

## THE ROLE OF BYE LAWS UNDER THE NIGERIA CONSTITUTION FOR SUSTAINABLE LOCAL COUNCIL ADMINISTRATION\*

### Abstract

*By-law is defined as a law made by a local government. The paper aims to evaluate the efficacy of by-laws, existence and good administration of the autonomy of local governments in the country. The methodology adopted is doctrinal. Much reliance is placed on secondary sources of data; text books and judicial decisions. The paper found that the complicated provisions of the Constitution of the Federal Republic of Nigeria did not allow for proper existence of the local government. We posit that by-laws can only properly operate at the local government level if the Constitution provides for its proper legislative existence and independence. The paper recommended that the National Assembly should urgently amend the Constitution of Federal Republic of Nigeria, 1999 to allow for independence and autonomy local government for sustainable development.*

**Key words:** sustainable Local Government, autonomy, by-laws, sustainable development.

### 1.0 Introduction

By-law is simply defined as a law that is made by a local authority and applies only to that area.<sup>1</sup> It is also defined as a law made by a local government for people in that area to obey.<sup>2</sup> It is also defined as a local law that generally requires something to be done / not to be done in a particular location and which is accompanied by some sanction/penalty for its non-observance.<sup>3</sup> Put in another way it is also defined as secondary laws that operate under the framework of higher legislation such as a Nation or State Laws.

### 2. Nature and Scope of By-laws

The scope of by-laws in Nigeria encompasses a wide range of regulatory frameworks tailored to specific organizations, institutions, and local governance structures. These regulations are designed to supplement national laws and address unique operational, administrative, and disciplinary needs within different sectors.

The legal framework establishing by-laws in Nigeria is rooted in the evolution of local governance, particularly marked by significant transformations since the colonial era. A pivotal change in Local Government structure occurred in 1976 when the Federal Military Government led by General Olusegun Obasanjo initiated a deliberate re-organization of Local Government systems. This re-structuring culminated in the recognition of Local Government as the third tier of government in Nigeria, supposing to create a more autonomous framework for local governance. The modernization of local government systems was further entrenched in the 1979 Constitution.

The establishment of local government was guided by constitutional provisions which allowed for the creation of democratically elected local government councils. Specifically,

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1A S Hornby, Oxford Advanced Learners Dictionary; Oxford: 8<sup>th</sup>edn. Oxford University Press, 2010) p. 197

<sup>2</sup> B.A. Garner, Blacks Law Dictionary, USA: 10<sup>th</sup>edn., Thomson Reuters, 2014) p. 242

<sup>3</sup> Lexis Nexis, Definition of Bye Law <https://> (assessed on 4<sup>th</sup> April, 2025)

Section 7 of the 1999 Constitution mandates that State Houses of Assembly outline the processes for creating local government councils, thereby granting States the authority to determine the scope and functions of local governance within their jurisdictions. This evolution of local governance also mirrors trends in other federations, such as the United States, where States maintain control over the establishment and regulation of Local Governments. Moreover, the incorporation of indigenous laws and customs into the legal framework has resulted in a legal pluralism that characterizes the Nigerian legal system. This complexity reflects both the influence of English law and customary laws are integrated in our legal system. As a result, by-laws created at the Local Government levels are often a blend of statutory provisions and customary practices, tailored to meet the unique needs of local communities in Nigeria.<sup>4</sup>

The legal framework for by-laws in Nigeria operates at both corporate and local government levels, deriving authority from specific legislation and constitutional provisions.

At the local government level, the authority to make by-laws derives from the 1999 Constitution (as amended), particularly the Fourth Schedule, which empowers local government councils to establish regulations on local matters such as sanitation, markets, and parking. These by-laws must not conflict with existing state or federal laws, as established in *Attorney-General of Lagos State v. Attorney-General of the Federation*,<sup>5</sup> where the Supreme Court emphasized the supremacy of federal and state laws over local government regulations.

### 3. History and Development of Local Government

The history of local government administration in Nigeria could be traced back to colonial era. The Colonial Government established the native authority system of local administration, also known as ‘indirect rule’, as early as 1900.<sup>6</sup> The ‘indirect rule’ system required that the administration at the local level should be carried out through the existing traditional rulers and institutions. Thus, in the areas where there were an existing traditional rulers or institutions, like the South East, new ones were created. This led to the establishment of Native Authority in its most rudimental form. The Native Authority Ordinance promulgated in 1910 gave impetus to the system of indirect rule and recognized a traditional ruler as a Sole Authority in his locality. The main function of the institution of the traditional ruler was to maintain law and order.<sup>7</sup> The discernible structure of local government administration from colonial to post-independence period prior to the launching of the 1976 [Local Government] reforms could be conveniently considered hereafter under the three region grouping of the national government at the material time.<sup>8</sup>

- a. **The Eastern Region** – consisting of the former East-Central, Rivers, and South-Eastern State (presently consisting of Anambra, Enugu, Imo, Abia, Ebonyi, Akwa-Ibom, Cross River, Rivers and Bayelsa States). A local administration was then established in which there was only a single regional administration without autonomy at the local level. This was known as “development administration” or “divisional administration” system, and considered the management of local affairs as an extension of the region’s administration. The state of affairs was that the regional officials responsible for the decentralized activities of the region worked in

<sup>4</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>5</sup> (2003) 12 NWLR (Pt. 833) 1

<sup>6</sup> P A Oluyede, *Nigerian Administrative Law* (University of Ibadan Press, 1988), Chap 3 at 103 – 109.

<sup>7</sup> Ibid, pp. 103 – 108; Jide Ibietan & Ndukwe, “Local Government Administration in Nigeria and the Localist Theory’ Exploring the Nexus”, *Studies in Social Sciences and Humanities* (2014) vol. 1, No. 4, 130 – 139.

<sup>8</sup> See OyelowoOyewo, “The Metamorphosis of the Local Government System of Administration in Nigeria”, in *Current Themes in Nigerian Law*, yemiAkinsoye-George (ed.) (2016) pp. 119-139.

association with selected/elected representatives of the people organized within councils or communities. The “Development Councils” made possible the involvement of local people in self-help community initiatives and grassroots reconstruction works.

- b. **The Western Region** – consisting of the old Western Region and Mid-West (presently consisting of Oyo, Ogun, Osun, Ondo, Ekiti, Edo and Delta States). A three-tier structure consisting of Divisional Council, District Council and Local Council was put in place. By 1972, a Council-Manager system modelled along the pattern of American and Canadian experience was introduced. However, due to poor finance the Council-Manager system was not fully implemented.
- c. **The Northern Region** – consisting of the old Northern Region (presently consisting of Sokoto, Kebbi, Katsina, Kaduna, Kwara, Kano, Jigawa, Yobe, Zamfara, Plateau, Benue, Bauchi, Gombe, Kogi, Niger, Nassarawa, Taraba, Borno and Adamawa). A three-tier or sometimes four-tier structure of local government system was in operation, made up of the Native Authority, District Councils, and the village Group Council.<sup>9</sup> This system derived mostly from the pre-existing traditional institutions and therefore seemed to have been the most adaptable system of local government administration in Nigeria before the local government reforms of 1976.

#### 4. Functions of a Local Government Council

The main functions of a local government council are as follows:

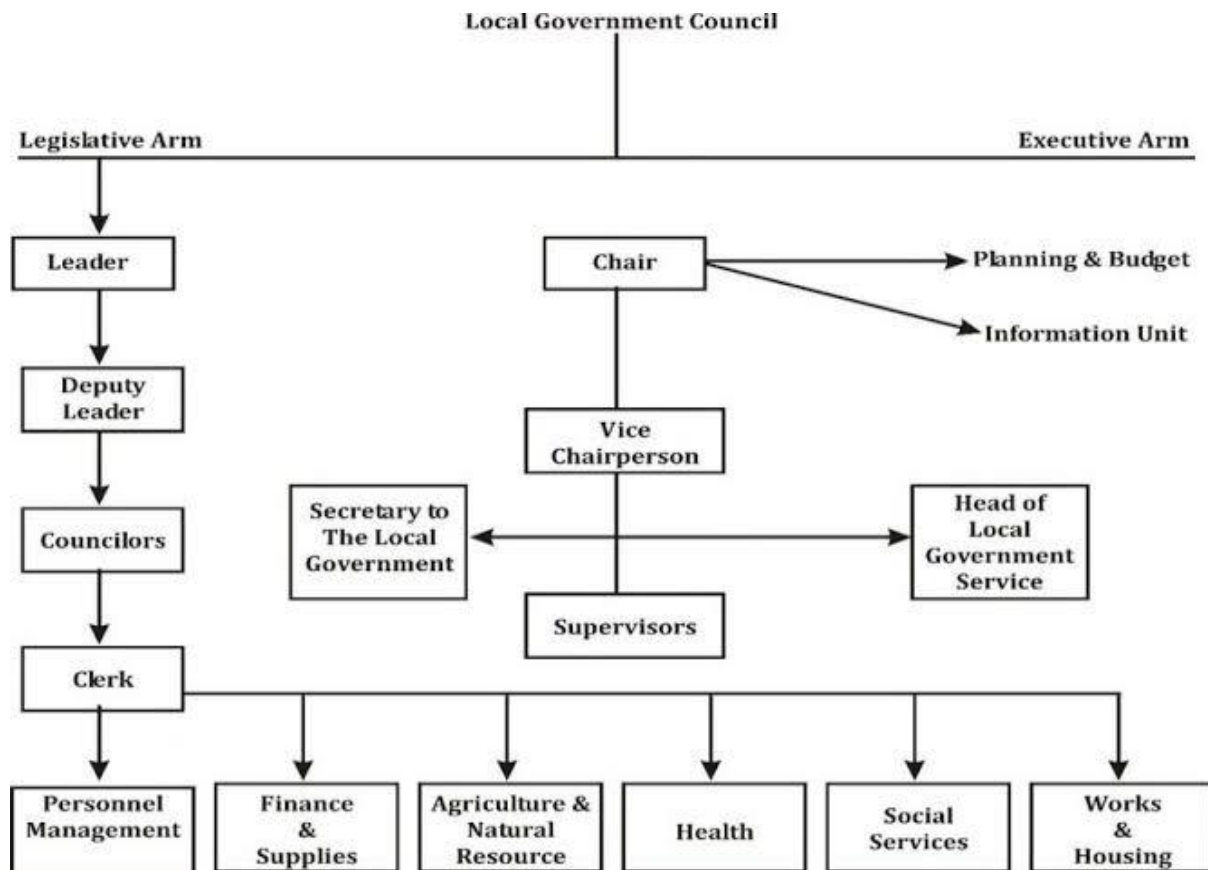
- (a) the consideration and the making of recommendations to a State commission on economic planning or any similar body,
  - (i) the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and
  - (ii) proposals made by the said commission or body;
- (b) collection of rates, radio and television licenses;
- (c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
- (d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
- (e) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;
- (f) construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;
- (g) naming of roads and streets and numbering of houses;
- (h) provision and maintenance of public conveniences, sewage and refuse disposal;
- (i) registration of all births, deaths and marriages;
- (j) 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; and
- (k) control and regulation of
  - (i) out-door advertising and hoarding,
  - (ii) movement and keeping of pets of all description,
  - (iii) shops and kiosks,
  - (iv) restaurants, bakeries and other places for sale of food to the public,
  - (v) laundries, and

<sup>9</sup>Op.cit

(vi) licensing, regulation and control of the sale of liquor.<sup>10</sup>

## 5.0 Local Government Areas of Nigeria

Nigeria has 774 local government areas (LGAs), each administered by a local government council[1] consisting of a chairman, who is the chief executive, and other elected members, who are referred to as councillors. Each LGA is further subdivided into a minimum of ten and a maximum of twenty wards. A ward is administered by a councillor, who reports directly to the LGA chairman. The councillors fall under the legislative arm of the Local Government, the third tier of government in Nigeria, below the state governments and the federal government.<sup>11</sup>



## 6.0 Local Government Reforms

The 1974 Public Service Review Commission, chaired by Chief Jerome Udoji, examined the structure of local government administration in Nigeria and identified major problems associated with it. However, it was the Federal Military which came to power in 1975 that made a ‘systematic and deliberate re-organization of the local government leading to elections at local government level on individual merit without party politics. The regime issued the guidelines for Local Government Reforms in 1976. This became a landmark in the evolution of the present local government administration in Nigeria.<sup>12</sup> The institutionalism of the principles and practice of participatory democracy in local government system of

<sup>10</sup><https://nigerian-constitution.com/fourth-schedule-functions-of-a-local-government-council/>. (assessed on 4<sup>th</sup> April, 2025)

<sup>11</sup>[https://en.m.wikipedia.org/wiki/Local\\_government\\_areas\\_of\\_Nigeria#:~:text=Nigeria%20has%20774%20local%20government,a%20maximum%20of%20twenty%20wards.](https://en.m.wikipedia.org/wiki/Local_government_areas_of_Nigeria#:~:text=Nigeria%20has%20774%20local%20government,a%20maximum%20of%20twenty%20wards.) (assessed on 4<sup>th</sup> April, 2025)

<sup>12</sup>JB Adewumi, ‘Local Government in Presidential System: The Nigerian Experience’, *Local Government in West African since Independence*, eds. I. Adamolekun, D Olowu, M. Laleye, (1988) p. 93

administration was adopted by various State Governments' Edicts. This resulted in the emergence of a uniform structure of local government administration in the country.

The 1979 Constitution of Nigeria adopted the fundamental features of the 1976 reforms. The autonomy and functions of Local Government were clearly expressed, and it became mandatory for the Federal and State governments to make direct financial grants and allocations to the Local Governments.<sup>13</sup> Unfortunately, the operation of the constitutional provisions during the Second Republic did not match the vision behind the reforms of the local government administration.<sup>14</sup> Indeed, in most cases the constitutional provisions were disregarded with impunity.<sup>15</sup>

With the overthrow of President Shehu Shagari's regime in 1983, the military government of General Mahamadu Buhari immediately established a 20-man committee chaired by Alh. Ibrahim Dasuki to re-examine the local government structure. The Dasuki Committee Report and the Government White Paper on it became the watershed for the establishment and standardization of Local Government Service Commission throughout the country.

### 6.1 The Traditional Experience

The Babangida Administration of 1985 dissolved State Ministries of Local Government in 1988 and transferred the regulatory functions to the office of the State Military Governor. New Guidelines were issued which prescribed the structure of the new local government system under the Civil Service Reforms of 1988. Due to political crisis General Ibrahim Babangida stepped aside.

The entering of Gen. Abacha into the helm of affairs in Nigeria came with another programme of transition to civil rule aimed to complete democratization of the local government system in 1996. The election and inauguration of the Local Government Councils on party basis took place in the first quarter of 1996. The creation of more States and Local Government Councils that brought the number of states and Local Governments Councils to 36 and 774 respectively was announced on October 1, 1996. Election into Local Government Councils on party basis was scheduled for December 1996. However democratization process of the local government system was completed in 1997. The status of local governments was eventually settled with the coming into effect of the 1979 Constitution.

### 7.0 Status of Local Governments under the 1999 Constitution of Nigeria

Bode Rhodes-Vivour, J.S.C in *Hon. Chigozie Eze & Ors. V. Governor of Abia State & Ors*<sup>16</sup> declared that the tenure of the currently elected members of the Local Government Councils of Abia State is regulated by the provisions of section 25 of the Abia State of Nigeria Local Government Law, No. 5 of 1999 and not sections 4 and 5 of the Abia State Local Government (Third Amendment) Law, 2004, among others. This is a firm declaration as to the status of local governments under the 1999 constitution of Nigeria as amended.

<sup>13</sup>Section 149(2) 1979 Constitution

<sup>14</sup>OyelowoOyewo op. cit pp. 122 - 123

<sup>15</sup>Alex Gboyega, "Local Government Since 1979", Political Values and Local Government in Nigeria, (Mulhouse, 1987) pp. 175 – 187. See Knight Frank & Rutley (Nig) Ltd v. Attorney General of Kano State (1990) 1 NWLR (Pt. 143) 210

<sup>16</sup> (2014) LPELR-23276 (SC)

Furthermore, the tripartite government structure was also preserved at the local government level; executive, legislature and judiciary – the executive is vested in the chairman, vice-chairman, supervisor or supervisory councilors, and the whole machinery of local government bureaucracy. The legislative functions are to be performed by the councilors, who represent the wards that make up the Local Government Area. The judiciary on the other hand is streamlined with the state administration of justice system, including the Customary Court, Magistrate Courts, State Election Petition Tribunal and High Courts.

## 8. Security of Tenure of Elected Officials of Local Government

It is important to remark that the way and manner of operation of Local Government Councils under the current constitutional and political dispensation vary from state to state within the Nigerian Federation. Based on the provision of section 7(1) of the 1999 Constitution, the Local Government Law enacted by each State House of Assembly is supposed to “ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.”

In *Speaker, K.S.H.A v. Adegbe*,<sup>17</sup> the Court of Appeal examined the provisions of the Kogi State Local Government (Amendment) Law, 2003, which confers the power of suspension and recommendation of a Local Government Chairman and affirmed that it was not inconsistent with the provisions of the 1999 Constitution. Section 16(1) of the Law empowers the House of Assembly of the State to, by a resolution of simple majority suspend a Chairman or Vice-Chairman of a Local Government Council or any political office holder, where there is grave allegation against him pending further inquiry by the House. In *Njaba L.G.C. v. Chigozie*,<sup>18</sup> The Court of Appeal held that the tenure of office of all local government officials starts to count from the date the Chairman takes his Oath of Office. In *Oshieze Vincent AkujobiEbirim v. Imo State Independent Electoral Commission*,<sup>19</sup> the Supreme Court in interpreting the provisions of section 23 of the Imo State Local Government Administration Law with respect to the term of Office of the Local Government Chairman, Vice Chairman and Members of Council held that there is nothing in the provisions to suggest that the three year tenure stipulated in s. 23(1) of the law must be an unbroken term of three years. The time runs from the date the Oath of Office is administered and cannot be extended for any reason, for any period of time beyond three years.

Unfortunately, not only the tenure of elected officials of the Local Government Councils but even the Councils themselves have, during most period of the operation of democratic governance both under the 1979 and 1999 Constitution, been unconstitutionally interfered with by the Governors of the States. Mbaba, JCA, In *Enyinna Onuegbu v. Governor of Imo State*<sup>20</sup>, the court stressed this challenge to the tenure of elected officials of the Local Government Councils and the Councilors,<sup>21</sup> thus,

The law is never lacking in intention or clarity that by Section 7(1) of the 1999 Constitution of Federal Republic of Nigeria (as amended) that: “The system of Local Government by democratically elected Local Government Council 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

<sup>17</sup> (2010) 10 NWLR (Pt. 1201) 45

<sup>18</sup> (2010) 16 NWLR (Pt. 1218) 166

<sup>19</sup> (2012) LPELR-9723 (SC) Per Ngwuta, J.S.C

<sup>20</sup> (2015) LPELR-25968 (CA)

<sup>21</sup> (2015) LPELR-25968 (CA) Per Mbaba, J.C.A. pp. 62- 65.

functions of such councils.” There are scores of decided cases of the supreme Courts affirming and enforcing the above Constitutional provisions. The problem is always in the absence of Political will, by Political leaders, especially Governors, to give effect to that provision. And the Legislature, which should check on the Executive to ensure the protection of democratically elected local government system, unfortunately, appears to be in alliance with the Governor in raping the Constitutional Provisions of Section 7(1) of the Constitution to install contrivance, in the name of ‘Transitional Committee’ or ‘Caretaker Committee,’ which has been condemned by the superior Courts.<sup>22</sup>

Guaranteeing the system of Local Government by democratically elected Local Government Council under the Constitution means that the Local Government Council must be democratically elected one and, it is in order if Local Government Council is dissolved, and a bye-election is ordered. It will be otherwise if the Council is dissolved, and a caretaker committee is appointed in its place. In this case, where the defendants amended the applicable law to the Local Government Council to enable the Governor to dissolve the Council and replace it with a Caretaker’s Committee, the trial Court erred by not declaring the law inconsistent with the Constitution.<sup>23</sup>

Interestingly, the new law on local government autonomy in Nigeria is centered around the Supreme Court's landmark judgment delivered on July 11, 2024, which affirmed the financial and administrative independence of Local Government Areas (LGAs) as the third tier of government under the Nigerian Constitution. The court ruled that federal allocations to LGAs must be paid directly into their accounts rather than passing through state-controlled Joint Allocation Accounts (JAACs), which governors had previously used to withhold or mismanage LGA funds. Additionally, the Supreme Court declared it unconstitutional for state governors to dissolve democratically elected LGA officials and replace them with appointed caretaker committees.

Despite this ruling, implementation has faced significant resistance. Several states, including Edo, Kogi, and Osun, have continued to disregard the judgment. For instance, Edo State suspended elected LGA chairmen in December 2024, while Osun State conducted controversial LGA elections in 2025 despite pending legal disputes. The federal government established an inter-ministerial committee to enforce the judgment, but as at April 2025, direct allocations to LGAs are yet to fully commence due to bureaucratic delays and opposition from state governors who rely on LGA funds for political control.

Legislative efforts in the National Assembly remain divided. Some lawmakers support bills strengthening LGA autonomy, including proposals to transfer the conduct of LGA elections from state-controlled electoral bodies to the Independent National Electoral Commission (INEC). Others, however, advocate for removing LGAs as a constitutional tier altogether, leaving their creation and funding to state governments. Legal experts emphasize that full autonomy is crucial for grassroots development, while critics argue that some LGAs lack the capacity to manage funds without state oversight.

The Supreme Court of Nigeria decision delivered on 11th of July 2024 in the celebrated case of *Attorney-General of the Federation v 36 States* has rendered section 162 (6)(7) of the 1999

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<sup>22</sup> Ibid

<sup>23</sup>See GenerlalyOyewoOyelowo, Local Government Law; Cases and Materials, (Lagos, University of Lagos Press, 2016)

Constitution idle, and otiose. The Supreme Court held that local government are financially autonomous and not appendages of State governments.

Section 162 (6)(7) of the Constitution provide:

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

(7) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State.

In jurisprudential thought, the American Realist School of Thought asserts that law is nothing but what the Judge says is law. Accordingly to the realist, Law is defined in terms of judicial decisions, not as a set of rules. Law originates from Judges, so the law is determined by what the Courts do, not what they law says.

## 10. Conclusion

There is no doubt that be-law is the law made by a local government for operation within its domain. This law is made by the legislative body of the local government otherwise called the councillors. It can be initiated by the executive or sponsored by the legislature. However, the powers of by-law are limited by the state, federal laws and of course, the Constitution of the Federal Republic of Nigeria. The Local governments where these by-laws operate are creatures of the constitution. The provision of the constitution that guarantees the existence of the local governments is also limited in its operation and independence by the same constitution. What an irony? It is observed that the constitution which supposed to be the safeguard of the autonomy of this local government complicated their existence and independence by its provisions.

Unfortunately the decision of the Supreme Court in *Attorney-General of the Federation v 36 States* will not cure the complications in the constitution with respect to the status of the local government. However the actual implementation of the decision will render the offending part of the constitution void. The National Assembly should urgently amend the constitution of the Federal Republic of Nigeria in these regards to showcase autonomy of local government and reflect constitutional democracy, maintain sustainable development and grassroots political development.