



## **RAPPORTEUR'S REPORT**

### **THEME:**

**CONFERENCE ON LOCAL GOVERNMENT BYE – LAWS IN  
NIGERIA**

**TRANSCORP HILTON (KADUNA HALL), ABUJA**

**26<sup>TH</sup> – 27<sup>TH</sup> February, 2014**

### **AN INITIATIVE OF:**

**YOBE STATE MINISTRY OF JUSTICE**

**AND**

**MOHAMMED MONGUNO & CO.  
CHASELAW CHAMBERS**

**MOHAMMED MONGUNO, ESQ  
PROJECT CO-ORDINATOR**

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(NBA- Institute of Continuing Legal Education)**

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FOURTH SESSION

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## **OPENING SESSION**

**Welcome Address by: Mohammed Monguno, Esq, ACIArb (Former Attorney-General and Commissioner for Justice of Borno State / Project Co-ordinator).**

1. Welcomed all the Conferees and informed them of the sad incident of the killing of Students of FGC Buni-Yadi in Yobe State that took place a day earlier. He enjoined the Conferees to observe a moment's silence as a sign of respect for the monumental loss and prayed for the deceased to have eternal peaceful rest.
2. He recognized the presence of the Permanent Secretary and Solicitor General of Yobe state to Chair the brief Opening Ceremony; the Keynote Speaker and all resource persons who were present.
3. He expressed his gratitude to the Ministry of Justice, Yobe state for facilitating the review of the bye-laws of all the 17 Local Government Councils in Yobe State.
4. He stated that the Conference was not designed as a classroom lecture but meant for brainstorming on its theme and thus requested for an inclusive and engaging atmosphere to come up with a befitting and appropriate document that could be useful and useable by all the local governments in Yobe State.

**Chairman's Remarks: Alhaji Saleh Samanja (the Permanent Secretary & Solicitor-General of Yobe State).**

1. He began by first tendering apology for the absence of the Hon Attorney-General, Yobe State due to the sad incident at Buni-Yadi the previous day in which several students were killed by insurgents.
2. He acknowledged the presence of the participants and thanked the conveners of the Conference and acknowledged that the theme of the Conference is apt

and the Resource Persons can no doubt handle the assigned tasks satisfactorily.

3. He stated that the Conference was pursuant to an agreement between the Yobe State Ministry of Justice and Chaselaw Chambers for the review of the Bye-Laws of Yobe State Local Governments and bring them up to speed with current needs.
4. The aim of the Conference is to update the staff of the Ministry of Justice on the need to understand the rudiments and the tools involved in drafting and reviewing of Local Government Bye-Laws in Yobe State.
5. He rounded up by stating that the choice of the Conference venue was apt and would provide the enabling atmosphere for the Conference.

### **THE 1999 CONSTITUTION (AS AMENDED) AND THE STATUTORY FRAMEWORK FOR THE DEVELOPMENT OF LOCAL GOVERNMENTS IN NIGERIA**

**Keynote Address by:  
Dr. Joseph Nwobike, SAN, FCIArb (UK)**

- i. Looked at the historical basis of the current Local Government Council system as it exists in Nigeria, taking up definitions on the concept of a Local Government as a unit of administration in Nigeria.
- ii. He stated that the Local government as a unit of governance is the platform on which local affairs and issues are dealt with, as well as being a vehicle for the implementation of government policies at the local levels.

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- iii. **The Creation of Local Governments:** He emphasized that the Local Government System is at the service of the State or Federal Government and therefore conveys the policies and programs to the local people and then ensure adequate representation in order to touch the lives of the people.
  - iv. He posited that it is important to determine the level to which the Local Government System has played its roles in achieving these objectives.
  - v. In the historical perspective, he condensed the scenarios that were at play before the creation of the Local Government Council system as we know it presently, to be one that was open to indiscretion and human manipulation due to the non-existence of a Local Government administrative structure.
  - vi. During the military era, Local Government Council activities were streamlined through the instrument of the DASUKI Report of 1976 which was the basis of the revised Local Government Council administration system which is now applicable across the Country.
  - vii. Prior to the 1979 Constitution, there was a Local Government Council Decree enacted by the then military regime which was couched as (Local Government Councils (Basic Transitional and Constitutional provisions) Decree.
  - viii. Thereafter, the 1979 and 1999 Constitutions respectively created a formal recognition of the Local Government Council administration in Nigeria
  - ix. He made mention of the fact that Section 7(1) of the 1999 Constitution guarantees a Local Government

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Council system that is democratically elected. However in some parts of Nigeria, it was previously feudalistic, but the aforementioned documents created order.

- x. The practical implication is that unelected persons become irrelevant in the conduct of legislative affairs of the modern Local Government Council.
- xi. He postulated that the Dasuki Report and the provisions of Section 7(1) of the 1999 Constitution contextually reacted to the postulation on the importance of the Local Government as an important arm of government that needed to be strengthened and democratized as enunciated by the late Chief Obafemi Awolowo, SAN.
- xii. The Speaker emphasized on the need for the Local Governments to have an active democracy wherein elected officials were allowed to run the affairs of the Local Government Councils as provided for in Section 7(1) of the Constitution and as was reinforced in the case of **Etim .A. Akpan & 4Ors. vs. Hon. Peter John Umah & 2ors.** (2002) 7 NWLR (Pt.767) P.701.
- xiii. The point made here is that in managing the affairs of a Local Government, Section 7(1) is paramount, but whether or not it is being given due recognition in other States is doubtful, since some States still have Caretaker Committees running the affairs of the Local Government Councils.
- xiv. **Can States create additional Local Government Areas?** Here, he stated that although the Constitution of Nigeria made some provisions in

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Section 8(3) allowing for such a scenario to play out, it puts a clip on it in Section 2(6) and 9.

- xv. However, he posited that State Assemblies should exercise extreme restraint and caution in the exercise of those powers to avoid creating Local Governments that would not be economically viable or politically sustainable.
- xvi. Emphasizing that the creation of the Local Government Councils is not the function of the State House of Assembly alone, it still falls into the purview of constitutional amendment. Thus, they create Local Government Area Development Councils whom are appurtenants to Local Government Councils.
- xvii. **Functions of Local Government Council:** He stated that these functions are statutory and are in the 4<sup>th</sup> schedule of the 1999 Constitution.
- xviii. It is submitted that Local Government Councils have the locus Standi to institute actions against State Assemblies where laws made by them are in clear conflict with the express provisions of the Constitution. The speaker chided that he was not aware if any of the Local Government Councils explored this avenue.
- xix. He postulated that the Local Government Councils had the power to legislate on matters that did not contravene the 1999 Constitution nor seek to usurp legislation passed by the State House of Assembly as the powers so given to them restricts their scope of activities.

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- xx. He posited that the legislative arms of the Councils will have to adopt applicable legislative rules and procedures in the conduct of their legislative functions.
- xxi. Where the State Assemblies donate them with the power to make such Rules, they have to raise it but where such Rules are made by the State Assemblies, they do not have any option than to adopt them as their Rules.
- xxii. An Act is 'ultra vires' an authority if it is beyond its powers; the converse term is "intra vires". In England, the key tool used to administer the checks and balances of the Local Councils is through the ultra vires principle.
- xxiii. In reviewing the position of the present draft Bye-Laws of Yobe state that deal with the "installation of dishes and masts" against what is stated under the 4<sup>th</sup> Schedule of the Constitution that deals with the functions of the Local Governments, he opined that the law on the installation of dishes and masts for communication does not derive its flavour from the Schedule of the Constitution. (***Thus, he argued that this draft Bye-law is inconsistent and does not derive its authority from Sections 7(1) and Part 1 of the 4<sup>th</sup> schedule of the 1999 Constitution and is clearly ultra vires and if anyone should go to court, could likely succeed.***)
- xxiv. **The Taxing Powers of Local Government Councils:** Recent developments have shown that some urban based Local Councils have been creating all sorts of tax heads without due regard to

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existing laws on the subject and the Constitution, all in the name of revenue generation.

- xxv. He emphasized that the taxing powers and revenue generation exercise of the Local Councils must be guided by the provisions of part 1 of the Fourth Schedule to the Constitution. **(Eti-Osa Local Government vs. Jegede** (2007) 10 NWLR (Pt.1043) P.537 at P.557 – 558.)
- xxvi. Thus, any law made by either the State Assemblies or the Local Councils which seeks to confer on the Local Councils the right to assess and collect taxes outside the contemplation of those provisions are void and of no effect.
- xxvii. The sole responsibility for the assessment and collection of all forms of taxes in Nigeria is vested with the Federal Inland Revenue Service with respect to federal taxes and the various State Revenue Boards, with respect to state taxes. **To that extent, the Local Councils do not have taxing powers.**

xxviii. **Finance of Local Government Council:**

Under the 1999 Constitution (As Amended), the framework for local government council financing is statutory.

- The Local Government Councils grant licenses and permits for the operation of a wide range of commercial and economic activities within their jurisdictions hence they generate revenue from such sources. However, there are cases where these fiscal rights are appropriated by States to the

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detiment of the Local Government Councils. **The Lagos State Land Use Charge is a good example.**

- Land Use Charge in Lagos is to the effect that Lagos State got the Local Government Councils to cede their powers to the State Government. The Land Use Charge Law is an amalgamation of State powers [to collect property taxes] and Local Government Council's powers [to collect tenement rates]. Because of this disparity, the matter was passed to the Courts for adjudication, without any resolve. The law is unconstitutional and negates the Constitution as it takes away the powers from the Local Government and vests it in the State solely.

**xxix. Control of Local Government Councils by State & Federal Governments:**

The right of one statutory body to control another must equally be statutory. The statute conferring the right of control also states the extent of such control in order to avoid the excesses inherent in control regimes.

- xxx. Its philosophy and objectives must be easily ascertainable by both the controller and the controlled.

**xxxi. Conclusion**

**In conclusion, an amendment of section 7 of the 1999 Constitution is suggested with a view to establishing a more virile Local Government System in Nigeria.**

- xxxii. State Assemblies should, in making laws and effecting control measures on the Local Government Councils, guarantee their independence and relevance.**

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- xxxiii. **The Local Government Councils should equally endeavor to articulate their constitutional rights properly and ensure that they play a major role in the Nigerian political construct.**
  - xxxiv. Some have even suggested that Local Government Councils should have direct funding from the Federation Account independent of the States.
  - xxxv. The Project Co-ordinator expressed sincere appreciation to Dr. Joseph Nwobike, SAN for the keynote address. He thereafter invited the Conferees to personally introduce themselves before the Tea Break.

## **INTRODUCTIONS AT OPENNING SESSION:**

1. Alhaji Saleh Samanja
  2. Dr. Garba Tetengi SAN, mn
  3. Paul Abba, Esq
  4. Muhammed Nur Zubairu
  5. Babayo Ngada Abdullahi
  6. Ahmed M. Ladan
  7. Saboli M. Gwio
  8. Saleh Dibbo Gadaka
  9. Usman Lukman Nuhu
  10. Bala Musa Kala
  11. Muhammad Nur Baba-Zau
  12. Yamai Lawan Musa
  13. Fatima Mustapha Sodangi
  14. Hafsat Bala Muhammed
  15. Nasir Abdu Dangiri
  16. Dr. Yusuf M. Yusuf
  17. Prof. Isa Hayatu Chiroma
  18. Dr. Joseph Nwobike, SAN
  19. Prof B.A. Haruna

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20. Mohammed Monguno
21. Ayodeji Oni (Miss)
22. Okechukwu Uzoechi
23. John Demide
24. Daniel C. Nzekwue
25. Ajijola Omega

## TEA BREAK

### FIRST SESSION

#### THE PROCESS OF MAKING LOCAL GOVERNMENT BYE-LAWS: CASE STUDY OF YOBE STATE.

**SPEAKERS: PROF. ISA HAYATU CHIROMA AND  
DR. GARBA TETENGI, SAN, MNI**

#### **PRESENTATION BY DR. GARBA TETENGI, SAN, MNI**

1. Defines “process” as series of things that are done to achieve a particular result.

#### **2. Processes of making Bye-laws in a Local Government**

- o The speaker took a cursory run-down on the processes to be adopted in the drafting of Bye-Laws for the client (*i.e. Local Government to which law officers would be assigned to advise*).
- o Take the client’s instruction (*i.e. the Local Government’s instruction*). What is the nature of the bye-law or in other words, what is the subject of the bye-law? Is it on market, motor parks or

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slaughter slabs?(these instructions have to be in writing).

- o Study the instructions carefully.
- o Conduct a research over the subject matter of the bye-Law in order to know the nitty-gritty of the subject matter being drafted.
- o Consult with your colleagues and share ideas, not necessarily within the State but even outside in order to have a comparative analysis over the subject matter and the area of concentration.
- o Make a preliminary report of your findings and put them in an intelligible template for your client to see; study and reach a conclusion.
- o If your client is satisfied with the report and the highlights contained therein, then think over the subject and get ready to draft.
- o Make a draft of the bye-laws and circulate same among your colleagues for their comments.
- o In drafting make sure that the essential elements of writing are not left out. Thus, ensure brevity, clarity, language and so on.
- o Compare your draft with a previous bye-laws that had been made and ensure that it passes the test of legal drafting.
- o Make the copy of the bye-law and submit to your client for study.
- o If the client is satisfied then make a final draft of the bye-law.

### 3. PROF. ISA HAYATU CHIROMA'S PRESENTATION

#### THE PROCESS OF MAKING LOCAL GOVERNMENT BYE-LAWS: CASE STUDY OF YOBE STATE

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- o In discussing this topic, he looked to the basis/foundation backing the powers of a Local Governments' existence vide Sections 7 & 8 of the 1999 Constitution (As amended).
- o **Structure of Local Government:** He went on to analyze the democratic nature of structures inherent in the Local government Council as a micro federating unit with the executive arm consisting of the elected Executive Chairman, Vice Chairman, appointed Council's Secretary, Supervisory Councillors appointed by the chairman, and the Directors who head the various departments of the local government.
- o He highlighted that the main functions of a Local Government Council are provided in the Fourth Schedule to 1999 Constitution and Section 7(5) of the 1999 Constitution.
- o **Legislative Power of Local Government:** The Speaker posited that the legislative arm of the Local Government derives its power of law-making from the Constitution and the law made by the House of Assembly of a State that provides for the establishment, structure, composition, finance and functions of such Local Government Councils.
- o The legislative jurisdiction of the Local Government Council is stated in the 4<sup>th</sup> Schedule and prescribed by the State House of Assembly, which in the case of Yobe State is under Sections 31 and 45 of Yobe State Local Government Law, 2000.
- o The Speaker posited that in making bye-laws, it is imperative for the Local Government Council to check:
  - Whether there is an appropriate law on the same subject matter made by the State.

- If the bye-law made by the Local Government is within its powers.
- That the bye-law does not contravene any regulation or legislation made by the State.
- o **Process of Making a Local Government Bye-law:** He further posited that the procedure for the passage of a bill to be a bye-law and likewise, its amendment by the legislative arm of Local Government is to some extent similar in nature to the procedure of passing a bill into law in the National Assembly and State House of Assembly. The main difference being, the actors here are located at the Local government level, (*wherein the Executive is the Chairman, the Speaker and Members are all Councillors*).
- o This is all provided for in Sections 115, 116 and 117 of the Yobe State Local Government Law 2000.
- o Enforcement of Bye-laws: The process for the enforcement of such is in substance and fact similar to that used for the enforcement of all laws in Nigeria, through issuing infringement notices, the application to the Courts for injunctions, seizing property, removing works, and recovering the costs of remedying any damage.

#### o **Conclusion**

- Local Government system is a very important tier of Government because it is closer to the majority of the populace whose rights and privileges are piloted through the tier system.
- Consequently the way and manner these rights and privileges are protected is reflected through various bye-laws enacted by this tier of government.

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- The more efficient and proactive these bye-laws are the better for the citizenry.
- Laws that are well articulated and widely accepted through the reflection of the majority view will always serve the purpose for which they are intended.

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## SECOND SESSION

# THE LEGAL AND REGULATORY FRAMEWORK OF BYE-LAWS OF LOCAL GOVERNMENTS IN NIGERIA: YOBE STATE IN FOCUS.

### SPEAKERS:

**MOHAMMED MONGUNO, ESQ.**

**DR. YUSUF M. YUSUF**

1. Mr. Monguno began with the historical origins of the Laws of Yobe State and its peculiarities and the various stages of the Laws it appropriated. He emphasized the need to look back before being able to go forward.
2. He undertook 'a journey to the past' and mentioned the various Regional and other Instruments of defunct States from which the present laws of Yobe State evolved(Namely: *Northern Regional Instruments applicable to Borno province before independence; Northern Nigeria Legal Instruments made under the 1960 Constitution; North-Eastern State Legal Instruments inherited pursuant to the States (Creation and Transitional Provisions) Act No.4 of 1967; Legal Instruments inherited on 3<sup>rd</sup> February, 1976 by Borno State pursuant to the States (Creation and Transitional Provisions) Act No. 12 of 1976*).
3. **Present Scenario:** Referred to S. 7 (1) of the 1999 Constitution (as amended); S. 7 (5) and the Fourth Schedule to the 1999 Constitution (as amended) provide functions and matters within the competence of Local Governments; Sections 31 and 45 of the Yobe State Local Government Law, 2000 (*in pari materia* with S. 64 of the repealed Local Government Law, Cap. 82 Laws of Yobe State, 1994).

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S. 65 of the Local Government Law, Cap.82 Laws of Yobe State 1994. (For example the following laws promulgated allowed for Local Governments to make bye laws on certain matters such as Forestry (S. 22 of the Forestry Law, Cap.56 Laws of Yobe State 1994; Traffic Laws (SS. 14 and 16 of Road Traffic Law, Cap.124 Laws of Yobe State 1994). (conduct of drivers on routes to follow, laws on traffic offenses, parking offenses, etc).

**4. How do we Lay our Hands on the legal instruments high-lighted above and some missing gaps in the record of gazetted Bye-Laws?** He posited that this was a challenging dilemma and it shows a *lacuna* in the legal instruments. He referred to answers to Questionnaires to the Council Chairmen and one old Borno State Gazette on markets regulation for Geidam Local Government as illustration of the point.

**5. Other Questions asked:** *What are the extant bye-laws that are in place? (i.e what are the laws in Yobe State?) ; What are the areas they would like the bye-laws drafted with local needs and values in focus?*

- o Some of the challenges encountered were that the Local Governments did not have any copies of Bye-Laws that may or might have been passed. (*If not available what do you do to avoid the exclusion of laws?*).

## **6. CHALLENGES**

- o Lack of proper record keeping of previously passed bye-Laws;
- o Lack of skilled personnel, Legal Officers or Desk Officers in each Local Government to manage and review bye-Laws regularly;
- o Encroachment by State Law into matters that are legally within the jurisdiction of local

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governments e.g. registration of births and deaths (*now under Federal authority -i.e.e National Population Commission*), markets, and all marriages, burial grounds, parks, gardens and open spaces, etc.

7. **Solutions:** To insert savings and repeal provisions in the Bye-Laws and publish regular editions of Bye-Laws.
8. **CONCLUSION:** That the roles played by local governments are very effective because they directly touch the lives of people at the grassroots and accordingly the regulatory framework of the Local Governments deserve to get serious attention.
9. In the exercise of the power of making Bye-Laws, there are bound to be conflicts/encroachments. It was surmised that the fourth Schedule to the 1999 Constitution does not foreclose the Local Governments from competence to legislate on issues relating to their powers. The interpretation of the Schedule should be channeled towards posing the question; “What is the nature of this Section? Is the Section inclusive or restrictive?”

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## **PRESENTATION BY DR. YUSUF M. YUSUF**

His presentation touched on the system of Local Government in Nigeria as a creature of the Constitution and as a form of decentralization of power and grass-root democratization of local administration.

- o Traced the existence and system of local governments in Nigeria to Section 7 (1) of the 1999 Constitution with law-making powers as enshrined in Section 1 of the Fourth Schedule to the 1999 Constitution and Sections 31 and 45 of the Yobe State Local Government Law 2000 (so far as Yobe State is concerned).
- o He mentioned various functions of local governments with Yobe State in focus based on extant statutory provisions.
- o Having stated the legal framework, he reviewed draft Bye-Laws of Yobe State Local Governments touching on Health, Environment and Sanitation matters, high-lighted the key elements of offenses, penalties, trials, licenses and the overall objectives of the draft Bye-Laws.

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## THIRD SESSION

### **Local Government, Federalism and the Role of Law in Enhancing Revenue Generation for Local Governments: Yobe State in Focus.**

**SPEAKER: PROF. GBENGA ODUNTAN**

**(University of Kent, England)**

**The Paper was presented by Paul Abba, Esq. on behalf of Prof. Gbenga Oduntan**

1. The focus of this paper was on Local Governments and their role in taxation in Nigeria.
2. **Federalism and the Three Tiers of Government:** The idea of autonomy of the federating units subject to constitutional provisions was discussed. Thus, none of the tiers of government should be totally dominated by the other. Accordingly, the paper argued that Local Governments should have fiscal autonomy as constitutionally guaranteed.
3. **Functions of the Local Government Apparatus:** This is as outlined in the 4<sup>th</sup> Schedule of the Constitution of 1999. However, one finds the States constantly going to shop in the domain of Local Governments, appropriating their activities and the rights accruable to them.
4. **Constitutionalism and the Local Government:**
  - o The 1999 Constitution envisages a democratic governance even within the local government level (Chairman – Executive; Councilors – Legislature;

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Judicial arm – Area or Magistrate Courts). This in practice hardly holds in Nigeria.

- o There is an absence of democracy at the Local Government Council level. There is a prevalence of “*Caretaker Committees*” as it is difficult to get many States to cultivate a strategy on how to create awareness of democracy at the Local Government levels.

## 5. Doctrine of Ultra vires

- o Local government powers are restrictive and should be interpreted within the confines given without going out of the purview of the provisions of the Constitution and the delegated legislations from the State Houses of Assembly.

## 6. The Protective Jurisprudence of the Judiciary over Local Government Authorities:

- o The Local Government system can be guided or protected by the Judiciary that sees *Section 7(1) of the Constitution as the platform upon which local governments carry out their restrictive roles and functions.*
- o The Supreme Court in ***Attorney General, Lagos State v. Attorney General of the Federation***<sup>1</sup>delivered an epoch-making judgment which declared the Local Government Area Law No 5 of 2002 enacted by Lagos State Government in which 57 local governments were created by ***breaking the existing 20 Local Government areas recognized under the 1999 Constitution into 57 Local Government Councils as unconstitutional null and void.***

## 7. Local Government Taxation in Nigeria

<sup>1</sup>(2004) 18 NWLR Part 904, 1.

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- o Internal & External sources of revenue of local governments considered.
- o Internally generated revenue collection should be enhanced and monitored.
- o There is a basic principle that you cannot tax on an area where you are not provided with the mandate to tax. *In the case of Local governments, tenement rates, ground rates, licensing fees and registration fees as well as naming of streets, among others, constitute sources of revenue.*

## **8. The Power of Yobe Local Government Councils to Levy Tax:**

- o The paper examined the draft Bye-Laws of Gujba Local Government on fishing and control of grain as clear examples of how a local government can enhance its revenue.

## **9. Problems of Local Government Taxation**

- o Local governments are commonly faced with a variety of difficulties in getting adequate revenue from the Federal and State Governments. In many cases, local governments suffer a double jeopardy due to allocation constraints. They also have to contend with dishonest collection, delays, inadequate system and insufficient reviews.

## **10. International Dimensions of Local Government Taxation and Administration**

- o The paper examined the various mechanisms employed to collect local revenues in the UK, Tanzania, Malawi and South Africa and the laudable social services funded by local taxation as suggestions for Yobe State.
- o Without this form of fiscal autonomy as practices in other countries show, Local Governments will remain underdeveloped, revenue wise.

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11. **Challenges to the Actualization of the Legislated Roles and Effective Taxation Regime**

- o Parliamentary supporting structure is inadequate: The support structure for the parliamentary functions of local governments arguably needs to be urgently improved.
- o Lack of sufficient parliamentary skills: The average local government Councilor is not trained in parliamentary processes, yet he must perform adequately at this task.
- o A lack of infrastructural resources: The palpable lack of infrastructural resources that is observable throughout the areas of government is perhaps even more amplified at the local government levels. Social services are often poor or absent, health and safety issues are not handled seriously.
- o Limited and under-resourced public education programme: One of the most surprising features of Local Government Administration in Nigeria, is how little of it is known to the Nigerian people in general. Nearly all but the most educated are even aware of the legislative competence of local government officials. This must be addressed through deliberate sensitization.
- o Gender insensitivity rooted in the structure of political participation: Whereas it may be difficult for women to summon the requirements of funds and time to participate in national or even state wide politics, it is difficult to see why women graduates who live in the same locality as their local government area have not been able to enter into office as elected councilors in appreciable numbers.

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- o Dysfunctional institutional arrangements:  
Government offices do not work well in tandem as an effective unit that renders valuable service to their communities. Communication of needs and aspirations of the leadership to the component parts may at best be seen as slow and at worst as shambolic.
- o Elected Councilors not sufficiently accountable to the electorate: Whilst the system of local government administration rests upon periodic elections and electioneering, it may be observable that there is still a democratic deficit in that accountability towards the electorate exists in all but name only.
- o Information systems available to elected Councilors and LGAs are to a large extent rudimentary, out dated and unfit for purpose: The level of IT support for elected Councilors and the Councils themselves are largely inadequate. Whilst this is representative of standards in African and perhaps developing states generally the removal or at least drastic reduction of the IT deficit is much easier to achieve than is apparent.
- o Insufficient co-operation and communication between CSO's and local government legislatures: Civil society groups and other national and international non-governmental organizations can provide quality training, and partnership relationships with local government areas.
- Relationship with Traditional Rulers and Community leaders: The relationship between local government legislators and their immediate traditional authorities is key because the discharge of their constitutional duties and the directives of the Ministry of Local Government will be impossible to perform unless they

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are seen to enjoy the continuous support of traditional chiefs and authorities.

### **Conclusion:**

- o The Phenomenon of local government administration is an effective device of governance the world over. It is the closest strata of government to the people and renders numerous services to the individual from the issuance of birth certificate to even his death certificate and many other services between these two certificates.
- o Thus, the paper advocates the need to pay serious attention to all issues on tax administration at the local government level with adequate training and professional delivery of desired services.

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## FOURTH SESSION

### Local Government Lands Registry: Powers And Functions.

**SPEAKER: Nasir Abdu Dangiri, Esq**

1. The Speaker reviewed the legal basis upon which the Local Governments in Nigeria derive their constitutional status and the relevant State legislation that allowed local government legislative powers and functions.
2. He furthermore took a cursory review of relevant sections of the Land Use Act, specifically Section 1,2,3,5,6,21,22,26,36,39 and 50 along with some judicial pronouncements interpreting the same.
3. He outlined the various rights that a purchaser for value is entitled to under the Land Use Act as it relates to lands located in Local Government Areas, differentiating between “Right of Occupancy” and “Certificate of Occupancy” titles and how they could be obtained.
4. He stressed the need to note the fact that under the Land Tenure Law and Native Land Ordinance, a statutory right of occupancy cannot co-exist with a customary right of occupancy over the same land.
5. He equally brought out the abuse of process whereby a person who had Customary Right of Occupancy, would go and secure a Statutory Right of Occupancy on the same land, contrary to extant provisions of law.
6. On consents to transactions, the speaker posited that consent to assign or mortgage should be signed by the

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Local Government, the Chairman or the Sole Administrator and no other because the power is given to him or her and not the Secretary or the Land Officer of the Local Government.

7. He advocated the need for every Local Government Council to have a well-organized Land Registry with competent staff to man the department or Registry even if it means requesting the Commissioner in charge of Lands to second a very seasoned and experienced officer to put the Local Government staff through. Accordingly, he advised that:

- o Files should be opened for each holder of customary right or certificate of occupancy with numbers or proper identification marks;
- o holders of customary right of occupancy should be encouraged to conduct search for a fee and a search report issued; and
- o Banks and Financial Institutions should be informed about the validity of customary rights or certificates of occupancy and they should be encouraged to accept such Certificates as security for loan/overdraft facilities or as collaterals.

8. Annexed to the paper are precedents of consent and Search Report local governments may rely upon as useful guide.

9. In conclusion, he stresses that a well-organized Land Registry in a Local Government Area or Council, if and when properly managed, is a very good source of revenue generation for the Local Governments in Yobe State.

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## FIFTH SESSION

### The Regulation and Control of Legislative matters through Bye-Laws in Yobe State.

- ❖ Here, the speakers reviewed the various draft Bye-Laws of Yobe State.
  - o Markets & Motor Parks - Dr. Garba Tetengi, SAN, mni (presentation by M. Monguno, Esq. on behalf of Garba Tetengi, SAN)
    - ✓ One draft Bye-Law made to embrace both markets and motor-parks.
    - ✓ Requirement for passenger manifest made for public safety and security.
    - ✓ Need to sensitize the public emphasized for effective enforcement.
  - o Health, Environment & Sanitation - Dr. Yusuf M. Yusuf;
    - ✓ The Speaker in this section analyzed the various domestic issues on which laws that had been drafted in Yobe State bordering on various health, environmental, and sanitation issues. He focused on Machina Local Government Council.
      - ✓ Machina Local Government Domestic Health Control and Sanitation Bye-Law.
      - ✓ Machina Local Government Foodstuffs and Regulated Premises Bye-Law.
      - ✓ Machina Local Government Sand Digging, Excavation and Filling Operations Bye-Law.
      - ✓ Machina Local Government Stacking of Building Materials Bye-Law.
      - ✓ Machina Local Government Water Sale and Drilling of Water Boreholes Bye-Law.
    - ✓ He emphasized the features and qualities that had been drafted for good governance and accountability

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- o Agriculture & Allied Matters - (Prof. Gbenga Oduntan) represented by Mr. Paul Abba
  - ✓ The speaker reviewed two draft Bye-Laws of Gujba Local Government on:
    - Capture and Killing of Fish; and
    - Control of Grain.
  - Using the above draft Bye-Laws as examples, he was able to show the use of taxation as a tool for the development and advancement of the Local Government Councils in Yobe State.
- o Transportation and Communication – Prof. Isa Hayatu Chiroma
  - ✓ Under the Transportation subhead, the presenter observed that there is no provision for the powers to make regulation for the purpose of giving effect to the provisions of the byelaw; ***and recommended that there is a need to provide for a section on administration and enforcement;*** Such as:
    - ✓ ***The Director of Finance and /or Supervisory Councilor for Finance may make Regulations;***
    - ✓ ***(a) Prescribing rules for the purpose of regulating Installation of Dish and Mast in...;***
    - ✓ ***(b) Prescribing rules and conditions for the purpose of issuance of Permits.***
    - ✓ ***(c) Prescribing rules for the purpose of monitoring compliance with or enforcement of the provisions of this Bye-Laws and any regulation made thereunder.***
    - ✓ ***Similarly on Contravention, he observed that there was the need to add a section, that provides an offence of obstructing any person authorized under the Bye-Laws from performing his functions as follows:***

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- ✓ “Whoever deliberately obstructs any person authorized to monitor compliance with or enforce the provisions of this Bye-Law and regulations made thereunder.....”

He recommends Power to appoint Task force as follows:

- ✓ “The Executive Chairmen shall have the power to appoint or constitute a task force for the purpose of enforcing the provisions of the Bye-Law and any regulation made thereunder”

- ✓ Under Communication, he stressed the following:

- ✓ On issue of The issue of the installation of dish and masts, ***there was no provision for power to make regulation for purpose of enforcement*** and there is a need to do it;
- ✓ Also obstructing public officer in the course of executing his duties be made an offence.
- ✓ That Section 8 dealing with the installation of Mast and Dish had a vague description of **“authorized officer”**. ***Such officer shall have the power to arraign before a court of competent jurisdiction any person who contravenes the provisions of the Bye-Law.*** Looking through the interpretations section, it defines ***authorized officer*** to mean any officer of the Local Government. He expressed his concern on this provision being too wide and likely to cause some mischief. He advocated an amendment to mention a Police Officer or Law Officer.

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- ✓ Reverting to the content of Section 1 which says "**No person shall instal or erect a commercial dish or mast without a permit issued by the Local Government**", he observed, that the intention of the section is not meant to regulate the activity, but to emphasise the fact that the Local Government Council where the Mast is hoisted is entitled to collect commission from its intended commercial activity.
- ✓ He wants the provision to cover public viewing houses used to watch paid cable provider based programmes.
- o Construction, Trade and Minor Industries – Mohammed Monguno, Esq., ACIArb
  - ✓ The speaker in this section analyzed the various issues bordering on Construction, Trade and Minor Industries in Yobe State.
- ✓ **CUTTING OF TARRED ROAD BYE-LAW**
  - o *This deals with elements of construction and public nuisance from construction, laying of pipes, cables, etc. This Bye-Law seeks to make some revenue for the Local governments by making it an offence to operate without a licence in addition to ensuring public health and safety.*
- ✓ **ERECTION OF CANOPY AND EXTENSION OF BUILDINGS FOR COMMERCIAL PURPOSES REGULATION;**
  - o *To control the nuisance caused by commercial outfits to buildings and others. It is meant to control wrongful practices affecting building*

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*lines, street space and environmental safety.*

✓ **CONTROL OF MINOR INDUSTRIES BYE-LAWS:**

o *The review here covers key provisions on the categories of minor industries, fees payable for permits, role of health and other public officers, etc.*

✓ All these Draft Bye-Laws ensure that they do not stray out of the confines of the delegated powers from the 1999 Constitution and relevant State Laws in Yobe State.

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## GENERAL DISCUSSION

**This Segment of the Conference enabled participants to deliberate on some important issues and questions arising from the various presentations. These are:**

**1. Question: Does the 1999 Constitution actually envisage the Local Government Council as the third tier of governance?**

Taking a global view at the Constitutional provisions on the creation of Local Governments, it can be gleaned that truly Local governments are creations of the Constitution. The position of the State and Local Government Council is akin to a pregnant mother, it cannot be severed (only in delivery) and such a delivery may never be addressed.

There are anomalies and the best one can do is to take a global reading of all the sections dealing with the creation of Local Government Councils. Discrepancies in the composition of the Local Government Councils from one State to another shows that there is no general application of the tier status of the Local Government Council as envisaged by the Constitution. Maybe a look should be made into the pronouncements of the Courts and other instances that might have been applicable to the interpretation of the position of the Local Government Councils. Participants unanimously agree that greater attention should be given to the Local Government System to function as a true tier of governance as advocated by the Key Note Speaker and others.

**2. What Courts are to be approached to adjudicate on land matters that lie outside the designated urban areas in Local Government Councils? ( i.e. Courts with Jurisdiction on lands outside statutorily designated urban areas?)**

The State High Court has unlimited jurisdiction on matters of Land adjudication. Thus, it was agreed that a careful research is required as to the appropriate Court to approach, but it would be better to go to the State High Court and save time.

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**3. How do you Manage the issue of the State Government encroaching into taxable areas belonging to the Local Government Areas Fiscal Capacity? (i.e. management of markets and the remittance of revenue generated there from?)**

After due deliberation and consideration of the presentations at the Conference, participants generally agreed that these are thorny issues but called for the need to continually guide the State Executive. For the fact that these are true sources of internally generated revenue and aid Local Councils to be viable and capable of performing their constitutional and legal roles, they should be allowed undisturbed powers to control what is within their mandate.

**4. Regulation of communication dishes and masts by Local governments.**

After a considered scrutiny of the view expressed by the keynote Speaker on the competence of such a regulation by local governments, the issue was respectfully resolved in favour of the local governments in the light of the Yobe State Local Government Law which has vested local governments with power to regulate any business enterprise or trade taking place within their area of authority. The Constitution itself has also empowered State Assemblies to confer additional functions that they deem necessary for local governments to perform.

**5. Cautionary Note on the Creation of Bye-laws to govern the Allocation of Bore-hole drilling licences as envisaged in the proposed bye-law under review**

It was posited that in the creation of Bye-Laws relating to Water Utility Management, care should be taken to ensure that they do not clash with already existing Laws that give guidance on the appropriate authority to approach for relevant documentation or approval needed from the State Water Board or Rural Water Supply Authority (RUWASA) to drill a borehole, etc.

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## 6. Provisions that Need insertion into the Bye-Laws on Haulage:

### a.

- ✓ That a provision be made in the Bye-Laws to cater for the position of haulage as it relates to Local government administration.
- ✓ It was advocated for a situation whereby an officer of high ranking, like a Director or supervisor of lands should make a rule or regulation in this regard. This was however opposed generally being contrary to rules of statutory drafting (i.e. making another rule or regulation under a Bye-Law which is also a subsidiary legislation).

### b. Enforcement

- ✓ Reviewing Sections 8 & 9 of the Bye-Laws on haulage, participants agreed that if a Local Government Chairman is empowered to setup Task Forces as advocated by a presenter, it will not go down well as it will be subject to abuse and misuse. It was agreed that enforcement should be left to the Courts.
- ✓ The authorized person as prosecutor is seen by many to leave too much room for unforeseen injustice and would be easily abused. It was advised that the power be given to the police and counsel authorized by the Attorney- General of the State.

## 7. LAND REGISTRY

- ✓ A situation where in transactions on rural land, consent is not given by the Local Government Chairman, but another person under the Legislated powers of the State is frowned at. Such a transaction is a nullity as it is clearly spelt out under section 5 of the Land Use Act as amended. This has to be strictly followed.
- ✓ On rural land, there is no need to seek another title from the State, as far as it does not fall within the designated urban area zone which is prescribed to be

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of a specified distance, varying from State to State. It was agreed that attention be given to the following:

- ❖ Need for Local governments to have Land Registries.
  - ❖ Need to strengthen the Land Registries in Yobe State with defined functions and mandates.
  - ❖ Need for Serious enlightenment on the need for a Land Registry.
  - ❖ Create a template that can be reviewed and the template be used to sensitize the govt. on the need for the Land Registry.
  - ❖ Tenement rates are vested clearly on the shoulders of the Local Government Council, but there is encroachment by the State on this which should be avoided.

## **VOTE OF THANKS BY NASIR ABDU DANGIRI,ESQ.**

Thanked the participants for braving the distance to come for the Conference and assured them that within the next few months, the whole process of preparation and compilation of the Bye-Laws would probably come to an end and assured that it would be presented to the government in a befitting way.

## **Mohammed Monguno**

Further thanked the participants, apologized for any inadequacies and requested the Solicitor-General to kindly convey appreciation to the Yobe State Ministry of Justice for the confidence and trust extended to serve the good people of Yobe State through this exercise.

## **CLOSING PRAYER:**

Closing prayer was offered by Abdullahi Babayo Ngada, Esq.

**Signed**

John Ozovehe Demide, Esq.



(Conference Rapporteur)  
NBA – Institute of Continuing Legal Education

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COMMUNIQUÉ ISSUED AT THE END OF THE CHASELAW CONFERENCE ON LOCAL GOVERNMENT BYE-LAWS IN NIGERIA HELD AT THE TRANSCORP HILTON HOTEL, ABUJA (KADUNA HALL), FROM 26 - 27 FEBRUARY, 2014

Preamble

The Law Firm of Mohammed Monguno & Co. (Chaselaw Chambers) held a 2-day Conference on Local Government Bye-Laws in Nigeria on 26 and 27 February, 2014 at the Transcorp Hilton Hotel, Abuja, which was consistent with the Yobe State Government's need and intention to review the Bye-Laws of the 17 Local Governments in Yobe State. The Conference was also intended as a platform for Lawyers from the Yobe State Ministry of Justice and Resource Persons at the Conference to consider numerous technical matters on the review of the Bye-Laws as drafted for the local governments in Yobe State.

The Conference was declared opened by the Honourable Attorney-General of Yobe State **Hon. Ahmed Mustapha Goniri**, who was represented by **Alhaji Saleh Samanja** (the Permanent Secretary & Solicitor-General of Yobe State), who also delivered a goodwill message. The Project Co-ordinator, **Mohammed Monguno Esq. ACIArb** formally welcomed all participants to the Conference which was duly accredited by the Nigerian Bar Association - Institute of Continuing Legal Education. An interesting and profound Keynote Address was given by a Learned Silk, **Dr. Joseph Nwobike, SAN, FCIArb (UK)**.

Structure of the Conference

The Conference consisted of an Opening Ceremony, a Keynote paper presentation on The 1999 Constitution (As Amended) And The Statutory Framework For The Development Of Local Governments In Nigeria, other paper presentations from Resource Persons who covered various aspects of the Conference theme, a group discussion and finally presentation of Certificates from the Nigerian Bar Association – Institute of Continuing Legal Education, Abuja.

## 1. Thematic presentations

Apart from the sad news that greeted the Conference on the ill-fated plight of the deceased students of the Federal Government College Buni-Yadi in Yobe State, the Conference was held under a successful brainstorming atmosphere. Apart from the Keynote Paper which set the desired tone for the Conference, the Papers presented by others did tremendous justice to the theme of the Conference. They are:

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- **Legal and Regulatory Framework of Bye-Laws of Local Governments in Nigeria: Yobe State in focus – By Mohammed Monguno,Esq. and Dr. Yusuf M. Yusuf.**
  - **The process of making Local Government Bye-Laws: Case study of Yobe State - By Dr. Garba Tetengi, SAN,mni and Prof. Isa Hayatu Chiroma.**
  - **Local Government, Federalism and the Role of Law in Enhancing Revenue Generation for Local Governments: Yobe State in Focus - By Prof. Gbenga Oduntan.**
  - **Local Government Lands Registry: powers and functions – By Nasir Abdu Dangiri,Esq.**
  - The Conference also considered the regulation and control of Legislative matters through local government Bye-Laws in Yobe State which included but not limited to the following:
    - o Markets & Motor Parks
    - o Health, environment & Sanitation
    - o Agriculture and allied matters.
    - o Transportation and Communication
    - o Construction, trade and minor industries
    - o Water and Lands Registry

## 2. Resolutions And Recommendations

At the end of the Conference held at the Kaduna Hall, Transcorp Hilton Hotel, Abuja, it was unanimously resolved as follows:

- i. An amendment of Section 7 of the 1999 Constitution is suggested with a view to establishing a more virile local government system in Nigeria.
  - ii. State Assemblies are urged, in making laws and effecting control measures on Local Government

- Councils, guarantee their independence and relevance.
- iii. Local Government Councils should endeavour to articulate their constitutional rights properly and ensure that they play a major role in the Nigerian political system.
  - iv. The Yobe State Ministry of Justice should continue to make necessary recommendations to the State and Local Governments on the need to have a process of proper archiving and production of regular editions of Laws and Bye-Laws in the State.
  - v. The Yobe State Ministry of Justice should make necessary recommendations to secure skilled personnel or Legal officers in each Local Government to manage and review bye-Laws regularly.
  - vi. Encroachment by State and Federal Authorities into matters that are legally within the jurisdiction of local governments should be avoided even if supportive roles in aid of local governments are laudable. Thus, the regulation of markets, registration of births, deaths and all marriages, burial grounds, parks, gardens and open spaces, etc, should be stopped and left to the Local Government Councils to manage as constitutionally provided.
  - vii. The prosecution of offences under the various Bye-Laws examined at the Conference should be by Police Officers or Law Officers authorized by or under the Office of the Attorney-General of the State.
  - viii.
  - The Ministry of Justice should not shy away from the opportunity to advise the Local Governments whenever they legislate on matters that appear to be out of their jurisdiction.
  - ix. The regulatory framework of the Local Governments deserves to get serious attention in order to have a

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positive impact on good governance, growth and transparency.

- x. A well-organized Land Registry in a Local Government Area or Council, if and when properly managed is a very good source of revenue generation. Accordingly, the Conference recommends the establishment of Land Registry in each Local Government.
- xi. The Conference recommends the need for regular sensitization workshops for those responsible for administering the Bye-Laws of Local Governments in Yobe State for optimal performance.
- xii. The Conference recommends that the Bye-Laws of Local Government should be published in handy copies that are most accessible and useable by the people.
- xiii. Finally, the Conference commends the courageous step taken by the Yobe State Government in supporting the local governments to actualize their constitutional mandate through the process of making their Bye-Laws regularly published and accessible.

Signed

**Mohammed Monguno, Esq, ACIArb**

Project Co-ordinator.

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