tax Act [32] (referred to as CITA) is an Act to consolidate the provisions of the Companies Income Tax Act 1961 and to make other provisions relating thereto with regards to the taxation of companies in Nigeria. Section 9 of CITA [33] in its paragraph (b) provides that companies should pay tax on rent collected by it from the occupants of its properties. These properties are situated on the ground and in particular localities of the country, some are in the urban areas while others are in the rural areas. It will be more efficient and cost effective if the federal government, state governments and local government areas collect tax from the profits made by the companies within their jurisdiction as they are more likely to know about such in and out movements of tenants, follow up on how much and when rents are paid to collect withholding tax, than someone in faraway Abuja or various state capitals if the property is not located therein. They can do this by asking the tenants to show or paste photocopies of their receipts on their doorpost as is done for other payments like Business premises registration and renewal payment receipts, Electricity Bills receipts, ESWAMA etc or by calling for the books of the company.

The likely question agitating the mind of a reader is whether this would not lead to double and multiple taxes on the companies if this proposal is applied, taking for instance companies like Coca Kola, 7 Up, NNPC etc., that have numerous and widespread branches across the federation. Firstly, companies owned by the federal, states and local governments or in which they own substantial equity and interest are exempted (ie profits of government). The other companies should pay tax according to the exact business transaction carried out in the localities, eg. say Coca Kola or 7 Up companies that have outlets or offices from where they make deliveries should be taxed based on the number of their products circulated and sold within the locality. This can easily be deciphered from their waybills and stock book of products received, after all they take advantage of the facilities in the said localities like access roads, bridges, water, sanitation etc., which are maintained by tax payers fund. If they are companies that insist that they are not making enough profits from offices or outlets opened by them and same cannot be determined, then they should be made to pay an agreed fee as tax or they should be a catergorised fee depending on the nature of business carried on by them, after crosschecking their stock books, ware bills, loading bills etc.

[32]. CAP C21 LFN 2004 (as amended 2011).
[33]. *Ibid.*

Section 11 (4) of CITA states that Agricultural trade or business involves the establishment or management of plantations, cultivation or production of crops, fruits, vegetables etc, and animal husbandry generally. These activities and projects are carried out mostly in the hinterlands and suburbs of towns and cities and the imposition and collection of tax on them will be better handled by the locality where they are situated, be it federal, state or local government. Even when a company willingly or is mandated by the FIRS to comply with the provisions of Section 12 of CITA which requires it to make a full disclosure of the terms of any agreement entered into by it either orally or in writing with regards to services listed under Section 9 of CITA to wit: payment of tax on profits accruing from trade or business; rent or premium; dividends, interests, royalties, discounts, charges or annuities; fees, dues, allowances etc. the enormity and plethora of the transactions alone for just one state like Lagos or Port Harcourt will simply overwhelm the FIRS for the entire year. Hence, the Researcher's advocacy that Local Government Council be made part of the federating unit, and the federating unit closest to the entity be empowered and authorize to collect taxes from them.

When a company claims to have ceased to carry on a trade or business under Section 29 (4) of CITA, how can the FIRS adequately and independently verify same, more so, if the said company is not situated within the metropolis of the state like many companies presently are, due to dearth of expansive plots of land within the towns for citing of industries.

The Personal Income Tax Act [34] (referred to as PITA) is an Act to impose income tax on individuals, communities, families, executors and trustees; and to provide for the assessment, collection and administration of the tax. There is no gain saying that Sections 69, 70, 71, 72, 73 & 74 of PITA which deal with deduction of tax on rent, interest, dividend, Director's fees, at source and penalty for failure to deduct tax respectively and pay same over to the relevant tax authority, is easier implemented by the government closest to the remitting entities in terms of follow up and investigation, in contradistinction to the present position whereby the FIRS is empowered and expected to do same.

The Value Added Tax Act [35] (referred to as VAT) is an Act to impose and charge Value Added Tax on certain goods and services and to provide for the administration of the tax and related matters. It is much easier and practicable for the States and Local Government Areas to administer this tax than the Federal Government *via* their agency the FIRS. Section 40 of the VAT Act deals with distribution of revenue and invariably acknowledges the fact that this is a tax meant for the States and Local Government Areas, in that it is charged and payable on the supply of goods and services, (other than exempt goods and services) carried on, on their turfs, which the FIRS collects on their behalf. It recognises the principle of derivation and provides that not less than 20% of the revenue shall be distributed on the basis of derivation (i e the area the revenue was generated from should retain 20% thereof) to the concerned States and Local Government Areas.

The researcher firmly canvasses that the States and Local Government Areas of the Federation should be allowed to collect VAT on the vatable activities carried out on their turfs by corporate and non-corporate entities. Firstly, they are closer to the said entities and most likely to monitor the activities and assess to VAT as applicable and collect more revenue than an FIRS with an office at best at the state capital, waiting for the vatable entity to come and register, collect and remit same. Secondly, the

[34]. CAP P8 LFN 2011.
[35]. CAP V1 LFN 2004.

States and Local Government Areas have a defined and determinate area to cover and will easily deploy the desirable, efficient and adequate manpower to cover and take care of same, in comparison to the FIRS with an office at the state capital and inadequate manpower to cover the desired areas.

Section 8 of the VAT Act mandates a taxable person to register with the Board within six (6) months of commencement of business and penalizes failure to register with a fine of ten thousand (₦10,000.00) naira in the first month and five thousand (₦5,000.00) naira for subsequent months in which the failure continues. The vexed question here is, going by some of the already mentioned challenges of the FIRS, manpower inclusive, when (if ever) and how is it going to enforce compliance even if it intends to? Can they go from one supermarket to another, shop to shop, hotel to hotel etc of all the vatable persons/entity? If they decide to do that, how long will it take to conclude same, and this is just one tax, what time will it have to attend to other revenue and tax matters? This is because we all know that tax payment and compliance rate is still too low in this country and people are not really interested in paying same, which translates to the fact that they will not be forthcoming in registering with the Board as required by the Act. For this and other obvious reasons, it will be easier if the States and Local Government Areas administer VAT tax so that the registration is done with them. These government bodies are able to follow up on people that fail, refuse or neglect to register or remit vat tax the same way they follow up house to house to enforce state and local government revenue. It should not be forgotten that the Joint Tax Board is still battling to contain and limit states to the taxes that they are supposed to collect, which means that they collect more than they ought to, implying that they have the time, personnel and competence to enforce these taxes in a true federalist arrangement. They will be able to scrutinize the records and books of transactions, operations, imports and other activities relating to taxable goods and services in order to determine the correct amount of tax due as provided for in Section 11 of the VAT Act, with the enablement of the provision of Section 39 of VAT Act that empowers an authorized officer to enter at any time without warrant any premises and inspect same.

It may be argued that it appears easy to collect VAT Tax on goods with the example of Section 16 (2) of the VAT Act that requires an importer of taxable goods to pay over the tax to the Board before clearing them, can same be said about vatable services.

When the LGCs are incorporated as part of the federating unit and fiscally empowered as it ought to, the federating States and LGCs after collecting the VAT tax should retain eighty percent (80%) of it, comprising cost of administration and derivation and remit twenty percent (20%) to the Federal Government, being a similitude of the provision of Section 40 of VAT Act.

5. Conclusion

The inclusion of the Local Government Councils as part of the federating units of Nigeria and empowering them to make their laws and manage their finances (after contributing an agreed percentage to the Federal Government directly or through the State Government) will positively affect the economy of Nigeria and its people. Being the government closest to the people, it knows exactly the immediate and remote needs of the people and if empowered, can adequately meet same. Moreso, they are more likely to generate more revenue internally than any other federating unit, as they are closer to the tax paying entity and can monitor and follow up on them to collect them. This consequently, implies the realisation of more revenue to run governance and bring about the much needed infrastructure and development in general.