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A Legal Appraisal of the Place of the Local Government in Nigeria's Federalism

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ABSTRACT

Federalism is a model of government wherein powers are shared between the central government and other federating units, each sphere of government existing and functioning independent of the others. In Nigeria, powers are shared among the federal government, state government and local government. However, the local government has not been able to perform to its optimal level because of a lot of challenges facing that level of government. This work did a legal appraisal of the place of local government in Nigeria's federalism with a view to finding ways by which a more independent, more efficient local government system can be achieved to provide the necessary developmental services at the grassroots. The work also undertook a comparative insight into the operation of local government system in Nigeria with local government system in Brazil and the United States of America. The methodology employed in the work is doctrinal, primary sources of data used are relevant statutes and case laws while secondary data from textbooks, journal articles and Internet materials were used. The work found that the structure and functions of the local government system in Nigeria are not clearly spelt out in the Constitution; the Constitution gave the state government powers to ensure the creation and existence of a democratically elected local government thereby making it a mere appendage of the state government who in turn has abused that position; local government system in Nigeria lacks financial autonomy and in some states there is no democratically elected council while in some others elected local government officials are dismissed before the end of their tenure; local government in the United States of America and Brazil enjoy more autonomy than that of Nigeria. The work recommended that a chapter of the Constitution should be created and devoted to establishment of local government and clearly providing for its functions, structures and compositions and term of office of its elected officials; complete autonomy from other tiers of government; direct revenue allocation to the local governments and conduct of local government elections by the Independent National Electoral Commission.

Key Words: Federalism, Federal Government, State Government, Local Government.

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1.0 Introduction

Federalism as a concept connotes the allocation and division of governmental powers between the central government and the federating units. The cardinal principle of federalism is that each tier of government is expected to maintain some degree of autonomy. It presupposes that each tier of government should carry out the constitutional roles conferred on it without any interference from other tiers of government. Nwabueze[1] defined federalism thus;

> Federalism is an arrangement whereby powers of government within a country are shared between a national, country-wide government and a number of regionalised (i.e. territorially localised) government in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its own territorial area, with a will of its own apparatus for the conduct of its affairs with an authority in some matters exclusive of all the others.

Federalism can also be defined as a state of affair in a country in which there are two or more levels of government, each of which has its own landmass or spheres of governmental legislative authority. Federalism can be distinguished from other systems of government, for instance, Unitary system of government which entails concentration of the entire governmental powers on the centre, wherein administrators may be appointed by the central government for the regions as agents of the central government; Confederalism is a system of government whereby a union of states or group of people come together and allocate some powers to the central government while the federating units are stronger and holds more powers than the central government.

Nigeria practices federalism with powers shared amongst the federal, state and local governments. However, the place of the local government in Nigeria's federalism has been a source of controversy and debates. The structure, composition and functions of this third tier of government are not clearly defined and this has hindered development at the grassroots level. The local government has not performed to the optimal level expected of it due to constant interference by the other tiers of government especially the state government.

This article undertook a legal appraisal of the place of the local government in Nigeria's federalism by examining the legal framework establishing local governments, the historical antecedence of local government in Nigeria with a view to finding ways by which the local government system in Nigeria can be improved so that the desired results of bringing development to the grassroots will be achieved through an autonomous and efficient local government system. The article will also highlighted local government system in the United States of America and Brazil to see if there are lessons Nigeria can learn from those jurisdictions in order to improve and strengthen local government system in Nigeria.

2.0 Local Government System in Nigeria

Starting from the pre-colonial era, local government or local administration as it was then, existed in various clans, villages, kingdoms and other traditional stool. The Northern part of Nigeria, the Hausa/Fulani, practised a more centralized system of local administration with the

[1] *The Presidential Constitution of Nigeria*, (London: C.Hurst& Co. (Publishers) Ltd.) 1982; P.7.

Emir at the head as both the political and religious leader.[2] The Emir delegated his powers to District heads known as *Magajis* to oversee the districts that made up the emirates. In the Western region, the Oba held power over towns, and delegated powers to the *Baale* who administered a town or village and pay royalties to the Oba.[3] In the Eastern region, the Igbos were republican and egalitarian in nature, they have *Ohaneze* or an assembly of men who sat at the village square to take decisions on behalf of the people.[4]

With the advent of colonialism in 1861, the British government introduced indirect rule. The aim of this is that local administration be carried out through traditional rulers, that is to say, traditional rulers were to be used as tools to implement the policies of the colonial government. Traditional rulers were recognized as native authorities and were to maintain law and order. The system of indirect rule was largely successful in the Northern region because of the centralized system of local administration; it was partiality successful in the Western region but failed in the Eastern region because of the decentralized system of local administration. Owing to the lack of success of indirect rule in the Eastern region, Donald Cameron, the then Governor of Nigeria, established Native Authority system in 1931-1949.[5] This culminated in the establishment of chiefs-in-council and chiefs-and-council in place of sole native authorities. The Chief-in-Council is made up of the chief and members of council. The chief presides over all meetings and acts in accordance with the majority opinion in the council, where he disagrees with the council, he would take whatever action he thought best and inform the Governor of the region.[6] However, under the chiefs-and-council arrangement, the chief cannot act against the majority decision of the council. Between 1950-1955 the first largely elected local government council based on the British Whitehall model emerged in Lagos and the Eastern and Western regions. Traditional rulers constituted about 25 percent of most local government council in Lagos and Western region.[7]

The legal framework for local government at this period was provided by the Eastern Region Local Government Ordinance of 1950, the Western Region Local Government Law of 1952 and the 1954 Native Authority Law in Northern Nigeria.[8] The councils as at that time had their powers extended to a wide range of responsibilities including primary education, health, police and judiciary. From 1960-1966, there was a decline in the prestige and responsibilities of local authorities.[9] In the former Western region, the Local Government (Amendment) Law 1960 abolished the powers of councils to levy education and general rates. In Lagos, there was a high

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[2] A.A. Ahmad, "Local Government Autonomy and its Effectiveness in Nigeria" *The Journal of African & Asian Local Government Studies,* June 2015. Available at https://www.researchgate.net/publication/318653002 Accessed on 1 December 2020.
[3] *Ibid.*
[4] *Ibid.*
[5] O.D. Amucheazi& E.A. Oji, "An Appraisal of the Performance of the 5th Republic Third Tier Legislature in Nigeria" *NnamdiAzikiwe University Journal of International Law and Jurisprudence*, Vol 5 (2014)
[6] Ahmad, n.9.
[7] O. Igbuzor, "Local Government Reform and Constitutional Review in Nigeria" Available at http://nigeria-local-government.blogspot.com/2009/01/local-government-reform-and.html?m=1 Accessed on 1 December 2020.
[8] M.O., Eze, "A Critique of 1976 Local Government Reforms: Its History, Structure and Impact after Forty Years in Operation in Nigeria" *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Vol. 21, Issue 9 (Sept 2016) PP 22-28.
[9] *Ibid.*

rate of default in the payment of property rates including government institutions, which reduced the revenue of the local councils. The outbreak of civil war in 1967adversely affected the local government system in the Eastern region. In Northern region, there were gradual changes in the structure of the councils with increasing number of elected or appointed non-traditional office holders becoming members of local authorities. The result was that the local authorities had a stable administration, which enabled them to assume responsibility, with some degree of success for more complex services like primary education.[10]

The major local government reform in Nigeria took place in1976. The 1976 reform established a uniform system of local government as regards their functions, structure, and financing. It also made the local government a multi-purpose third tier of government.[11] As the third tier of government, local government gets statutory grants from the federal and state governments for the good of the rural populace. According to the 1976 reform, 75 percent of members of the council are to be elected through the secret ballot on a no-party basis under the direct and indirect systems of election. The remaining 25 percent are to be nominated by the state government. Following the reform, the Federal Government in 1977, allocated 5 percent of the federal revenue to the local government.[12] It also provided that the population of any local government council should be between 150,000-800,000 people.

The following are the objectives of the 1976 Local Government reform:

1. To make appropriate services and development activities responsive to local wishes and initiatives by devolving or delegating them to local representative bodies;
2. To facilitate the exercise of democratic self-government close to the grassroots of our society and to encourage initiative and leadership potential;
3. Mobilization of human and material resources through the involvement of members of the public in their local development; and
4. To provide a two-way channel of communication between local communities and government (both state and federal).[13]

The Constitution of the Federal Republic of Nigeria 1979 abolished the provision that 25 percent council members should be nominated by the state government and provided for all local council members to be democratically elected. During the second republic (1979-1983), the civilian administration ignored the constitutional provisions and no elections were held, instead sole administrators were appointed to administer the local governments.[14]

Subsequent local government reforms were contained in the 1984 Dasuki Report of the Nigerian Local Government, the 1989 Constitution, the 1992 Handbook on Local Government Administration and the Constitution of the Federal Republic of Nigeria 1999.[15]

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[10] *Ibid*.
[11] Local Government Reform of 1976. Available at https://nigerianscholars.com/tutorials/nigerian-local-government/local-government-reform Accessed on 1 December 2020.
[12] Igbuzor, n. 14.
[13] *Ibid*.
[14] Ahmad, n.9.
[15] Amucheazi& Oji, n. 12.

Section 7(1)[16] of the Constitution provides that, "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." This research will appraise how the local government under the current dispensation in Nigeria has fared, whether it is occupying its rightful place in Nigeria's federalism.

3.0 Challenges facing the Local Government System in Nigeria

The Local Government councils in Nigeria have lots of challenges they face in trying to occupy their rightful place in Nigeria's federalism as the third tier of government. These challenges will be discussed in this section. They include:

3.1 Weak Legal framework establishing Local Government System in Nigeria

Section 2(2) of the Constitution[17] states that Nigeria shall be a federation consisting of states and a Federal Capital Territory. This provision clearly did not mention the Local Government as a component part of the federation called Nigeria. This puts a question mark on whether the draftsman of the Constitution actually intended Local Government to be a component part of the federating units or mere appendages to the state. The first mention of local government was in Section 3(6) of the Constitution which stated that there shall be seven hundred and sixty-eight local government areas as shown in the second column of councils as shown in part II of that schedule, that section did not state whether those local government areas are part of the federating units in Nigeria. Section 7 establishes the Local Government. It stated in subsection 1 that the Government of every state shall subject to section 8 of the Constitution ensure the existence of a democratically elected local government areas under a law which provides for the establishment, structure, composition, finance and functions of such councils. By this provision, the Constitution casts on the states the mandatory duty to ensure that there is a functional, structured democratic local government in the state. Subsection 5 of the same Section 7 empowers the state legislature to make laws conferring functions on the local government in addition to the ones conferred to them by the Fourth Schedule to the Constitution. Unlike the Federal and States government, there is no other constitutional provision defining the arms of the local governments and their respective functions or tenure of office, all these are left for the states to decide. In *AG. Abia State v AG. Federation*[18] the Supreme Court voided the portion of the Electoral Act 2001 which provided for the tenure of local government councils and held that the National Assembly has no constitutional power to make laws relating to the tenure of local government councils.

It should be pointed out that there was an improvement in the constitutional framework for local government system from what it was under the 1979 Constitution and what it is in the extant constitution. Under the 1979 Constitution, section 3(1) named all the states of the federation but merely included the list of the existing local government in the second column of Part I of the

[16] Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[17] *Ibid*.

[18] (2002) 6 NWLR (pt.763) 264 SC.

First Schedule to the Constitution. Section 3(2) merely referred to local government as "area". [19] Also the 1979 Constitution failed to expressly empower the states to create new local government areas, unlike the extant constitution which empowers states to create new local governments following the laid down procedures stipulated in section 8.

Flowing from the foregoing is the fact that the fate of the local government lies in the hands of the State Government. These constitutional powers over the affairs of the local government granted to states have been severally abused and this has reduced local governments to mere appendages of the states and has negatively affected their effective operation in the scheme of things as the third tier of government.

3.2 Conduct of Election of Local Government Council by State Government

Elections into local government councils are conducted by the State Independent Electoral Commission of the state concerned. Section 197(1) (b)[20] establishes the State Independent Electoral Commission as one of the State Executive Bodies. Its composition and powers are set out in the Third Schedule to the Constitution;[21] the commission is composed of the chairman and not less than five but not more than seven other persons. The Commission has powers to organise, undertake and supervise all elections into local government councils within the state and also to render such advice to the Independent National Electoral Commission on the compilation of and the register of votes in so far as that register is applicable to local government elections in the state. The chairman and members of the Commission are appointed by the Governor subject to the approval of the State House of Assembly of the State.[22] The chairman and members of the Commission can be removed from office by the Governor acting on an address supported by two-thirds majority of the State House of Assembly of the state praying that he be removed for inability to discharge the functions of his office or for misconduct.[23]The Constitution states that the Commission shall be independent and shall not be subject to the direction and control of any authority or person.[24]

An appraisal of these constitutional provisions puts a big question mark on the independence of the State Independent Electoral Commission. The fact that the chairman and members are appointed by the Governor with the confirmation of the State House of Assembly of the State and can be removed by those two arms of government for misconduct or inability to discharge the functions of his office gives a leeway for state control over the Commission. State governments have continuously influenced local government elections and consequently install council members who belong to the same political party with the State Governor and who were handpicked by the Governor to do his bidding instead of exercising their powers independent

Recently, Kano State conducted local government elections into the 44 local government councils, the ruling All Progressive Congress (APC) won all the 44 Chairmanship positions and

[19] **P. Ehi Oshio, Nigerian Federalism:** Local Government and its Relationship with the other Tiers of Government.
[20] Constitution of the Federal Republic of Nigeria 1999 (as amended).
[21] Sections 3 & 4 thereof.
[22] n. 27, section 198.
[23] *Ibid*, section 201.
[24] *Ibid*, section 202.

484 councillorship positions.[25] Same happened in Enugu State in 2020 local government council polls where the state's ruling Peoples' Democratic Party (PDP) swept the entire 17 chairmanship positions and won 260 councillorship positions.[26] This is also the situation in other states of the federation, Local government elections in Nigeria are always won massively by the political party at the helms of affairs in the state, while in some states the ruling party sweeps in the entire chairmanship and councillorship seats, in the others, the opposition parties take a little fraction of the councillorship seats. This puts a question mark on the integrity of the process of election at the local government level and also cast doubt on the independence of the State Independent Electoral Commission.

3.3 Lack of Financial Autonomy of the Local Governments in Nigeria

The Constitution makes provision for all revenues collected by the Government of the Federation to be paid into a special account to be known as the Federation Account.[27] It went ahead to state that the amount standing to the credit of the federation account shall be distributed among the three tiers of government in a manner to be prescribed by the National Assembly.[28] The amount for Local Government Councils of a state shall be allocated to the state for the benefits of the local government councils on such terms and in such a manner as may be prescribed by the National Assembly.[29] Each state is to maintain a special account called State Joint Local Government Account where the funds for the Local Government Councils in the state shall be paid into.[30]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.[31]

From the constitutional provisions, the National Assembly prescribes the modalities for the distribution of the amount in the federation account among the three tiers of government, then while each state government takes what is due for the state, the amount due for the local government councils in each state will be paid into the State Joint Local Government Account from which the State Houses of Assembly will then determine how the amount will be shared among the local government councils of the states. The implication is that each local government council is left at the mercy of the state government to determine how much it gets from the joint account. It presupposes that a local government council that is not dancing to the tune of the state government might get lesser sum from the joint account. There have also been cases of seizure of local government revenue. Under the Presidency of Chief Olusegun Obasanjo, the funds for Lagos state local government councils was seized by the federal government on the grounds that the Lagos state government created additional 37 local government councils. Despite Supreme Court judgment directing the federal government to release the funds, the federal government

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[25] Premium Times, APC wins Kano LG Election. Available at https://www.premiumtimesng.com/regional/nwest/437086-apc-kano-lg-election.html Accessed on 25 January 2021.
[26] PDP Sweeps Enugu LG Polls, *Guardian Newspaper*, 1 March 2020. Available at https://m.guardian.ng/news/pdp-sweeps-enugu-lg-polls Accessed on 25 January 2021.
[27] Constitution of the Federal Republic of Nigeria 1999 (as amended), section 162(1).
[28] *Ibid*, section 162(3).
[29] *Ibid*, section 162(5).
[30] *Ibid*, section 162(6).
[31] *Ibid*, section 162(8).

remained adamant.[32] There are also cases of state governments that have withheld local government funds, some of the instances of states withholding local government funds are; in Borno State, between March 2002 and March 2003 out of a total of 13.3 Billion Naira allocated for the local government councils in the state from the federation account, the state government deducted almost a half of the sum (amounting to about 6.8 Billion Naira), in Rivers State, a total of more than 31 Billion Naira was deducted from the revenues accruing to local governments in that state between 2007 and 2013.[33] In some states, there is absence of a democratically elected local government council and owing to that, the state withholds the local government funds and cannot be questioned by their appointed caretaker chairmen.

Fourth schedule to the Constitution specifies the functions of the Local Government Councils and also states that the State Houses of Assembly can confer additional functions on the Local Government Councils by law. Local Government Councils are meant to generate revenues internally through the performance of those functions conferred on them, for instance, through collections of levies from markets, licensing of bicycles, trucks, barrows and so on. Most times, the state encroaches on these functions and deprives the local government council of the revenue generation opportunities. This hinders the local government council from having funds for the smooth running of that tier of government.

3.4 Absence of Democratically Elected Local Government Council forceful removal of Democratically Elected Local Government Chairmen from office

As already stated in this article, section 7 of the Constitution makes it mandatory for each state to ensure the existence of a democratically elected local government councils in that state. Unfortunately, this constitutional provision has been observed more in breach. The State Independent Electoral Commission (SIEC) is saddled with the sole responsibility of conducting local government elections, however, the duty of maintenance and compilation of register of voters for local government elections is that of Independent National Electoral Commission (INEC). State governments always hide under the cover that as at the time of expiration of tenure of local government councils, INEC has not been able to compile the register of voters so as to enable SIEC conduct elections. Some state governments also cite paucity of funds for local government elections as reason for inability to conduct the elections and hence the need for a caretaker committee. One begins to wonder, since there has never been a time in the democratic history of Nigeria, a caretaker committee was appointed to be in the helms of affairs at the federal or state government level owing to inability to conduct elections in those tiers of government for whatever reason, why then is that of the local government justified?

The appointment of caretaker committee at the local government councils in place of democratically elected local government councils has received judicial condemnations in *Akpan v. Umah*[34] the court stated *inter alia*, that any law made by a House of Assembly of a State which provides for the nomination of membership of a council or appointment of an administrator or caretaker committee to replace a democratically elected council is inconsistent with the clear and

[32] AG. Lagos State v AG Federation…….
[33] A.E. Obidimma& E.O.C. Obidimma, "Legality of Caretaker Committees to manage Local Government Councils in Nigeria" *International Journal of Innovative Research and Developments* Vol. 5 Issue 5 April 2016, pp. 203-210. ISSN 2278-0211. Available at www.ijird.com. Accessed on 27 January 2021.
[34] (2002) 7 NWLR (pt. 767) p. 701.

unambiguous provisions of section 7(1) of the 1999 Constitution which guarantees democratically elected Local Government Councils and is therefore unconstitutional to the extent of the inconsistency.[35] The cases of *Akan v. A.G. Cross Rivers State*[36] and *Akinpelu v. A.G. Oyo State*[37] also reiterated the judicial condemnations of the appointment of caretaker committees at the local government council. In *A.G. Plateau State &ors v. Hon. Chief Anthony Goyol&ors,*[38] the court held that irrespective of the powers conferred on the State House of Assembly to make laws, such laws must be made in accordance with the provisions of the Constitution. The Court held further that House of Assembly does not have the power to make any law giving the Governor power to truncate a democratically elected Local Government Council and that the purported law upon which the dissolution of the councils was done is null and void for being inconsistent with the Constitution. Also in *Eze v Governor of Abia State*,[39] the Governor of Abia State dissolved all elected Local Government Councils on June 2006 when they still had 23 months to complete their tenure and replaced them with caretaker committees. The appellants, that is, the dissolved chairmen, vice chairmen and councilors, approached the court to seek redress. The trial court held that the appellants were wrongfully removed but declined an order of reinstatement on the ground that their tenure in office has elapsed, and instead ordered that they should be paid their salaries and allowances from the time of dissolution of the Council to the date of expiration of their term in office. Dissatisfied, the appellants appealed to the Court of Appeal which affirmed the judgment of the trial court. At the Supreme Court, the apex court stated thus:

> *Section 7 of the Constitution of Nigeria imposes a duty on the Governor of a State to ensure that the system of Local Government continues unhindered. Accordingly, a Governor's act of dissolving Local Government Councils and replacing them with caretaker committees amounts to the Governor acting on his whims and caprices, unknown to Nigerian laws, and clearly illegal and undemocratic. It is the duty of the Governor of a State to ensure the existence of Local Government Councils instead of destroying them. In this case, the Court of Appeal was right when it found that the Governor lacked the legal competence to dissolve the elected Local Government Councils and appoint caretaker committees in their stead and that this act was illegal, ultra vires, and of no effect whatsoever. Since general elections are held every four years to elect the President, Governors and members of the National and State Legislatures, there is no justifiable reason, except where a state of emergency has been declared, for a State Governor to dissolve a Local Government Council and appoint a caretaker council in its place. Persons elected for a fixed term of years can only be removed from office if found to be in breach of the rules governing their offices or for infamous conduct. If such a person is removed from office in a manner the court finds to be wrong, he shall be entitled to all his entitlement, to wit: salaries, allowances, etc. Thus, since*

[35]Obidimma, n. 40.
[36] (1982) 2 FRR 177.
[37] (1982) 2 FNR 428.
[38] (2007) 16 NWLR (pt. 1059) 57.
[39] (2014) 14 NWLR (pt. 1426) 192; cited in G.A. Oladele, "Legality of the Dissolution of elected Local Government Councils in Oyo State, Nigeria" *Global Journal of Politics and Law Research*, Vol.8, No.5, pp. 25-41, September 2020; p. 34.

> *the appellants, were adjudged to be entitled to a three-year tenure of office which they did not fully utilize due to the deliberate actions of the Governor – respondent, they were entitled to a remedy by way of monetary compensation for the unexpired period of their truncated tenure, in view of the fact that they could not be reinstated to complete their tenure.*

The Supreme Court also rose to the occasion in the case of *Governor of Ekiti State &Ors. v Olubunmo & Ors.*,[40] the fact of the case was that on 25 October 2010, the respondents; elected officers of the Local Government Councils in Ekiti State, brought an action against the appellant for a declaration that section 23(B) of the Local Government Administration (Amendment) Law 2001 of Ekiti State which amended Local Government Law 1999 of Ekiti State to the effect that the Governor of Ekiti State can dissolve democratically elected Local Government Councils and replace them with caretaker committees, was in conflict with section 7 of the Constitution of the Federal Republic of Nigeria and thus, *null and void*; and a declaration that the tenure of the respondents was statutorily set at three years with effect from the date of their election, specifically from 20 December 2008 to 19 December 2011. While the matter was still in court, the 1st appellant, Governor of Ekiti State, by a radio announcement on 29 October 2010, dissolved the Local Government Councils and removed the respondents, who were elected to the Councils and appointed caretaker committees to oversee the affairs of the Councils.[41] This development necessitated an amendment of the reliefs to include three additional reliefs, to wit: i. A declaration that the Governor's unilateral dissolution of the democratically elected Local Government Councils in the sixteen Local Government Councils of Ekiti State through radio announcement on 29 October 2010 was a breach of section 7(1) of the Constitution of the Federal Republic of Nigeria and therefore is undemocratic, unconstitutional, *null, void* and of no effect whatsoever; (ii) A declaration that the composition, constitution, inauguration and/or setting up of caretaker committees in the sixteen Local Government Councils by the Governor was unconstitutional; (iii) A declaration that the tenure of the respondents is statutorily set at three years with effect from the date of their election, specifically from 20 December 2008 to 19 December 2011.[42] Upon a preliminary objection filed by the appellants, the trial court declined jurisdiction and the case was struck out. Aggrieved by the decision of the trial court, the respondents approached the Court of Appeal, and the Court of Appeal invoking its powers under Section 15 of the Court of Appeal Act heard the originating summons on its merits and in its judgment, their Lordships held that section 23B of the Local Government Administration (Amendment) Law 2001 of Ekiti State which empowered the State Governor to dissolve elected Local Government Councils and replace them with caretaker committees as *null and void* for being inconsistent with section 7 of the Constitution of the Federal Republic of Nigeria 1999 as amended. The Court of Appeal ordered the Governor to pay the respondents (as appellant before it) their outstanding allowances and emoluments. The appellants dissatisfied by the judgment of the appellate court, approached the Supreme Court which affirmed the judgment of the Court of Appeal and dismissed the appellants' appeal.

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[40](2016) LPELR-48040(SC).
[41]G.A. Oladele, "Legality of the Dissolution of elected Local Government Councils in Oyo State, Nigeria" *Global Journal of Politics and Law Research,* Vol.8, No.5, pp. 25-41, September 2020; p. 35.
[42]*Ibid.*

Currently, there are so many states in the federation that do not have a democratically elected Local Government Council. In Anambra State, there were no elected Local Government Council from 2002 when the tenure of the then Local Government Councils expired up till 2014 and after the expiration of the tenure of those elected in 2014, there was no other election till date, rather it is caretaker committees that are currently running the affairs of the Local Governments in the state. Some state Houses of Assembly have made enabling legislation that made it possible for these caretaker committees to be legally appointed, for instance, in Delta State, the State House of Assembly enacted a law titled Local Government Transition Law 2011 which enables the state appoint caretaker committee instead of conducting local council elections.[43] In Ebonyi State in 2015, the State House of Assembly had to amend the Local Government Law to enable the Governor appoint a caretaker committee.[44]

3.5 Usurpation of Taxation Powers of the Local Government by the State Government.

The Fourth Schedule to the Constitution provides for the functions of Local Government Council which includes areas where the Local Government Council can levy taxes and rates. These include; collection of rates, radio and television licenses; licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts; assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a state; among others.

Taxes and Levies (Approved List for Collection) Act[45] stipulates list of taxes and levies each tier of government can collect. For Local Government Council, the Act provide for the following list[46]:

i. Shops and Kiosks rates;
ii. Tenement rates;
iii. On and off liquor license fees;
iv. Slaughter slab fees;
v. Marriage, birth and death registration fees;
vi. Naming of street registration fee, excluding any street in the State Capital;
vii. Right of Occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments;
viii. Market taxes and levies excluding any market where State finance is involved;
ix. Motor park levies;
x. Domestic animal license fees;
xi. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck;
xii. Cattle tax payable by cattle farmers only;
xiii. Merriment and road closure levy;
xiv. Radio and television license fees (other than radio and television transmitter);
xv. Vehicle radio license fees (to be imposed by the local government of the State in which the car is registered);

[43]Obidimma, n. 40.
[44]*Ibid*.
[45]Cap T2 Laws of the Federation of Nigeria, 2004.
[46] Ibid, Part III.

xvi. Wrong parking charges;
xvii. Public convenience, sewage and refuse disposal fees;
xviii. Customary burial ground permit fees;
xix. Religious places establishment permit fees;
xx. Signboard and advertisement permit fees.

These are matters within the scope of Local Government Council to make laws and levy taxes in accordance with the Fourth Schedule to the Constitution and Taxes and Levies (Approved List for Collection) Act No. 21, 1998. The Law provides that subject to the provisions of section 3 of the Law each Local Government Council shall be the assessment and collecting authority in respect of Property and Tenement Rate payable for privately owned houses in its area of jurisdiction.[47] The Law further provides that the collecting authority can delegate the powers to collect property and tenement rates in writing to the State Government.[48] In practice, however, these taxes and levies are collected by the State Government in usurpation of the powers of the Local Government Council, moreover, the intendment of the Constitution and the Taxes and Levies (Approved List for Collection) Act No. 21, 1998 is that each tier of government shall have the power to make the necessary legislation for the collection of taxes and levies under its authority, and not for such laws to be made on its behalf by another tier of government. In the absence of a democratically elected Local Government Council, these taxes and levies are collected either directly by the State Government or indirectly through the state appointed caretaker committee which will in turn remit the monies so collected to the state government.

Various state governments have enacted laws on matters which the Local Government Council have the right to collect taxes and levies, this is especially in states where there is absence of elected Local Government Council. The Anambra State House of Assembly in 2011 enacted Anambra Property and Land Use Charges (APLUC) Law[49] which provides for levies and land use charges. The Law provides that Property and Land Use Charge for the purposes of the Law include; property rate; tenement rate; ground rent and infrastructural development and maintenance levy.[50] This usurpation of taxing powers of Local Government Council by various State Governments has received judicial condemnation by the courts in Nigeria.

In *Eti-Osa Local Government v Mr. Rufus Jegede & Anor*[51] the appellant enacted Bye-Laws No. 10, 1998 (Corporate Outfit Bye-Laws) outside the scope as contained in Part III of Taxes and Levies (Approved List for Collection) Act No. 21, 1998. The respondents filed an originating summons praying the court to determine, among other things, whether the appellant laws imposing tax on corporate outfits is inconsistent with Part III of Taxes and Levies (Approved List for Collection) Act No. 21, 1998 and thus invalid, null and void. The trial court held, among other things, that Local Government Council does not have the powers to make laws in relation to collection of taxes and levies outside the subject matters contained in the Taxes and Levies (Approved List for Collection) Act and thus the bye-laws imposing corporate outfit taxes was declared null and void and of no effect. This decision was affirmed by the Court of Appeal.

[47] Ibid, section 3(3).
[48] Ibid, section 3(4).
[49] No. 15, 2011.
[50] Ibid, section 3(2).
[51] (2007) 10 NWLR (Pt. 1043) 537 CA.

3.6 Other interference in the affairs of the local government by the state government, for instance, through the establishment of Local Government Service Commission by state governments which takes care of the appointment, promotion and discipline of local government employees in Grade Level 07 and above; the Commission also monitors the activities of each local government employees in Grade level 01-06.

3.7 Local governments experience dearth of skilled technical and professional staff to carry out their duties in collection of taxes, rates, construction/maintenance of markets, schools, health centres and in budgetary and financial management system and so on.[52]

4.0 Overview of Local Government System in other Jurisdictions

In other jurisdictions where federal system of government is practiced, there exists power sharing between the central government and the component unit(s). In some of these jurisdictions, the component units are state governments and local government councils just like it is obtainable in Nigeria. The article has selected the United States of America and Brazil as a case study of an overview of the place of local government system in both jurisdictions to see the lessons that can be drawn from both jurisdictions in order to better the local government system in Nigeria.

4.1 Overview of Local Government System in the United States of America.

The United States of America is a federal state just as Nigeria; its federalism consists of the Federal, the State and the Local Government. The existence, structures, compositions and functions of the Local Government in the United States are not provided in the Constitution of the United States. However, the Constitution stipulates that all powers not granted to the Federal Government under the Constitution, are reserved for the states and the people.[53] The implication therefore is that the powers to create, structure and compose Local Governments reside with the State Governments and these are provided for in the respective constitutions of the states. Local governments in the United States are two-tier governments as against the single-tier system practiced in Nigeria. The tiers of Local Government are counties, which are called boroughs in Alaska and parishes in Louisiana; the second tiers are municipalities. The Local Governments are either territorial or corporate.[54] Examples of territorial unit are some counties and local school districts;[55] a corporate government has its own Charter which can be likened to a constitution. Such Charters are approved and authorized by the state, and must not contradict state law.[56] Some corporate governments have received various degrees of what is called home rule, which enables them to change their structures and pass laws with which the state government cannot interfere, so far as it does not conflict with state laws.[57] Municipalities can be structured in many ways as defined by state constitutions, and are called, townships, villages, boroughs, cities or towns. Various kinds of districts also provide functions in local government outside county or

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[52]Chinda C. Izeoma, "Challenges of Local Government Administration in Nigeria" *African Social & Policy Journal Siren Research Centre for African Universities PortHarcourt*(June 2014) Vol.7, No.1. PP. 186-190.
[53]Tenth Amendment to the Constitution of the United States.
[54]Nick Swift, "Mayors play the Central Role in US Municipal Government" *City Mayors*. Available at www.citymayors.com/usa/usa-locgov.html Accessed on 12 February 2021.
[55]*Ibid*.
[56]*Ibid*.
[57]*The American State and Local Government*. Available at www.theusaonline.com/government/state-local-government.htm Accessed on 12 February 2021.

municipal boundaries such as school districts or fire protection districts.[58] Mayors, city councils and other governing bodies are elected directly by the people.[59] The Mayor is the head of the executive branch; the city council is the legislature while there are also municipal courts as the judicial arm. As at 2017, there are 90,075 local governments in the United States, out of this number, 38,779 are general purpose, that is, counties, cities, towns, townships and villages, while 51,296 are special districts like school districts, water authorities and park districts.[60]

4.2 Overview of Local Government System in Brazil

Brazil practices federal system of government just like Nigeria and the United States, with governmental powers divided amongst the federal government, 26 states government and 5,560 municipalities. The municipalities are the local government. The municipalities in Brazil are not a creation of the state governments and the Constitution of Brazil clearly provides for the composition, structure and functions of the municipalities. The Constitution also granted autonomy to the municipalities, free from interferences from the federal and state governments. Every municipality holds local elections for mayors and municipal councils for a four year term, the mayor can be re-elected once.[61] In municipalities where the population exceeds 200,000 voters a second-run election has to be held in the event that no candidate polls majority of the votes; municipal councilors, just like all other legislatures, are elected through the system of open-list proportional representation.[62] Municipalities in Brazil derive revenue from transfer of a percentage of both federal and state taxes which are sent directly to the respective municipality, and also from internally generated revenue.[63] Internal source of revenue for municipalities include, tax on services, frontage tax, urban property tax, returns on investments etc.[64]

5.0 Conclusion

Nigeria is a federation made up of three tiers of government; the federal government, state government and the local government. While the extant constitution clearly spelt out the composition, functions and structure of the federal and state governments, it gave the state governments power to ensure the existence of democratically elected local government councils in the state, through a state legislation to ensure the composition, functions and structures of the local government. In the performance of these constitutional functions, state governments over the years have turned the local government into mere appendages of the state in abuse of the powers granted to the states. This state of affairs has put to question the place of the local government in Nigeria's federalism. It has raised a query as to whether the local government is truly an independent tier of government or mere department of the state government.

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[58] *Ibid*.
[59] Swift, n. 53.
[60] *Number of Local Governments by State*. Available at https://www.governing.com/archive/number-of-governments-by-state.html Accessed on 12 February 2021.
[61] Celina Souza, "Brazil's System of Local Government, Local Finance and Intergovernmental Relations" *CiteseerX*. Available at https://citeseerx.ist.psu.edu Accessed on 15 February 2021.
[62] *Ibid*.
[63] *Ibid*.
[64] A.M. Adu& M. Igbalajobi, "Local Government Administration: Nigeria and Brazil in Perspective*" International Journal of Innovation and Research in Educational Sciences* (2015) Vol. 2, Issue 6, ISSN (online) 2349-5219. Available at https://www.ijires.org>files Accessed on 15 February 2021.

This has made local government face lots of challenges which include weak legal framework for local government system in Nigeria occasioning undue interference in the affairs of that tier of government by the other tiers of government especially the state government. The Constitution did not make adequate provisions to ensure the autonomy of the local government especially its financial autonomy with the existence of the state-local government joint account. There have been cases of state governments seizing or embezzling the funds of local governments in the state-local government joint accounts. The conduct of election into local government council in Nigeria is bestowed on State Independent Electoral Commission and this gives room for the manipulation of the electoral process by the state government whose duty it is to appoint chairman and members of the electoral commission, the result is that in all local government elections in Nigeria, the state's ruling political party always secures all or majority of the chairmanship and councillorship slots. There is always absence of democratically elected local government council in most states with caretaker committees who owes their royalty to the state government that appointed them in place of elected local government councils. In some cases, elected local government councils are dissolved by the state government before the expiration of their tenure and replaced with a caretaker committee. Some state legislatures have laws backing this unconstitutional act. There are dearth of professionals in the local government council.

The United States, just like Nigeria, left the existence of local government to the state government. However, local governments in the United States, which are two tiers, have more autonomy than those in Nigeria. There is, for instance, no case of appointment of caretaker committees by the state government to oversee the affairs of local governments in the United States. There are periodic elections in every county, municipality and so on.

In Brazil, the place of local government in the federal structure is clearly spelt out in Brazil's Constitution. There functions, establishment, compositions and tenure in office clearly stated. Local governments in Brazil which are called Municipalities are not a creation of state government but an independent tier of government same way the federal and state governments are. They are therefore more autonomous than that of Nigeria.

8.0 Recommendations

The work recommends a constitutional amendment creating a chapter in the Constitution specifically for local government councils. The chapter should state the functions, composition of the local government. Just like in Brazil, local government in Nigeria should be autonomous from other tiers of government especially state governments; it should have its own checks and balances like the three arms of government, viz; the executive, legislature and judiciary existing at the local government level. There should be sanctions for any state government that dissolves an elected local government council, whether the dissolution was made pursuant to a state legislation or not; also courts should award punitive damages to be paid from personal funds of any state governor that dissolves an elected local government council and such dissolved council should be reinstated into office irrespective of the fact that as at the time of judgment, the term of office of the council would have expired. Election into local government council should be conducted by INEC or in the alternative; the power of appointment of the chairman and members of State Independent Electoral Commission should be removed from the executive and legislative arms of the state government and given to representatives of various professional

bodies. The Constitution should clearly state the term of office of chairmen and councillors of local government councils, the terms should be the same four years as that of the other two tiers of government. Also local government elections should be held periodically and the appointment of caretaker committees instead of conducting elections should cease and be made a misconduct in the Constitution against State governors. Local government allocations should be paid directly to the various local government councils, and state-local government joint account should be abolished. The local government staff welfare package should be improved upon in other to attract professionals and intellectuals from different fields into the local government system. Each local government council should have their own civil service commission that controls, disciplines and checks corruption among the staff.