BAR PART 1 NOTES

NIGERIAN CONSTITUTIONAL LAW

What is Constitutional Law?

- Collection of legal rules which prescribe, establish, regulate the working of Constitution.

According to WADE and BRADLEY: Constitutional Law and Administrative Law (10th Edition) at page 9, Constitutional Law means "the miles which regulate the structure of the principal organs of government and their relationship to each other and to the citizen and determine their principal/main functions."

Dr. D.I.O. Ewelukwa on the other hand defines Constitutional law as "a collection of legal rules which prescribe, establish, and regulate the working of the Constitution of a political allocation otherwise known as a State."

What is a State?

(a) Can mean a country considered as an organized political community controlled by one government e.g. Nigeria.

(b) It can be defined as a unit in a country or an organized political community forming part of a country e.g. Lagos State or Edo State.

(c) It may mean the personification of the government of a country e.g. The State V. Appoh (1970) 2 All N.L.R. p. 218.

Note that the "State" can be likened to a company with the "Constitution" like its Articles and Association which lays down the rules and regulations binding it.

The Place of a Constitution in a Legal System

A legal system can be likened to a tree, with the constitution representing the trunk (i.e. the thick main stem of a tree from where the branches grow) and the other laws representing the branches. As the branches spring directly from the hunk, so also enactments and subsidiary laws spring directly from the Constitution.

The Constitution is the fundamental law of the land, it is a higher law and legal source of legitimate authority. According to the legal theory of HANS KELSEN, the Constitution is the law from which all other laws in a society derive their validity and authority. It is therefore the Basic Law or the GRUNDNORM. The constitution is supreme and everyone must be subjected to it.

What is the Constitution's Authority?

Generally, a Constitution is an act of the people made by them either directly in a referendum or through a convention or constituent assembly popularly elected for the specific purpose subject or not to formal ratification by the people in a referendum.

Consequently, if the substantive contents of a Constitution is freely agreed upon and adopted by the people either in a referendum or through a constituent assembly popularly elected for the purpose, then it is their act, although promulgation may in the interest of formalism and regularity have been done by an existing state authority.

A good Constitution should be the original act of the people to make it autochthonous. This principle is reflected in the preamble to the 1979 and 1999 Constitutions of the Federal Republic of Nigeria. See the Preamble to the 1979 and 1999 Constitutions.

Question: Can Nigeria's past Constitutions be said to be original act of the people or an act of the Federal Military Government? See B.O. NWABUEZE, The Presidential Constitution of Nigeria, pp. 1-16.

Note that the Preamble to the Constitutions merely raises a presumption of the autochthony of the past Constitutions of Nigeria. The statements therein purport to show that the past Constitutions were homegrown and an act of the people.

A detailed analysis of the making of these Constitutions creates a doubt whether this aspiration of autochthony was really achieved e.g.

(1) The independence Constitution 1960, was the product of a final exercise of power by the departing colonial authority who set down the rules in the Constitution.

(2) The 1963 Constitution is a reproduction of the 1960 Constitution which was imposed on the country by the colonial masters.

(3) The 1979 and 1999 Constitutions although were homegrown but are not really autochthonous because:

(a) most members of the Constitution Drafting Committee (CDC) and members of the Constituent Assembly (CA) were handpicked by the Military government and not elected as would rightly have been done.

(b) majority of the people that were handpicked were learned men and people from the elite group and there was no effective representation from the lower segment of the population, e.g. students, farmers, petty traders, etc.

(c) there was great interference by the Federal Military Government with the decisions of the Constituent Assembly and the Military junta made a considerable number of amendments and additions to the draft Constitution after due deliberations and decisions arrived at by the members of the Constituent Assembly.

(d) the draft as deliberated upon by the Constituent Assembly was not submitted to national referendum, and acceptability by Nigerians.

The effect is that it was the Federal Military Government, rather than the Constituent Assembly and the people, that was the source of legal authority for the Constitutions.

Types of Constitutions

There are various types of Constitutions:

(a) Written and Unwritten

(b) Rigid and Flexible

(c) Civilian and Military

(d) Unitary and Federal

Written Constitution

The idea of a written Constitution started in the late 18'" Century, mainly as a result of the American and French Revolutions. Under a written constitution, fixed rules, customs and principles of government are written down clearly in a single document. Put differently, a written Constitution is when all the fundamental laws and principles concerning the organization of government, the power of its various agencies and the rights of the citizens are expressly written down in one document e.g. 1979 and 1999 Constitutions of the Federal Republic of Nigeria and United States of America's Constitution. Other countries that operate a written Constitution are Canada, Ghana, Sierra-Leone, Gambia, Liberia, etc. Written Constitution has its merits and demerits.

Merits are as follows: -

It has a feature of certainty since the fundamental laws, principles of government and the division of power between the various organs of government are well spelt out expressly.

(2) It safeguards the interest of the people/citizens because of the relevant provisions on protection of minority interests and fundamental human rights of individuals which are well embodied in the Constitution.

(3) It is usually very difficult to amend and does not allow any kind of misuse of power by the leaders or Executives.

(4) It is good for a State with different ethnic groups because it makes clear how political leaders are to be elected and how the State's resources would be shared amongst the various component units.

It serves as a limiting factor to the supremacy of the Parliament who are themselves subjected to the Constitution.

(6) It gives the country a sense of purpose and direction.

Demerits

Procedure for changing a written Constitution is not only difficult but also very complicated.

(2) It is unhelpful in times of emergencies when the Constitution may require urgent amendment.

(3) To change it is expensive and also time consuming.

(4) It tends to be rigid and creates the problems of interpretation and enforcement of constitutional provisions.

(5) It is restricted in scope because it is not realistic to codify all the laws of a country in a single document.

Unwritten Constitution

This does not denote the absence of documentation. Rather it is characterized by the absence of a single document which could be referred to from time to time by the citizens and government. It is made up of some fundamental principles of law, rules and regulations, powers and functions of government, judicial decisions, conventions, and traditional beliefs which have grown with the people but which are not codified in one single document but they are scattered in diverse documents.

Examples of countries with an unwritten Constitution is Great Britain where the laws are scattered in charters, petitions, parliamentary, judicial decisions, and customs and conventions e.g. the Bill of Rights (1688), the Magna Carta (1215), the Petition of Rights (1628). Although some of these laws are written down in various documents, yet there is no single document known as the British Constitution.

Merits

(1) It is flexible and ensures that laws which are not serving useful purposes are removed with ease.

(2) It develops from the actual experience of government and is more readily acceptable and relevant to the people.

(3) It is not strict in its processes of amendment.

Demerits

(1) The various customs and acts of parliament are sometimes misinterpreted due to the absence of written guidelines.

(2) It may allow for frivolous amendments.

(3) It may permit too much flexibility in its amendment procedure and thus allow government in power to amend the rules contrary to the wishes of the greater majority of the people.

Rigid Constitution

The determinant factor is the process of amendment. A rigid Constitution is one which is very difficult to amend or change because its amendment involves a special, different procedure which is provided for under the Constitution. Examples of countries with rigid constitutions are Nigeria, USA, Ghana, etc.

In Nigeria, the Constitution is rigid because it cannot be altered by the ordinary process of legislation. See section 9, 1979 and 1999 Constitutions, which require not less than two-thirds majority of all members of the National Assembly and approved by resolution of the Houses of Assembly of not less than two-thirds of all the State. See section 9(2).

Merits

(1) It is generally clear and precise as the processes of amendment are clearly stated in the Constitution to avoid any form of misunderstanding.

(2) It allows for uniform pattern of governing because the provisions of the Constitution are not easy to change.

(3) To ensure that fundamental laws of the State and the rights of citizens are preserved, rigid obstacles are placed in the way of frivolous revision of the Constitution.

(4) It ensures that amendments are not made in a hasty and thoughtless manner to protect the interest of the people.

(5) It is good for a heterogeneous polity.

Demerits

(1) Not easily adaptable to meet changing circumstances especially at emergency periods.

(2) It does not easily embody new conventions, values and beliefs of the people.

(3) It may generate prolonged controversy and over politicization which can lead to serious political crisis or even breakdown of the constitutional order.

(4) It is very expensive, time and energy consuming in conducting referendum for changing or amending a rigid Constitution.

Flexible Constitution

There is no special procedure prescribed for the amendment of this type of Constitution. It can easily be amended by the ordinary law-making process in the Parliament. It does not require a two-thirds majority or ¾ of the State Legislatures for approval. Such Constitution is usually found in a unitary State with unwritten Constitution e.g. Britain, New Zealand, Canada, Australia, etc where their Parliaments can alter any part of their Constitutions by a simple majority of votes.

Merits

(1) It allows for easy interpretation and adaptation.

(2) It can meet the emergency need of a nation.

(3) Its amendment is not time consuming.

(4) It makes it possible for the desires and wishes of the people to be accommodated in the political process.

It is good for a homogeneous polity with relatively small territorial landmass.

Demerits

(1) It can easily be changed and mischievously manipulated to achieve some selfish interests.

(2) It does not protect the interest of minority groups in a multi-ethnic State like Nigeria.

Unitary Constitution

Unitary States are run on a single government basis. There may be local councils that are established for administrative purposes only. The councils are supervised by the central government from where much of their authority is delegated. In other words, there is no constitutional division of powers so all powers are attributed to the central government alone.

Unitary constitutions are usually adopted in countries with relatively small territories e.g. the Gambia, South Africa, Britain and New Zealand.

Merits

(1) Allows for quick decision -making.

(2) It is less expensive to run because there is only one level of government.

(3) It ensures uniform and even development within the country.

(4) It provides a favourable climate for peaceful and orderly government because it does not accommodate most of the factors that generate friction and tension in federal states.

It encourages unity because there is no divided loyalty.

Demerits

(1) It encourages much dependence on the central government.

(2) Cannot meet the needs of a heterogeneous society.

(3) Encourages the emergence of a dictator as a result of over concentration of governmental powers in one single authority.

(4) It can lead to ethnic domination of the minorities by the majorities.

Federal Constitution

This is the type of Constitution for a group of states who have voluntarily come together as one country and are ruled by a central government with the component states still retaining some of their powers. The Constitution itself shares powers between the different levels of government who are themselves creations of the Constitution.

Powers of each unit is defined by the Constitution in such a way that they are co-ordinate and independent. Thus, central government cannot interfere in the functions ascribed to the other levels of government under the Constitution.

In a federal state, the Constitution is supreme. Thus, in federal Constitutions, there is the Legislative List which is divided into:

(a) Exclusive Legislative List upon which only the central government can make laws

(b) The Concurrent Legislative List over which both the central and the state governments can make laws and

(c) The Residual List which contains matters upon which the state government can make laws. See the Constitution of Federal Republic of Nigeria 1999. Examples of countries with federal constitutions are Nigeria, USA, USSR, etc.

Merits

(1) It brings about political unity without destroying the identity and separate existence of the component states.

(2) It caters for local differences and therefore allays the fears of domination of the minorities.

(3) There are more employment opportunities because of division of powers and duplication of offices.

(4) Division of powers amongst the organs of government leads to checks and balances.

Demerits

(1) Duplication of powers and governments leads to increase in government expenditure.

(2) Inter-state frictions may arise from the fear or the threat of domination of one state by another e.g. distribution of amenities may become the source of quarrels.

(3) It increases ethnic consciousness which does not guarantee peace and unity in a country.

(4) The federal government may find it difficult to take quick decisions because by the nature of a federal Constitution, the consensus of the federating states becomes necessary before decisions can be taken.

Civilian and Military Constitution

Civilian Constitution operates in a civil society where you have a democratic government in place. It implies a constitution made by the people to govern themselves in a civilized society free from any military imposition or governance.

On the other hand, the common pitfall is to assume that the military administrations have no constitution. The question then is: Is it necessary to discuss constitution under a military regime?

The Nigerian experience has revealed that the military administration has no respect for the Constitution. Since a military junta who takes over power does not only abrogate the existing Constitution but goes on immediately to promulgate decrees in place thereof, and these decrees supplant the authority of the Constitution. Thus the machinery for Constitution making under the military can be found in decrees. See the Constitution (Suspension and Modification) Decree 107 of 1993. Note:

(a) S. 1(a) of the Decree and First Schedule thereto.

(b) S. 1(3) of the Decree and Second Schedule thereto.

(c) SS. 8 and 9 of the Decree.

(d) S. 25 of the Decree.

See further, Governor of Ondo State v. Adewole (1985) 3 NWLR (Pt. 13) p. 474; Lakanmi v. A-G of Western State & Ors. (1971) U.I.LR. p. 201

Consider the place of the 1979 Civilian Constitution under the Military administration. See Ekpenkhio v. Egbadon (1993) 7 NWLR (Pt. 308) p. 717.

What is the authority of a military regime in Nigeria? See A Constitutional History of Nigeria by B.O. Nwabueze, pages 161-178. Take note of the following relevant cases:

(1) Lakanmi & Anor v. A-G (Western) Nigeria (1970) NSCC P. 143

(2) Mitchell v. DPP (1986) A.Cp. 73; (1985) 3 W.L.R., P. 724

(3) Madzimbamuto v. Lardner-Burke (1968) 1 A.C p. 645

(4) State v. Dosso (1958) 2 Pakistan Supreme Court Report, p. 180.

Parliamentary And Presidential Executive Government

In Nigeria, this distinction is best represented in the first and second Republics. The former is the Parliamentary type and the latter the Presidential Executive. The basic distinction is whether there is a split between the office of the Head of State and that of the Head of Government or whether they are fused in one executive office.

If they are fused as in the Second Republic of Nigeria, then there is a Presidential type of Executive; otherwise it is a Parliamentary system of government. The Presidential type is best presented in the United States whilst the Parliamentary type is operated in the United Kingdom. See the Constitution Drafting Committee Report Vol. 1, page 29.

What justifies the appellation "Parliamentary government" is the fact that the right to govern flows through the Legislature to the Executive. In the first Republic in Nigeria, (i.e. 1960 - 1966), we practiced the Parliamentary system which we derived from the constitutional experience of Great Britain. Government rests with a cabinet of ministers headed by the Prime Minister. The Parliamentary system produces only a ceremonial Head.

Under the Parliamentary system, the doctrine of collective responsibility applies such that when there is bad governance both the Prime Minister and the entire members of the cabinet must take responsibility for it. Note that in a Parliamentary system members of the executive cabinet are also members of Parliament.

Under the Presidential system, executive powers are placed in the hands of the President who is not a member of Parliament and whose continuance in office is not dependent on his membership of the Parliament. The Presidential system combines the office of Head of State and Head of Government in the same person. See S. 5 of 1979 and 1999 Constitutions. The Presidential system of government gives practical meaning to the doctrine of separation of powers and checks and balances because the organs of government are clearly separated and their functions and authorities are clearly delineated. See SS. 4, 5 and 6 1979 and 1999 Constitutions. Responsibility for good or bad governance attaches to the President as the Chief Executive while the Ministers are mere functionaries whom he may appoint and drop as the need arises.

It has been argued that the Presidential system is more relevant in Nigeria because of our cultural antecedent whereby we tend to identify with a single all powerful traditional authority such as the Emir, the Oba and Obi.

Bicameral And Unicameral Legislatures

A bicameral legislature is one that contains 2 chambers, i.e. the Lower House or the First Chamber and the Upper House or the Second Chamber. In Nigeria, the bicameral legislative system is being practiced at the federal level where you have the Upper House which is the Senate which provides for equal representation among States in the central legislature e.g. the Constitution makes provision for 2

Senators from each State and 1 from the Federal Capital Territory, Abuja. See S. 48 of 1999 Constitution. The Lower House is the House of Representatives in the central legislature. See S. 49 of 1999 Constitution.

The Senate serves as a necessary check on the House of Representatives and also enhances, the quality of legislation. On the other hand, a unicameral legislature consists of only one chamber.

Although a bicameral legislature is retained by both the 1979 and 1999 Constitutions at the center, at the State level, a unicameral legislature was introduced otherwise known as the House of Assembly. This among others quicken the legislative process in the States and also cuts down the expenses of running the government at that level. See SS. 43 and 84 1979

Constitution and SS. 47 and 90 of 1999 Constitution. Note however that in a unicameral legislature, bills could be hastily and rashly approved since there is no other chamber to have a second look at them. Hence it does not give room for checks and balances.

Question: Should Nigeria retain a unicameral legislature at the State level or should it be extended to the federal legislature, or is a bicameral legislature preferable at both the federal and state levels?

SECTION TWO

THE CONSTITUTIONAL HISTORY OF NIGERIA

The Macpherson Constitution

The Macpherson Constitution of 1951 was not in fact the work of Sir John Macpherson. The only justification for referring to it as the Macpherson Constitution appears to lie in the fact that the Constitution was introduced during his regime. It was designed to avoid the criticisms of the Richard's Constitution, i.e. that there was no adequate consultation with the people.

The draft of the Macpherson Constitution was debated at the village, district, provincial and regional levels. The new Constitution was designed to give an increased measure of responsibility to Nigerians for the conduct of their own affairs whilst granting increased autonomy to the 3 regions.

Composition

There was to be a central legislature and a central executive council for the country. There were 136 elected members in the House of Representatives consisting of 34 each from the East and West and 68 from the North. There were 6 nominated ex-officio members.

Both the North and West had 2 chambers, namely Houses of Assembly and Houses of Chiefs.

Composition Of Regional Houses

(a) The Northern House of Assembly was made up of 90 elected members, a President by the Lt. Governor, 4 officials and 10 nominated members. The House of Chiefs consisted of the Lt. Governor as President, 3 officials, all first class Chiefs, 37 other Chiefs and an Adviser on Moslem Law.

(b) The Western House of Assembly was made up of a President appointed by the Lt. Governor from outside the House, 4 officials, 80 elected members and 3 nominated members, while the House of Chiefs comprised the Lt. Governor (President), 3 officials and 5 Chiefs.

(c) Eastern House of Assembly presided over by the Lt. Governor had 5 officials, 80 elected members and 3 nominated members.

Under the Constitution the Governor had the power to legislate for the peace, order and good government of Nigeria "with the advice and consent of the House of Representatives."

The House could debate and pass any Bill except those affecting the status of Regional Houses which must be reserved for Her Majesty's pleasure. The Governor had power to bring into force any Bill not passed by the House if he considered it necessary for the maintenance of good government.

There was only one legislative list – list of subjects on which a Regional House might legislate. The central legislature could, however, legislate on any subject including those in the list. But where there was any conflict between central and regional law in respect of the same matters, the last in time prevailed. All Regional Bills had to be approved by the Governor before the Lt. Governor could assent to them.

The Executive

The 1951 Constitution established a Central Council of Ministers in place of the old Executive Council. It consisted of 4 Ministers from each Region's House of Assembly selected by the Governor on the recommendation of the Lt. Governor. A Minister could be removed by the Governor on a vote of no confidence by two-thirds majority or if he failed to carry out a policy decision of the Councils of Ministers. The Ministers had no departmental responsibilities as such, each of them having only the general responsibility of submitting to the Council certain matters specified as coming within the Province. This, in addition to the fact that, there were 6 officials with departmental responsibilities in the Council, tends to show that the Council was not a cabinet in the true sense. The Ministers themselves instead of behaving as cabinet Ministers tended to regard themselves as representatives of their Regional Houses.

Franchise

Except in Lagos and Calabar, elections into the House of Assemblies were indirect. They were conducted through electoral colleges from the village level until provincial representatives were elected to the Regional Houses. The Regional Houses themselves acted as electoral colleges for electing Regional members of the House of Representatives. The main qualification required of electors and candidates was that they were tax payers and satisfied the residential qualification of 12 months.

Defects of The Constitution

(a) It enacted the principle of collective responsibility in a manner that gave no room for the equally important doctrine of ministerial responsibility.

(b) It made no provision for the posts of Prime Minister or Premier. Hence the government lacked effective leadership.

(c) The central government was given powers which made it interfere unnecessarily with regional matters.

(d) The provisions were more of a unitary than a federal constitution.

The Constitutional Conferences Of 1953 and 1954

As a result of the various constitutional crises that was destroying the unity of the country and which vitiated the application of the 1951 Constitution, it was decided by Her Majesty's

government that the Nigerian Constitution would have to be re-drafted to provide greater regional autonomy. Accordingly, Nigerian leaders were invited to London to review the Constitution. A delegation of 19 people, 6 from each regions and one from the Cameroons were sent to London for the conference which lasted from 30th July to 22nd August 1953. The following decisions were arrived at:

(1) There should be a federal system of government where the functions of the federal government would be spelt out and residual powers left to the regions. They drew up the federal list and concurrent list with the proviso that in case of a conflict the federal laws would prevail.

(2) The Regional Lt. Governor should henceforth be referred to as Governor while the Governor should be called Governor-General. (3) Lagos should be separated from the Western region, and made a neutral federal territory (i.e. Federal Capital Territory).

(4) Her Majesty's government agreed to grant self-government to those regions who desired it in 1956 but only on all those matters which fell within the competence of the regional government.

In order to settle some unresolved political problems at the 1953 London Conference, there was yet another conference in Lagos on 19 January, 1954 under the Chairmanship of the Secretary of State for the Colonies, Sir Oliver Lyttleton. The conference arrived at the following decisions:

(1) Federalism was agreed for Nigeria.

(2) That the public service should be regionalized,

(3) The judiciary should be regionalized.

(4) It was accepted in principle that financial resources be allocated to the regions and regional government (i.e. revenue allocation).

That autonomy should be granted to the Southern Cameroons.

(6) That though Southern Cameroon should remain part of the Nigerian federation as a quasi-federal territory, it should have a legislature of its own.

The 1954 Federal Constitution

The 1954 Federal Constitution is the product of the conferences held in 1953 and 1954. Under the Constitution, Nigeria became a federation of 3 Regions and the Southern Cameroons.

Composition Of The Federal Legislature

The House of Representatives consisted of 184 elected members (92 from the North, 42 each from the East and West, 2 from Lagos and 6 from the Southern Cameroons). In addition, there were 3 ex-officio members-the Chief Secretary, the Attorney-General and the Financial Secretary and 6 nominated members. The composition of the Regional House remained the same as under the 1951 Constitution except that in the East and West all ex-

officio members had disappeared. For uniformity of law, Regional Legislatures could authorize the House of Representatives to make law for the Regions with respect to matters not in the Legislative lists.

Legislative Powers

The Constitution contained two Legislative Lists – the Exclusive list and the Concurrent list. With regard to matters in the concurrent list both Federal and Regional Governments could legislate within their specific spheres, and where there was any conflict the law enacted by the Federal Government prevailed. All matters not on the lists were residual matters - within the legislative competence of the regions.

Franchise

The indirect election system introduced by the 1951 Constitution was discarded for direct election to the Regional Houses, except in the North where the Electoral College system was retained except in 18 Urban areas where direct elections were held. The East introduced Universal Adult Suffrage, the West gave franchise to tax payers only, and the North to male adult tax payers. Separate regionally organized elections were held for the House of Representatives and the Regional Houses of Assembly.

The Executive

The Central Council of Ministers consisted of 10 Ministers (3 from each Region and 1 from the Southern Cameroons), 3 ex-officio members -the Chief Secretary, the Attorney-General and the Financial Secretary. The Ministers who were for the first time given departmental responsibility except political and legal matters, were appointed by the Governor-General on the advice of the leader of the party with overall majority in the House of Representatives, thus, breaking the direct link with the Regional Legislative Assemblies. All officials had disappeared from the Executive Councils in the West and the East. The Governor, however, remained President of the Council. The Civil Service and the Judiciary were regionalized and Lagos was separated from the Western Region and constituted a Federal Territory. The use and operational control of the Police force was left with the Governor-General acting in his discretion. Marketing Boards were regionalized.

Judiciary

A Federal Supreme Court was established for Nigeria. High Courts were established for each of the North, East and West and one for Lagos and the Southern Cameroons.

Defects Of The Constitution

(1) Not much progress was made in the area of popularly electing Constitution makers, and effecting mass contribution to the Constitution.

(2) The Constitution did not give the minority groups adequate security and participation at the centre.

The post of Prime Minister was still not created.

The London Constitutional Conference 1957

Following the Constitutional Conferences of 1953 and 1954 which led to great advancement in Nigeria's Constitutional development, other Constitutional conferences were held in 1957 and 1958 for the purpose of granting further government responsibilities to Nigerians.

The 1957 Conference was held between 23rd May and 261 June, in London and was attended by all the major political parties in the country. The following decisions were arrived at namely:

(1) The Governor should appoint as Premier, the person who commanded a majority in the House of Assembly and appoint other Ministers on the advice of the Premier. Also, the Governor would no longer preside over the Executive Council meetings of the Regional Councils.

(2) A regional Governor would be appointed by the Queen for the regions. Consequently, on 8 August 1957, the Eastern and Western Regions became self-governing.

(3) The Nigerian governments should be constitutionally obliged to pay due compensation for properties acquired for public purposes.

(4) The Eastern region was allowed to establish its own House of Chiefs as a 2nd chamber to level up with the Northern and Western regions.

(5) Southern Cameroons was to have the status of a region with its own Premier, but the Governor-General would continue to have ultimate responsibility for it as a Trust Territory.

(6) The Federal Legislature (i.e. House of Representatives) was to be composed of 320 members elected by universal adult suffrage in the East, West and Southern Cameroons and by adult male suffrage in the North.

(7) The office of the Prime Minister of the Federation was to be created to give effective leadership to the Government at the center. The person who commanded majority of the House of Representatives was elected as Prime Minister. Thus, on 2nd September 1957, Sir Abubakar Tafawa Balewa was elected as Prime Minister being from Northern Peoples Congress (NPC), a party that commanded majority seats at the Federal House of Representatives.

(8) There was to be a Commission of Inquiry to look into the fears of the minorities.

Another constitutional conference was held also in London between 29th September and 27th October 1958. It was attended by all the political parties and was significant for being the last Nigerian Constitutional Conference held before the attainment of independence in 1960. Three major issues necessitated the conference, namely:

(1) To consider the reports of the minorities commission on the possibility of the creation of more regions or states to ally the fears of minority domination.

(2) To discuss the timing of the grant of independence.

(3) The form of Nigeria's independence constitution and other outstanding political, fiscal and administrative issues relating to independence.

Following from these issues, the following decisions were reached:

That the Northern Region should become self-governing in 1959 since the West and East had been granted self-autonomy in 1957.

(2) A list of fundamental human rights provisions should be inserted in the constitution to allay the fears of the minorities and to protect both the interest of the majority and minority citizens alike.

(3) That Nigeria should become independent on 15th October 1960.

(4) That provisions to regulate the procedure for amending the constitution and for altering the regional boundaries would be entrenched in the constitution.

The right to self-determination was accorded the Southern Cameroons which later joined the French Cameroon in March 1961 after a referendum.

The 1959 Federal Election

In December 1959, there was a nation-wide general election held into the Federal House of Representatives. No single party won an all majority as was in the case in 1954. Thus strenuous efforts to form a new government began. Consequently, the NPC (Northern Peoples Congress) and the NCNC (National Council of Nigeria and the Cameroons) agreed to form a coalition government with Sir Abubakar Tafawa Balewa, the Prime Minister. Dr. Nnamdi Azikiwe of the NCNC was made the Governor-General whilst AG (Action Group) formed the official opposition with Chief Obafemi Awolowo as the leader of the opposition in the House of Representatives.

The Independence Constitution Of 1960

Enacted as Nigeria (Constitution) Order in Council 1960 promulgated by the British Government. The order embodied the following:-

(a) Constitution of the Federation

(b) Constitution of Northern Nigeria

(c) Constitution of Western Nigeria

(d) Constitution of Eastern Nigeria

This Constitution conferred full independence on the entire Federation. It came into operation on 1st October, 1960 and remained in force until 1st October, 1963 when the country became a Republic.

The Legislature

There was established a National Parliament which consisted:

(a) The Queen

(b) The Senate composed of 44 Senators

(c) The House of Representatives composed of 320 elected members

The Regional Government

Northern Region

(a) House of Chiefs composed of all first class Chiefs in the Region, 95 other Chiefs, and an adviser on Moslem law.

(b) House of Assembly of 170 elected members.

Western Region

(a) House of Assembly consisting of 124 elected members

(b) House of Chiefs consisted of 115 members and a maximum of four Chiefs selected by the Governor acting in accordance with the advice of the Premier.

Eastern Region

(a) House of Assembly consisting of 146 elected members

(b) House of Chiefs composed of all traditional rulers in the Region, first class Chiefs selected to represent the various provinces in the Region, fifty-five other Chiefs, and five special representative members.

The Constitution prescribed two legislative lists, the exclusive list containing 44 items and the concurrent list containing 28 items. Matters which did not come within these two lists were considered as residual matters and left to the Regional government.

Regional Executive

The 4 executives of each Region consisted of the Premier and some other Ministers appointed by the Governor on the advice of the Premier. The Executive Council was collectively responsible to the Regional legislature.

The 1960 Constitution enforced the collective responsibility of the Executive by empowering the Governor-General or Governor to dismiss the government whenever it appeared to him that the Premier no longer enjoyed majority support in the elected house of legislature. Unfortunately, it was not stated whether the loss of support must be unequivocally expressed in a formal vote of no confidence or in some other act indicative of it. See Akintola v. Aderemi (1962) All N.L.R. 442.

The Judiciary

Judicial appointments (except the Chief Justices of the Federation and Regions who were appointed by the Governor-General or Governor on the advice of the appropriate Premier) were made by the Governor-General or Governor on the advice of a special body, the

Judicial Service Commission, established for each region and the Federation by the Constitution of 1960.

Such Judges could only be dismissed on the grounds of inability to discharge the functions of their office or for misbehaviour on the recommendation of a Tribunal of Judges confirmed by the Judicial Committee of the Privy Council.

Constitutional Guarantee Of Fundamental Rights

On the recommendation of the Minorities Commission in 1958, the Constitution made detailed provisions for fundamental human rights in line with the models laid down by the 1948 Universal Declaration of Human Rights. Emergency Powers

See section 65 of the Federal Constitution. The Parliament was empowered to make laws during a period of emergency for Nigeria or any part of the country with respect to matters not included in the legislative lists where such laws appeared to it to be necessary or expedient for the purpose of maintaining peace, order and good government during the particular period.

Defects

The main problem with this Constitution is that the idea of owing allegiance to a foreign sovereign was repugnant to the national pride of many Nigerians; it was felt that it was a negation of the full sovereignty of their Parliament.

The 1963 Republican Constitution

This is the first homegrown and indigenous Constitution for Nigeria. See the preamble to the Constitution.

Note: The Constitution consisted of four distinct Constitutions:

(a) The Constitution of Northern Nigeria Law, 1963

(b) The Constitution of Eastern Law, 1963

(c) The Constitution of Western Law, 1963

(d) The Constitution of Mid-Western Nigeria, 1964

Republican Constitution re-enacted most of the provisions of the 1960 Constitution. The most important innovation in the 1963 Constitution is the abolition of the monarchy and its replacement by a republic. Zimit v. Mahmood (1993) 1 N.W.L.R. 71. The Queen ceased to be the Head of State of Nigeria, and was replaced by the President and Regional Governors.

The Queen's jurisdiction in appeals from the Nigerian Courts was also abolished. The abolition of the Judicial Service Commissions and their replacement by the Premier's authority was considered as a negation of the institutional guarantee of the Independence of the Judiciary. This is obvious from the absence of a constitutional vesting of judicial powers in the courts. Compare with section 6 of the 1979 Constitution.

Effects Of The 1963 Republican Constitution

(1) The constitution abolished the power of the Governor to remove the Premier without a resolution on the floor of the House. Note the circumstance in which a Governor could remove a Premier created much controversy in the case of Adegbenro v. Akintota (1963) 3 All E.R. p. 544. Note that the constitution now made it clear that the Governor could remove the Premier only in consequence of a vote of no confidence by the House of Assembly. See Constitution of Western Nigeria (Amendment) Law No. 13 of 1963.

(2) The 1963 Constitution strengthened the office of the Prime Minister and Premier, however they were made accountable to the Parliament.

(3) The 1963 Constitution expressly established the office of the Attorney-General as Minister in the government.

(4) A guarantee of the fundamental human rights principles were strengthened as they were all entrenched in the Constitution.

(5) Some emergency powers were conferred on the federal government, i.e. they could declare a state of emergency throughout Nigeria or in any part thereof.

(6) The Constitution also laid down the process for the creation of new regions and for the alteration of the existing regional boundaries e.g. in August 1963 another region was carved out of the Western region known as the Mid-Western Region.

Post Independence Political Crises And The Advent Of Military Rule In Nigeria

Generally, the Republican era witnessed sporadic and on occasions, near fatal political upheavals which was as a result of several inadequacies in the provisions of both the 1960 and 1963 Constitutions namely:

(1) The imbalance in the structure of the Federal States created by the 1954,1960 and 1963 Constitutions. There was inequality in the size and population between the North and other regions. The Northern region was larger than the rest of the other regions put together. This was not a healthy sign for a viable federalism. According to John Stuart Mill in his book Representative Government (Everyman Ed) pages 367-368, "in a true federation there should not be any one state so much more than the rest as to be capable of vying with many of them combined. If there be such a one, and only one, it will insist on being master of the deliberations."

This problem of imbalance was to a large extent, part of the cause of the problems which led to military incursion of the country.

(2) The majority-minority tribes structure in the region also posed another problem. Each region consisted of many ethnic groups. There were however some small ethnic groups that were incapable of standing on their own and had to be grouped with major tribes under which they were submerged e.g. in the West, the Yorubas were dominant and in majority as opposed to the Edos, Urhobos and Ijaws who were minorities (before the creation of Mid-Western State). In the East, the Ibos dominated the group as opposed to

the Efiks, Ibibios and Ijaw-speaking minority and in the North, you have the Hausa-Fulani dominating over the Kanuris, Nupes and the Tivs of the Middle Belt and the Yorubas in Ilorin and Kabba provinces.

Therefore, tension was inevitable in the majority-minority tribes structure since it entrenches the permanent control of the regional government by the majority tribes. There were riots and hostilities and protests from the small tribes leading to a state of chaos and bloodshed. There was also agitation for the creation of more states to correct the existing imbalance.

(3) The trend of party politics immediately before and after independence in Nigeria There were various inter-tribal politics and fights amongst the political parties all with a view to being popular and also to project the image of their various tribes as being in the majority e.g. the Eastern Regional crises of 1953 which arose because of the internal split and power struggle within the NCNC leadership. Also, the crises over the motion for "self-government in 1956."

(4) The Federal Government's Special Emergency Powers: The failure of the Constitution to define what was to constitute an emergency situation justifying a declaration of a state of emergency by Parliament left the door open to abuse as did in fact happened in the emergency declared in 1962 in the then Western region.

(5) The Action Group Crises: On the attainment of independence the three main political parties had become regional in outlook. These were the Northern People's Congress (NPC) in the North, The Action Group (AG) in the West and the National Convention of Nigeria Citizen (NCNC) in the East. The AG crises arose from a personality clash between Chief Obafemi Awolowo, the party leader and his deputy, Chief S.I, Akintola. This situation factionalized the party, with one group being led by Chief Awolowo while Chief Akintola led the rival group. With a view to dislodging the NPC from control of the Federal government, the Awolowo group sought alliance with NCNC while the Akintola group joined forces with NPC to maintain the status quo and source allocation of resources to the West.

It is was also alleged against Chief Awolowo that though he was the leader of the opposition of the federal parliament, he wanted to be consulted by the Chief Akintola-led Western regional government (as the party leader) before major decisions could be taken.

There was a further issue of suspicion between the two politicians. Chief Awolowo believed that this deputy (Chief Akintola) was planning to remove him and take over as the party leader of Action Group. As a result, Chief Awolowo saw him as a traitor who should be removed from the party and (as a follow up) from office as Premier of the Western region.

Chief Awolowo now introduced the ideology of democratic socialism into the party, but this was vehemently opposed by the Chief Akintola-led faction. With the above scenario the conflicts and rift in the party grew wider and worsened by the day. Worse still, the idea of Chief Awolowo that the party joins the NPC/NCNC coalition to form a national government was again challenged by Chief Akintola's group.

At its party conference in Jos, February 1962, the party decided to dismiss Chief Akintola from his party post when all efforts to reconcile the two groups failed. In consequence, a majority of the party members of the Western region House of Assembly signed a letter to the Governor of the region to the effect that they no longer had confidence in him. The

governor promptly dismissed him as premier and appointed Alhaji D.S Adegbenro as the new premier.

At a meeting of the House to ratify these decisions, there was a free for all fight and the police had to use tear gas to disperse the members. While this crisis lasted, the NPC/NCNC led Federal Government declared a state of emergency in the region and appointed Dr. M.A. Majekodumni the Federal Minister of Health as the Administrator of the region. The state of emergency lasted for six months after which Chief S.L Akintola was reinstated as premier.

This was the setting when Chief Awolowo was charged with plotting to overthrow the federal government. He was convicted and sentenced to 10years in jail.

The federal government set up a commission of inquiry to investigate the management of the National Bank set up by the western regional government. The commission that was headed by Justice G.B.A Coker also investigated some public corporations in the region. It discovered serious cases of maladministration, irregularities and diversion of public funds to the affairs of Action Group. Nonetheless, it absolved Chief Akintola of any guilt. While the above situation lasted, the NPC/NCNC federal government saw it as an opportunity to spite Chief Awolowo and the AG for his calls for the creation of states for the Northern minorities. This was accomplished by carving out Midwest as a region out of the Western region.

Meanwhile Chief S.L Akintola formed a new political party, the United Progressive Party (UPP), which joined forces with the NCNC to form the opposition in the West.

Thus, the Action Group crisis in the West was the first political crisis that started the drift of the first republic. The crisis was also significant for the way it tested the judicial interpretation of the Independence Constitution in the following cases:

Cases:

(i) Wiliams v. Majekodunmi (1962) 1 ANLR 328

(n') Akintola v. Aderemi (1962)1 ANLR 442

(iii) Adegbenro v. Akintola (1963) 3 All 544

(6) The Population Census Crises Of 1964: In 1962 a population census was conducted to ascertain the population of Nigeria. After the census but before the figures were officially released, they leaked. As a result of the uproar and general criticism of the figures to the effect that they were manipulated the census was cancelled. A census Board under the authority of the Prime Minister was set up and a fresh census was conducted in late 1963 to early 1964. The provisional figures released put the population of Nigeria at 55.6 million. The distribution was North 29.7 million, West 10.3 million, the East 12.3 million, Mid-West 2.5 million, while Lagos city was put at 675,332 people. Following the crises of confidence already palpable within the polity, a lot of criticism and turmoil greeted these figures. In a surprising move however, the federal government accepted the figures and was joined in this by the West. However the East and Midwest rejected the figure on grounds of gross irregularities and inflation of figures. The Eastern region accordingly went to the Supreme Court arguing that the federal government should not have accepted the figures on the grounds that they were inflated and vitiated by irregularities, and in consequence they would affect the delimitation of constituencies for election purposes. See: A. G., East v. A.

G., Fed. The Supreme Court however ruled against the Eastern region on the ground that because they could not show a legal right to any number of constituencies, they lacked the locus standi to bring the action. In the circumstance, the census figures were accepted and was therefore the basis for delimitation of constituencies, boundary adjustments and 20 allocation of development projects, while the discontent remained unattended to.

(7) The General Election Crisis 1964: Hardly, had the census crisis of 1964 died down when another major crises in the area elections arose in the same year. That year was constitutionally a normal election year. For this purpose, two major alliances emerged on the political scene to contest election. They were UPGA (United Progressive Grand Alliances) made, up of remnants of the AG, NCNC, NPF, and the United Middle Belt Congress (UMBC). On the other hand, the NPC, NNDP, Mid-West Democratic Front, NDC, and the Dynamic Party formed the NNA (Nigerian National Alliance).

The nomination process for candidates for elections to the federal parliament in 1964 and electioneering campaign was marred by high scale fraud and irregularities. In the north and west, UPGA candidates could not obtain nomination papers. Even the few that did could not file them because electoral officers disappeared when they saw UPGA candidates coming to file their papers. The UPGA as a result protested to the President with a threat to boycott the election if the anomalies were not addressed. Why the situation persisted at the close of nomination period most of the candidates in the North and West (who were NNA candidates) were declared unopposed.

The President, Dr. Nnamdi Azikwe called on the Prime Minister, Alhaji Abubakar Tafawa Balewa to postpone the election. The latter rejected the instruction and proceeded to hold the election on December 30, 1964. The UPGA boycotted the election in many parts of the country especially in the East. Eventually, the votes were counted and it was announced to the bewildered Nigerians that NNA had won a total of 198 seats out of the 312 seats open for contest. On January 1, 1965 the ceremonial president, Dr. Azikiwe addressed the nation that given the prevailing circumstances he would rather resign than call on the leader of the party, which (purportedly) won majority of the seats to form the government. An impasse ensued and the nation was once more pushed to the brink.

Some prominent Nigerians including the Chief Justice of the federation intervened and called on the president to exercise his constitutional power in the interest of the nation. This he did by reappointing Sir A.T. Balewa as the Prime minister. A 'little election' was held in the East where the boycott was total, while a national government was formed by the Prime Minister, without including any AG member.

(8) The Western Region Election Of 1965: In 1965 it was constitutionally due to hold elections to the Regional House of Assembly. The battle again was between the two grand Alliances that were in the field in 1964 during the federal election, i.e. NNA and UPGA. The NNA was represented by NNDP, which was in power in the region. During the nominations and elections, the same evils of the 1964 federal elections were replicated. The electoral officers disappeared in areas UPGA candidates were to file their papers. Thus, at the close of nomination, like the fraud of 1964, many seats were declare unopposed. Most of the western populace had prepared to vote the chief Akintola government in the region out of power. Thus, the manipulation by electoral officers irked and frustrated the electorate. Besides, the election itself was so massively rigged that the people had to take the laws into their own hands. The effect was massive killing, destruction ofproperiy, arson, looting, rape, robbery and violent riots which reigned in that region throughout the remaining part of 1965.

The situation in the West to a large extent typified the anomie that had engulfed the entire nation. It had become obvious to the wary that something ominous was in the offing. This was the milieu in the country when the military struck on January 15, 1966, after it had become obvious that federal government was at its wits end as to how to arrest the drift.

SECTION THREE

THE STRUCTURE AND NATURE OF THE MILITARY ADMINISTRATION IN NIGERIA 1966 TO DATE

Military administrations in Nigeria have a consistent approach in their governance of the country. Their style is to suspend and/or modify certain provisions of the existing Constitution. See particularly:

(a) The Constitution (Suspension and Modification) Decree 1996 - Ironsi's Administration

(b) The Constitution (Suspension and Modification) No. 9 Decree of 1996-Gowon's Administration.

(c) The Constitution (Basic Provisions) Decree No. 32 of 1975 - Murtala's Administration.

(d) The Constitution (Suspension and Modification) Decree No. 1 of 1984-Buhari's Administration.

(e) The Constitution (Suspension and Modification) (Amendment) Decree No. 17 of 1985 -Babaginda's Administration.

(f) The Constitution (Suspension and Modification) Decree No. 107 of 1993 -Abacha's Administration.

Federal Organs And Bodies

(i) Head Of State And Commander-in-chief

Under this dispensation, the number one citizen and Chief Executive of the Federation is the Head of State and Commander-In-Chief of the Armed Forces (designated "President" in 1985). He is the head of both the Legislative and Executive arms of government. See Section 3(1) and Section 6(1) of Decree 107 1993.

(ii) Chief Of General Staff (Chief Of Staff, Supreme Headquarters See Section 7(1) of Decree 107. He is the de facto number two citizen. Prior to 1985, as Chief of Staff, Supreme H/Q, he handled military and service functions, but with the reorganization of 1985, as Chief of General Staff, his functions are confined to political matters only, although he retained his membership of the AFRC, new Provisional Ruling Council, National Council of State and National Council of Ministers. In fact, in the absence of the Head of State, he chairs these bodies as Vice-Chairman.

(iii) The Provisional Ruling Council

This is the highest body in the unified hierarchical command structure of the Federal Military Government.

See section 8(2) of Decree 107 for its composition and Section 10(10) of Decree 107 for its functions. Also, Military Gov., Ondo v. Adewumi (1988) 3 N.W.L.R (Pt. 82) 280; Ojokolobo v. Alamu (1987) 2 NW.LR. (Pt. 61) 377.

(iv) The National Council Of States

See Section 8(2) of Decree 107 for its composition and Section 11 of the Decree for its functions. Note: Consider whether this body offends any of the tenets of federalism, i.e. is it an instrument of interference of Federal in State administration?

(v) The Federal Executive Council

See section 8(4) of Decree 107 for its composition and section 12 of the Decree for its functions.

(vi) The Armed Forces Consultative Council: Is a body that meets from time to time to discuss "the state of the nation."

Each of the these principal organs of government is presided over by the Head of State, Commander-In-Chief of the Armed Forces, or in his absence by the Chief of General Staff, as Vice Chairman.

Each of them has power to regulate its own procedure. While the Provisional Ruling Council meets at least once every three months, the National Council of States meets at least three times every year, the Federal Executive Council meets once in a week.

State Administration

Administrator

He is the Chief Executive of the State. He heads the legislative and executive arm of the government of the State. See section 2(3) of Decree 107.

See Anretiola v. Labiyi (1987) 4 NW.L.R (Pt. 63) p. 34; Williams v. Dawodu (1984) 4 N.W.L.R (Pt. 87) 189.

Where Section 2(2)(b) is agreeable with Federation? Also consider Section 6(b) of the Decree.

Advisory Judicial Committee

See Section 15(1) for its composition and functions. Compare this body with the Judicial Service Commission under Section 140 of the 1979 Constitution.

Impact Of Military Administration On Major Constitutional Law Concepts

The Rule of Law is one of the most basic concepts of public law and is a synonym for law and order. It means that nobody should be above the law and there must be equality of all before the law, subject however to some modifications.

The Military administration had no respect whatsoever for the rule of law. In fact during this period, law and order broke down thus endangering state security. This can be seen in the way and manner of coming into power by forceful subjugation and replacement of a pre-existing order in a way that is in flagrant violation of the constitutional provisions on how the country shall be governed. See Section 1(2) (1979) and (1999) Constitutions.

The first legislation promulgated by the Military declared that the Military was above the law. See Section 3(1) of Constitution (Suspension and Modification) Decree No. 1, 1966 which provides that "the Federal Military Government shall have power to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever." See also Section 5 of Decree 107 (1993) which provides that "no question as to the validity of any of the Decrees shall be entertained by any court of law in Nigeria. This provision made it clear that the old order of the rule of law had changed giving way to arbitrary rule by decrees. See the celebrated case of Lakanmi & Kikelomo Ola v. The A. G (Western State) & Ors. (1971) UILR pg. 20 where the Supreme Court held that a decree of the Federal Military Government was invalid as a legislative exercise of judicial powers. The Military Government immediately after the judgment promulgated the Federal Military Government (Suspension and Enforcement of Powers) Decree No. 28 of 1970 which declared the judgment of the Supreme Court null and void and of no effect whatsoever since the judgment was made to declare a decree or an edict invalid. With this decision, the Military began their aberration and opposition to the rule of law.

Other decrees promulgated that were not in conformity with the rule of law are as follows:

(1) Robbery & Firearms (Special Provisions) Amendment Decree 1977. This decree substituted death penalty for life imprisonment which was the highest punishment for robbery under the applicable law, i.e. the Criminal Code.

The Military administration also had far reaching effects on Fundamental Human Rights provisions as guaranteed under the Constitution namely:

(i) There was a breach of the constitutional provision on Right to Personal Liberty of an individual as provided under Section 32(1) (1979) and Section 35(1) (1999) Constitutions. Contrary to this, the Military promulgated State Security (Detention of Persons) Decree No. 2 of 1984 as subsequently amended under which people were locked up arbitrarily without trial for months and years.

(2) Also the Right of access to the law courts enshrined under Section 36(4) 1999 and Section 33(l) 1979 within a reasonable time of arrest was not respected by the Military. The right of access to the law courts was barred by the Public Order (Bar to Certain Proceedings) Decree No. 41 of 1970.

(3) There was also great violation of the constitutional right to dignity of human person as provided for under the Constitution. See Section 31(1) 1979 and Section 34(1) 1999 Constitutions. Contrary to this, the Military boys beat up and brutalized people and also locked them up in the most horrible conditions. See Amakiri v. Iwowari (unreported Suit No. PHC/232/73 of March 22, 1973. [1986] 1 NLTR 145

(4) Although the constitution provides that no one shall be convicted of a criminal offence unless it is well defined in a written law. See Section 33(12) 1979 and 36(12) 1999 Constitutions, the Military charged and convicted citizens for various offences not known under a written law, so long as the offence is stated under their Decrees.

(5) The very important freedom of speech, freedom to campaign and belong to a political party was abolished during the Military era by Political Parties (Dissolution) Decree No. 9 of 1984.

(6) Contrary to the constitutional guarantee of the citizens right to own personal properties, the Military arbitrarily confiscated various properties of persons via the promulgation of Decrees without furnishing any compensation. See Forfeiture of Assets Miscellaneous Decree 1990 and Lakanmi & Anor v. A.G. (Western State).

(7) The Military administration resorted to the use of Military Tribunals for trial of matters rather than the use of the regular courts. Also most of the Tribunals were predominantly constituted by serving Military Officers save for one retired Judicial officer. This is definitely not in consonance with the provision of fair hearing under the Constitution.

(8) Furthermore, the process of appeals or judicial review was not allowed by the Military administration. On the contrary, there were various decrees excluding appeals or judicial review e.g. Section 4 of the Public Officers (Protection Against False Accusation) Decree provides that "no appeal shall lie from a decision of any tribunal established under the Decree." See also The Exchange Control (Anti-Sabotage) Decree.

(9) The Decrees of the Military junta were promulgated to take effect retrospectively and retroactively contrary to the provisions of Section 33(8) 1979 and Section 36(8) 1999 Constitutions. See for example The Exchange Control (Anti-sabotage) Decree 1973 which was promulgated on 5/8/77 and was deemed to have come into operation on 29/7/75, i.e. more than 2 years before the date of promulgation.

(10) There was administrative lawlessness which characterized the Military era. Several members of the civil service, judiciary and corporations were either compulsorily retired or dismissed outrightly without any just cause. Lecturers were also not left out.

(11) The Military junta also had far reaching impact on the independence of the judiciary. Note that Section 6 of both 1979 and 1999 Constitutions vest judicial powers of the Federation in the courts.

Unfortunately, during the Military era, judicial powers were submerged in the absolute legislative sovereignty of the Federal Military Government. The Military promulgated several decrees which not only lay down offences and their punishments but also determined the guilt or settled issues which normally should have been left to the judiciary. See Lakamni's case. Also the matters which required purely judicial decisions were transferred to all kinds of Tribunals. See Robbery & Firearms (Special Provisions) Decree for trying armed robbers and the Counterfeit Currency (Special Provisions) Decree 1974 for trials of persons counterfeiting currency.

The Military tribunals were constituted predominantly by Military personnel with the exception of the Chairman who was either a serving High Court Judge or retired. The presence of these executive functionaries destroyed the independence of the judiciary and impartiality of the tribunal. Furthermore, in most of the cases, appeals to the regular courts were not allowed but rather decisions of the tribunal were subject to confirmation or changes by the Head of Federal Military Government or the Supreme Military Council. See Exchange Control (anti-sabotage) Decree 1977. The system of appointment and removal of the Judges solely by the Supreme Military Council or Provincial Ruling Council (whichever was in place) also affected the independence of the judiciary.

The Search For A Constitution For The Second Republic

Remember that Military intervention was meant only to allow the political climate settle down. Hence no sooner had the Military assumed power than it started to consider the process of returning Nigeria to an elected democracy.

21st February, 1969 – Government promised to appoint study groups to study the country's constitutional problems. Subsequently, a study group on constitutional Review consisting of Professor Essien Udom, Dr. Okoi Arikpo, N. Buba Ardo, one administrator for each of the four regions and Chief Rotimi Williams as Chairman was inaugurated.

12th September, 1969 - The ad-hoc Committee on constitutional proposals for the country met to consider four alternative forms of government:

(a) A Federal system with a strong centre

(b) A Federal system with strong regions but weak centre

(c) A Confederacy

(d) An entirely new arrangement peculiar to Nigeria.

Independence Broadcast of 1970 - Government announced its intention to hand over power in 1976.

Independence Broadcast 1974 - Government announced that the 1976 target date is unrealistic. See Daily Times, 2nd October, 1974 at page 17.

October 1976 to September 1977 -Draft Constitution released for public debate.

August 1977 - Members of the Constituent Assembly chaired by Sir Udo Udoma inaugurated. See Constituent Assembly Decree 50 of 1977. Members were elected through the reorganized local government as electoral colleges. The report of the Constituent Assembly later enacted by the Supreme Military Council with 22 amendments said to strengthen it and ensure stability, progress and continuity as the Federal Republic of Nigeria (Enactment) Decree 1978, i.e. The 1979 Federal Constitution of Nigeria.

The Choice Of A Presidential Executive Type Of Government

See The Constitution Drafting Committee Report Vol. 1 page 29 (supra).

Characteristics:

(i) Fusion of office of Head of State and Head of Government.

(ii) Separation in the membership, control, and functions of the three organs of government subject to checks and balances.

Advantages

(a) Avoid the conflict inherent in parliamentary Executive. See B.O. Nwabueze: A Constitutional History of Nigeria, page 257 on how this inherent conflict has been held in Britain.

(b) Avoid the complexity and uncertainty of governmental relations.

(c) Operates separation of powers and checks and balances in government.

(d) Presidentialism is credited with unity, energy and dispatch.

The Search For A Third Republic

Note: Did the Second Republic fail because of the defects of the 1979 Constitution or because of the immaturity of its operators?

The principle of separate legislature invoked envy among legislators when the President appointed those who lost elections into ministerial and other positions. 13th January 1986. The Political Bureau consisting of 12 members inaugurated, to sensitize, receive and collate political ideas and opinion of Nigerians.

The Constitution Review Committee consisting of 47 nominated members inaugurated to produce a draft Constitution. The Constitutional Assembly to consider the draft Constitution inaugurated. At the inauguration of the Constituent Assembly, the Head of State said:

"We expect the constitution to have transitional provisions. They are transitional to the extent that this provisions (sic) will progressively give way with the progressive reduction in the military participation ratio in the political process. I charge you therefore to follow the changes envisaged in the transition programme, for example, you should make provisions for the changes anticipated in the introduction of civilian government at the state level operating in the context of military led federal government between 1990 to 1992. This administration believes that there will be no conflict of legitimacy if the constitution comes into effect in 1989."

The outcome of the reports of the political Bureau, Constitutional Review Committee, and the Constituent Assembly, after necessary modifications was promulgated as Constitution of the Federal Republic of Nigeria (Promulgation) Act Cap. 63 of L.F.N. 1990, i.e. The 1989 Constitution. See A.G. (Anambra) v. A.G. (Fed.) (1993) 6 N.W.L.R. (Pt. 302) 692.

Parliamentary Privileges And Immunities

Under the Legislative Houses "Powers and Privileges" Act Cap. 28 Vol. II L.F.N. 1990, an attempt has been made to create an enabling environment for our law makers in the form of Parliamentary privileges and Immunities. See Section 3 of the Act.

Note that by the Provision of Section 274 (1979) and Section 315 of 1999 Constitution the enactment is still an existing law.

The provisions of the said Act deals with the following issues:

(a) Freedom of Speech. In order to allow for free flow of information and genuine debates on the floor of the House, the Act protects members of the legislature in respect of any

statement made by them on the floor of the House either orally or in writing. This is same as judicial immunity of judicial officers.

(b) Conduct of Strangers. The Act also empowers the President or Speaker of the Senate to order any person who is not a member of the Legislative House to leave the House or be removed by officers of the House. Note that this is without prejudice to the ordinary practice of allowing members of the public to seat at a public gallery and watch the proceedings by virtue of Section 17 of the Act.

Note that a "stranger" is anyone who is not a member of the House nor an official of that House. Note the powers of the President or Speaker of House to enforce order in the House. See Sections 16 and 17 of the Act.

By virtue of Sections 30 and 31 of the Act, no civil process issued by any court in Nigeria in exercise of its civil jurisdiction shall be served or executed within the chambers or precincts of the Legislative House while the House is in session or sitting. The issue that arises for determination is the constitutionality of the provisions of these 2 sections in the light of the provisions of Section 6(1) & (6) of the 1999 Constitution. See also the case of Tony Momoh v. Senate of the National Assembly (1981) N.C.L.R. pg. 105. See also Alhaji Makarfi v. Chief Edwin Ume Ezeoke (1981) 2 N.C.L.R. p. 234. and Dingle v. Assoc. Newspapers Ltd (1960) 2 Q.B. p. 405.

(c) Conduct of Members: Members must maintain the integrity of the House otherwise they will be liable for contempt. See Section 20 of the Legislative Houses (Powers & Privileges) Act; it provides that members are required to abide by the standing orders of the House and conduct themselves in a manner befitting of law makers failing which the House may exact some punishment on him.

(d) Power of the House to Summon People to Appear Before It: See Section 4 of the Act which provides for the power of the Committee to order attendance of people as witnesses before it. This includes power to issue summons under Section 5 and to issue warrant under Section 6 of the Act to compel the attendance of a witness where he fails to do so.

Note that there is a constitutional backing for the power of the National Assembly to conduct investigations into any matter with respect to which it has power to make laws. See Section 88(1999) Constitution. See also Section 89(1) 1999 Constitution which provides that the legislators shall for the purpose of investigating any matter under Section 88 have power to procure all such evidence written or oral as it may think necessary and examine all persons as witnesses whose evidence may be relevant to the subject matter.

Enforcing A Breach Of Parliamentary Ethics

(a) The House may sanction, e.g. suspend the member. Note -Mallam Sidi Ali's case and the case of Hon. Ogochukwu in the House of Representatives.

(b) An aggrieved party may institute civil proceedings against the tortfeasor

(c) Criminal action on behalf of the State may lie.

What is the constitutionality of Sections 30 and 31 of the Powers and Privileges Act? See Section 42(2) of the 1979 Constitution.

Also Tony Momoh v. Senate and Anor (1981) 1 N.C.L.R. page 31.

The Executive

First Republic

See Section 84 of the 1963 Constitution. The executive authority of the Federation was vested in the President and that of a region in the Regional Governor. Parliament had power to confer functions on persons or authorities other than the President.

As Constitutional Head of State, except in few cases, the President or Governor could not exercise the authority vested in him on his own initiative. He must act on the advice of a cabinet of Ministers or individual Ministers. See Section 93.

See Section 87 - on the appointment of Prime Minister and other Ministers of the Federation.

Note that the election of the President was by Secret Ballot in a joint meeting of both Houses of Parliament held for the purpose of electing a President. See Section 35, but see also Section 157.

Note Section 90 which provides for collective responsibility of Ministers.

See Aderemi v. Akintola (1962) 1 W.N.L.R. 185.

Second Republic

See generally Section 5 of the 1979 Constitution. By this provision, Nigeria shifted from the Parliamentary system of government to the

Presidential Executive type of government

On the rationale for this change, the Constitution Drafting Committee observed:

"The separation of the Head of State from Head of Government involves a division between real and formal authority; the division is meaningless in the light of Africa's political experience and history, the single person to the position of ruler. In the context of Africa the division is not only meaningless, it is difficult to maintain in practice. No African Head of State has been known to be content with the position of a mere "figure Head."

Election Of The Chief Executive

See Sections 122 to 128 for the President. Sections 162 to 266 for Governor.

Note - It is not possible for a candidate to be declared elected unopposed without actually having been voted for at an election, even if he is the only nominated candidate at the close of nomination.

Also the procedure for election depends on the number of candidates nominated for the election.

To be elected, the candidate must satisfy general conditions in respect of citizenship and age, and electoral qualifications as regard the position contested for, i.e. the number of votes at State and Federal levels.

See Sections 123(a) & (b); 126(2).

Electoral Qualification

Section 126(2):

A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election

(a) he has the highest number of votes cast at the election, and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-third of all the states in the federation (emphasis supplied):

See Awolowo v. Shagari and Ors. (1979) 6-9 S.C. page 51. Issues- Whether Alhaji Shagari was duly elected or returned and that his election or return was void.

That an election be ordered to be held in accordance with the provisions of Section 34A(3) of the Electoral (Amendment) Decree No. 32 of 1979.

Verdict-Appeal fails and it is dismissed. The decision of the Tribunal is affirmed.

How sound is this decision?

See Olu Adediran: Awolowo v. Shagari and Ors.

A case of compromise between Law and Political Expediency. Zambia Law Journal (1980), page 38 or Journal of the Indian Law Institute (1982) Vol. 24, page 41.

(a) Is a State not a body corporate? Can it be legally fractionalized? Should it not be taken as a whole, how then can 12 Z/3 of 19 be 12 2/ 3 instead of 13 States?

(b) FEDECO in a letter reference No. EC/AZ/7N/730 of November 8, 1978, written by Chief Michael Ani in respect of registration of political parties, it was stated that 12 z/3 of 19 is 13. Then why the sudden change in this computation?

Removal of Chief Executive

See Sections 132 (1979) and 143 (1999) Constitutions for impeachment for the President. Sections 170 (1979) and 188 (1999) Constitutions for impeachment of Governor.

Note - Impeachment is to a Presidential type of Executive while vote of no confidence is to the Westminster Parliamentary type of government.

Grounds for Impeachment

See Sections 132(2) 1979 and 143(2) 1999 Constitutions, and Sections 170(2) 1979 and 188 of 1999 Constitutions.

It must be "Gross Misconduct." This is a grave violation or breach of the provision of the Constitution or a misconduct of such nature as amounts in the opinion of the legislature to gross misconduct.

See Balarabe Musa v. Kaduna House of Assembly & Ors. Suit No. KDH/1/1981.

In Sections 132(10) 1979, 143(10) 1999 Constitutions and 170(10) 1979 and 188 (10) 1999 Constitutions intended to oust the jurisdiction of the courts?

See - Section 6 of the 1979 Constitution and Section 6 1999 Constitution.

Also Anisminic v. Foreign Compensation Commission 1969 2 A.C 147; Ishola v. I.G.P (1975) 3 CCHJ 1.

Secondly, a Chief Executive may be removed for permanent incapacity. See Sections 133 (1979) and 144 (1999) Constitutions and Section 171 (1979) and 189 (1999) Constitutions for the procedure to be adopted to achieve the above.

The Judiciary

See generally Section 6 of the 1979 Constitution. This section is unaffected by Decree 107 of 1993 except a slight modification as contained in the second schedule to the Decree. To a constitutional lawyer, the question is always whether the law on the judiciary as an organ of government sufficiently guarantees the independence of the judiciary. See Ikenna v. Bosah (1997) 2 SCNJ 135; Akinnubi v. Akinnubi (1997) 1 SCNJ 202.

According to Winston Churchill commenting on the judiciary of the Victorian Era, said:

"The principle of complete independence of the judiciary from the Executive is the foundation of many things in our Island life. It has been widely imitated in varying degrees throughout the free world. It is perhaps one of the greatest or deepest gulfs between us and all forms of totalitarian rule. The only subordination which he owes is to the existing body or legal doctrines initiated in many years past by this brethren on the bench, past and present, and upon the laws passed by parliament which have received the royal assent. The judge has not only to do justice between man and man, he also (and this is one of the most important functions considered incomprehensible in some large parts of the world) has to do justice between citizens and the state."

How do you assess an Independent Judiciary? Look at the law on the following:

(a) Qualification and appointment of Judicial Officers

(b) Their Remuneration

(c) Immunities and Privileges of Judicial Officers

(d) Their tenure and removal from office.

Consider the above under the first and second republics, also any of the Military administrations. See Onitiri v. Ojomo (1954) 21 N.L.R.; Ebun Ajao v. Alikali Amodu & others (1960) N.R.N.L.R 8

Are the above sufficient parameter for an Independent Judiciary in Nigeria? No! Therefore, let us consider also -

(a) The stronghold of the Executive on the Judiciary. Should the Judicial Service Commission continue to be an Executive body? See Section 140 of the 1979 Constitution and Section 153 of 1999 Constitution. What of the Advisory Judicial Committee, i.e. composition and functions?

(b) Is it not necessary to consider the quality of men appointed to the bench?

According to Oputa, J.S.C. in a paper titled "The Judiciary and the Administration of Justice: Critical Assessment and Recommendation," presented in August 1986 at an N.B.A Workshop in Jos, he said:

"An honest judge who is not a legal genius is far better than a brilliant but clever rogue....."

(c) Should the appointment of the Chief Justice of Nigeria not be in the hand of the Judiciary because they have the records?

(d) Should there not be a minimum age to be appointed a judge, e.g. 40 (forty) years? Note that under the present regime in Nigeria and in the light of the Constitutional provisions as regards the appointment of judicial officers, one may be appointed a judge of the High Court at the age of 29 (twenty-nine) years and even a Justice of the Supreme Court at 34 (thirty-four) years!!

(e) The exclusion of magistrates from the definition of judicial officers. See Section 277 (1979) Constitution and Section 318 (1999) Constitution.

(f) It is proper to have a self-accounting judiciary because "he who plays the piper dictates the tune."

(g) The brazen and contemptuous disregard of Court orders by functionaries of Government. See Federal Military Government (Supremacy and Enforcement of Power) Decree No. 12 of 1994.

Locus Standi

The term Locus Standi refers to the competence or qualification of a party to bring an action in Court or to invoke the jurisdiction of the Court towards the enforcement of a particular right or duty.

The issue therefore is not whether the subject matter is one that can be treated by the Court neither is it the competence of the Court itself to hear such matter. The question simply is: "Is the person coming to Court a proper person to move the Court?" What level of

interest must an applicant possess to afford him standing in law to enforce a justiciable breach of the law?

Put differently, can a person bring an action for a declaration that the Fundamental Human Rights provisions of the Constitution have been infringed in circumstances when he does not allege any contravention in relation to himself?

The constitutional basis of locus standi can be found in Section 6(6)(b) 1999 and Section 6(6)(b) 1979 Constitution giving the Court's judicial power to hear matters for the determination of any question as to the civil rights and obligations of persons.

Note that the Courts approach these issues differently depending on whether it is a civil or criminal matter. In a civil matter, a strict approach is being adopted. See Senator Adesanya v. The President of the Federation of Nigeria & Anor (1981) 5 S.C p 112. See also Chief Adeniran Ogunsanya v. Prof Ishaya Audu (1982) 3 C.N..L.R, p. 529. Attorney-General Of Kaduna State V Mallam Umaru Hassan (1985) 2 NWLR. (Pt. 8) 483

Compare these two cases with the case of Fawehinmi v. Akilu & Ors. (1987)4N.WLR(Pt.67),p.797. This was a matter with criminal undertones and because of the criminal nature, the liberal approach was adopted.

Office Of The Attorney-General/Public Prosecution

Sections 150 and 195 of the 1999 Constitution both provide for the appointment of an Attorney-General who shall be the Chief Law Officer of the Federation and the State respectively. The position of an Attorney-General at both the Federal and State levels is a dual position in the sense that apart from being the Chief Law officer, the Attorney-General is also a Minister of the Government at the Federal level and Commissioner for Justice at the State level.

The powers of the Attorney-General as a Public Prosecutor are similar both at the Federal and State levels and these powers are well spelt out under Sections 174 and 211 of the 1999 Constitution which empower the Attorney-General of Federal and State, to institute, undertake, take over and continue, and to discontinue at any stage of the proceedings but before judgment is delivered in any criminal proceedings instituted by him or any other authority or person.

Note that the Attorney-General may exercise any of these powers either personally or through other officers of his department. See Sections 174(2) and 211(2) 1999 Constitutions.

Note also that the power to discontinue a matter is also known as power of nolle prosequi and can only be exercised by an incumbent Attorney-General so that in the absence of an incumbent Attorney-General the power cannot be exercised. See Attorney-General, Kaduna State v. Hassan (1985) 2 NWLR (Pt. 8), p. 483 where it was held by the Supreme Court that in the absence of an incumbent Attorney-General the powers conferred on the Attorney-General cannot be exercised by the Solicitor-General or any other officer of the Attorney-General's department. There must be an incumbent Attorney-General to donate the powers vested in him by the constitution to an officer of his department as donee of the power.

An incumbent Attorney-General can exercise the power of nolle prosequi personally by stating orally in Court that he intends to discontinue a criminal prosecution. However where he is delegating the power to an officer of his department, such officer would have to exercise the power in writing by entering an instrument signed by the Attorney-General. The donee of the Attorney-General's power cannot enter an oral nolle prosequi. See The State v. Chukwurah (1964) N.M.L.R., p. 64; Saka Ibrahim & Anor v. The State (1986) 2 S.C., p. 91.

The Attorney-General in the exercise of the powers conferred on him by the Constitution is not bound by the dictations or directives of the Head of State or President (i.e. Executive). See A. G. of Federation v. G.O.K. Ajayi (1996) 5 NWLR (Pt 448) p. 283. See also A.G. of Ondo State v. A.G. of Federation & 35 Ors (2002) 6 S.C. (Pt. 1) p. 1.

All that the Constitution requires of the Attorney-General when exercising his powers is that he shall have regard to public interest, the interests of justice and the need to prevent abuse of the legal process. It is therefore assumed that these considerations are borne in mind by the Attorney-General. See Section 174(3) and Section 211(3) 1999 Constitution and Sadiq v. The State (1982) 2 N.C.L.R p. 141.

The Attorney-General's power to enter a nolle prosequi is absolute and unfettered and upon exercising the power, the High Court shall terminate the proceedings. See The State v. Ilori (1983) 1 S. C. N. L. R., p. 94.

Note that the power of a State Attorney-General and Federal Attorney-General to institute, take over, order and continue criminal proceedings against any person is rigidly demarcated. The State Attorney-General can only exercise such powers for any offence created by any law of the House of Assembly whilst the Federal Attorney-General has power to institute actions for any offence created under any law of the National Assembly. For a State Attorney-General to institute action under the laws of a National Assembly (i.e. federal offence) he needs express delegation of the Federal Attorney-General. See Anyebe v. The State (1986) 1 S.C., p. 87. This notwithstanding, there are circumstances where an Act of the National Assembly is passed to be effective as a law of a State, e.g. Robbery and Firearms (Special Provisions) Act 1970 (as amended). In such a situation, the State Attorney-General will not require the delegation of authority by the Attorney-General of Federation to institute criminal proceedings. See Emelogu v. The State (1988) 2 NWLR (Pt. 78) p. 524.

1. Forms of Government

a. Presidential system

b. Parliamentary system

c. Unitary system d. Federal system e. Confederation

2. The Indirect Rule System of Administration.

a. Reasons for success in the North

b. Partial success in the West

c. Total failure in the Fast

d. Why was it adopted at all

3. First Republic 1963-1966

a. Salient features of the 1963 Constitution

b. Collapse of the first republic

C. Grundnorm and military coup

4. Salient features of 1999 constitution a. Rigid

b. Written c. Supreme

d. Federal system

e. Separation of Powers

£ Fundamental Objectives & Directive principles of state policy

Forms Of Government

Governments have often been classified into various types for better understanding and ease of study. The four major types are:

1. Presidential System

This is a system of government where the president is the Head of State and Head of government. He is the Chief Executive of the entire country and takes responsibility for all policy measures initiated an executed by his administration. He is often assisted by ministers appointed by him whom he may also drop at anytime.

In this system of government the doctrine of separation of powers is in full operation. This three organs of government, i.e the Legislature, the Executive, and the Judiciary, are separated and manned by different personnel responsible for their distinct functions. The system however accommodates the concept of checks and balances by which each organ of government serves as a check on the possible abuse of powers by the other organs. Contemporary illustrations of this type of government are the United States and Nigeria under the 1999 Constitution.

In Nigeria the president and the vice-president are elected directly by the people and do not sit in the National Assembly. The same position exists at the state level with respect to state governors.

However, by the means of checks and balances, the president could be impeached by the National Assembly for misconduct in the exercise of the functions of his office. See S. 143 1999 constitution. He in turn could veto a law passed by the National Assembly: S. 581999

Constitution. He controls the Judiciary through the initial appointment of federal judges and their removal. But the judiciary could declare his actions unconstitutional.

Shugba v. Min. of Internal Affairs

Ojukwu v. Gov. of Lagos State

It also may declare an Act of the National Assembly unconstitutional and void: - A.G Bendel v. A. G. Federation.

2. The Cabinet System Of Government

This is the system of government where there is a split in the Executive. This means that while one person is the Head of State and performs only ceremonial functions, the other is the Head of government wielding real executive powers. This system of government is not dependent on the name ascribed to the Head of State or ceremonial head. In some cases he could be called the president, the King, the Queen, etc. All that matters is the type and extent of powers being wielded by the occupant of the office. The system of government is also alternatively referred to as the parliamentary system of government. With Britain and Israel as archetypes.

In this type of administration, the real Head of government is the Prime Minister. He nominates his ministers to the ceremonial head for appointment. These ministers and the Prime Minister constitute the cabinet, which is the executive arm of the administration. This cabinet carries out major decisions and executes them in the name of the ceremonial head of state.

All members of the cabinet (including the Prime Minister) are also members of the parliament from where they are chosen.

The doctrine of separation of powers does not apply fully as the executive and legislature are fused. There is the doctrine of collective responsibility by which any decision of the cabinet binds all the members.

In the parliament there is an official opposition with a mandate to censure government policies presented to the parliament.

The cabinet may ask the Queen to dissolve the parliament where any of its policies are defeated by a vote of no confidence.

This will be followed by a fresh election to elect another parliament, e.g Nigeria: 1960-1966.

3. Unitary System Of Government

This is a system of government where there is only central government in the country. That government holds and wields all the powers but may create other units of administration at the local level for administrative convenience. In this same way it may abolish the said administrative units as those bodies have no constitutional existence. All the constitutional powers reside in the said single central government. This system is typified by the state of Israel, Gambia and Britain.

Often this system of government is adopted by countries with small territories, and often have flexible constitution with a supreme parliament.

4. Federal System of Government

This is a system of government where they are two or more levels of government each owing its existence and deriving its powers and authority from the same source, the constitution. In a federal state, the governments of the states and that of the inclusive government are each autonomous in some areas yet coordinate and equal in many other respects.

In those areas left for the federal government it alone may operate therein. The same applies to the areas left for the states. There is an area where the three may operate together though in cases of clash, the federal authority supercedes. These powers are listed in the constitutions as Exclusive Legislative list and the concurrent legislative lists respectively. Federalism has often been described as a compromise between the centrifugal and centripetal forces in operation in a state. That it is mid-way between a unitary system and a con-federal system. It is a system which works unity in diversity and gives the diverse elements which make up a polity the opportunity to retain their identity while contributing to the progress and development of the state and at the same time enjoying the benefits accruing from such union. Modem examples of federalism are the United States, Australia, Canada and Nigeria.

To make for stability because of its diverse nature it is felt a federal state must have:

a. A supreme constitution

b. Many states smaller and much weaker than the federal government

c. Clearly spelt out division of powers

d. An independent Judiciary to act as an arbiter

e. Equality in the treatment of states, e.g. Senate representation.

This system of government is often adopted by states with multi-ethnic and religiously different composition of peoples. It is also influenced by the size of the territory of the state in question and the geographical outlay e.g. Australia.

Some factors have been identified as further impelling people to adopt this system of government:

a. The political leadership of the country, e.g. USA, Nigeria.

b. Similar political experience in the hands of colonial masters, e.g. Nigeria.

c. Economic advantages from resources found in different locations, e.g. Nigeria.

d. Security/Defense-arising from a big population and large territory, U.S., Soviet Union, Canada.

e. The diversity of the people and the fears of the minorities, e.g. Nigeria.

Nigerian federation is one with three tiers of government to wit. Federal, state and local government. Their existence and powers have a constructional dimension. Thus, no level of government may encroach on the areas of authority of the other or abolish it. See ss. 3, 8, 47, 90,130, 176, 230, 270,1 n schedule, 2nd schedule, 4th schedule, 1999 Constitution of the Federal Republic of Nigeria.

Confederation

This system of government is a unique one. It is a situation where two or more independent sovereign states come together to create a supranational authority to administer their affairs jointly.

The supra-national government is limited to such areas as defence and security, external affairs, immigration, currency, and police. These affairs and institutions are commonly managed by the supra- national government while the confederating states run their other affairs independently. In most situations it is the fear of security against attack by an apparently strong but belligerent neighbouring states that often nudges states to confederate.

It must be noted that this arrangement often entails the compromise of the sovereignty of the confederating states. For this reason, this form of arrangement has ceased to be popular among states. Indeed, it is difficult to see an existing confederation in our modern state practice.

For this reason, states have now resorted to the use of defence pacts to secure the assistance of stronger allies in times of trouble.

Further international organizations such as the UN, EU, AU, NATO, ECOWAS, etc, are now re-organized to be effective in handling emergencies within member states by way of peace-keeping operations.

In this way the difficulties of fear of loss of sovereignty, domination of a stronger and richer confederating state and the fear of collapse by pulling out of member states which characterize a confederation are taken care of.

Thus, while a confederation envisages a weak center with strong states, a federation, on the other hand, creates a strong center with weak states.

Salient Features Of The 1999 Constitution

These are:

1. Supremacy:

The 1999 Constitution is a supreme one. This is evident in S.1 (1) f (3) of the constitution. This means that all levels of government and governmental institutions owe their existence to the constitution. It further implies that any law which is inconsistent with the provisions of the constitution will to the extent of such inconsistency be void. See. A. G. Bendel v. A.

G. Fed. & ORS; Balewa v. Doherty (1963) 1 WIR 949. Godwin Jideonwo v. Gov. of Bendel (1981) INCLR 4.

In jurisprudential parlance this means that the 1999 Constitution is the grundnorm of the Nigerian legal system. This means that it is the fundamental law from which all other laws take their validity.

Implicit in this is the fact that the parliament is under the constitution. Note that this is a sharp contrast to the situation in England where the parliament is both sovereign and supreme.

Though the parliament in England is sovereign to the extent only that as far as law making is concerned, it competes with no other person or body.

It follows that judicial review is a feature of our legal system as laws enacted by the legislature are subject to scrutiny by the law courts for validity vis-à-vis the provisions of the 1999 Constitution.

2. Written:

The 1999 Constitution of Nigeria is a written one. By this, it is meant that all the provisions of the constitution can be found in one single document known and referred to as the constitution. This conforms with the position in the United States but contrasts with what obtains in the United Kingdom. In the latter jurisdiction, the constitution is constituted by various documents; statutes of great antiquity and conventions such that it is not possible to, point to a single document as the United Kingdom's Constitution. E.g. Magna Carta 1215, the Bill of Rights, the statute of Westminster, etc, thus making it an unwritten constitution.

3. Rigid:

The 1999 Constitution is a rigid one. This means that a special procedure (which is often rigorous) is required to amend the provisions of the constitution. This is evident from S.9 of the constitution, which involves the National Assembly, State Houses of Assembly, a referendum and a particular majority vote to secure an amendment of the constitution. This is different from the constitution of the United Kingdom which is flexible in nature. In that jurisdiction, the constitution is amended by the parliament - by the ordinary law making process of the legislature. By implication, the parliament is supreme to the constitution in Britain.

4. Separation Of Powers:

This doctrine which has as its focus, the political liberty of the citizens, was popularized by Montesquieu based on the earlier writing of John Locke. By its imperative, the functions of government are broadly split into three parts and manned by three separate organs. These are the legislature for law making, the Executive for implementation of the law, and the judiciary for the interpretation of the constitution and the laws in the constitution and the laws. Under the 1999 Constitution the legislature is established under section 4; section 5 takes care of the Executive while the judiciary has a place in section 6 of the constitution. Each of these organs is independent but co-ordinate with the others. Thus, it is possible for

the concept of checks and balances injected into the theory of separation of powers by the exigencies of modern governance to operate.

The legislature can impeach the president of Nigeria, S. 143. All justices of the Supreme Court also require an approval of their appointment by the senate of the National Assembly - S. 231, 1999 Constitution. Further, the annual appropriation Act presented by the president requires approval of the legislature before he can spend monies there from - S.81. The executive has to assent to bills passed by the legislature for them to become laws S. S. 58 & 59 it is also the power of the executive to appoint judges both at the federal and state level S.S. 231 & 238. The judiciary can declare an Act of the National Assembly unconstitutional and may also censure an action of the executive as null and void.

A. G., Bendel v. A.G., Federation

Ojukwu v. Gov., Lagos State

Shugaba v. Min. of Internal Affairs

The overall effect of the theory is that under the 1999 Constitution, Nigeria presently operates the executive presidential system of government. This is different from the Westminster model of parliamentary democracy in practice in the United Kingdom.

5. Federalism:

This is a system of government where power and authority is constitutionally shared between two or more levels of government. Each level of government is independent but co-ordinate in its exercise of authority. In Nigeria this has been achieved by means of sections 4, 5, 6, 47, 90, 130, 176, 230 & 270 of the constitution. The sections establish the three organs of government at the federal and state levels in Nigeria.

The constitution also demarcates their areas of authority by means of legislative lists containing items on who may legislate and areas where both levels of government may work together. See 2nd schedule to the 1999 Constitution containing Exclusive, Concurrent and Residual Legislative lists. In Nigeria, the constitution also recognizes a third tier of government to wit, the local government system. See sections 3, 8, and 4d, schedule for the functions of the local governments in Nigeria.

The implication of the federal system is to contrast with a unitary one where the other units of administration are creations of the central government. They could therefore abolish or re-constitute them as they desire. However, in Nigeria with a federal set-up, all tiers of government owe their existence and powers to the constitution.

6. Fundamental Objectives & Directives Principles Of State Policy:

This is contained in chapter 2 of the 1999 Constitution comprising sections 13-24 of the 1999 Constitution.

These are points of focus which the government of the day is meant to pursue as goals meant to improve the welfare of the citizen. They cover such issues as education, health, culture, environment, foreign policy, political objectives obligations of government to the people, economic objectives, social objectives and duties of the citizen.

The Directive Principles refer to the pathways to be followed by the government towards the realization of these goals.

However, the constitution in section 6(6)(C) makes the entire provisions of the chapter non-justiciable. What these means is that the provisions are merely directory or exhortatory and cannot be enforced against the government by way of a court action. See Archbishop Okojie v. Jakande. The need for this peculiar provision in our constitution (which debuted in the 1999) Constitution is a phenomenon that has a history. In Nigeria, our political experience had been that power was acquired for mere political aggrandizement. It was used for the mere purpose of stealing from the public purse and suppressing political opponents. It was hardly ever used for the improvement of the welfare of the citizenry. Government was always adrift and operated like a rudderless vessel which roamed the sea to no specific direction. It was to arrest this drift that this chapter (which was first seen in the constitution of India) was adopted.

The focus therefore, is to call the attention of those in power to the essence of political leadership which is for the improvement of the well-being of the citizens of this country and the general development and progress of the Nigerian state.

The Indirect Rule System of Administration

The indirect rule is a system of administering a people through their own leaders or chiefs.

This system of administration was introduced into Nigeria by Lord Lugard at the inception of British colonial rule.

Some of the factors that led to the adoption of the system of administration were:

1. He had no specific directions from Her Majesty's government on how to govern Northern Nigeria.

2. There was shortage of British officials on ground, hence he had to incorporate the local Emirs.

3. The system was meant to serve as a training ground for the future political leaders of the North.

4. There was already in place a functional administrative infrastructure which he did not want to disrupt.

5. The system had been tested in India where it turned out a huge success.

6. There was inadequate financial resources available to him at the inception of the British colonial rule.

A. Indirect Rule In The North:

The system recorded a huge success in Northern part of Nigeria. This is accounted for by the fact that prior to the commencement of colonial rule there was already a well established local administrative set-up. This was headed by the Emirs who were both political and spiritual religious leaders of their people. The muslim religion endowed them

with immense powers and political clout which they used in commanding respect and obedience from their subjects who held them in awe. There were efficient tax collection system, police system, local courts and prison/detention system for punishment. The British simply improved on this and found no reason to disrupt it. The position of the Emus was a useful tool in securing obedience of the people and was an asset rather than a threat to securing the interest of the British. Thus, the system was a success because there was already in place a conducive socio-political and cultural milieu for its operation and the British cashed in on this without interfering with the position or powers of the Emirs.

B. Indirect Rule In The West:

The Western part of Nigeria is mainly inhabited by the Yoruba ethnic group. Because of the success of the indirect rule system in the North, Lord Lugard had it introduced in the West among the Yorubas. The system ended up a partial success, i.e., it was not as successful in the west as it was in the North. The reasons for this were that – like the Hausa/Fulani the Yorubas have traditional leaders called Obas. However, unlike their Hausa/Fulani counterparts, a Yoruba Oba did not wield as much enormous powers of control over the people. His position was made worse by the existence of a control power of the people over him known as the calabash. Thus, an Oba who became authoritarian on the people could be made to commit suicide by the means of calabash. This singular factor deprived the Oba of the kind of powers and authority which a traditional ruler needed to command in order to get the indirect rule system working well. The Yorubas hold the Oba in high esteem and awe but that was only to the extent that he did not exceed his bounds in the exercise of power. Thus, the indirect rule system though operated in the West but could hardly attain the level of efficacy and success it did in the North because the people had a power of control over their Obas.

C. Indirect In The East:

Unlike the North and in the West where an enabling environment existed for this system of administration, in the East where the Ibos occupy, such an environment was totally non-existent. This is accounted for by the republican nature of the Ibos who never believed in the authority of one man over them. When Lord Lugard came to the East, he could not find people in the mould of Emirs in the North, or Obas in the West. Though, there were a few community leaders among the Ibos, such people had no powers over the general populace and could not give instructions to be carried out. Ibos believed in the kindred system where all able bodied men came together to take decisions on their activities. Observing this vacuum, Lord Lugard sought to create chiefs by British flat which the Ibos stoutly resisted and shunned. In his frustration he had recourse to touts, outcasts and never-do-wells among the Ibos who cashed in on the opportunity and were tagged warrant chiefs. Because they were known failures and outcasts among the Ibos, they were shunned, avoided, castigated and stoned in most cases. Thus, they never functioned and the authority supposedly given to them by British made them a laughing stock in the eyes of the people as they never used them.

Most attempts to exercise those powers were stoutly resisted and led to many riots e.g. Aba women's riots of 1929. The end result was the death of the institution of warrant chiefs and with it the indirect rule system in the East. Thus, the experiment on that system of administration among the Ibos was a disaster so to speak.

The 1963 Constitution – Salient Features

This constitution abolished the monarchy and changed Nigeria into a republic. Thus, with the effect from October 15th 1963, Nigeria became a republic and the Queen of England ceased to be its head of state.

A. That constitution which came to be known as the first republican constitution, had five constitutions contained in it-these are:

1. The constitution of Northern Nigeria

2. The constitution of Western Nigeria

3. The constitution of Eastern Nigeria

4. The constitution of Mid-west Nigeria 1964.

5. The constitution of the federation

B. Written: It was a written constitution in the sense that all the provisions of the constitution could be found in a single document i.e., the constitution of the federal republic ofNigeria, 1963.

C. Rigid. It was a rigid constitution to the extent that any amendment required a special rigorous procedure to be complied with S.S. 4 of the constitution.

D. Supreme: The constitution declared it supreme in S.1 (1) thereof. The implication of this is that it was the grundnorm of the Nigeria legal system till January 15th, 1966 when the first military coup occurred. See decree 1 of 1966; decree 28 of 1970, which was a reaction to Lakanmi v A.G., - West - but see general as the demonstration of this supremacy in the case of Balewa & Doherty.

What this further meant was that any law which was inconsistent with the provisions of the constitution became void to the extent of the inconsistency. This therefore meant that while the parliament was only sovereign (in that as far as law-making was concerned, it competed with no other person or agency), the constitution was above it. For this reason, the judicial review of legislation became an important aspect of our legal system.

E. Federalism: The constitution entrenched a federal system of government. This means that there was a constitutional division of powers between the two levels of government to wit: federal and the regions. The constitution in accordance with the dictates of federalism created an exclusive legislative list. This comprises items on which only the federal government may legislate. It also created a concurrent list on which both levels of government may legislate. However, where a conflicts occurs, the law of the federal government will prevail. Whatever is not mentioned in either of the list of items was left for the regions only. The federal structure under the first republic has been criticized to the extent that it did not conform with one of the requirements of sound federalism. This is that non of the federating units should be large enough either in size or resources to be able to challenge either the federal government or the other units put together. The Nigerian Federation under the 1963 Constitution had very large regions which were strong enough to

pose threats to the unity of the country. Note; that this has partly informed the splitting of the country into 36 states of much smaller federating units.

F. Parliamentary System: The constitution installed a parliamentary system of government for the country. This means that there was split in the executive. Thus, while the president was the ceremonial head of state (like the Queen of England), the head of government who exercised the real executive power (though in the name of the nominal head of state) was the prime minister. The prime minister was picked as a person who appeared to the president to command leadership in the House of Representatives. He in turn will pick his ministers with whom he forms the cabinet. The prime minister and his cabinet are all members of the legislature. Thus, there is a fusion of these two organs while only the judiciary is separate. The cabinet may fall by a vote of no confidence if any of its programs are defeated. It may then call of the head of state to dissolve the parliament and order fresh elections. In England, this is an unwritten political convention which has been in practice for centuries. However, this was written in the 1963 Constitution and led to court actions on what transpired in the Western House of Assembly when an attempt was made to remove Chief S.L. Akintola as the regional premier by the regional governor. See Adegbenro v. Akintola (1963) All ER at 544. The doctrine of collective responsibility of the cabinet to the parliament operates. Thus, once a decision has been arrived at by the cabinet

As a body, they must stand or fall together. No individual minister may deny responsibility for such a decision.

The only alternative was to resign from the cabinet prior to the decision being made public.

The majority party after parliamentary elections formed the government while the minority became the official opposition with a leader who was paid by the government. The role of the official opposition was to censure policies of the government in power with a view to bringing it down and taking overpower at general elections. In addition to the collective responsibility of the cabinet there was also ministerial responsibility of such minister to the parliament over matters within the ministry under his control.

G. Bill Of Rights – In 1958, Sir Henry Willinck's commission fears of the minorities submitting its report. The major thrust of that report was that to allay the fears of the minorities, a bill of fundamental rights be entrenched into the constitution. This was inserted into the 1960 independence constitution and re-enacted by the 1963 first republican constitution.

H Supreme Court -There was created an independent judiciary at the apex of which was the Supreme Court. It was to serve as an arbiter between regions and the federal government to ensure a stable federal system. See A.G., East v. A. G., Fed. & ORS.

I. Legal Foundation - The 1960 independence constitutions of Nigeria, contained in the Nigeria (Constitution) order-in-council, 1960, was made by the British government. Even after independence on 1 n October 1960, the power/authority of the Nigerian government even up to September 30, 1963, still could be sourced partly from the British parliament, the Nigeria Independence Act, 1960. A significant change effected by the 1963 Constitution was to do away with this imperial foundation of the 1960 Constitution. Having granted legislative powers to the federal parliament, the latter enacted the constitution of the federation Act 1963. This Act repealed the Nigeria Independence Act 1960 and the order-in-Council to the extent of their application to the Federal Republic of Nigeria. In the same vein, it delegated to the Regional Legislatures similar authorities to repeal and replace the

independence Act and the order in council to the extent that they applied to the regions. In summary therefore, the 1960 Constitutions were contained in one single document under the same authority. The 1963 Constitution was contained in different documents enacted under different legislative authorities; to wit; the federal parliament for the Federal Constitutions and the regional legislative for the Regional Constitutions.

J. Autochthony - It is the view of Prof. B.O. Nwabueze that the 1963 Constitution was not autochthonous. This, he argues is because it was enacted by the local legislature after repealing the imperial order-in-Council of 1960. An autochthonous constitution he submits is one which derives its force from its own native authority, and not by virtue of its having been enacted or authorized by an imperial power. This contention stands to reason when it is realized that the constitution of 1963 was enacted on the basis of authority conferred on the Nigeria legislative by the independence Act of 1960; an enactment of the British parliament. In essence, the 1963 Constitution failed to sever the Nigerian legal order from it linkage with the British government.

K. Amendment - The constitution being rigid laid down rigorous procedures for the amendment of its provisions. In all however, the constitution did lay down three different procedures for the amendment of its provisions – S.4.

(a) Two thirds of both houses of each legislature was required for the amendment of any provision of the constitution.

Some provisions could not be amended except the bill seeking such amendment, were after passage, ratified by at least three of the four regional legislatures in case of amendment in the federal constitution. For such amendment in a regional constitution, it required ratification by two-thirds majority of both houses of parliament. The provisions in question in the federal constitution were those dealing with issues like: supremacy of the constitution, the provision on federalism, republican status of the nation, the presidency, fundamental human rights, franchise; electoral commission, diffusion of powers between the executive and legislative of the federal and regional governments, Revenue allocation. The police, the judiciary, conduct of prosecutions, etc. The creation of new regions and the alteration of boundaries between regions of the federation. Here, in addition to the above provisions, 60% of Yes Votes of the areas affected was required in a referendum to affect these changes.

Other Features

The first Republican Constitution in addition to the above had the following features

(a) A B 1- Cameral Legislature at the center consisting of the Senate and House of Representatives. At the Regional level the legislatures consisted of House of Chiefs and House of Assembly in each region.

(b) A parliamentary system of government along the British lines. This entailed a fusion of the legislature with the executive while the judiciary remained a separate institution.

(c) In line with the recommendations of the Sir Willinck Commission of 1958, a constitutional guarantee of fundamental human rights to allay the fears of the minorities.

(d) The Constitution further insulated the conduct of elections, appointment, promotion, removal and disciplinary control of the public service and of the Police from the political control of ministers.

For a more detailed analysis of the 1963 Constitution, see generally a Constitutional History of Nigeria by Prof. B.O Nwabueze PP. 89-121.

The 1963 Constitution And The Queen

The 1960 independence constitution foisted a monarchy on the Nigerian State at independence. The practical import of this was that Nigeria was still tied to the apron strings of the Queen, who remained her political head implying a continued linkage of our legal system to that of Britain.

However, on October 1, 1963 the new constitution abolished the monarchy and changed Nigeria to a Republic. By this step the queen ceased to be the Queen of the sovereign of Nigeria.

This implied that:

(1) The functions hitherto performed b y the Queen now devolved on the President and Governors of the regions.

(2) The Governor-general of Nigeria was abolished and replaced with that of President.

(3) Law making now became the duty of the Senate and House of Representatives with the President for the federation.

(4) The executive authority of the federation and of the regions became vested in the President and Governors respectively.

(5) The Queen ceased to be the Head of State of Nigeria and the government became that of the federation of Nigeria and no longer Her Majesty's.

(6) As the head of state the accreditation of Ambassadors and other foreign envoys on behalf of Nigeria, now fell on the President.

(7) It followed that High Commissioners from Nigeria to those countries where the Queen was still sovereign had to present their letters of commission to the queen (as between one sovereign state to another) while their counterparts coming to Nigeria had to likewise do to the president of Nigeria.

(8) The tag of "Royal" or "Crown" ceased to appear as label on governmental institutions and all governmental institutions and all properties held by the Crown or by other authority or person on behalf of or trust for the Crown became vested in the President or Governor of a region as the case maybe.

(9) Nigerian citizens ceased to owe allegiance to the Queen but to the Nigerian State; this had a profound effect on the wording of the Oaths administered to public office holders. Thus all phrases making reference to "Her Majesty Queen Elizabeth II" had to be replaced with "The Federal Republic of Nigeria."

(10) The award of national honours was the prerogative of the president to award Nigerian honours such as GCFR, GCON, CFR, CON. In furtherance of this development, all Nigerian citizens or non-citizens within the public service or armed forces who desired to obtain an honour, dignity or decoration (other than, scientific, academic or professional) from any country needed a prior consent of the president.

(11) The constitution also abolished appeals from the decisions of law courts in this country to the Privy Council in London.

Nigeria And The Commonwealth

The status of being a Republic has been defined to mean; "A system of government in which the people hold sovereign power and elect representatives who exercise that…"

Before independence, Nigeria was in the commonwealth but was not a member of that organization. This is explained by the fact that membership thereof is only open to independent sovereign states among who there is equality of states. Even after independence, Nigeria continued as usual in the commonwealth. However, with the approach of republican status, the fear arose that Nigeria could not retain membership of the commonwealth. This was because of her position before 1949 when the feeling stood that only a state that owed allegiance to the Crown could remain a member of the organization. This of course was inconsistent with a republican status. However, this view changed in a communiqué issuing, form the Commonwealth Prime Minister's Conference in 1949 as a result of the pulling out of the Commonwealth by Irish Republic and the grim prospect of India and the up-coming Afro-Asian countries also following the Irish example.

This indirectly converted the commonwealth into an organization of ex-British dependencies who were sovereign and owed no allegiance to the British Crown as their sovereign.

With this development Nigeria joined the organization as a sovereign and republican state not owing an allegiance to the British Crown as her Head of state.

Thus, the implication of the Nigeria membership of the organization are

(1) With respect to the Republican states in the Commonwealth (which includes Nigeria) the Queen who is the head of the commonwealth occupies no legal position under their constitution or government.

(2) The Queen is only The Head of the Commonwealth, a title importing no constitutional powers but merely symbolizing the unity of the association.

(3) Nigeria (like all other members of the association) enjoys equal status both with Britain and other members of the Commonwealth.

This is in consonance with The Balfour Declaration 1926 to the effect that: "Members are autonomous communities... equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs."

The Collapse Of The First Republic

Hardly had Nigeria attained independence in 1960 when certain events began to occur that served as a build up to the eventual demise of the first Republic of January 15, 1966 when the first military coup d'etat took place in Nigeria. It is agreed among writers in the field of Nigeria's political history that some of the crises that created the enabling environment for the soldiers to strike were:

At its party conference in Jos, February 1962, the party decided to dismiss Chief Akintola from his party post when all efforts to reconcile the two groups failed. In consequence, a majority of the party members of the Western region House of Assembly signed a letter to the Governor of the region to the effect that they no longer had confidence in him. The governor promptly dismissed him as premier and appointed Alhaji D. S. Adegbenro as the new premier.

At a meeting of the house to ratify these decisions, there was a free-for-all fight and the police had to use tear gas to disperse the members. While this crisis lasted, the NPC/NCNC-led Federal Government declared a state of emergency in the region and appointed Dr. M.A. Majekodunmi, the Federal Minister of Health, as the administrator of the region. The state of emergency lasted for six months after which Chief S.L. Akintola was reinstated as premier.

This was the setting when Chief Awolowo was charged with plotting to overthrow the federal government. He was convicted and sentenced to 10 years in jail.

The federal government set up a commission of inquiry to investigate the management of the National Bank set up by the Western region government. The commission that was headed by Justice G.B.A. Coker also investigated some public corporations in the region. It discovered serious cases of maladministration, irregularities and diversion of public funds to the affairs of Action Group. Nonetheless, it absolved Chief Akintola of any guilt. While the above situation lasted, the NPC/NCNC federal government saw it as an opportunity to spite Chief Awolowo and the AG for his calls for the creation of states for the Northern minorities. This was accomplished by carving out Midwest as region out of the Western region.

Meanwhile, Chief S.L. Akintola formed a new political party - the United Progressive Party (UPP), which joined forces with the NCNC to form the opposition in the West.

Thus, the Action Group crisis in the West was the first political crisis that started the drift of the first republic. The crisis was also significant for the way it tested the judicial interpretation of the 1960 Independence Constitution in the following cases:

Cases:

Wiliams v. Majekodunmi (1962) 1 ANLR 328

Akintola v. Aderemi (1962) 1 ANLR 442

Adegbenro v. Akintola (1963) 3 All 544

The Population Census Crises Of 1964

In 1962, a population census was conducted to ascertain the population of Nigeria. After the census, but before the figures were officially released, they leaked. As a result of the uproar and general criticism of the figure to the effect that they were manipulated, the census was cancelled. A census board under the authority of the Prime minister was set up and a fresh census was conducted in late 1963 to early 1964. The provisional figures released put the population of Nigeria at 55.6 million. The distribution was North 29.7 million, West 10.3 million, the East 12.3 million, Midwest 2.5 million, while Lagos city was put at 675,332 people. Following the crises of confidence already palpable within the polity, a lot of criticism and turmoil greeted these figures. In a surprising move however, the federal government accepted the figures and was joined in this by the West. However the East and Midwest rejected the figures on grounds of gross irregularities and inflation of figures. The Eastern region accordingly went to the Supreme Court arguing that the federal government should not have accepted the figures on the grounds that they were inflated and vitiated by irregularities, and in consequence, they would affect the delimitation of constituencies for election purposes. See: A. G., East v. A. G., Fed (The supreme court they however ruled against the eastern region on the ground that because they could not show a legal right to any number of constituencies, they lacked the locus standi to bring the action). In the circumstances, the census figures were accepted and was therefore the basis for delimitation of constituencies, boundary adjustments and allocation of development projects, while the discontent remained unattended to.

The General Election Crisis of 1964

Hardly had the census crisis of 1964 died down when another major crises in the area of elections arose in the same year. That year was constitutionally a normal election year. For this purpose, two major alliances emerged on the political scene to contest election. They were UPGA (United Progressive Grand Alliances) made up of remnants of the AG, NCNC, NPF, and the United Middle Belt Congress (UMBC). On the other hand the NPC, NNDP, Mid-West Democratic Front, NDC, and the Dynamic Party formed the NNA (Nigerian National Alliance).

The nomination process for candidates for elections to the federal parliament in 1964 and electioneering campaign was marred by high scale fraud and irregularities. In the North and West, UPGA candidates could not obtain nomination papers. Even the few that did could not file them because electoral officers disappeared when they saw UPGA candidates coming to file their papers. The UPGA as a result protested to the president with a threat to boycott the election if the anomalies were not addressed. While the situation persisted, at the close of nomination period, most of the candidates in the North and West (who were NNA candidates) were declared unopposed.

The president, Dr. Nnamdi Azikwe called on the Prime Minister Alhaji Abubakar Tafawa Balewa to postpone the election. The latter rejected the instruction and proceeded to hold the election on December 30, 1964. The UPGA boycotted the election in many parts of the country especially in the East. Eventually, the votes were counted and it was announced to bewildered Nigerians that NNA had won a total of 198 seats out of the 312 seats open for contest. On January 1, 1965 the ceremonial president, Dr. Azikiwe addressed the nation that given the prevailing circumstances he would rather resign than call on the leader of the party which (purportedly) won majority of the seats to form the government. An impasse ensued and the nation was once more pushed to the brink.

Some prominent Nigerians including the Chief Justice of the Federation intervened and called on the president to exercise his constitutional powers in the interest of the nation.

This, he did by re-appointing Sir A.T. Balewa as the Prime minister. A 'little election' was held in the East were the boycott was total, while a national government was formed by the Prime Minister, without including any AG member.

The Western Region Election Of 1965

In 1965, it was constitutionally due to hold elections to the regional House of Assembly The battle again was between the two grand Alliances that were in the field in 1964 during the federal election, i.e. NNA and UPGA. The NNA was represented by NNDP, which was in power in the region. During the nominations and elections, the same evils of the 1964 federal elections were replicated. The electoral officers disappeared in areas UPGA candidates were to file their papers. Thus at the close of nomination, like the fraud of 1964, many seats were declared unopposed. Most of the western populace had prepared to vote the Chief Akintola government in the region out of power. Thus, the manipulation by electoral officers irked and frustrated the electorate. Besides, the election itself was so massively rigged that the people had to take the law into their own hands. The effect was massive killing, destruction of property, arson, looting, rape, robbery and violent riots which reigned in that region throughout the remaining part of 1965.

The situation in the West to a large extent typified the anomie that had engulfed the entire nation. It had become obvious to the wary that something ominous was in the offing. This was the milieu in the country when the military struck on January 15 1966, after it had become obvious that the federal government was at its wits end as to how to arrest the drift.

The Effect Of The Coup

Hanz Kelsen, a German legal philosopher in his pure theory of the law posited the concept of a hierarchy of norms. By this he meant that in any legal system, the laws operating therein were arranged in a hierarchy.

He contends that the highest law within the system and at the apex of the hierarchy was the most important of all the laws. This apex norm he referred to as the 'grundnorm'. The importance he ascribes to this fact is that all the other laws within the system derive their validity and tenor from this apex norm.

Accordingly, anything that affects this grundnorm percolates down the legal ladder to affect the other norms of less importance. He proceeded to argue that whenever there is an occurrence within the legal system which is not within the contemplation of that norm, it amounts to a revolution.

Thus, when this revolution occurs, the effect is that there is a change in the grundnorm displacing and replacing the old grundnorm. This new grundnorm becomes the basis for the validity of the laws lower in the hierarchy. Thus, where there is any conflict between the dictates of the grundnorm and that of the lesser norm the former prevails.

This new grundnorm becomes accepted as the new apex norm to the extent that the institutions and persons within the system act in accordance with and in compliance with it. Hence, it is today axiomatic both in international law and jurisprudence that as far as revolutions are concerned, it effectively validates.

Brought to the field of constitutional law, in states where there is a supreme, written and rigid constitution, it is the grundnorm in that legal system. Thus, where there is a military coup d'etat which is not something authorized by the constitution, it is a revolution.

The 1963 Constitution was the grundnorm for the Nigerian legal system during the first republic,

The coup that took place on January 15, 1966, and followed by a counter-coup in July of the same year was a revolution against that constitution.

The effect was that from the date of the coup and the emergence of the junta coupled with the suspension of the constitution, it ceased to be the grundnorm for the Nigerian legal system. The new grundnorm become the will of the military officers who executed the coup, as manifested in the Decree No. I (Constitution Suspension) of that year.

This position of the law was however, challenged in Lakanmi v. A. G., West, S.C. 58/69 of 24/4/70 where the Nigerian Supreme Court unfortunately, did not have a proper appreciation of the situation. It accordingly ruled that the 1963 Constitution was still the grundnorm. Irked by this development the junta barred its fangs by enacting Decree No. 28 of 1970 re-asserting that the military coup was a revolution and that the 1963 Constitution had ceased to be the grundnom in Nigeria. The Decree in essence nullified the effect of the Supreme Court decision in Lakanmi's case.

The Kelsian theory of the grundnom therefore posits that a successful revolution begets its own legality. Accordingly, the military regime is not hide-bound by the constraints of a pre-existing constitution. See N. UJu A. G., Federation (1984) NCL Review 16.

Fortunately, the experience in Nigeria has never been that of a total martial law. This would involve a total obliteration of the entire legal system by the military and the installation of a totally new legal system. Rather we have had a military that only alters the grundnorm to an extent and allows the lesser norms to remain in place as the dictates of necessity and stability in the system require.

Nonetheless, the alteration of the grundnorm alters these other laws lower in the hierarchy to the extent that the basis of their validity and continued operation now differs. For this purpose, it goes to no issue that the actual provisions remain exactly the same.

However, it has been posited in juristic thinking and accepted in international law that:

For a situation to qualify as revolution within the contemplation of the Kelsian theory, it must have the following profound effect on the legal system:

1. There must have been an abrupt political change, i.e. a coup d'etat or revolution.

2. The change must not have been within the contemplation of an existing constitution.

3. The change must have destroyed the entire legal order except what it preserves.

4. The new constitution and government must be effective within the system.

See Generally

1. B.O Nwabueze, A Constitutional History of Nigeria. PP. 161 - 177

2. The State v. Dosso (9158) PLD Sc 533

3. Mazimambuto v. Ladner Burke (1969) AC 645 PC

4. Sallah v. A. G. S. C S170 of 20-4-70

5. Ogunlese & ORS v. A. G., Federation (1970) LD 28/69 unreported

6. Adamolekun v. Council of Univ. of Ibadan (1967) S.C. 378/ 1996

The Hierarchy Of Laws Before The Coup

1. The 1963 Constitution- Grundnorm

2. Acts of the Federal Parliament

3. Laws of the various Regional Assemblies

4. By-Law of Local Government

AFTER THE COUP, IT BECAME:

Decree No: 1 of 1966 and other constitution Decrees- Grundnorm

2. Other decrees (not of constitutional dimension)

3. Unsuspended provisions of the 1963 Constitution

4. Acts of the defunct Federal Parliament

5. Edicts of Regional/State Military Governors

6. Laws of the defunct Regional Houses of Assembly

7. Bye-Laws of Local Government Authorities.

In a democracy, that the constitution is the grundnorm is specifically so stated in the constitution itself. See S. 1 (1) 1963, 1979, 1999 constitutions. It is for this reason that any other norm within the system which is in conflict with it, must abate. See. Doherty v. Balewa (1963) 1 WLR 949. In a military dispensation, the constitution is supplanted by a constitution (Suspension and Modification) Decree No. 1, after it has been displaced. See S.3 Decree No. 1, 1966. To drive home the death of the 1963 constitution and re-affirm Decree No. 1 as the new grundnorm the Decree provided in section 3 as follows:

"Provided that this constitution shall not prevail over any provision of a decree and nothing in this constitution shall render any provision of a decree void to any extent whatsoever."

In consequence, the constitution become relegated to second place in the military administration. The Decree becomes the Apex norm, while any other laws under it which conflicts with it becomes void.

Nonetheless, the unsuspended provisions of the constitution supersede over an Edict of a state military governor. See Adamolekun v. Council of the University of Ibadan

Federalism In Nigeria

The basis for Federalism in Nigeria existed long before independence and has perhaps started right from 1914 when the country was divided into the Northern and Southern protectorate. Close to the independence, there was continuous agitation for a federal system of government especially amongst the minorities who feared domination by the major ethic groups. As a result, right from 1960, Nigeria seems committed in one way or the other, both under civilian and military rule, to the course of federalism.

Our Constitutions of 1976 and 1999 have made good attempts to incorporate the earlier mentioned requirements. It cannot be disputed that our constitution is a written constitution whereby governmental powers have been clearly distributed between the level of governments - namely the Federal, State and Local Government.

It should have been noted that although the level of government must operate on a coordinate and not subordinate basis, what is meant and what is been done in our constitution is the existence of a cordial relationship whereby the levels of government will cooperate and interact with each other to attain the maximum and desired objective of the government. There are therefore instances whereby one level of government depends on the other to attain maximum success and operate properly. At this juncture, our illustration would be undertaken by examining how the organs of government at the federal and state level are divided and shared.

The Legislative Organ

At the federal level, we have the National Assembly as the body empowered to make laws for the whole of the federation. The areas within which the National Assembly can make laws are clearly listed under the exclusive list provided in the 2nd schedule part I of 1999 Constitution. The fist contains 68 items arranged alphabetically. It is only the National Assembly that can make laws on these areas, thus the word 'exclusive'. The list ended with an omnibus clause which stipulates that the National Assembly can make law on any matter incidental or supplementary to any matter mentioned elsewhere in this list.

At the state level, we have the State Houses of Assembly. The areas under which the State House of Assembly can operate are listed on the concurrent legislative list provided under schedule II part II. It has 12 items elaborated into 30 paragraphs. This list is not exclusively designed for State House of Assembly alone; the National Assembly can exercise concurrent jurisdiction on it. That is to say that both the National Assembly and the State House of Assembly can make law under the list. The extent to which the National Assembly and the State House of Assembly can make law is clearly stated.

But where a State Assembly and National Assembly make a law on the same item, that made by the National Assembly shall prevail over that of state. Where a matter not included

in either exclusive or concurrent list arises, 5.4 (7) of 1999 Constitution empowers the Sate Assembly to make law in that regard. This is called the residuary power.

Executive Organs

Under a federal system, we have the president as the executive head. He is responsible for executing all laws made by the National Assembly and all such other powers constitutionally conferred. The president appoints ministers who assist him in the discharge of his functions.

At the state level, the state governor exercises the executive function. And he is assisted by his appointed commissioners. Although the state governor exists on a coordinate basis with the president, he is not in any way answerable to the president, a critical analysis would portray the governor as inferior. This is especially seen in cases of emergency. When a state of emergency is declared, the president may operate as the executive head of that state. Furthermore, the constitution provides that whatever a state governor does it must not in anyway appear or attempt to undermine the functions of the president.

The governor shares some power with the president through his membership in the Council of States and the National Economic Council. All governors are members to these bodies and they actively participate in advising the president in matters relating to the administration of the federal government.

The Financial Autonomy Or Revenue Allocation:

The controversial requirement for financial autonomy is hardly practicable and has not been practicalized anywhere in the world.

In Nigeria, an attempt has been made to satisfy this requirement. A glance through the division of powers will clearly reveal that the state and local governments are made dependent to the federal government for financial subventions. This is, however, made a statutory right under section 149 of 1979 Constitution and section 162 of 1999 Constitution. By virtue of these provisions, the state and local governments are constitutionally entitled to share the amount available in the federation account in the manner prescribed by the National Assembly.

The 1999 Constitution has made an improvement over the 1979 position. It has established an independent National Revenue Mobilization, Allocation and Physical Commission in which all the states are to be represented. The commission recommends the revenue allocation to the states and local government. The recommendation is to be made to National and State Assemblies as to what percentage is to be allocated from the federation account to the three levels of government. This may however be seen to be a mere persuasive notion that will guide the national Assembly on the particular mode of allocation.

Federalism And Military Administration

The federal principles appear incompatible with the unified command structure of the military administration. Under the military, the constitution is not supreme, thus, there is no binding law which regulates relationship between the federal and state government. Again, the division of legislative powers under the military government has been described as unfederal, even though Decree No. 1 enables state governments to enact edicts in respect of matters contained in the concurrent lists provided the consent of the president has been

sought and obtained. The practical effect of the provisions of section 2 which gives the Federal Military Government power to legislate on any matter whatsoever in the whole of the federation epitomizes the unfederal division of legislative powers.

Under section 6, powers vested in the state governor are delegated, thus reducing them to agents of the Federal Military Government. Their appointment and removal is the sole responsibility of the A.F.R.C. This has equally led to criticism of the federal system under the military as a unitary set-up. In addition, the independence of the judiciary is greatly curtailed under the military with obnoxious "ouster clauses."

Again, the issue of revenue allocation which formally was the responsibility of the National Assembly consisting of the representatives of all Nigerians has shifted to the A.F.R.C to decide. The formula being used by the military has come under sever criticism but not much can be done under the unlimited legislative government.

However, the issue of federal character appears to gain continue support under the military. There is no doubt also that creation of states have been more effective under the military in such a way to ensure the establishment of the physical structure of a federal state. This could be as a result of ethnicism and sometimes unwarranted agitation of minorities in some areas. And this in most cases make creation of states more difficult under a civilian regime.

It can be concluded, perhaps, that under the military there is at least to some extent some features of a federal state.

Constitutional Law Concepts

An idea which have tended to permeate constitutional making in the modem world is the concept of constitutionalism or limited government; i.e. the idea of putting into constitution certain rules and regulations directed toward preventing abuses or exercise of arbitrary powers. A written constitution is seen primarily as having the function of controlling the organ of government. The same applies to unwritten constitution though in a less manner.

Modem constitutions have tried to carry this through various constitutional concepts like the rule of law, separation of powers supremacy of the constitution and F.H.R. The three arms of government have certain rules of operations with checks and balances in such a way that one does not encroach on the other and none gets too powerful. However, in a military set-up there is an absence of such limitation in the exercise of power which make the concepts unworkable. Thus under it, there can be no constitution properly so-called. At best what obtains is a military constitution. As a result, military rule is generally regarded as an aberration, since it comes to power and maintains itself in power by force, hence unconstitutionally.

Rule of Law

The concept of the rule of law is of great antiquity and dates back even to the time of the Greeks. It is one of the most basic concepts of public law and is regarded as a synonym for law order without which lives and properties will be insecure.

The expression "rule of law" means the administration of things in a given society according to the law of that society. It entails the situation where the governance and conduct of the

society is done and guided by the law. It is the law that rules and not the whims and caprices of the rulers. The law overrides and is superior to personal caprices of the rulers.

Rule of law and its concept owed its modem origin to the writing of Prof. A. V. Dicey, first published in 1885 and entitled "Introduction to the Study of the Law of the Constitution." He analyzed rule of law as having three different implications thus:

1. "... No man is punishable nor can be lawfully made to suffer in body or property except for a distinct break of law established in the ordinary legal manner before an ordinary court of the land. In this sense, the rule of law is contrasted with every stem of government based on the exercise by persons in authority of wide arbitrary or discretionary! powers. It means in the first place the absolute supremacy or,, predominant of regular law as opposed to the influence of arbitrary, power ....."

2. "Every man, whatever be his wrong, position or condition is subject to, and amenable to the jurisdiction of the ordinary tribunal."

3. "The constitution of the U.K is pervaded by the rule of law in that the general principles of the constitution are without the judicial decision determining the right of private persons in particular places brought before the court."

It can be seen that the first two parts of the meaning of the rule of law are related and may be said to amount to the concept of equality before the law for all citizens. Thus, punishment could not be imposed except for the violation of an existing law. See Aoko v. Fagbemi (1961) All NLR 400.

The third meaning shows that right of individual are established and guaranteed not by the constitution but by the remedies provided by the courts acting under the umbrella of the rules of law. See Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40.

Improvement On The Rule Of Law

The International Commission of Jurists, the 1959 Delhi Convention and a host of other bodies have suggested a number of ideas and principles with a view to improving the concept of rule of law.

It was suggested that (1) functions exercised by the legislative and executive must be based on the legitimate authority and where it affects the liberty of an individual such function must be done in line with the protection of such liberty; (2) that the law should conform with certain minimum standard of justice in such a way that criminal law are certain and definite. The accused should be entitled to fair public trial, the presumption of innocence and a right of appeal should be guaranteed.

All these fundamental principles have been embodied in the Nigerian Constitution. For example, the concept of rule of law features prominently under section 1 of 1999 Constitution, which declares the supremacy of the constitution. The constitution is the supreme law of the land and all laws, actions and people hold their allegiance to the constitution. The suggestion on the improvement on the concept of the rule of law can be seen under the provision of chapter II of 1999 Constitution dealing with fundamental objectives and directive principles of state policy. See sections 13-24 of 1999 Constitution.

The suggestion on the improvement on the concept of rule of law can also be seen under the provision of chapter 4 of 1999 Constitution dealing with fundamental rights. See ss. 33-46 of the 1999 Constitution.

Separation Of Powers

It is a universally recognized and accepted system of governance that functions of government should be divided amongst its three basic organs, namely legislature, executive and the judiciary. The rationale behind the concept of the separation of power is to avoid the concentration of powers in a single arm of government so that the life and properties of individual members of the state are accorded maximum safeguard. For if the legislature or the executive could be given powers to make law and execute the law, it then would appear that the arm is given a license to make law and exempt itself from obedience of that and thereby creating a tyrannical situation.

By the doctrine of separation of power, the three arms of government should be independent and autonomous within their respective space, functions and powers. Each organ should be free from unwarranted interference from other organs. This classification of organs of government owe its origin to Aristotle. But the doctrine of separation of power was first formulated by a French writer, Montesquieu, in his book entitled The Spirit of Laws, published in 1948. In Montesquieu's time, kings were all over the continent, exercising and enjoying absolute power. This resulted in a lot of abuses and negation of power and liberty of individuals. He then formulated the idea that the three arms of government should be organized and their functions separated without interference. The doctrine entails the following:

1. There must be no interference into the affairs of one organ by the other.

2. No person should exercise more than one function.

3. No organ should exercise the function of another function.

It should be noted, however, that separation of power does not mean absolute independence of one organ from other organs. This is because no government can function well without its three organs exercising minimum coordination and interaction. The structure of government is designed in such a way that the branches have some joint of contact but no one arm of government should dominate the others. The doctrine can be more accurately described as the sharing of power. Each organ is given a voice in the business of the other and each is made dependent in the operation of the others in order to accomplish its business. It is through the blending of powers by politically independent branches that the doctrine of checks and balances is made effective.

The Legislature

It needs be re-emphasized that the basic and most important duty of the legislators is the making of laws in the legislature for the welfare of our teeming population. Thus, section 4 (1) (2) (3) (4) (5) of 1999 Constitution provides for this important assignment. But this power is restricted to federal legislature. The power of state legislature to make laws for the state is provided for under section 4 (5) and (6) of the 1999 Constitution.

As said earlier, the three arms of government cannot afford to operate in watertight compartments under our constitutions. It would appear therefore that our constitution has been able to successfully produce a government of "separated institutions" sharing power in some spheres rather than one under a right separation of powers. It is no surprise then to see the legislature performing some judicial and or quasi-judicial functions. See sections 142 and 183 of 1999 Constitution which give and state procedure for removing the president and governors - a supposedly judicial duty. See also the case of Balarabe Musa v. Speaker, Kaduna State HIA & Others (1982) 2 S.C. Also section 128 of 1999 Constitution vests the National Assembly with some investigative power that will apparently appear to be an interference with the judicial functions. Other examples abound in the 1999 Constitution.

The Executive

The executive of the federation and the states are vested in the president and the governors respectively. See section 5 (1) and (2) of 1999 Constitution. The fundamental function of the executive is to execute and maintain all laws made by either National Assembly or State House Assembly, and to all matters with respect to which the assembly has for the time being powers to make laws.

It is, however, observed that both the legislature and judiciary partake in the functions of the executive. For example, it is the duty of the president (executive) to negotiate treaties; such treaties do not become effective until the National assembly has approved the treaties. Again, it is the duty and functions of the executives to appoint ministers or commissioners who will assist him in his day to day activities, yet this duty is subject to the approval of the nomination by the National Assembly or State House of Assembly. See section 147 (2) of 1999 Constitution. The truth, therefore, is that there is no rigid separation of powers between the executive and the legislature under the presidential system of government but separated institutions sharing powers in some sphere for the welfare of the people of Nigeria

Judiciary

Section 6 of the 1999 Constitution states that the judicial powers of the federation shall be vested in the courts established for the federation of Nigeria. The courts here include the federal and state courts as are established or may be established from time to time. Under section 6, the Supreme Court is empowered to declare invalid and unconstitutional any legislative orexecutive act that are not in accordance with the provision of the constitution. The judiciary therefore is given an upper hand over other arms of government. The upper hand is to interpret adequately and pronounce rightly on the laws made by the legislature and to be executed by the Executive.

In view of our discussion, under legislative and executive arms, it hardly needs to be said that these arms of government greatly perform quasi-judicial functions. They are numerous and need not be recounted. What is important for now is to examine whether the judiciary in turn performs the functions of either the legislature or the executive.

Section 46 (3) (4) empowers the Chief Justice of Nigeria to make laws with respect to the practice and procedure of a high court for the purpose of proceeding relating to the enforcement of fundamental human right in the high court. Here, it would be seen that the Chief Justice of Nigeria is vested with the power of making law and not interpreting the law – an exercise of legislative function. The justification for this is that the Chief Justice of

Nigeria is better equipped and most knowledgeable in the matter of procedure to be followed in a court of law.

Again, the courts make law, though not as made by the National Assembly or the State House of Assembly. For example, in the case of Shitta-Bey v. Federal Public Service Commission (supra) the Supreme Court seems

to have broken forever the shackles of the imported English feudalism in English common law that public servants hold their appointment at the pleasure of the state who can hire and fire. The Supreme Court held that the Public Service Commission is a creature of the constitution, hence, it compelled the commission to perform its duties and observe the rules and regulations made thereunder. Another case in the matter of interpretation nearing legislature is Bronik Motors Ltd. v. Wema Bank Ltd. (1983).

The conclusion to be drawn from the foregoing interaction of the three arms of government is that the three arms must operate in perfect cooperation for good administration to ensue.

Supremacy of Parliament, Constitution And Decrees

The concept of parliamentary or legislative supremacy is a legal concept and the legacy of the British parliamentary practice which arose out of conflict between the crown and the parliament. It simply means that the parliament is supreme and is not subject to any other authority. According to Sir Erskine Maine, the parliament can pass law unjust and contrary to sound principle of government, but it is not controlled in its discretion. And when it errs, its error can only be corrected by itself. Thus, parliament cannot bind itself nor its successors by making a law unrepealable.

The concept has been accepted in countries with unwritten constitution and is a clear reflection of the flexible nature of such constitution. Nigeria as a former colony accepted and operated this concept until 1960 when the Independent Constitution was enacted. Thereafter, the country adopted the supremacy of the constitution.

The concept of the supremacy of the constitution on the other hand simply means that the constitution as a legal document is the ultimate of all laws, which laws must conform with it for validity. Simply put, it means, the constitution is supreme to any other law and any other law that is inconsistent will be null and void to the extent of its inconsistency. This is true of entrenched or written constitution. The Nigerian Constitution is a written one and it has adopted the concept of supremacy of the Constitution. Section 1 of 1999 Constitution leaves no ambiguity as to the supremacy of the constitution. It states:

"This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."

Section 1(3) states further:

"If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void."

Section 6 of 1999 Constitution is very clear in empowering the court to declare any constitutional dispute between the federal and state governments or between individual and the government. See the case of Balewa v. Doherty (1961) All NLR 604; Lakanmi v. A.G. of

Western Nigeria (1971) 1 UILR 201. See also the case of Kamada v. Governor of Kaduna State (1986) 4 NWLR (Pt. 35) Pg. 361.

The position under the military administration is however different entirely with supremacy of the constitution and slightly different with supremacy of the parliament. The position under the military seems to bring into reality the fears often expressed about the absolute powers exercised under a legislative supreme government. This is because it exercises all the legislative powers usually bestowed on the legislature in parliamentary system of government and much more.

Usually, on coming to power, some fundamental provisions of the constitution are suspended and replaced with a decrees which becomes the legal basis for every action of the military government. The decree and subsequent decrees are then made supreme laws of the land, superior even to the constitution (Supremacy of Decree). See Decree No. 1 of 1966 and Decree No. I of 1984, particularly sections 1-6. The summation of these sections are:

(1) The unsuspected provisions of the constitution are still in operation provided they shall not prevail over any decree and nothing in the constitution shall render the decree void to any extent.

(2) The federal military government shall have power to make law for the peace, order and good governance of Nigeria or any part thereof with respect to any matter and

(3) No court of law can question any decree or edict.

The nature of these Decrees culminated into a legal battle between the federal military government and the judiciary in Lakanmi's case. Immediately after Lakanmi's case, the federal military government swung into action by promulgating a decree entitled "The Federal Military Government (Supremacy and Enforcement of Powers) Decree 1970. This decree is a deadly blow on the judiciary as it rendered the decision in Lakanmi's case inoperative. The judiciary, thus, surrendered to the supremacy of the decree in the case of Adamolekun v. University Of Ibadan (1968) N.M.L.R. 253 and held that the Decree or Edict is supreme over the constitution.