FEDERAL/STATE CONSTITUTIONAL ISSUES IN NIGERIA BETWEEN 1979 - 1903: THEIR GENESIS, EVOLUTION AND SOLUTION

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DEDICATION

This Thesis is dedicated to my Father Dr. R.E. Onwumere.

DECLARATION

I hereby declare that this dissertation has been written by me and that it is a record of my own research work. It has not been presented in any previous application for a higher degree. All questions are indicated and the sources of information are specifically acknowledged by means of reference.

11/8/88

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ABSTRACT

This thesis aim at discussing the major problem of federalism in Nigeria under the Presidential Constitution which stems from the lack of proper understanding among the leaders of the principle behind the federal system, as manifested in the intense rivalry, confrontation, conflict of interest and difference of opinion between the Federal and State Government that characterised the Second Republic, The autonomy of each tier of government was misconstrued to mean competition and confrontation, with each trying to frustrate the other, whereas the conception underlying the system is that the federal and State Governments are mutually complementary parts of a single governmental mechanism, federalism demands of them co-operation with one another in order to promote the welfare of the people through their combined efforts. To the common man living within the territory of a State, it is a matte* of little or not importance which of the two governments operating there has the constitutional power to provide a particular service. Since the two must have between them the necessary power it is legitimate for him to expect them to co-operate in looking after his welfare.

Conflicts between the two tiers of governments manifested in various areas, i.e. the non acceptance of the Presidential Liaison Officers by some State Governments, the use and control of the police, the controversy over the revenue allocation formula, the refusal of some State Governments to make land available to the federal Government for the building of the low cost housing units and the control of the mass media.

But of all the confrontational stance of the State Government towards the Federal Government the most obvious was the demolition by the Oyo State Government of houses under construction at Ibadan by the Federal Government in order to solve the accomodation problem of the people of the State, on the flimsy excuse that the land on which the houses were being built had not been granted to Federal Government,

The use and control of the police was the source of much rancour and confrontation. There was the dispute about the constitutional propriety of the adaptations made by the President in the Public Order Act 1979-

The revenue allocation formula enacted in 1981 generated a lot of controversy. The whole exercise was politicised. The non - NPN controlled States averred that the Federal Government manipulated the membership of the Joint Finance Committee appointed to resolve the difference between the formulae recommended by the House of Representatives and Senate, to suit their interest, and that was why they were denied the larger share recommended for them by the House of Representatives in the final report of the Finance Committee.

The Federal Government was also involved in this unnecessary confrontation with some of the State Governments. The jamming of the television station of Lagos State by the Federal Government controlled NTA is an example of such confrontation.

The multiparty system adopted by the country during the Second Republic was responsible for all conflicts and confrontations between the Federal and State Governments. The State Governments not controlled by the NPN refused to accept the

leadership of the NPN Federal Government and felt that the only way they could score a political point was to frustrate the NBT Federal Government. This, it should be noted is disastrous for the political system of a developing State.

Ways by which the confrontations and conflicts could be reduced considerably or eliminated completely have been discussed.

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ABBREVIATIONS

1.	A.F.R.C.	-	Armed Forces Ruling Council
2.	All N.L.R.	-	All Nigerian Law Report
3.	C.D.C.	-	Constitution Drafting Committee
4.	C.L.R.	-	Commonwealth Law Report
5.	C.P.C.	-	Criminal Procedure Code
6.	FEDECO	-	Federal Electoral Commission
7.	G.N.P.P.	-	Great Nigerian Peoples Party
8.	N.C.L.R.	-	Nigerian Constitutional Law Report
9.	N.P.N.	-	National Party of Nigeria
10.	N.P.P.	-	Nigerian Peoples Party
11.	N.W.L.R.	-	Nigerian Weekly Law Report
12.	P.L.O.	-	Presidential Liaison Officer
13.	P.R.P.	-	Peoples Redemption Party
14.	S.C.	-	Supreme Court Law Report
15.	U.S.	-	United States Law Report

CHAPTER ONE

INTRODUCTION

1.1 INTRODUCTION

This thesis that aims at discussing the main problem of federalism in Nigeria during the Second Republic, which stems from the intense rivalry and conflicts between the Federal and State Governments, under Chapter One discusses the general principles of a federal system with particular reference to the 1979 Constitution. A federal system comes into existence when the powers of the government of a country are shared between the Federal Government and a number of State Governments in such a way that each exist separately and independently from each other. Thus Wheare (1963) writes that "the concept of federalism involves the division of powers in such a way that the federal and regional governments are each, within their spheres co-ordinate and independent"[1].

Chapter two discusses the structure of the Federation. As a political unit Nigeria has undergone series of divisions since it came into existence in 1914 as a single unit, after the amalgamation of different protectorates and colony. At this time Nigeria consisted of three units i.e. Northern Nigeria, Southern Nigeria and the Colony of Lagos. This three units was increased to four in 1939, which was later increased to five in 1963. This number was further increased to twelve when the military created the twelve State structure in 1967. The Federation of Nigeria was subdivided

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1. Wheare K.C. (1963) Federal Government, 4th Ed. Oxford University Press London p. 11.

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into nineteen States and a Federal Capital Territory in 1976 in a bid to satisfy incessant demand for more States. After the creation of the nineteen States in 1976 the Federal Military Government urged the Constitution Drafting Committee to provide constitutional restrictions on the creation of more States. Thus the 1979 Constitution adopted the stringent procedural requirements suggested by the Constitution Drafting Committee. This notwithstanding during the Second Republic there were demand for up to 53 new States, though the National Assembly did not deliberate over the issue before the overthrow of the government in December 1983.

Chapter three deals with the machinery of government, for example the Legislature, Executive and Judiciary. Under the legislative power emphasis is laid on legislation of the Federal Government and State Governments over concurrent matters in the 1979 Constitution. Then mention is made of the doctrine of covering the field which is a doctrine used for resolving conflicts arising between the Federal and State Governments legislative powers over concurrent matters. The controversy about the Public Order (Adaptation) Act 1981 is discussed in detail.

Under the executive arm of the government mention is made of the single police force, styled the Nigerian Police Force, adopted for the whole country. Also discussed is the authority of the President or Governor over the use of the police. The fact that the Inspector-General of Police is appointed and removed by the President and the State Governors do not have a hand in such appointment and removal, considerably

weakened the authority of the State Government's in relation to the police. Their authority is further weakened in that the State Commissioners for Police are not accountable to them.

Under the judiciary, the State Court's power to adjudicate over federal issues is extensively discussed. Also discussed is the condition under which the original jurisdiction of the Supreme Court can be invoked.

The main focus of this thesis covered under chapter four is to provide a detailed account of the problem of federalism in Nigeria, which stems from the absence of co-operation between the Federal and State Governments over the exercise of their powers. This is manifested in the intense rivalry, confrontation, conflict of interest and difference of opinion between the Federal and State Governments. The autonomy of each tier of government is misconstrued to mean competition and confrontation with each trying to frustrate the other, whereas the conception underlying the system is that the Federal and State Governments are mutually complementary parts of a single governmental mechanism. What is demanded of them is co-operation with one another in order to promote the welfare of the people through their combined powers.

Federalism being a complicated and delicate system of government in each country the separative and uniting forces should be co-ordinated. In essense federalism is to have a common united country. By forming separate governments, the desire should not be to create conflicts but to work in harmony to achieve a common goal. The division of power does involve the possibility of conflicts arising between the Federal and State Governments, but these conflicts are to be resolved in

the spirit of mutual co-existence and this is possible when both levels of government lay stress less on their legal or constitutional powers and more on co-operation, to work the federation successfully and use their respective powers for the advancement and welfare of the people and the nation. Misunderstanding on the exercise of powers may be removed by evolving intergovernmental forums or national forums where differences of opinion could be resolved and each made to realise how best it should exercise its powers, for the benefit of the people and the country. Under the 1979 Constitution we have the Council of States and the National Economic Council. The need is for a co-operative federalism and not a dual or conflicting federalism. The spirit of co-operation so developed through such institutions go a long way in strengthening federal principle.

The revenue allocation evoked intense controversy in Nigeria between 1979-1983. Also discussed is the conflict between the Federal and State Governments over the first revenue allocation formula under the 1979 Constitution.

Chapter five deals with the conclusions and recommendations The researcher intends to suggest an alternative system of government under which the intense rivalry, confrontation, conflict of interest and difference of opinion seen under the Presidential system of government during the Second Republic will be reduced considerably.

1.2 GENERAL PRINCIPLES OF A FEDERAL SYSTEM

(a) FEDERAL PRINCIPLE

Since Nigeria adopted the federal system in 1954, federalism has become the basic feature of its Constitutions. The 1960, 1963 and 1979 Constitutions are based upon

federal principles.

It is important to note that it is not all federal Constitutions that use the word federal in them. For example Wheare 1963 quoted Morison S.E. in History of United States Vol. I page 87 that "the words'Federal' or Federation' occur nowhere in the American Constitution. Nonetheless it has always been called the 'Federal Constitution', and nowadays every body regards the United States as an example of Federal Government."[2]

The 1979 Constitution describes itself as a Federal Constitution and embodies the federal principle because it divides the power between the Federal and State Governments by specifying the powers of the Federal Government and the concurrent powers, leaving the residue with the States.

Federalism essentially means:

> "the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent."[3]

This is called 'federal principle' by Wheare (1963) who deduced it from his analysis of the American Constitution. He says that the American Constitution is an example of a perfect federal Constitution though it does not use the expression 'federal'.

This definition of federalism is not accepted by some writers. According to one view the Constitution is Federal when the States continue to hold their original Constitution, while creating a federation with limited or specified powers.

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2. Wheare K.C. (1963) Federal Government Oxford University Press London p. 1.

3. Ibid. p. 10.

If this definition is accepted it means that only the American and Australian Constitutions qualify as federal and not the Canadian or Nigerian Constitution. It is immaterial whether before the Federation the States have their own Constitutions. What is essential is that the division of powers between the Federal and State Governments is effected in such a way that they function independently of each other or co-ordinate with one another.

Secondly, it is suggested that a Constitution is federal when both the general and regional governments operate directly upon the people. By this test even the unitary Constitution may work in a way that will ensure the operation of the laws of the Central Government and the Local Government directly upon the people. Therefore this test cannot satisfactorily distinguish a Federal Constitution from a Unitary Constitution. However, by this test also the 1979 Constitution is Federal as both the Federal and State Governments directly operate upon the people in respect of the matter assigned to them respectively by the Constitution.

Thirdly, it is suggested that the distribution of powers may take one of two forms - specifically enumerated powers may be assigned to the Central Government, the residue remaining in or being assigned to the several States, as is the case in the United States and Australia or the enumerated powers may be conferred upon the States, as in Canada[4].

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4. WYNES W.A. (1976) Legislative, Executive and Judiciary Powers in Australia, Sweet & Maxwell Ltd. London p. 2.

Applying these tests it is suggested that the 1979 Nigeria Constitution which describes itself as a federal Constitution is an example of a federal Constitution, because it contains federal principles in its complete form. The 1979 Constitution enumerates the powers of the Federal Government and the concurrent powers leaving the residue with the States. In respect to concurrent matters it prescribes that in case of conflict the federal law will prevail over the State law. The justices of the Supreme Court[5] and the Court of Appeal[6] are appointed by the Federal Government whereas the judges of the High Courts are appointed by the State Governments.[7] In constitutional matters State High Courts have original jurisdiction in respect of both Federal and State matters. Likewise the appellate jurisdiction of the Court of Appeal and the Supreme Court extends to both Federal and State matters. The State High Courts form part of the single hierarchy of courts. Thus there is no dual system of courts as in the United States of America.

The Constitution under Section 2(1) provides that:

> "Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria".

This provision makes it clear that no State of the Federation shall have a right to secede, thereby impeding the continuance of a Federal Government in Nigeria. Thus as Wynes (1976) writes:

> "The federal union being brought about by agreement is legally indissoluble except by the assent of all the States concerned; there is no right of secession".[8]

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5. Section 211.
6. Section 218.
7. Section 235.
8. WYNES W.A. (1976) Legislative Executive and the Judicial Powers in Australia, Sweet & Maxwell Ltd. London p. 3.

The 1979 Constitution which provides under Section 9(2) the mode for altering it gives the idea that it is rigid. It gives the power to both the Federal and State Governments. Thus the section provides that:

> "An Act of the National Assembly for the alterations of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States". (In the case of National Assembly raised to four-fifths majority with regard to Sections 8 and 9 or Chapter IV of this Constitution).

Thus from the above provision the Constitution is not a flexible Constitution. The Constitution also provides that it is the Supreme law of the land and any law inconsistent with it shall be declared void to the extent of its inconsistency.[9] Thus Seervai (1975) writes that:

> "A Federal Constitution, with its distribution of powers, requires a written Constitution .... that the established courts must decide whether a law violates constitutional limitations and declare it void .... It follows from this that federalism gives rise to legalism". He went on to say that "the framers of our Constitution were aware that legalism and rigidity are the inevitable consequences of federalism".[10]

To buttress the point that a Federal Constitution must be written and rigid, Wynes writes that:

> "The division of powers between the Federal and State governments being of the essence of federalism, it follows that the Constitution of the Federal State must almost necessarily be of the written and rigid or controlled, type".[11]

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9. S. 1.

10. SEERVAI H.M. (1975) Constitutional Law of India, Sweet & Maxwell Ltd. London p. 9.

11. Ibid. p. 2.

It is said that a Constitution may be federal in form but in practise it may operate deviating from the federal principle. For instance the Australian Constitution which describes itself as a Federal Constitution and also contains federal principle has been working in such a way that infact the Federal Government has assumed superiority over the State Government, more particularly because of its financial resources and the increased financial dependency of the State on the Federal Government. In this respect it is questionable whether the 1979 Constitution of Nigeria has practised the federal principle contained therein completely due to the financial over dependence of the States on the Federation.

As in the words of Sawer (1967):

> ".... 'true' federalism requires that each unit of government should be financially self-sufficient".[12]

These observations equally apply to the 1979 Constitution of Nigeria as well as its precedessor, the 1963 Constitution.

(b) A WRITTEN AND SUPREME CONSTITUTION

It is essential that if a government is to be regarded as a federal government its Constitution must be written and the Supreme law of the land. This is in order to ensure the successful working of the federation.

As Wheare (1958) puts it:

> "It must follow that Constitutions which are federal, are also supreme and written, and, in the sense of the term as Bryce used it rigid".[13]

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12. Sawer G. (1967) Australian Federalism on the Courts, Cambridge University Press New York, p. 1.
13. Wheare K.C. (1958) Modern Constitutions, Oxford University Press London p. 30.

The Constitution of the United States which is regarded as the most Federal Constitution by Wheare is written and is the Supreme law of the United States. According to Mason and Beaney (1968) "The most distinctive feature of our Constitution (United States) is that it is law, paramount, Supreme law ....". They went on to say that "the Founding Fathers made the Constitution 'the Supreme law' of the land."[14]

The Indian Constitution which is a federal Constitution is also written. Thus Seervai (1975) says that "A Federal Constitution, with its distribution of powers, requires a written Constitution".[15]

Thus, the main aim of making Federal Constitutions, written and Supreme Constitutions is that since the Federation is formed as a result of the agreement between the federating units, it is essential that the terms of the agreement are reduced to writing in order to eliminate any ambiguity. The Constitution being the Supreme law of the land it means that any act of the Federal or State Governments which is in excess of the powers given to it by the Constitution will be declared void. The Federal Constitutions give the courts the power to sustain the supremancy of the Constitution.

The American Supreme Court in MARBURY v. MADISON[16] declared that a law violating a Constitution established by the people themselves could be considered by the judges as null and void.

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14. Mason and Beaney (1968) American Constitutional Law, Prentice - Hall Inc. New Jersey p. 15.

15. SEERVAI H.M. (1975) Constitutional Law of India, Sweet & Maxwell Ltd, London p. 9.

16. 1 Cranch 137, L. Ed. 60 (1803) 25.

The India Constitution also gives the power to assert the supremacy of the Constitution to the courts. Thus Seervai (1975) writes that "..... the established courts must decide whether a law violates constitutional limitations and declare it void to the extent that it does"[17].

The 1979 Constitution provides for the supremacy of the Constitution under Section 1. The Section provides that:

> "(1) This Constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
>
> (2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.
>
> (3) 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".

Subsection(1) asserts the supremacy of the Constitution. This subsection is similar to Article VI(2) of the United States Constitution which also asserts the supremacy of the Constitution. It provides that:

> "This Constitution and the Laws of the United States which shall be made in pursuance thereof... shall be the Supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding".

In addition, the specific provisions dealing with the jurisdiction of the Supreme Court, Court of Appeal and High Courts include constitutional matters. Section 6 which deals with judicial

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17. Ibid. p. 9.

power is wide enough to include constitutional matters.

There are no similar declarations in the Constitutions of Canada and Australia but in both countries the supremacy of the Constitutions has been the direct result of the application of the doctrine of ultra-vires, they being the enactment of imperial British Parliament.

Subsection (2) of the 1979 Constitution, is presumably a reassertion of the illegality of revolutions or coup d'etat as a means of changing governments. But this section, however could not in itself prevent the occurance of a coup as the civilian government was toppled in December 1983 in a coup led by the army notwithstanding the provisions of subsection (2).

Subsection (3) declares quite clearly that ... any law which is inconsistent with the Constitution shall be declared void. The courts apply the Constitution as law to cases before them and in the course of such application any law which contravenes any part of the Constitution will be regarded as inconsistent, and to the extent of that inconsistency, void. Thus in TONY MOMOH v. SENATE OF THE NATIONAL ASSEMBLY AND OTHERS[18], the provisions of Section 31 of the Legislative (Powers and Privileges Act Cap. 102 Laws) of the Federation of Nigeria and Lagos, 1958, which provided that court's process cannot be served within the Chambers or precincts of a legislative house while that house is sitting was held inconsistent with the provisions of Section 42 of the Constitution. Ademola J. (Lagos High Court) declared that:

> "It cannot but suffer the fate reserved for such legislation by the provision of Section 1 of the Constitution which proclaims the supremacy of the Constitution and declares void any law inconsistent with its provisions".

Thus from the above passage it will be presumed that the

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18. (1981) 1 N.C.L.R. 21.

Nigerian Constitution of 1979 like other Federal Constitutions gives the courts the power to reassert its supremacy.

(c) AMENDMENT OF THE CONSTITUTION

A Federal Constitution normally prescribes a special mode by which the Constitution can be amended or modified, which is different from the method of amending the ordinary laws. This peculiar feature makes the Federal Constitutions rigid. The amending process is always such that neither of the two governments has exclusive power to amend the Constitution. Thus Wynes has written that:

> "..... in order that the terms of the union may be adequately and permanently defined, the manner of apportionment of powers must be reduced to some definite and tangible form, not alterable by the central authority at will".[19]

In the United States the amendment of the Constitution may be proposed by the Congress at the instance of two-thirds of both Houses of Congress or on the applications of the legislatures of two-thirds of the States call a convention for proposing amendments. Amendments so initiated may be ratified either by the legislatures of three-fourths of the States or by Conventions in three-fourths of the States as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article,

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19. WYNES W.A. (1976) Legislative, Executive and Judicial Powers in Australia, Sweet & Maxwell Ltd. London p. 2.

and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.[20]

In Australia, the amendment of the Constitution requires that the law proposed for alteration must be passed by an absolute majority of each House of the Parliament after which within 2-6 months it is submitted to the referendum of the people; Or where the proposed law is passed by one House by an absolute majority and the other House rejects or fails to pass it or passes it with some amendments, if after an interval of three months the two Houses did not resolve their differences, then the Governor-General may submit the proposed law of the first mentioned House to a referendum of the people. If in this referendum in a majority of the States a majority of the electors voting approved the proposed law then it shall be presented to the Governor-General for the Queen's assent; provided that no alteration diminishing the proportionate representation of any State in either House of the Parliament or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.[21]

The 1979 Constitution of Nigeria gives the amending Power to the Federal and State Legislatures, under Section 9 of the Constitution. Any Amendment passed by the National Assembly by ⅔ majority in each House would become law only when it is

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20. Article V of the Constitution of the United States of America, 1787.

21. Section 128 of the Commonwealth of Australia Constitution Act 1900.

approved by the legislature of ⅔ of the States. The ⅔ majority requirement in case of National Assembly has been raised to 4/5 for amending Chapter IV i.e. fundamental rights, the Section dealing with creation of new States (Section 8) and Section 9 which deals with the amending procedure. There was no occasion to invoke the amending process of the 1979 Constitution during the Second Republic, therefore, it is academic to speculate whether in practise it made the Constitution rigid or flexible.

From the above discussion on the amendment of the Constitution, the Constitutions of United States, Australia and Nigeria would be classed as rigid Constitutions.

The amending provision in the Federal Constitutions that have the effect of making the Constitution rigid is inevitable. This is because if the Constitution is made flexible or easy to amend by either of the two governments, the government which has the power to effect the amendments will make amendments that will favour it and this might bring an end to Federalism in that country as the other government might not readily accept such amendments.

(d) EVOLUTION OF THE FEDERAL SYSTEM IN NIGERIA

The Federal system of government which was introduced in Nigeria by the 1954 Constitution under the governorship of Sir John Macpherson, had since been regarded as the best system for the country by the generality of Nigerians. Those who advocate for a federal system maintained that since Nigeria is a country made up of hetrogenous cultural and ethnic groups, it is only under a federal system that the various groups will be recognised and preserved in order to form one united country. To drive home this point Lewis (1965) maintains that "A Society which has a very wide geographical differences can live together at peace only in a Federal frame-work".[22] The

22. Lewis, W.A. (1965) Politics in West Africa G. Allen & Unwin London p. 53.

Nigerian Community being sharply divided on the basis of tribe, language and religion it is difficult for a unitary system to work successfully in the country. This situation is similar to that which exist in India where economic and cultural differences dictate separate treatment of the same problems. To solve the Indian problem Glendhill (1951) maintained that "either devolution or federalism is essential"[23].

Sir John Macpherson, unlike Governors before him, did not impose the Federal Constitution on the people of Nigeria but consulted and sought their advice on the system of government they felt is best for the country. He did this by sending questionnaires to the people in the villages and divisional meetings, provincial, regional and national conferences. The outcome of the questionnaires which left a choice between a federal system and a unitary system was that all the delegates at the various meetings and regional conferences opted for a federal system, though there were a few dissenting voices that recommended the unitary system.

Since the adoption of federalism by the 1954 Constitution, the Federal system had been experimented in subsequent Constitutions. The perfect Federation was experimented in the 1960 and 1963 Constitutions. It was further strengthered in the 1979 Constitution in the light of experiences of the working of the Federation under the 1960 and 1963 Constitutions. It therefore looks as if federalism is the only answer to Nigeria's politics, as an attempt to form a national government under the government of Major General Aguiyi Ironsi failed. This Head of State after toppling the civilian government of the First Republic felt that the country will be properly united under the unitary

23. Glendhill, A. (1951) The Republic of India, Stevensons Ltd., London p. 8.

system. He thereby introduced the unitary system of government under decree No. 34 of May 1966.[24] This decree made far reaching changes in the Constitutional and political set-up of the country. It ended the federal status of the country and converted it to a unitary system. The Federal Military Government and the Federal Executive Council became respectively the National Military Government and the Executive Council. The Regions were no longer to be called Regions but Groups of Provinces. In addition, the Military Governors were to lose their powers of issuing edicts and all previous edicts were converted to decrees. All the political parties and tribal groups were banned. Finally the five public services were unified under a National Public Service Commission. This decree mainly provoked people from the Northern part of the country and it led to violence in this part of the country and another coup in which General Ironsi was killed. After the over throw of the government of General Ironsi, General Gowon, the new Head of State abolished the unitary system and restored federalism. He made it clear:

> "that a country as big as Nigeria and comprising such diversity of tribes and cultures cannot be administered under a unitarian form of government".[25]

The killing of the easterners in the North after the adoption of the unitary system led the Eastern Government of Col. Odumegwu Ojukwu to suggest the adoption of a loose Federation with a right to the Regions to veto Federal Executive and Legislative Acts. This suggestion was not adopted instead

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24. Section 6 of the Constitution (Suspension and Modification) No. 5 Decree 1966.

25. Kirk-Greene A.H.M. (1971) Crisis and Conflict in Nigeria 1966-70, Vol. I Oxford University Press Oxford p. 280.

the Federal Military Government, sensing that the threat of secession by the East was imminent, on May 27, 1967 declared a State of Emergency and announced the splitting of the country into 12 States. This notwithstanding the East declared itself the 'Republic of Biafra' on May 30 1967. This secession finally led to a 30-month civil war, because the Federal Government was not preparped to accept this impedement to the continuance of a Federal system for the whole country.

Thus after the abolition of the unitary system introduced in 1966 and the restoration of federalism, Nigeria has since been fully committed to federalism. General Murtala Muhammed in his announcement to the Constitution Drafting Committee (C.D.C.) in 1975 maintained that "we are committed to a federal system of government".[26]

The Constitution Drafting Committee in its report noted that since 1954 Nigeria has had a Federal Constitution including provisions for fundamental rights.[27]

In the Constitutent Assembly this view was expressed on the federal system of government:

> "Concerning federalism, what should be noted is that about eighty years ago this country consisted of kingdoms and empires which were independent in their existence with their different social

26. Report of the C.D.C. Federal Ministry of Information Lagos 1976 Government Press p. XIII.

27. Report of the C.D.C. containing the Draft Constition Vol. I (1976) Federal Ministry of Information Printing Division Lagos, p. 111.

> and political aims and aspiration and the basic tenets of these qualities are still with us. In the past we have been trying to contain them and we are still trying to do so. The main aim of this country should be to harmonise these various forces and use them, contain them, and produce a united and powerful country. And to do this there is no other answer but federalism".[28]

From the above two views it could be said that the Constitution Drafting Committee and the Constituent Assembly were also committed to federalism as the Federal Military Government. But it should be noted that though the federal system is the most suitable system of government for Nigeria, considering its hetrogenous nature, it has some inherent problems which have been discussed in detail in the Chapters below.

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28. Proceedings of the Constituent Assembly Vol. I (1977) Federal Ministry of Information Printing Division Lagos p. 1509.

CHAPTER TWO

THE STRUCTURE OF THE FEDERATION UNDER THE 1979 CONSTITUTION

The Federal Republic of Nigeria is a Federation consisting of States and a Federal Capital Territory. This is provided for under Section 2(2) of the 1979 Constitution. The Constitution went further under Section 3(1) to declare that:

> "there shall be 19 States in Nigeria, that is to say, Anambra, Bauchi, Bendel, Benue, Borno, Cross River, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers and Sokoto".

With the 19 States and the Federal Capital Territory it therefore means that Nigeria is made up of 20 autonomous governments. This notwithstanding Nigeria should be regarded as one sovereign State. This is because the Constitution has clearly declared in Section 2(1) that:

> "Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria".

The Federation of Nigeria which today consist of 21 States experienced a series of subdivisions between 1914 to 1987. The subdivision of Nigeria into Regions or States between this period came as a result of strong pressure from the different groups demanding them.

Nigeria which formally consisted of 3 basic units, experience its first subdivision in 1939 when the Southern Nigeria was divided into the Western and Eastern Provinces. The main aim of this subdivision was to bring the government nearer to the people in the Western part of Nigeria. This

was because the capital of the Southern Province which was then in Enugu meant that communication between the Western Region and the seat of government was handicapped as the postal system through the railways had to go via Kaduna.

The next subdivision was in 1963 when the Mid-Western Region was created from the Western Region. This creation came in response to the strong pressure from the minorities in the Western Region. They justified the creation of Mid-Western Region now Bendel State on the ground that they have been cheated in the scheme of things. They pointed out that they were denied fair representation in the civil service, political appointment, the siting of government projects, the award of scholarship and the distribution of amenities. Thus they maintained that there was absence of even development.

The subdivision of Nigeria into 12 States in 1967 by the Federal Military Government came with a view to achieve unity and stability in Nigeria.[1] The Federal Military Government felt at the time that with the subdivision of Nigeria into 12 States the Eastern Region would drop the threat of secession which was then imminent.

The creation of more States in Nigeria came up again in 1976 when the Federal Military Government divided the country into 19 States. What prompted this creation was pressure from the different ethnic groups that felt neglected in the distribution of amenities or being dominated by the majority ethnic

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1. Kirk-Greene, A.H.M. (1971) Crisis and Conflict in Nigeria. A documentary source book 1966-69 Vol.I, Oxford University Press, London p. 444.

groups and also the feeling on the part of the Head of State that creation of new States in 1976 would enhance future political stability in the country.[2]

After the creation of new States in 1976, the Head of State made it clear that its administration would not entertain the demand for the creation of more States. The Federal Military Government felt that the 19 States created were sufficient and will solve the economic and political problems in Nigeria, since it was in line with the recommendations of the Irikefe Panel on creation of States. Thus in his broadcast to the Nation on Tuesday February 3 1976, the Head of State told the State Governors to promote even development in their respective States. He said:

> "It was clear to the Supreme Military Council from the finding in the Panel's report, that part of the agitation for the creation of State was a result of bad government especially at the State level".[3]

He continued:

> "The new administration is determined to entrench good and purposeful government. To this end, all State administrations, old and new must henceforth seek to promote even development within their respective States and allay the fears of minorities through fairness and justice in all governmental matters".[4]

Since the Federal Military Government felt that the creation of the 19 States was sufficient to solve Nigeria's

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2. Broadcast by Head of State February 3 1976 published in Daily Times February 4 1976 pp. 3-9.
3. Broadcast by the Head of State on February 3 1976 published in Daily Times February 4 1976 pp. 3-9.
4. Ibid.

economic and political problems, the Head of State asked the Constitution Drafting Committee to impose strict constitutional procedure for the creation of more States, in the Draft Constitution. The strict constitutional procedure provided for in the Draft Constitution was finally adopted in the 1979 Constitution under Section 8(1). The Section provides that:

> "An Act of the National Assembly for the purpose of creating a new State shall only be passed if-
>
> (a) a request, supported by at least two-thirds majority of members (representing the area demanding the creation of the new State) in each of the following; namely-
>
> (i) the Senate and the House of Representatives;
>
> (ii) the House of Assembly in respect of the area, and
>
> (iii) the local government Councils in respect of the area,
>
> is received by the National Assembly;
>
> (b) a proposal for the creation of the State is thereafter approved in a referendum by at least two-thirds majority of the people of the area where the demand for creation of the State originated;
>
> (c) the result of the referendum is then approved by a simple majority of all the States of the Federation supported by a simple majority of members of the House of Assembly and;
>
> (d) the proposal is approved by a resolution passed by two-thirds majority of members of each House of the National Assembly".

The failure of the 19 States to satisfy the agitators of new States made it possible for the demand for more States to be revived particularly during the civilian regime, although the Federal Military Government had stated that it will not entertain future demands for the creation of States. Thus Joye and Igweike (1982) wrote that:

> "In each of these instances the creation of new Regions or States came in response to strong pressures from various groups in society demanding

> them. In no instance did the increase fully satisfy the demands for new governmental units. Consequently, the demands for more States did not cease with the coming into being of the 1979 Constitution. During the first year of its existence Nigeria experienced a steady increase in such demands".[5]

The stringent constitutional provision for the creation of more States under Section 8(1) notwithstanding, it was noticed that during the Second Republic there were proposals for creation of 51 more States, though the National Assembly did not deliberate over the proposals before the army came into power again in December 1983.

The demand for the creation of new States was revived during the present Military Regime. From the above discussions it may be noticed that the demands for more States have been made because of the desire of each area or ethnic groups to bring the government nearer to its people, to ensure even development, eliminate domination and to ensure political and economic stability in the area concerned.

Thus the States created were designed to comply with these demands made by agitators for new States. In no instance did the increase fully satisfy the demands for new governmental units. Thus the Cookey Political Bureau set up by General Babangida to fashion out a new political order for Nigeria recommended the creation of 6 more States before 1990. One of the factors they considered was the objective of the Irikefe Panel which recommended the 19 - States federal structure in 1976. The Irikefe Panel had noted that the creation of States should among other things, seek to establish an

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5. Joye E.M. and Igweike K. (1982) Introduction to the 1979 Nigerian Constitution. The Macmillian Press Ltd. London p. 99.

institutional framework which would ensure rapid economic development among all ethnic groups, increase participatory democracy as an insurance against political instability, promote and institutionalise a balanced and stable Federation and, finally, remove the fears of the domination of the minorities which had tended to slow down economic and political development in the country.[6] The Bureau also noted that unlike the situation in 1975 when the agitation to split the States generated great hostilities among the component communities, there is unanimity today among the people that splitting the States along the lines recommended by the Irikefe Panel in 1975 is the only guarantee for even development and political peace in the area.[7] Out of the 6 new States viz: Katsina, Akwa Ibom, Delta, Wawa or Enugu, Kogi and Sardauna recommended by the Bureau the Federal Military Government created only two new States which are Katsina and Akwa Ibom States thus making the number of States in Nigeria 21.

2.1 FEDERAL AND STATE GOVERNMENTS USING ONE CONSTITUTION

The 1979 Constitution which is the only Constitution for the 20 independent governments (the Federal Government and the 19 State Governments) which existed in Nigeria between 1979 - 1983, has two legislative lists scheduled to the Constitution (2nd schedule) under which both governments can exercise their powers. The first list is the Exclusive Legislative List which is exclusive to the Federal Government.

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6. Federal Military Government White Paper on Report of Panel on Creation of New States. Federal Ministry of Information (1976) p. 18.
7. Federal Military Government White Paper on Report of the Political Bureau. Federal Ministry of Information (1987) p. 30.

The second list is the Concurrent Legislative List concurrent to the Federal and State Governments.

The National Assembly may make laws for the peace, order and good government of the Federation or any part thereof in respect to any matter that is included in the two Legislative Lists. (Section 4(2), (4). A State Legislature on the other hand may legislate on any matter not on the Exclusive List (Section 4(3). This means that the States can legislate on matters on the Concurrent Legislative List as well as on all other matters which are not on either of those two Lists, except where the matters are "incidental or supplementary" to matters on the Exclusive List. It is important at this juncture, to note that where the National Assembly and a State House of Assembly both legislate on an item in the Concurrent List, the law made by the National Assembly shall prevail and the State law shall, to the extent of its inconsistency be void (Section 4(5).

As far as conflicts between the State and Federal laws are concerned this will not arise in the case of items in the Exclusive List because the Constitution has emphatically declared that the National Assembly has the power to make laws for the peace, order and good government of the Federation with respect to any matter in the Exclusive List, save as otherwise provided in the Constitution, and that this power shall be to the exclusion of the Houses of Assembly of States (Section 4(3). But since the National Assembly and the Houses of Assembly of States can both legislate on matters on the concurrent list, conflict is bound to arise between the Federal

and State laws. In order to reduce possible conflict and obviate the necessity of applying the doctrine of covering the field, the Concurrent List has enumerated the twelve matters contained therein and also went on to define the respective extent of Federal and State powers in respect of these matters. In respect of Concurrent subjects in the body of the Constitution e.g. Section 11, where conflict arise between the Federal and State laws 'repugnancy' will apply.[8]

The 1979 Constitution under Section 5 provides that the executive authority of the Federal Government and the executive authority of the State Government shall extend to the execution and maintenance of the Constitution. But the Section went on to provide that the executive powers of the State Government shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation or to endanger the continuance of a Federal Government in Nigeria. This proviso seems to suggest that the power of the State Government to execute the provisions of the Constitution is restricted. This places the Governor of the States in a position of inequality with the President even within their own area of authority. This is because the Constitution stipulates that the executive powers of the State shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation.

For the amendment of the Constitution, the 1979 Constitution gives such amending power to both the Federal and State

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8. Attorney-General Ogun State v. Attorney-General of the Federation (1982) I2 SC p. 13.

Governments, under Section 9. Thus in accordance with the tenets of federalism the Constitution does not give such a power to either the State or Federal Government alone.

The main reason why Nigeria a Federal State adopted a single Constitution for the whole country a practise different from what obtains in other Federations like U.S.A., Canada and Australia, is because the Nigerian Federation was formed by devolution from a unitary State. Thus when a Federal system was established for the country in 1954 a single Constitution was adopted for the Federal Government and the new Regional Governments that were created. This Constitution defined their respective powers. But in 1960 and 1963 Nigeria copied the practise of the other Federations whereby separate Constitutions were established for the Federal Government and each of the Regional Governments. The 1979 Constitution reverted back to the 1954 position of adopting a single Constitution for the country. The Constitution specified the powers of the State and Federal Governments. Matters relating to the Federal and State Governments but not common to both, though dealt in the same Chapter were treated separately in different Sections. But matters common to both the Federal and State Governments were dealt with under the same Sections e.g. division of powers, fundamental objectives and directive principles, citizenship and fundamental rights.

2.2 THE FEDERATION UNDER THE 1979 CONSTITUTION: ITS RATIONALE AND SHORTCOMINGS

Nigeria opted for a federal system because of its mult-ethnicity and heterogenous tribes. The First Republic failed

due to the contemptuous disregard of the Federal Constitution and the violations of its fundamental guarantees.

The 1979 Constitution taking care of the above problem provided in Chapter II the fundamental objectives and directive principles of State policy, which clearly set out the parameters of government and with the hope that its policies and actions can generate a spirit of co-operation, unity and progress among the people of Nigeria. The fundamental objectives are defined as the directive "principles" laid down by the policies which are expected to be pursued in the efforts of the nation to realise its national ideals. Thus Section 15 of the Constitution provides that "the motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress". Section 15 subsection (2) went on to provide that national integration shall be actively encouraged. The State shall also foster a feeling of belonging and involvement among the various peoples of the Federation, so that loyalty to the Nation shall over-ride sectional loyalties (Section 15 (4). This Section was enshrined into the Constitution because promotion of loyalty to the Nation which transcends sectional loyalties is a peculiar feature of federalism.

On social objectives of the country it is the duty of the State to direct its policy towards ensuring that all citizens without discrimination on any ground whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment.

The 1979 Constitution is mainly concerned with the promotion of national unity and the command of national

loyalty. This it did by incorporating into the Constitution the 'federal character principle under Section 14(3). This could only be achieved if there is no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies. With this objective of consolidating the unity of the country, the State power is distributed among the Federal Government and the 19 State Governments. The operation of the 'federal character principle in practical terms was seen in the appointment of Ministers, special advisers and ambassadors during the Second Republic. The Federal Government made it a point of duty to appoint at least one Minister from each of the 19 States of the Federation.

The Federal character principle is defined in Section 277 as "the distinctive desire of the people of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation as expressed in Section 14(3) and (4) of this Constitution". In application of the Federal character principle enshrined in the Constitution each State of the Federation is given a representation in the federal cabinet and in some of the most sensitive federal commissions. To abide by the principle of the federal character the Federal Government must ensure that the strategic departments and functions of government are not concentrated among people from a particular Section of the country. Only when this is achieved can it be said that there is "no predominance of persons from a few States or from a few ethnic groups". The most significant provision on the Federal character principle is that the Presidency shall not

be monopolised by one Section of the country. The National Assembly under Section 199 is empowered to ensure that with regard to the armed forces, the composition of the officer's corps and other ranks shall reflect the federal character of Nigeria (Section 197). The President is given power to appoint the Secretary to the Government of the Federation, Head of the Civil Service of the Federation, Ambassadors, High Commissioner or other principle Representatives Abroad, Permanent Secretary or other Chief Executive in any Ministry or Department of Government of the Federation. In exercising this power of appointment, the President shall have regards to the federal character of Nigeria and the need to promote national unity (Section 157).

The First Republic collapsed because the politicians then were motivated by their own selfish and personal interest rather than national interest in the running of the affairs of the country. The 1979 Constitution in recognition of this has laid down provisions which will ensure that the welfare of the people shall be the primary concern of the government and that the government shall be responsible and accountable to the people. To achieve this the government was to provide shelter, good roads, medical and health care facilities, social amenities and free education at all levels. Thus during the Second Republic the Federal Government embarked in the building of low-cost houses through out the 19 States of the Federation. It also maintained the federal roads within the States. The Federal Government provided free and universal primary education which is compulsory. Some States i.e. Lagos, Oyo, Ondo, Ogun and Bendel operate free education at all levels. But because University education is mainly

within federal control, bursaries are given to undergraduates from these States by their State Governments to cover their expenses in the Universities.

Under Section 204 , the 1979 Constitution provides that the programme as well as the aims and objects of a political party must conform with the provisions of Chapter II of the Constitution. The political parties shall not employ the use or display of physical force or coercion in promoting any political objective.

After our ugly experience during the First Republic where government officials abused the administration of government for amassing of personal wealth, a code of conduct was established under the 1979 Constitution to ensure that the administration of government was no longer abused for the amassing of personal wealth. Thus a government official was prohibited from accepting any gift or benefit for the discharge or non-discharge of his duties.

The fundamental human rights are enshrined into the 1979 Constitution in recognition of the centrality of man's humanity. The Constitution guarantees various rights but for the purposes of this thesis we are only concerned with those human rights guaranteed by the Constitution that promote Federation, co-operation and national unity. These are (a) Right to freedom of movement (Section 38) and (b) Right to freedom from discrimination (Section 39). The human rights guaranteed by the Constitution are subject to reasonable restrictions which the State may by law impose in the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedoms of others.

For instance Section 38 which guarantees right to freedom of movement sets out two grounds under which a persons' movement maybe restricted. The Section which provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part and that no citizen of Nigeria shall be expelled from Nigeria or refused entry into Nigeria or exit from it (Section 38(1), went on in subsection (2) (a) and (b) to provide the instances when a person's movement can be restricted. Subsection (2) (a) provides that the right to freedom of movement as provided in Section 38(1) will not invalidate any law that is reasonably justifiable in a democratic society which imposes restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria. Subsection (2) (b) provides that Section 38(1) does not invalidate any law that makes possible for the removal of a person from Nigeria to another country to be tried for any criminal offence or to serve imprisonment in execution of the sentence of a court of law in respect of a criminal offence for which he has been found guilty. But there must be a reciprocal agreement between Nigeria and such other country before this subsection can be applicable. As regards this right the question, whether the seizure of a citizen's passport violates the right to freedom of movement? will therefore arise. In SHUGABA v. MINISTER FOR INTERNAL AFFAIRS[9], the plaintiff had been deported to Chad by the Federal Government on the ground that he was not a Nigerian citizen. The State High Court of Maiduguri held that he was a Nigerian

9. (1981) 1 N.C.L.R. 25.

and that the deportation order was a violation of his freedom of movement. In the course of the trial, his passport had been seized and on application for its release, the Court held that the seizure of his Passport would affect his freedom of exit from the country and therefore constitutes a violation of the right to free movement.

Freedom from discrimination which is guaranteed under Section 39 of the Constitution is also subject to reasonable exceptions stated in Section 39(3). The section provides that different treatments should not be afforded to different persons, such treatments attributable wholly or in part to their respective descriptions by race, tribe, place of origin political opinion or sex, whereby persons of such description are not made subject or accorded privileges which are not accorded to persons of another such description (Section 39(1). Section 39(2) prohibiting discrimination based on the circumstances of one's birth is generally believed to be an attempt to remove any disability attached to illegitimacy. The guarantee against discrimination does not, however, prevent the government from implementing special programmes and measures for the assistance of specific classes of persons who may suffer from particular disabilities or disadvantages.

The 1979 Constitution established an executive Presidency and governorship for the country. The main aim for doing this is to ensure stability in the country and to avoid the conflict of authority and the unnecessary complexity and uncertainity in government relations that are peculiar to the system of separation between a titular Head of State and Executive Head

of Government as was the case in the 1963 Constitution. Thus with the establishment of executive President and Governors, the 1979 Constitution recognised the need for effective government. For if the executive power is placed in many hands and therefore subject to many wills, if disunited, will create weakness in a government, and to unite those several wills, and reduce them to one, will consume time and cause delay.

The President nominates the Ministers of the Government of the Federation subject to the confirmation of the Senate provided that the President shall appoint at least one Minister from each State, who shall be an indigene of such State (Section 135).

The 1979 Constitution recognised economic development as the paramount need of the country. In the economic field the predominating power over economic affairs is at the centre. This notwithstanding it should be noted that the economy of the country is one and indivisible. The main aim for the subdivision of Nigeria into States was to create new centres for development equiped with the central powers of a State Government. The undue centralisation of power in the Federal Military Government during the military regime made the States subordinate to the Federal Government. But the 1979 Constitution enables the State Governments to come into their own as centres for development, with a will and authority of their own rather than as mere appendages of the Federal Government. A new revenue allocation formula is needed to ensure that the State Governments secure adequate independent revenue for the implementation of developments within their respective territories.

The 1979 Constitution established a single police force styled the Nigeria Police Force for the whole country. This is a departure from the position under the 1963 Constitution which permitted the legislature of a Region to make provision for the maintenance by any Native Authority of a police force under the Native Authority Police (Section 105(7).

The Constitution established for the Federation the following bodies, namely:-

(a) Council of State;
(b) Federal Civil Service Commission;
(c) Federal Electoral Commission;
(d) National Defence Council;
(e) National Economic Council;
(f) National Population Commission;
(g) National Security Council and
(h) Police Service Commission (Section 140).

The President is empowered to appoint the Chairmen and members of these bodies but subject to the confirmation of the Senate. But in exercising his power to appoint a person as Chairman or member of the Council of State, the National Defence Council or the National Security Council, the President does not require to obtain the confirmation of the Senate (Section 141(2). In the case of the Federal Electoral Commission, the Federal Judicial Service Commission or the National Population Commission, the President shall consult the Council of State (Section 141(3).

The States of the Federation had equal representation in these Federal Executive bodies and thereby were placed in a position to exert influence on the formulation of federal policies and to protect the interest of their respective

States. The Council of State had on it all the Governors of the States. The National Economic Council comprised inter-alia the Governors of all the States and the Federal Electoral Commission and the National Population Commission comprised of members inter-alia one person from each State.

The States of the Federation have pre-dominance say in the amendment of the Constitution and in the creation of more States (Sections 8 and 9). No amendment of the Constitution can be passed without the approval of the State legislatures of at least ⅔ of all the States. For the creation of new States the approval of majority of all the States of the Federation is a must among other conditions. Any treaty concluded by the Federal Government in respect of matters not included in the Exclusive Legislative List of the Federation require ratification by a majority of all the Houses of Assembly of the States.

The State executive and the legislatures were independently constituted and exercised their respective powers and functions without any control, influence or interference from the Federation. This was clearly illustrated in the Public Order Case[10] where the Supreme Court held that a federal enactment cannot impose powers or duties on a State Government.

Although the Judges of the High Courts are appointed by the respective States the Constitution did not provide for a dual system of courts. The Supreme Court and the Federal Court of Appeal have appellate jurisdiction in respect of both Federal and State matters. But in the appointment and removal

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10. Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 1-2 SC. 13.

of judges of these courts the States have no say. The State High Courts likewise have jurisdiction in respect of both Federal and State matters except, in respect of those matters brought within the perview of the Federal High Court. The same is the position in respect of subordinate courts.[11]

Section 44 of the Constitution provides that the Senate shall consist of 5 Senators from each State. Thus the States are equally represented in the Senate. This is in accordance with the federal principle.

When Nigeria adopted the 1979 Presidential Constitution it was praised by many people, Nigerians and foreigners alike. They felt that the 1979 Constitution which is similar to the U.S. Presidential Constitution will ensure the practise of democracy in the country. The multiparty system it adopted gave it a democratic out-look. Because the Presidential Constitution has worked successfully in United States it was felt that Nigeria is firmly anchored in the best traditions of Western democracy. Thus this concealed some of the weaknesses within the system. When these weaknesses were finally noticed by some Nigerians it was thought that the best thing to do was incisive reforms pushed through a dominant political party with a national spread. But before the reform movement could get started the government was overthrown in December 1983.

The judiciary was politicised through a system of independent State judiciaries. Each party in power at the State sought to create a judiciary that will do its bidding.

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11. See for a detail discussion on it in Chapter III.

The executive authority of the Federal Government and that of the State Government both extend to the maintenance and execution of the Constitution (Section 5). But the Section in its proviso says that the executive powers of the State Government shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation or to endanger the continuance of a Federal Government in Nigeria. "This proviso" according to Nwabueze (1983):

> "May be said to limit a State Government to the execution of provision of the Constitution relating to that government, but the Federal Government is not similarly limited".[12]

Since this proviso limits the executive powers of or State Government it is imperative that provisions such as this which tends to make the Federal Government superior to the State Government should be avoided. This is because in a federal system the Federal Government and State Government are equals.

The creation of a single police force for the whole country was criticised by some Nigerians. They maintained that the police was politicised. The provision in the Constitution that gives the President, to the exclusion of the State Governors, the power to appoint and remove the Inspector-General of Police, the Head of the Nigeria Police Force is said to be incompatible with the tenents of federalism. Furthermore the powers of State Governors

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12. Nwabueze B.O. (1983) Federalism in Nigeria under the Presidential Constitution, Sweet & Maxwell Ltd., London P. 36.

were undermined in their dealings with the States Commissioner of Police, in that they are not empowered to appoint or remove the Commissioner of Police. The Governors power over the Commissioner of Police was further weakened in that the Commissioner is not accountable to the State Governor.

The provision of the 1979 Constitution that gives the President power to appoint the Chairman and members of the Federal Electoral Commission (Fedeco) gives the idea that Fedeco which is suppose to be an independent body is under the control of the President. This is because there is a tendency for an office holder to favour his appointer especially if he is desirous for re-appointment.

It is imperative to note here that one of the factors responsible for the confrontational attitude that characterised Federal and State relations in Nigeria is the absence of a truly national party. Without a truly national party cutting across tribal, cultural and linguistic divisions, federalism will continue to be viewed as "a bargaining arrangement for interest groups". As Watts (1966) Observed:

> "Where a single party has been able to aggregate diverse interests and to dominate both central and regional elections so that it controls most governments at both levels, national cohesion and co-operation between governments have been facilitated. This has been the situation in India, Malaya and until 1954 Pakistan".[13]

In recognition of the fact that a national political party will go a long way in unifying the country and eliminating ethnic politics the 1979 Constitution provided under Section

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13. Watts (1966) New Federation Experiment in the Common Wealth Hutchinson Educational, London p. 337.

202 that:

> "no association by whatever name called shall function as a political party unless
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> (a) the names and address of its national officers are registered with the Federal Electoral Commission;
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> (b) the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, sex, religion or ethnic grouping;
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> (c) a copy of its Constitution is registered in the principal office of the Commission in such form as maybe prescribed by the Commission.
>
> (d) any alteration in its registered Constitution is also registered in the principal office of the Commission within 30 days of the making of such alteration.
>
> (e) the name of the association its emblem or motto does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and
>
> (f) the headquarters of the association is situated in the capital of the Federation".

The above Constitutional Provision notwithstanding the political parties that emerged during the Second Republic were tribally based. This, had,thus, created the problem of confrontation between some of the State Governments and the Federal Government. The declaration of Alhaji Shehu Shagari as the winner of the Presidential election in 1979 was not accepted by the other political parties i.e. UPN, NPP, PRP and GNPP. The feeling of resentment which this created in them had thus embittered their attitude to the NPN - controlled Federal Government right from the very beginning, to the extent that the UPN - controlled State

Governments initially refused to display the photograph of Alhaji Shehu Shagari in public buildings in their States. This and many other confrontational stance (discussed in the Chapters below) of some State Governments towards the Federal Government made it impossible for the federal system to have a fair chance in Nigeria during the Second Republic.

Another weakness of the 1979 Constitution was that it did not provide for machinery that will monitor the performance of the political parties and punish shortcomings. Party indiscipline was thereby encouraged. The national executives of some parties were undermined in their relationship with the State Governments controlled by rival political parties. The Unity Party of Nigeria (UPN) withdrew the State Governors of both the GNPP and the PRP from their respective national executives. The UPN also turned the representatives of the GNPP and PRP in the National Assembly against the national leadership of their parties. The main aim for doing all these was to paralyse the NPN - controlled Federal Government.

Since the NPN - controlled Federal Government had a minority in the National Assembly the opposition parties in the majority were able to make things difficult for it. This was done by blocking executive measures or subjecting them to long delays. Though the 1979 Constitution established the Council of State and the National Economic Council that handled economic matters as Constitutional forums where economic and political problems between the Federal Government and State Government are solved, this did not help matters. This was because the progressive parties made up of the UPN, NPP, PRP and GNPP had 12 delegations,

leaving the NPN - controlled Federal Government with only 8 delegations on both Councils. Due to this the Federal Government policies had to be revised or some concessions made to the State Governments of the opposing groups, in order to minimise the delay and ensure that the policies are passed.

A mention of few examples will illustrate the above point.

1. The drastic drop in both world sales and prices of crude oil came to the fore in July 1981 when Nigeria only exported 771,000 barrels of crude oil per day compared to 2,381,000 barrels per day in July 1979. The Central Bank carried the news in its quarterly report for October/ December 1981. This notwithstanding the National Assembly only gave the President the power to deal with the matter on 20th April 1982, only after a secret session of the National Assembly, where the legislators were persuaded after being informed of the disastrous foreign exchange situation the nation was facing.

2. The Revenue Allocation Act took 6 months to pass through the National Assembly. Even when this Act had passed through the National Assembly, the Governor of Bendel State on behalf of the opposition parties challenged the validity of the Act in the Supreme Court,[14] where it took the court some months to decide in favour of the plaintiffs. Thus it took almost a year before a valid Revenue Allocation Act could be enacted.

3. The Electoral Act is another example. It took one year to pass through the National Assembly. Infact the Act

14. Attorney-General of Bendel State v. Attorney-General of the Federation and Others (1981) 10 SC 1.

only passed through the National Assembly when Fedeco complained publicly that it will not be possible to conduct the 1983 elections if the Act was not passed in due course.

4. The passage of the Code of Conduct Bill was blocked in the National Assembly through out the life of the Second Republic. The result was the absence of the anti-corruption authority to check the excesses of public office holders.

The New Nigerian carried the story of important Bills which would have improved the operations of some government departments and protect consumers interest but did not pass through the National Assembly because of undue delay in the National Assembly. Infact there were 15 of such bills including Nigeria Enterprises Promotion Amendment Bill, Nigeria National Petroleum Corporation (Reorganization) Bill, Nigerian Tourist Board Bill, Provident Fund Management Board (Amendment) Bill, Consumers Products Protection Authority Bill, Pre-Shipment Inspection of Imports (Amendment) Bill.

This Constitutional and political paralysis of the Federal Government, induced by obstruction or delay of executive measures ought to be avoided. This is because the time drag is bad for any system of government. It is infact disastrous for the political systems of developing States. The multi-party system is the breeding ground for this political paralysis of the Federal Government. It should be abandoned and a one-party system adopted because such a problem cannot arise under the one-party system.

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15. The New Nigerian, March 9 1984, p.1.

CHAPTER THREE

MACHINERY OF GOVERNMENT UNDER THE 1979 CONSTITUTION

3.1 THE LEGISLATURE

The National Assembly: The 1979 Constitution provides for a bicameral legislature at the centre for Nigeria. Thus under Section 43, the Constitution provides that:

> "There shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives".

In accordance with the features of Federalism members of the Senate are elected instead of being nominated. The Constitution in order to maintain equality between the States provided that each State shall elect a fixed and equal number of members into the Senate. Thus Section 44 provides that:

> "Subject to the provisions of Chapter VIII and other provisions of this Constitution the Senate shall consist of 5 Senators from each State".

The composition of House of Representatives is provided for under Section 45 which states that:

> "Subject to the provisions of Chapter VIII and other provisions of this Constitution the House of Representatives shall consist of 450 members".

Representation in the House of Representatives is based on population. It should be noted that the number of 450 members provided for under Section 45 is temporary and subject to any additions necessary when the new Federal Capital Territory becomes operative.

The two Chambers are considered to serve as a check on each other and prevent the passage of ill-considered legislation

The legislative power of the Federal Government is specifically granted to the two Houses which comprise the National Assembly. This is provided for in Section 4(1) which stipulates that:

> "The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives".

This power is exercised by the passing of Bills.

House of Assembly: Unlike the centre the legislative House in the States is characterised by the introduction of unicameral legislature. This introduction is a departure from previous practise. Section 84 of the 1979 Constitution provides that:

> "there shall be a House of Assembly for each of the States of the Federation".

Section 85 states that:

> "Subject to the provisions of the Constitution a House of Assembly of a State shall consist of three times the total number of seats which that State has in the House of Representatives, and the members of a House of Assembly shall be elected in accordance with the provisions of this Constitution".

Due to the fact that the Federal Electoral Commission fixed the number of Constituencies for each State based on population, the size of each State's House of Assembly was related to its recorded population. The legislative power of the State Government is granted to the House of Assembly as provided in Section 4(6) which states that:

> "The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State".

The legislatures in the States being unicameral the only Chamber of the House passes the Bill and then sends it for the Governor's assent.

The role of the legislature in a federal system of government is very important because the various activities of the Federal State are shared between the centre and the member-States. The form normally adopted is the allocation of matters of national concern to the Federal Government and matters of local concern to the State Governments. This has been done under the 1979 Constitution by the provision of two legislative lists, an Exclusive and a Concurrent List under the 2nd Schedule. Section 4 of the 1979 Constitution gives to the National Assembly exclusive and concurrent powers of legislation in respect of certain enumerated matters and the Houses of Assembly of the States have the residuary power. Section 4(3) provides that the National Assembly to the exclusion of the Houses of Assembly of States shall have the power to make laws in respect to matters in the Exclusive Legislative List. Section 4 gives both the National Assembly and the State Houses of Assembly the power to legislate over matters in the Concurrent List but provides that where the law of a State House of Assembly conflicts with that of the National Assembly validly passed, the law of the National Assembly shall prevail (Section 4(5).

Section 11 of the Constitution gives the National Assembly and the State Houses of Assembly the power to make laws with respect to the maintenance and securing of public safety and public order. But Section 11(4) went further to give a special power to the National Assembly alone which is that the National Assembly can make laws in respect of a particular State where the House of Assembly of that State is unable to perform its functions.

This power given to the National Assembly by Section 11(4), together with all the important functions of government contained in the Exclusive List effectively tilts the power structure in favour of the Federal Government. It is also indicative of the type of Federation intended, that is, a centrally strong Federation.

(a) FEDERAL AND STATE LEGISLATIVE POWERS OVER CONCURRENT MATTER

The main source of concurrent matters in the Constitution of 1979 is the Concurrent Legislative List. There are also other sources of Concurrent matters found in the body of the Constitution which are Sections 11, 5 and 149.

In respect to the Concurrent Legislative List Section 4(4) and (7) give both the National Assembly and the State Houses of Assembly the power to make laws with respect to matters included therein. Thus because the National Assembly and the House of Assembly both have the power to legislate over matters in the Concurrent List there is bound to be conflict arising between the Federal laws and the State laws. In order to reduce possible conflict and prevent the application of the doctrine of covering the field, the Concurrent Legislative List has enumerated the twelve matters contained therein and also went on to define the respective extent of Federal and State legislative powers in respect of the these matters. A typical example of this is seen under item B of the Concurrent List. Under this item the National Assembly is empowered to make laws with respect to antiquities and monuments in a State, with the consent of the State in which such antiquities and monuments are provided they are

designated by the National Assembly as National Antiquities or National Monuments. But the State House of Assembly may make laws for the State or any part thereof with respect to antiquities and monuments not so designated. This means that once an antiquity in a State with the Consent of the State has been designated a national antiquity, it falls within the exclusive control of the National Assembly even though it lies physically in the State. But without such designation, the National Assembly has no power to make laws on it.

In any case where the Concurrent Legislative item does not specifically enumerate the legislative powers of the Federal and State Governments as item B above and both make laws over the matter in the item, the law validly made by the National Assembly shall prevail and the law made by the State House of Assembly, to the extent of its inconsistency shall be void (Section 4(5).

Apart from the Concurrent Legislative List another important source of Concurrent matter found in the body of the Constitution is in respect to public order and public safety provided for under Section 11. The Section gives the Federal Government and State Governments power to legislate in respect to public order and public safety. The Section provides as follows:

> "11(1) The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.

> (2) Nothing in this Section shall preclude a House of Assembly from making laws with respect to the matters referred to in this Section, including the provision for maintenance and securing of such supplies and services as may be designated by National Assembly as essential supplies and services".

In respect of the legislative power, given to the Federal and State Governments under this Section where the State law conflicts with the Federal law, the Federal law will prevail. This was clearly illustrated in the case of ATTORNEY-GENERAL OF OGUN STATE v. ATTORNEY-GENERAL OF THE FEDERATION[1], where Chief Justice Fatayi-Williams said that:

> "It is, of course, settled law, based on the doctrine of covering field ... that if Parliament enacts a law in respect of any matter in which both Parliament and a Regional legislature enacts an identical law on the same subject matter, the law made by Parliament shall prevail. That made by the Regional Legislature shall become irrelevant and therefore impliedly repealed"[2].

Another source of concurrent matter (executive and not legislative) in the body of the Constitution is Section 5 which prescribes under subsection 1(b) that the executive power of the Federation shall extend to the execution and maintenance of the Constitution. Subsection (2)(b) of the same Section also stipulates that the executive powers of the State shall extend to the execution and maintenance of the Constitution. Thus the execution and maintenance of the Constitution are by this section concurrent to both the Federal and State Governments. This means that Federal and State legislature derive their power to legislate in respect to the maintenance of the Constitution from this/

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1. (1982) 1-2 SC p. 13.
2. Ibid at p. 45.

concurrent power given to both the Federal and State Executive to execute and maintain the Constitution under Section 5. Sub-section (2)(b) of Section 5 has a very important proviso which is that the executive powers of the State shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation. Thus any act of the State Government which tends to impede the executive powers of the Federation will be declared void. In ATTORNEY-GENERAL OF LAGOS STATE v. NATIONAL ELECTRIC POWER AUTHORITY[3], the Lagos High Court held that if the Governor of Lagos State can function in place of the Military Governor, then he is bound by the provisions of Section 28(4) of the Land Use Act to make land, of NEPA's choice, available to it for use as required without charge. It would tantamount to impeding the Executive powers of the Federal Government to disturb the use by the defendant of the disputed land. Sections 5(1) and (2) of the Constitution are relevant in this respect.

The word 'Constitution' in the context of Federation could mean the respective Constitutions of the Federal and State Governments. That means the Federal Executive power extends to such provisions of the Constitution that deal with Federal matters, matters in respect of which the National Assembly has power to make laws and any other specific matter (Federal or State) that has been assigned to the Federal Executive. Likewise the State Executive power extends to such provisions of the Constitution that pertain to State matters and in respect of which the State legislature has the power to make laws, unless

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3. (1983) 4 NCLR 768.

the provision of Section 5 of the 1979 Constitution is given this limited meaning the proviso to this Section would mean that the Federal Executive power can be exercised in a manner to impede or prejudice the exercise of the executive powers of the State.

Section 149 of the 1979 Constitution provides in Subsection (6) that;

> "Each State shall pay to local government councils in its area of jurisdiction such portion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly".

Subsection (7) provides that;

> "The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State".

Thus Section 149(6) prescribes that the National Assembly is empowered to prescribe the "terms and manner" for the payment by State Government of its contribution to the revenue of local government councils. And Section 149(7) gives the State House of Assembly power to prescribe the manner in which the revenue due the local government councils will be distributed amongs them. Accordingly the powers of the National Assembly under Section 149(6) and those of a State House of Assembly under Section 149(7) are Concurrent[4]. Therefore any laws made under the two subsections of Section 149 are subject to the provisions

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4. The Attorney-General of Bendel State v. Attorney-General of the Federation and 18 Ors (1984) 5 NCLR p. 101.

of Section 4(5) of the Constitution which stipulates that:

> "If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void".

Various criteria have been adopted in Federal Constitutions for determining inconsistency between a Federal and State Legislation. The Nigerian Courts just like other Federations have adopted the doctrine of covering the field, a doctrine well known in Australia and the United States of America, for resolving the Conflicts between the Federal and State laws.

(b) THE DOCTRINE OF COVERING THE FIELD

The doctrine of covering the field which is formulated by the American Supreme Court and the Australian High Court is a criterion for determining inconsistency between a Federal and State legislation.

Under the Australian Constitution the legislative powers vested in the Commonwealth Parliament are exclusive and concurrent. Exclusive powers are those exclusive to the Commonwealth alone, whereas the concurrent powers are exercisible by both the Commonwealth and the States. But in respect to these concurrent powers there is a provision which assert the supremacy of Commonwealth laws. Thus in order to assert the supremacy of the Federal laws the Australian High Court has applied the doctrine of covering the field to declare void any State law which is inconsistent with a Federal law.

The test of covering the field was applied in the FORTY-FOUR HOUR CASE[5] by Isaacs J. He said that:

> "If a competent legislature expressly or impliedly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field ... The inconsistency is demonstrated not by comparison of detailed provisions, but by the mere existence of the two sets of provisions. If one enactment makes or acts upon as lawful that which the other makes unlawful, or if one enactment makes unlawful that which the other makes or acts upon as lawful, the two are to that extent inconsistent".

In this case the Court held that there was inconsistency between a Commonwealth award prescribing a 48-hour week with a loss of pay for non-attendance and a State Act prescribing a 44-hour week with the proviso that where a Commonwealth award provided minimum hours exceeding 44 overtime should be paid for the excess and therefore the Federal law should prevail. The doctrine was also applied in EXPARTE MCLEAN[6] where Dixon J. stated the principle in the following terms:

> "The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its intention is directed. When a Federal Statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter".[7]

The importance of the doctrines was explained by Dixon J. in

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5. (1926) 37 CLR at p. 489.
6. (1930) 43 CLR 472.
7. (1930) 43 CLR 472 at p. 483.

VICTORIA v. THE COMMONWEALTH[8] where he said that:

> "When a State law, if valid, would alter, impair, or detract from the operation of a law of the Commonwealth Parliament, then to that extent it is invalid".

In the United States where the legislative powers of the Federation is exclusive and concurrent, the exclusive powers are exclusive to the Federal Government while the Concurrent powers are Concurrent to both the Federal and State Governments. There is a provision in the Constitution which asserts the supremacy of the Federal laws over the State laws in respect of Concurrent matters. Thus the doctrine was applied in the case of DAVIS v. BEASON[9] and it was held that the Congressional legislation supercedes State law where the same matter is the subject of legislation by both. In explaining the test of inconsistency in a case that came up later it was held in GULF, COLORADO, ETC v. HEFLEY[10] that where the Federal law and the State law on the same subject matter prescribe different rules, the Federal law shall supercede the State law.

The application of the doctrine of covering the field in the Australian High Court and the American Supreme Court as explained above was adopted in Nigeria for resolving conflicts between a Federal law and a State law in respect of Concurrent subjects. Under the 1979 Constitution both the Federal and State legislature are empowered to make laws in respect of Concurrent subjects but if the State law is inconsistent with

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8. (1926) 38 CLR 399.
9. 133 US 333.
10. 158 US 98.

the Federal law the State law shall be void to the extent of its inconsistency (Section 4(5)).

The question of inconsistency between Federal and State law came up in the case GIREMABE v. BORNU N.A.[11], where the appellant had been convicted in the court of the Shehu of Bornu on a charge of culpable homicide punishable by death. The High Court of Northern Nigeria had confirmed the sentence, but the conviction was set aside by the Supreme Court because, while the record of the trial disclosed evidence of severe assault by the accused person upon the deceased shortly before his death, there had been no medical evidence before the Court that the deceased died as a result of the injuries inflicted upon him. The Court considered it appropriate to order a retrail before the Northern Region High Court, and did so, having power to make such an order under Section 20 of the Federal Supreme Court Act, 1960. The result would be the trial of the accused before the High Court in a situation not specified in Section 185 of the Northern Region Criminal Procedure Code, which purported to define exhaustively the circumstances in which such trials could take place. It followed that the Code, a Regional law is inconsistent with a Federal Act. By virtue of Section 64(4) of the Constitution, the Act prevailed.

The doctrine of occupied field was directly applied by the Supreme Court in the case of ATTORNEY-GENERAL OF OGUN STATE AND OTHERS v. ATTORNEY-GENERAL OF THE FEDERATION[12], where the adaptations made by the President in the Public Order Act

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11. (1961) 1 All NLR 469.

12. (1982) 1-2 SC. 13.

an existing law enacted by the Federal Military Government, were challenged by the State Governments as unconstitutional, and a total invasion of the legislative powers vested in the National Assembly and Houses of Assembly. They also contended that the Public Order Act having been enacted for the benefit of the State took effect as a State law. The Supreme Court by applying the doctrine of covering the field held that since the Act was enacted by the Federal Military Government it took effect not as a State law but as a Federal law and is therefore, deemed to be an Act of the National Assembly. Being an Act of the National Assembly, the appropriate authority to make such modifications or changes in its provisions is the President of the Federal Republic of Nigeria under Section 274(4)(c). Thus the Public Order Act 1979, an existing law on a concurrent matter, was held by the Supreme Court to be a Federal law. Udo Udoma J. in his judgment said that:

> "Had it been in the intendment of the Federal Military Government that the Public Order Act 1979 should operate and be regarded as a State law, nothing could have been simpler than for the Federal Military Government to have sent a proforma draft to the law coupled with the Command of the Head of the Federal Military Government that the same be enacted as an Edict in each State".[13]

All State laws on public order and public safety which are therefore inconsistent with the Public Order Act (adaptations) are thus held invalid. Fatayi-Williams C.J.N. said that:

> "Where identical legislations on the same subject matter are validly passed by virtue of their constitutional powers to make laws by the National Assembly and a State House of Assembly it would be more appropriate to invalidate the identical law passed by the

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13. (1982) 1-2 Sc at p. 78.

> State House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter".[14]

He continued:

> "It is, of course settled law, based on the doctrine of covering the field that if Parliament enacts a law in respect of any matter in which both Parliament and regional legislatures are empowered to make laws, and a regional legislature enacts an identical law on the same subject matter, the law made by Parliament shall prevail, that made by the Regional legislature shall become irrelevant and therefore impliedly repealed".[15]

The Supreme Court cited the Australian case of EXPARTE MCLEAN[16] and the following observation of Dixon J. was referred to:

> "When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be they make laws which are inconsistent notwithstanding that the rule of conduct is identical which each prescribes..."[17]

It is important to note that the doctrine of covering the field will not prevent the State Government from exercising its legislative powers over a Concurrent subject but it will operate to declare void the State law on such Concurrent subject which will remain inoperative so long as Federal law operates.

Section 11 which deals with public safety and public order provides in subsection (2) that:

> "Nothing in this Section shall preclude a House of Assembly from making laws with respect to the matters referred to in this Section, including the provision for maintenance and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services".

The wordings of this Section gives the idea that the National

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14. (1982)1-2 SC at 41.
15. (1982)1-2 Sc at 16.
16. (1930) 43 CLR 472.
17. (1930) 43 CLR 472 at p. 483

Assembly and State House Assembly can both legislate with respect to the maintenance and securing of public safety and public order. Thus for the fact that the National Assembly has designated certain supplies and services as essentials supplies and services will not prevent a State House of Assembly from exercising its legislative powers to make laws in respect of such supplies and services. But where the law made by the State House of Assembly is inconsistent with that made by the National Assembly, the doctrine of repugnancy will set in to declare the State law invalid.

(c) THE PUBLIC ORDER (ADAPTATION) ACT

The Public Order Act 1979 was passed by the Federal Military Government as a uniform legislation for the whole country to replace the divergent State laws on the subject. Thus it was an existing law before the coming into effect of the 1979 Constitution. During the Second Republic the President, under the power given to him in Section 274(4) (c), made some adaptations to the Public Order Act. The modifications on Section 1 of the Act are as follows:

(a) Substituting "Commissioner of Police" for "Military Administrator".

(b) Substituting a new subsection (5) for the existing subsection, and

(c) Deleting the whole of subsection (6), Section 4 subsection (3) was also modified by the deletion of the words "after consultation with the Military Administrator" and substitution therefore of the words "with the concurrence

of the Governor of the State". In Section 6 subsection (2) the "Attorney-General of the Federation was substituted for the Attorney-General of the State". Finally, new Sections which conferred specified powers on the Minister charged with the responsibility for Police affairs were substituted for Sections 10 and 11. Section 12, the definition Section, was also consequentially amended.

Being dissatisfied with these modifications in the Public Order Act 1979 the Governments of Ogun State, Bendel State and Bornu State, challenged their validity in the Supreme Court, and the three cases were consolidated into one case[18]. The State Governments of Kaduna, Kano, Gongola and Ondo in objecting to the modifications, instituted actions in the High Courts which were dismissed on the ground that the High Court lacks jurisdiction.

In the case before the Supreme Court the State Governments contended that the adaptations are unconstitutional, and in excess of the powers vested in the President in Section 274 of the Constitution, that it is a plain invasion of the legislative powers vested in the National Assembly and the State Houses of Assembly. They also maintained that the Public Order Act is a State law and that the adaptation order complained of takes away the power of a State Governor under Section 195(4) of the 1979 Constitution to give directions to the Commissioner of Police with respect to maintenance of 'public safety and public order,' and vest it in the Inspector General of Police. They contended that by virture of Section

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18. Attorney-General of Ogun State and Ors v. Attorney-General of the Federation (1982) 1-2 SC p. 13.

276(1) of the Constitution every right hitherto exercised by the Military Administrator of a State now vests on the Governor of a State. They also contended that since the adaptations made by the President imposed duties on the State Government it is therefore unconstitutional as the Federal Government cannot impose duties on the State Government.

The Supreme Court declared unconstitutional the adaptation which required the "Concurrence of the Governor of the State" when the Commissioner of Police is exercising the power to prohibit public meetings, assemblies and processions incertain circumstances. The Court maintained that since the adaptation subjected the Commissioner of Police to the Governor's power of Concurrence it takes away the power given to the Commissioner of Police under the proviso of Section 195(4), which is that the Commissioner before complying with the Governor's directions may request that the matter be referred to President or such Minister of the Government of the Federation as may be authorised in that behalf by the President for his directions.

The contention that the Public Order Act is a State law was rejected by the Supreme Court. The Court held that since the Act was enacted by the Federal Military Government it took effect not as a State law but as a Federal law. Thus Udo Udoma J., said that:

> "Had it been in the intendment of the Federal Military Government that the Public Order Act 1979 should operate and be regarded as a State law, nothing could have been simpler than the Federal Military Government to have sent a proforma draft to the law coupled with the command of the Head of the Federal Military Government that the same be enacted as an Edict in each of the State.

The Supreme Court also dismissed the contention that by

virtue of Section 276(1) of the 1979 Constitution the State Governor inherits all rights hitherto exercised by the Military Administrator and held that the provisions of Section 276(1) gives no such power to the State Governor. As Justice Idigbe puts it, "this is an absolute misconception of what the section actually provides".[19]

The Supreme Court held that a State Governor cannot of necessity and for all purposes wear the shoes of the Military Governor on the basis of Section 276. The Court further held that "property" "rights", "liabilities" and "obligation" mentioned in Section 276 of the Constitution are contractual and tortious obligations vested in the Military Administrator before 1st October 1979 and "are clearly irrelevant to the modification provided for in Section 274(1)".

The Supreme Court rejected the contention that the adaptation order takes away the power of the State Governor to give directions to the Commissioner of Police with respect to maintenance of public safety and public order under Section 195(4). The Court held that Section 195(4) only enables the Governor to control the use of police for the maintenance of public safety and public order.

The contention that the President cannot impose duties on the State Government was upheld by the Supreme Court. Commenting on this point Fatayi-Williams CJN said:

> "Neither the President of the Federal Republic nor the National Assembly can unilaterally confer powers on a State functionary such as the Governor or the Attorney-General of a State and thus bring him within the investigatory or scrutinising powers conferred upon the National Assembly by Section 82(1) of the 1979 Constitution".[20]

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19. (1982) 1-2 SC p. 13 at p. 79.

In the same vein Idigbe JSC said:

> "Therefore assuming that the President could validly conduct the adaptation exercise under consideration in these proceedings, he could not validly confer functions (or functional obligations) on the Governors of the State of Ogun, Bendel and Borno or of any of the States of the Federation for that matter, nor as my Lord the Chief Justice has pointed out could be validly have imposed a duty (or functional obligations) on the said Governors".[21]

Lastly, adding to the strong body of opinions on the issue, Kayode Eso, JSC said:

> "Surely, such a situation as stated above, could not be in the contemplation of the Constitution. A situation where the Chief Executive of the country or a Federal functionary could be subject to sanctions by a State House of Assembly or State Chief Executive or functionary could be subject to the authority of the National Assembly would offend not only against the spirit but the letter of Constitution. Each of the States Legislative Assemblies and National Assembly is sovereign in its own House; neither interferes with the governments of the other. This is the basis of federalism ..... I have already stated that the President has no Constitutional power to impose such obligations not only on a State Governor but a State functionary".[22]

The Supreme Court finally held that since the Public Order Act 1979 is a Federal law it is therefore deemed to be an Act of the National Assembly. Being an Act of the National Assembly the appropriate authority to make modifications or changes in its provisions is the President under Section 274(2). It therefore held that the adaptations made in the Public Order Act 1979 by the President were within the adaptive power conferred on the "appropriate authority" under Section 274(2).

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21. Ibid at p. 80.
22. Ibid at p. 94.

(d) LEGISLATIVE AUTHORITY IN RELATION TO LAND USE ACT

In recognition of the fact that for a government to discharge its functions effectively it must have adequate control of the land and its territory,[23] the Federal Military Government promulgated the Land Use Act in 1978 under which all the land in the State are vested in the State Government and such land shall be held in trust and administered for the use and common benefit of the people.[24]

The Land Use Act under the provisions of Section 28 gives the State and Federal Governments power to acquire land needed for public interest. The Land Use Act which provides for compulsory acquisition of land, being a Federal enactment (Section 274(6), it is questionable whether a State legislature can still legislate on compulsory acquisition of land needed for its services. The State legislature can legislate on the compulsory acquisition of land but such legislation if in conflict with the relevant provision of the Land Use Act will be declared void to the extent of its inconsistency (Section 4(5).

The Land Use Act 1978 an existing law before the coming into force of the 1979 Constitution was entrenched into the Constitution by Section 274(5)(d). This being the case the Land Use Act can only be amended or repealed in accordance with the provisions laid down in Section 9(2) of the Constitution, which stipulates that a proposal for an amendment shall not be passed in either House of the National Assembly unless the proposal is supported by not less than $\frac{2}{3}$ majority

23. Report of the National Workshop on the Land Use Act 1978, Lagos University Press, Akoka, Lagos (1982) p. 122.

24. Section 1 of the Land Use Act.

of all the members of that House and approved by resolution of the Houses of Assembly of not less than $\frac{2}{3}$ of all the States. Thus in accordance with the features of federalism, the Federal and State legislatures are given power to amend or repeal the Act.

The Land Use Act being a Federal enactment is regarded as the Act of the National Assembly under Section 274(1)(a). Thus the appropriate authority to make modifications in it to bring it in conformity with the Constitution is the President (Section 274(4)(a)).

3.2 THE EXECUTIVE

The 1979 Constitution under Section 5 provides that:

> "(1) Subject to the provisions of this Constitution, the executive powers of the Federation-
>
> (a) Shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and the Ministers of the Government of the Federation or officers in the public service of the Federation; and
>
> (b) Shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being power to make laws".

From the wordings of this Section the executive powers of the Federation vested in the President are subject to the Constitution. Thus the President in exercising the powers vested in him shall not exceed the Constitution limits. Lord Atkin in ESHUGBAYI ELEKO v. GOVERNMENT OF NIGERIA[25] gave a strict interpretation of executive power. He said that the executive:

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25. (1931) A.C. 662.

> "Can only act in pursuance of the powers given to him by law. In accordance with British jurisprudence, no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice".[26]

Where the President exercises his power contrary to the provisions of the Constitution, he might be liable to impeachment and the courts are empowered to declare such an act unconstitutional. Thus in YOUNGSTOWN SHEET AND TUBE CO. v. SAWYER, where the President of the United States of America ordered the Secretary of Commerce to take over and operate the steel mills of the country. The President justified his action on the ground that the stoppage of work due to the strike threatened by the steel workers would jeopardise national defence, particularly in Korea. On appeal the Supreme Court by a majority of 6 to 3 held that the President had exceeded his Constitutional powers.

Delivering the judgment of the court, the Chief Justice maintained that:

> "Article II of the American Constitution did not singly nor in the aggregate grant to the President, expressly or impliedly, ... the "residum of power" or "inherent" power which authorizes him, as defendant claims, to take such action as he may deem to be necessary, including seizure of plaintiffs properties, whenever in his opinion an emergency exists requiring him to do so in the public interest.... The President can exercise no power which cannot be fairly or reasonably be traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise".

The Constitution also provides in Section 5 subsection (2) that:

> "Subject to the provisions of this Constitution, the executive powers of a State-
>
> (a) Shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and
>
> (b) Shall extend to the execution and maintenance of this Constitution all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws;
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> But such executive powers shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation or to endanger the continuance of a Federal Government in Nigeria".

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26. Ibid at p. 670.
27. 343 US 579 (1952).

Just as the executive power of the Federation vested in the President is limited so also the executive power of a State vested in a Governor of a State is not absolute. It is limited by the Constitution and any law made by the State House of Assembly. Thus in CHIEF EZE S.B.C. ORISAKWE v. GOVERNOR OF IMO STATE[28], the plaintiff's certificate as a recognised Chief was withdrawn by the Governor. Under the relevant chieftaincy law, the Commissioner charged with Chieftaincy duties must have set up enquiry before advising the Governor to withdraw recognition whenever allegations of grave misconduct were made against a recognised chief. In this case, after several of such allegations were made against the plaintiff, the Governor acted on the recommendation of a Panel not set up by the Commissioner and which did not investigate any of the allegations made against the plaintiff. On the contention of the Governor's counsel that the executive authority of a Governor could not be challenged in a Court of law, the Court held that the executive power vested in a Governor under the Constitution is not absolute hence in its exercise it must be subject to the provisions of the Constitution.

Thus for the acts of a State Exedutive to be constitutional and valid they must be intra vires the Constitution.

Another important fact to note about the provisions of Section 5 of the 1979 Constitution is that it makes the power to maintain and execute the Constitution Concurrent to both the Federal and State Governments. The proviso in subsection (2)(b) restricts the general power granted to the State Executive. This places the Governor of the States in a position of inequality

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28. (1982) 3 NCLR. 743.

with the President even within their own area of authority because the exercise of their powers must necessarily be subordinate to the "exercise of the executive powers of the Federation".

Section 265(1) of the 1979 Constitution gives power to the President to proclaim a State of emergency in any part of the Federation under the situations stipulated in subsection (3) of this Section, which are as follows:

(a) the Federation is at war;

(b) the Federation is in imminent danger of invasion or involvement in a State of war;

(c) the actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;

(d) there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert the same;

(e) there is an occurrence of imminent danger or the occurrence of any disorder or natural calamity, affecting the community or a Section of the Community in the Federation.

(f) there is any other public danger which clearly constitutes a threat to the existence of the Federation;

(g) the President receives a request to do so in accordance with the provisions of subsection (4) of this Section.

The Section under subsection (4) also gives the Governor of State with the sanction by resolution of ⅔ majority of all members of the House of Assembly, the power to ask the President to issue a proclaimation of State of emergency in the State, where there is (1) a breakdown of public order and safety, (2) clear and present danger of an actual breakdown of public order and safety or (3) an occurrence of imminent danger or occurrence of any disaster or natural calamity, and such a situation does not extend beyond the boundaries of the State. It should also be noted that where the Governor fails within a reasonable time to make a request to the President to issue a proclaimation, then the President can take the initiative. (Section 265(5). A typical example where the power vested on the Governor under Section 265(4) was exercised was in the Kano riots that took place in 1980. On December 18, 1980 a wave of riots erupted in Kano State in which many Moslems lost their lives. Moslems of the Yen Izala Islamic Sect were alleged to have set out that morning in thousands from their Yan-Awaki quarters in Kano to engage a holy war against Moslems who did not accept their teachings. In the confrontation that ensued, many innocent lives were lost and several homes and vehicles burnt. When the Kano State Police could not contain the situation, the Governor, Alhaji Abubakar Rimi had to request help from the President. The President then ordered the Army and the Airforce to the rescue. Within a few days, the Military brought the situation under control.[29]

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29. Daily Times December 20 1980.

(a) A SINGLE POLICE FORCE FOR THE FEDERATION UNDER THE 1979 CONSTITUTION

The 1979 Constitution provides for the establishment of a single police force for the whole country styled the Nigeria Police Force (Section 194(1). The Section also provides that no other police force shall be established for the Federation or any part thereof, thereby denying the State Governments the power to establish their own police force. This is a departure from the position under the 1963 Constitution where Parliament could make provision for the maintenance of a police force by a local authority within the Federal Territory for employment therein.[30] This power was never exercised. Under the 1963 Constitution the legislature of a Region also could make provision for the maintenance by any Native Authority of a police force under the Native Authority Police (Section 105(7). The functions of the Nigeria Police Force include among others the enforcement of all laws and regulations made by the Federal and State Governments.

The Police being an item in the Exclusive Legislative List (item 44) the State legislature is thereby incapable of legislating in respect of police. This is because it has been provided under Section 4(3) that the National Assembly shall, to the exclusion of the Houses of Assembly of States, legislate on matters on the Exclusive List. But though a State legislature may not legislate with respect to police, the State Government can direct the activities of the police, in the State.[31] This is provided for under Section 195(4) which gives the Governor the power to give lawful directions to the Commissioner of Police of that State with respect to the maintenance and securing of public

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30. Section 105(4) of the 1963 Constitution of Nigeria.

31. Joye E.M. and Igweike K. (1982) Introduction to the 1979 Nigerian Constitution: The Macmillian Press Ltd. London p. 82.

safety and public order within the State.

The provision that the Nigeria Police Force shall be organised and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly/Section 194(2)(a)/is also a departure from the position under the 1963 Constitution where the Regions were also involved in the organisation and administration of the police force.

The main reason why Nigeria under the 1979 Constitution adopted a single police force for the whole country a practise different from what obtains in the other Federations i.e. America, Canada and Australia,[32] is because of the fears of some Nigerians that if the State Governments are allowed to establish their own pplice force, the police will be politicised and used as an instrument of victimisation against members of the opponent political parties in the State.[33] Thus the Constitution in recognition of this fear, provided for only one police force for the whole country to be controlled by the Inspector-General of Police who is accountable to the Federal Government. But from our experience during the Second Republic it was noticed that even a single police force could be politicised and used to the advantage of the party in control of the Federal Government especially where the control of the police is unduly centralised in the Federal Government. This was why Governor Ambrose Alli of Bendel State lamented his championship of a single police force during the making of the 1979 Constitution saying that the single police force is the most potential source of danger in our Federal system.[34]

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32. Proceedings of the Constituent Assembly Vol.I 1979 Federal Ministry of Information Printing Division Lagos, p. 1159.

33. Tamuno T.N. (1970) The Police in Modern Nigeria, University Press Ibadan p. 184.

(b) AUTHORITY OF THE PRESIDENT OR GOVERNOR OVER THE USE OF THE POLICE

It has been clearly specified in the 1979 Constitution that there shall be an Inspector-General of Police at the apex of the single police force for the Federation and that he shall be appointed by the President (Section 195(1). The Section went on to provide that there shall be stationed in each State a contingent of the police force under the Command of a Commissioner of Police, subject to the authority of the Inspector-General of Police (Section 195(2). This Section clearly emphasise that the central control of the Police Force is firmly within the province of the Federal Government, the Inspector-General of Police being placed directly under the authority of the President, by whom he is appointed. There are under the Inspector-General of Police, Commissioners of Police appointed by the Police Service Commission, under whose command are the contingent of police posted to each State. The Commissioners are answerable to the Inspector-General of Police. For the purpose of maintaining and securing public safety and public order in the Federation the President or any duly authorised Minister of the Government may give such lawful directions as he may consider necessary (Section 195(3). The Inspector-General must comply with those directions and the courts may not inquire into whether any and what direction have been given (Section 195(5).

The Commissioner of Police of a State is similarly required to comply with the orders and directions of the Governor of his State or his duly authorised Commissiner (Section 195(4). But the Police Commissioner may request that the matter be referred to the President or Minister of the Government of the Federation

before carrying out any such directions. This proviso ensures that the ultimate control of the police remains with the Federal Government. This proviso has also been the cause of dissatisfication among some Governors because being responsible for the maintenance of peace and stability within their respective areas, there are occasions when prompt law enforcement action by them may avert a bigger crisis. If the Commissioner of Police insist on getting clearance from the Federal Government before obeying the directions of the Governor, the damage might have already been done before police came on the scene. Having regard to the political immaturity of most developing nations, it is not difficult for the Commissioner to use this power to frustrate effective government in a State to the extent that an emergency situation may be created. Explaining the implication of the proviso Joye and Igweike (1982) wrote that:

> "This provision indicates the delicate balance of powers between the Federal Government and the State Governments with respect to public safety. It indicates that in order for public safety and order to be effectively maintained there must be a harmonious working relationship between State Governors and Commissioners of Police. Otherwise, Commissioners could frustrate the efforts of Governors in this area by simply referring all security matters to the Federal Government. The resulting delay in police action necessary to deal with emergencies would inhibit and perhaps prevent effective maintenance of public safety and order".35

In one instance in Anambra State the Governor directed the Commissioner of Police to post 60 named policemen on security duty at the Government House, the official residence of the Governor. The Police Commissioner instead deployed 30 policemen

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35. Joye M.E. and Igweike K. (1982) Introduction to the 1979 Constitution. The Macmillian Press Ltd. London p. 82.

made up of a mixture of policemen from and outside the Governor's list. The Governor then applied for an order of mandamus[36] in the State High Court of Enugu to compel the State Commissioner of Police to comply with his direction to post a given number of named policemen on security duty at the Government House. The Commissioner contended that it will be a security risk for the rank and file of the force to know that their selection for duty in the Government House will be done by the Governor and that the selection of the policemen for such purpose is within Police Commissioner's exclusive power.

The High Court of Enugu held that where a direction is not unlawful and the Commissioner of Police has not requested that the matter be referred to the President as provided under Section 195(4) of the Constitution, the refusal or failure to comply with the direction will tantamount to a refusal or failure to carry out a public duty and is redressable by mandamus.

The Court finally held that even though the Inspector-General of Police or Commissioner of Police can be compelled to carry out lawful directions of the President or Governor, as the case may be, the court is not obliged to enquire into what directions were given.

With due respect to the learned Judge I think that the order of mandamus must relate to a specific direction which it is alleged the Inspector-General of Police or Commissioner of Police has failed to carry out. How then can a court know whether the Inspector-General of Police or Commissioner of Police refused or failed to comply with the lawful direction

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36. State v. Commissioner of Police, Mr. Bishop Eyitene,

if the court did not enquire into what the directions are.

The proviso of Section 195(4) undermined the Governor's control over the Commissioner of Police during the Second Republic and this was particularly seen in the State Governments not controlled by the N.P.N. The non- N.P.N. controlled State Governments felt the police was used to foster the aims and objectives of the N.P.N. controlled Federal Government. These State Governments contended that the Nigeria Police Force is not impartial; neither is it politically neutral. According to the New Nigerian Newspaper:

> "More than half of the State Governors in the country see the police in entirely negative light".[37]

A situation which clarified the point that the Nigeria Police Force was not politically neutral was the sort of lapse exhibited by the police, during the Kano riot of July 10, 1981, by not preventing the destruction of property and also the fact that no arrests were immediately made. What precipitated the riot was the query issued to the Emir of Kano, Alhaji Ado Bayero by the State Governor, Alhaji Abubakar Rimi. The behaviour of the police in this matter created the impression in the mind of many people that the police were sympathetic to the rioters. The Daily Times commenting on the Kano riot in its opinion column said:

> "While the Government could be seen as a direct cause of this violent out burst, we must condemn in its entirely, the seemingly pre-meditate nature of the riot itself. Nigeria is a democracy. The failure of the police to contain the situation to any extent must be condemned".[38]

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37. New Nigerian Editorial September 21, 1981.
38. Daily Times, Wednesday July 15, 1981 p. 3.

Ebino Topsy discussing 'The Nigeria Police' said:

> "It is indeed lamentable that, in Nigeria the police that should defend the interest of all of us by being absolutely impartial in our affairs are being manipulated to hunt us down. A tradition of wickedness, brutality and vindictiveness has been established for our Police Force and this image does no credit to our dear country".39

The power of the State Governors to control the use of police was further undermined by the fact that the Commissioners of Police are not made responsible or accountable to their State Governors. This had led to confrontation between the Police and some of the State Governors who have repeatedly contended that the police had been politicised and turned into an instrument of the N.P.N. controlled Federal Government for the intimidation and harrassement of its political opponents. To lend support to this contention the Governor of Ogun State averred that the Commissioner of Police for the State refused to give license for the meeting of the delegates conference of the Unity Party of Nigeria (UPN) scheduled on March 13, 1981 at the Centenary Hall Abeokuta on the ground that 24 hours notice had not been given to enable the Commissioner to make arrangements for the police to cover the meeting. But according to the Governor the Commissioner was able within the short period to mobilise anti-riot policemen to lay a "near siege" on the Hall to prevent the meeting from being held as scheduled.

This confrontation between the State Governments and police inherent in the control of the use of the police can

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39. Sunday Tribune August 16, 1981 p. 12.

only be eliminated if the undue centralisation of the Nigeria Police Force in the Federal Government, seen in the power given the President to appoint and remove the Inspector-General of Police, the Head of the police force, is alterated by making the President and Governors responsible for such appointment or removal or the power given to a non-partisan body i.e. the Police Service Commission as was the case under the 1963 Constitution. Furthermore, the Commissioners of Police should be made responsible to the State Governors. The State Governments should also be involved in the organisation and administration of the police force as was in the 1963 Constitution. Lastly a provision which makes it possible for the Governor to be consulted on the appointment and removal of the Commissioner of Police should be entrenched into the Constitution, as the non-inclusion of this in the 1979 Constitution undermined the Governors authority over the Commissioner of Police.

(c) EXECUTIVE AUTHORITY IN RELATION TO LAND USE ACT

Section 1 of the Land Use Act provides that:

> "subject to the provisions of this Decree, all land comprised in the territory of each State in the Federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerian in accordance with the provisions of the Decree".

By this provision of the Land Use Act all land in every State in the country became held in trust by the State Government on behalf of and for the benefit of the people of the State.

Section 28 of the Land Use Act also provides that:

"(1) It shall be lawful for the Military Governor to revoke a right of occupancy for overriding public interest.

(2) Overriding public interest in the case of a statutory right of occupancy means-

(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease or otherwise of any right of occupancy or part thereof contrary to the provisions of this Decree or of any regulations made thereunder.

(b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of Federation for public purposes of the Federation.

(c) the requirement of land for mining purposes of oil pipelines or for any purpose connected therewith.

(3) Overriding public interest in the case of a customary right of occupancy means-

(a) the requirement of the land by the Government of the State or by a Local Government of the State in either case for public purpose within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation.

(b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

(c) the requirement of the land for the extraction of building materials.

(d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession sublease, bequest or otherwise of the right to occupancy without the requisite consent or approval.

(4) The Military Govemor shall revoke a right of occupancy in the event of the issue of notice by or on behalf of the Head of the Federal Military Government if such notice declares such land to be required by the Government for public purposes" .

Under the provisions of Section 28 of the Land Use Act the Military Governor is empowered to revoke the rights of occupancy in a land where the land is needed by either the State Government or Local Government or Federal Government for public purposes.

The Land Use Act 1978 is defined as an existing law by

Section 274 of the 1979 Constitution and under Section 274(6) is regarded as a Federal enactment. It is queried whether by virtue of Section 276 of the 1979 Constitution the State Governor inherits the rights and powers of the Military Governor under the Land Use Act? There had been conflicting decisions in respect of this question.

In ATTORNEY-GENERAL OF LAGOS STATE v. NATIONAL ELECTRIC POWER AUTHORITY[40], the High Court of Lagos held that the Governor of Lagos not being a Military Governor has no legal right to impose conditions for the use of any piece or portion of land in Lagos State in reliance on the Land Use Act until necessary modifications are made to it. The Court further held that the President or the National Assembly has no power to alter or amend the provisions of the Land Use Act, which is a Federal enactment, by substituting the "State Governor for the "Military Governor" or making any other modifications except as provided for in Section 274 of the Constitution. In other words the Court is saying that the State Governor cannot inherit the rights and powers of the Military Governor under the Land Use Act by virtue of Section 276 of the 1979 Constitution and it based its decision on the decision of the Supreme Court in ATTORNEY-GENERAL OF OGUN STATE'S CASE,[41] where Section 276 was interpreted. The court in this case held that a State Governor cannot of necessity and for all purposes wear the shoes of the Military Governor on the basis

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40. (1983) 4 NCLR. 768.

41. (1982) 1-2 SC. p. 13.

of Section 276. The Court further held that "property", "rights","liabilities" and "Obligations" mentioned in Section 276 of the Constitution are contractual and tortious obligations vested in the Military Administration before 1st October 1979 and "are clearly irrelevant to the 'modification' provided for in Section 274(1)".

In AINA AND CO. LTD. v. COMMISSIONER FOR LANDS AND HOUSING AND OTHERS[42], the High Court of Oyo State also dismissed the contention that the State Governor by virtue of Section 276 of the Constitution inherits the title, rights and powers of the Military Governor under the Land Use Act. The Court held that since Section 276 speaks of property, right or privilege vested in "the former authority of a State as representative or trustee for the benefit of the people of the State", while the property and powers vested in the State Military Governor by the Act were vested in him in trust " for the use and common benefit of all Nigerians", and this does not pass to the Governor by virtue of Section 276.

In EKWOCHA v. GOVERNOR OF ANAMBRA STATE AND OTHERS, Justice Nwokedi (Anambra High Court) upheld the contention that the State Governor by virtue of Section 276 of the Constitution inherits the title, rights and powers of the Military Governor under the Land Use Act. He held that if the Governor is denied the right to inherit the Military Governors title, rights and powers under the Land Use Act, that this will make the provisions of Section 274(5) useless and of no effect, since the position of the

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42. (1983)4 NCLR. p. 546.
43. (1983)4 NCLR. p. 670.

Military Governor had been abolished with the coming into effect of the 1979 Constitution in 1st October 1979, it therefore means that the powers conferred upon him by the Act can never be exercised.

The conflicting decisions as regards the executive authority in relation to the Land Use Act discussed above have been decided upon by the Supreme Court in the case of CHIEF R.O. NKWOCHA v. THE GOVERNOR OF ANAMBRA STATE.[44] In this case as regards the question:

> "Whether the Governor of Anambra State is the proper authority to exercise the power or functions vested in or exercisable by the Military Governor under the provisions of the Land Use Decree"?

The Supreme Court answered the question in the affirmative, and held that the trust constituted under the Land Use Decree being a right of property, which right is preserved under Section 274(5) of the Constitution, would vest in the Governor of the State without further assurance. Thus while it is plain that a Governor under a Civilian regime within the concept of the 1979 Constitution is not the same as the Land Use Decree, it is implicit in Section 276 that the vesting of property should be in the Chief Executive of the State for the time being. Thus by the same token the State Governor would succeed to the powers of the Military Governor as prescribed under Sections 7, 9, 11, 27 and 28 of the Land Use Decree.

It has been suggested that Section 28(4) of the Land Use Act, which stipulated that the State Government should

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44. (1984) 6 Sc. 362.

allocate land to the Federal Government when the land in the State is needed for public purposes, should be amended.[45] This is because the State Government under this Section might unreasonably withold the revocation of the right of occupancy on a particular land needed by the Federal Government for public purposes. This was noticed during the Second Republic when the Federal Government declared that it needed land in the States for the Federal housing programme, some State Governments initially refused to make land available and suggested that the Federal Government should give them the money to build the houses. But according to Justice Ishola Oluwa (Lagos High Court) in ATTORNEY-GENERAL OF LAGOS STATE v. NATIONAL ELECTRIC POWER AUTHORITY[46], if the Governor of Lagos State can function in place of the Military Governor, then he is bound by the provisions of Section 28(4) of the Land Use Act to make land, of NEPA'S choice, available to it for use as required without change. He maintained that it would tantamount to impeding the Executive powers of the Federal Government to disturb the use by the Defendant of the disputed land. Sections 5(1) and (2) of the Constitution are relevant in this respect.

The Land Use Act being declared a Federal enactment under Section 274(6) of the Constitution is regarded as an Act of the National Assembly and thus the "appropriate authority" to make necessary modifications in the Act in order to bring it into conformity with the provisions

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45. Report of a National Workshop on The Land Use Act, Lagos University Press, Akoka, Lagos (1982) p. 143.

46. (1983)4 NCLR. 768.

of the Constitution is the President. The Land Use Act being a Federal enactment the authority of the President to execute it is therefore conclusively established, the President being given power under Section 5(1)(b) to execute all laws made by the National Assembly.

3.3 THE JUDICIARY

Most of the Federal Constitutions specifically confer judicial powers in the courts. But there is now uniformity in the organisation of these courts in the Federations.

In America for instance, the judicial power of the Federation is vested in the Supreme Court and such other courts as may be established by the Congress. The State courts have their separate existence under the State Constitutions. The Supreme Court and other Federal courts exercise Federal judicial powers whereas the State courts exercise State judicial powers. Broadly speaking, the dual system of courts prevails in America. Thus as Klein (1977) wrote in his book:

> "The existence of a dual court structure, State - Federal, is a distinguishing feature of our American judicial system ... The State courts operate as the judicial arm of the State government, while the Federal courts operate as a part of the Federal government".47

The Australian Constitution, like the American Constitution, adopts the dual system of courts. The federal courts exercise federal jurisdiction and the State courts State jurisdiction. As in America, the Federal Government has no control over the appointment of the judges of the State courts. Where the

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47. Klein F.J. (1977) Federal and State Court Systems - A Guide Ballinger Publishing Co. Massachussetts p. 1.

Commonwealth Parliament confers Federal jurisdiction over the State courts, the State courts are thereby regarded as part of the hierarchy of the Federal Courts.[48]

In Canada the position is different. There is only a single hierarchy of courts with the Supreme Court at the apex. The Provincial Courts exercised both the Federal and State jurisdiction.[49]

Under the 1979 Constitution of Nigeria though Section 6(1) and (2) provides that the judicial powers of the Federation shall be vested in the Federal courts and the judicial powers of the State vested in the State courts there is no dualism in the hierarchy of courts in Nigeria. The State courts have jurisdiction over Federal and State matters. The Federal courts (Court of Appeal and Supreme Court) also have appellante jurisdiction over State issues, while the Supreme Court has original jurisdiction in cases where the Federation and States are parties. The judges of the Federal courts are appointed by the Federal Government whereas the Judges of the State courts are appointed by the State Government.

The term judicial power has not been defined as such by the 1979 Constitution but it has been defined in the American case of MUSKRAT v. UNITED STATE[50], as the power:

> "Of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision".

It is "the right to determine actual controversies arising between diverse litigants, duly instituted in courts of proper jurisdiction".[51]

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48. Lane P.H. (1972) The Australian Federal System with United States Analoques. The Law Book Co. Ltd., Sydney p. 311.
49. Whyte J.D. & Lederman W.R. (1977) Canadian Constitutional Law Butterworths Toronto Chp. 5.
50. 219 US 346 at 361 (1911).
51. United States v. Arrendondo (31 U.S) 691 (1832).

The judicial power of the State and Federal courts under Section 6(6) of the 1979 Constitution extends to the interpretation and application of the Constitution, laws of the National Assembly and laws of the State Houses of Assembly:

> "To all matters between persons, or between government or authority and any person in Nigeria, and to actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person".

The Courts in Nigeria have in no case examined the scope of judicial powers as stated in Section 6(6) of the Constitution. The wordings of this subsection would suggest that the courts might insist upon the existence of or affectation of civil rights and obligations as the basis of the judicial power. The words civil rights and obligations can be widely construed to include legal rights and obligations, privilege, freedom and liberty. Civil rights and obligations might give rise to the idea that locus standi is a precondition for the exercise of the judicial powers. The subsection would also suggest that only the person who could prove that he has direct interest in the civil rights and obligations will have standing to invoke the judicial powers of the court. Interest is capable of being construed broadly as did the Supreme Court in ATTORNEY-GENERAL OF BENDEL STATE v. ATTORNEY-GENERAL OF THE FEDERATION[52], where the Court held that the Plaintiff has a right to sue the Federal Government in the Supreme Court for a declaration that the Revenue Allocation Act is null and void and that

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52. (1982) 3 NCLR. 1.

Court has the jurisdiction to entertain the suit. Commenting on this point Obaseki J.S.C. said that:

> "The right and interests of Bendel State to a share of the public revenue as prescribed by a validly enacted Act of the National Assembly gives him sufficient standing to prosecute this action. Bendel State is only to indicate a justiceable dispute to give it locus standi to challenge the constitutional validity of legislation."[53]

Furthermore Nnamani J.S.C. said that:

> "I think the plaintiff has a legal interest in ensuring that it is entitled to a share in accordance with a law enacted as provided in the Constitution"[54]

(a) SUPREME COURT ORIGINAL JURISDICTION

The Federal Constitutions confer powers in the Supreme Court in its original jurisdiction to determine issues between the Federation and State or between the States. Thus in accordance with this the Federal Constitutions of United States of America, Canada and Australia confer on the Supreme Court, in its original jurisdiction, the power to resolve disputes between the Federation and State or between the States arising from the interpretation of the Constitution or as to any question of law or fact, so as to remove any doubt as to the legal powers, rights and duties of the parties involved.

In Nigeria the 1979 Constitution under Section 212(1) provides that:

> "(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends".

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53. Ibid at p. 84.
54. Ibid at p. 112.

This provision of the Constitution supports the notion that the original jurisdiction of the Supreme Court flows directly from the Constitution and is therefore self-executing without further action by the National Assembly. Thus as Chief Justice Taney enunciated in KENTUCKY v. DENNISON[55] that in all cases where original jurisdiction is given by the Constitution, the Supreme Court has authority:

> "To exercise it without further act of Congress to regulate its powers of confer jurisdiction, and the court may regulate and mould the process it uses in such manner as in its judgment will best promote the purpose of justice".

The wordings of Section 212(1) emphatically declare that the original jurisdiction of the Supreme Court arises under two conditions which are:

(1) When there is a dispute between the Federation and State or between the States; and

(2) When such a dispute involves a question of law or fact on which depends the existence or extent of a legal right.

The first condition relates to the parties. The question is what is meant by the terms 'federation' or 'the State'. The American decision[56] placed support to the argument that in the original jurisdiction of the Supreme Court the State can be a party only in their capacities as government or have rights, duties and obligations as government of the States, and not in their representative capacity for the people of the State.

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55. US 66; 98 (1861).
56. Johnson v. Cook, 3304 US 387 (1938).

The Supreme Court of Nigeria clearly defined the terms "State" and "Federation" in the case of ATTORNEY-GENERAL OF THE FEDERATION v. ATTORNEY-GENERAL OF IMO STATE.[57]

According to Bello J.S.C. as he then was;

> "The term 'State' has an ordinary and extended meaning.' The ordinary meaning of 'State' within the context of the Constitution is one of the Component parts of the Federation which form the constituent units of the Federation as prescribed by Section 2 of the Constitution. The extended meaning of 'State' under Section 277 applies 'when used otherwise than in relation to one of the component parts of the Federation'. The three tiers of governments (Federal, State and Local) including their agencies and officials are States within the context of the extended meaning".[58]

Justice Eso went on to explain that:

> "The word 'State' must mean State in its sovereign or corporate capacity, and a State in that capacity must be a State as created under Section 3 of the Constitution".[59]

The Supreme Court held that the word "Federation" in Section 212(1) of the Constitution bears the same meaning as the Federal Republic of Nigeria.

It is therefore clear that for the original jurisdiction of the Supreme Court to be invoked there must be a dispute in which the rights or Constitutional powers of the Federation or State as a government are involved. Thus the terms "State" and "Federation" in Section 212(1) refers only to government. This is because since it has been provided in Section 2 that Nigeria

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57. (1983) 4 NCLR. 178.
58. Ibid at p. 180.
59. Ibid at p. 180.

is an indivisible and sovereign Nation, the Nation cannot have a dispute with a Section of itself.

As to the question whether the President of the Federation is synomymous with the Government of the Federation and whether a Governor likewise with respect to his State. The definition of the words "Governor" and "President" in section 277 are very clear. Also defined in such unambiguous term is the word "Government":

> "'Governor or Deputy Governor' means the Governor of a State or a Deputy Governor of a State. Government includes the Government of the Federation, or of any State, or of a Local Government Council or any person who exercises power or authority on its behalf. 'President or Vice-President of the Federal Republic of Nigeria".

It therefore follows from these definitions that where a President or Governor is exercising power or authority on behalf of the Government of the Federation or of a State either the President or Governor is synonymous with Government By Section 267(1) and (3) no civil or criminal proceedings can be instituted or continued against the President, Vice-President, Governor or Deputy Governor. But actions may be brought against the President or Governor in his official capacity or only as a nominal party. When such an action arises against the President or Governor the Supreme Court to the exclusion of any other court has jurisdiction to deal with the matter. This issue was clarified in the case of THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA v. THE GOVERNOR OF KANO STATE[60], in which the Governor of Kano State sued the President of the Federal Republic of Nigeria and the Attorney-General of the

60. (1982) 3 N.C.L.R. 819.

Federation over the exercise of the President's constitutional functions. The central issues that arose are:

(1) The action having been brought by the Governor of Kano State as Chief Executive of Kano State against the President as Chief Executive of Nigeria becomes one between the Government of Kano State against the Government of the Federation.

(2) In view of Section 212 of the Constitution the jurisdiction of the State High Court is excluded.

The second condition under which the original jurisdiction of the Supreme Court can be invoked is that such a dispute involves a question of law or fact on which depends the existence or extent of a legal right, and this was fully interpretated by the Supreme Court in the case of ATTORNEY-GENERAL OF THE FEDERATION v. THE ATTORNEY-GENERAL OF IMO STATE.[61] In this case it was held that to invoke the original jurisdiction of the court under Section 212(1) of the Constitution, there must be a dispute between the Federation and one or more States or between the States and the character of the dispute, as clearly qualified by the Section must involve a question, whether of Law or fact, on which the existence or extent of a legal right depends. It was therefore established in clear terms that the dispute within the purview of the Section must be a justifiable dispute. In otherwords, it must be a dispute that is appropriate for judicial determination.

With regard to the issue as to whose "legal rights" is intended to be involved in the dispute under the Section, the Court further held that it must be the legal right of

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61. (1983) 4 N.C.L.R. 178.

the State invoking the original jurisdiction of the court. The dispute has to involve either a constitutional right vested in that State or affect its existing or prospective legal right or interest. Thus for the original jurisdiction of the Supreme Court to be invoked the legal rights of the Federation and any State must be involved. This was clearly illustrated in this case where the Attorney-General of the Federation filed an action in the Supreme Court against the Attorneys-General of Imo, Ondo and Lagos States. The cause of the Attorney-General's complaint concerned three suits pending in the High Courts of Imo, Ondo and Lagos States. The dispute in the suit in the High Court of Imo was between the Attorney-General of that State on behalf of the citizens of Imo State (and not as the representative of Imo State) and the Federal Electoral Commission. While the disputes in the High Courts of Ondo and Lagos were between private persons and the Federal Electoral Commission. No legal right of the Federation or of any State was involved in any of the suits in Imo, Ondo and Lagos States.

In the Supreme Court, the defendants raised a preliminary objection that the Supreme Court has no original jurisdiction to hear the case since it is not a matter which comes within the scope of the original jurisdiction of the Supreme Court as prescribed in Section 212(1) of the 1979 Constitution.

The Supreme Court decided that it had no jurisdiction to entertain the action and struck it out after giving the following reasons:

(1) Before the original jurisdiction of the Supreme Court can be invoked under Section 212 subsection (1) the following criteria must be satisfied:

(a) There must be justifiable dispute involving any question of law or fact;

(b) The dispute must be;

(i) Between the Federation and a State in its capacity as one of the constituent units of the Federation; or

(ii) Between the Federation and more States than one in their capacities as members of the constituent units of the Federation; or

(iii) Between States in their aforesaid capacities; and

(c) The dispute must be one on which the existence or extent of a legal right of the Federal Republic of Nigeria or a legal right of a State in its aforesaid capacity is involved.

(2) The Attorney-General of the Federation has no locus standi as the Federation as a plaintiff has not shown that it has an interest which is affected or is likely to be affected by the action complained of.

In ATTORNEY-GENERAL OF BENDEL STATE v. ATTORNEY-GENERAL OF THE FEDERATION AND 22 OTHERS[62], where Bendel State challenged the constitutionality of the Allocation of Revenue (Federation Account, etc.) Act 1981, passed by the National Assembly, by invoking the original jurisdiction of the Supreme Court. The learned Counsels for the defendants contended that the Supreme Court has no jurisdiction in this case, as there were no disputes between the plaintiff and the defendants and that the claim is, therefore, neither justiciable nor tenable. They based their contention on the decision of the Supreme Court in ATTORNEY-

62. (1982)3 NCLR. 1.

GENERAL OF EASTERN NIGERIA v. ATTORNEY-GENERAL OF THE FEDERATION.[63]

Dismissing the contention the Supreme Court held that in Attorney-General of Eastern Nigeria's Case, the court denied jurisdiction under Section 114(1) of the 1963 Constitution, which is in pari materia with Section 212 of the 1979 Constitution, because the plaintiff (Eastern Nigeria) failed to show in its statement of claim that any legal right vested in it had been involved and the action was dismissed on the ground that the statement of claim disclosed no cause of action. But in the Attorney-General of Bendel State's Case it was conceded that the plaintiff (Bendel State) had a legal right before the passing of the Act in dispute under Section 272 of the Constitution to a share of the revenues in the Federation Account, which the imperative provisions of Section 149(1) of the Constitution require the Federation to maintain, and that it also has a vested right to a share of the same account by virtue of Section 149(2) - it is clear from the two Sections that the plaintiff has a Constitutional right to a portion of any amount standing to the credit of the Federation Account. If follows therefore that the dispute between the plaintiff (Bendel State) and the Federation involves a question on which the extent of a constitutional right of the plaintiff depends. The court further held that the constitutional right is a legal right within the purview of Section 212 of the 1979 Constitution. The legal right of the plaintiff it maintained is the proportion of the national revenue it is entitled to under Section 149(2) of the Constitution, upon the proper exercise of legislative powers by the

63. (1964) 1 All NIR. 224.

National Assembly in that regard.

It is also important to note that the Supreme Court has exclusive jurisdiction over cases within its original jurisdiction and no other court can be conferred with this jurisdiction. Thus in GOVERNOR OF KADUNA STATE v. THE PRESIDENT OF NIGERIA[64], the main question which the Court had to resolve was whether the High Court of Lagos State had jurisdiction to resolve was whether the High Court of Lagos State had jurisdiction to entertain an action in a dispute between a State Governor and the President of the Federation. The dispute arose as a result of the exercise of executive power by the President in making an Adaptation of Public Order Act Order 1981, which removed the power of issuing permits and controlling conduct of public meetings and processions previously vested in the Military Governor and gave it to the Inspector-General of Police. This act of the President was challenged by the Kaduna State as being unconstitutional and void.

It was contended on behalf of the defendants that the Supreme Court has original jurisdiction to deal with the claim of the plaintiffs having regard to the fact that the dispute is between the Executive function of the President and the Governor. On the other hand, it was contended on behalf of the Plaintiffs that the exercise of the power which the President purported to exercise involves a personal exercise of power and does not concern as such the Government of the Federation anymore than it concerns the Government of

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64. (1981)2 NCLR. 786.

Kaduna State. It was held that in all matters involving the exercise of Executive power, any dispute between a State Chief Executive and the President can only be adjudicated upon by the Supreme Court in its original jurisdiction under Section 212 of the Constitution.

Similarly all such actions[65] on the adaptations made by the President on the Public Order Act, which were brought before the High Courts by the State Governments were dismissed on the ground that the High Courts lack jurisdiction to decide the cases. But the three State Governments Ogun, Bendel and Bornu that pursued their cause in the Supreme Court, had their cases consolidated into one case[66] as the Supreme Court is the only Court that has jurisdiction to try such cases between the Federal Government and the State Governments.

Where a case has been brought before the Supreme Court in its original jurisdiction, it is the duty of the High Court dealing with a similar matter in another case to stay its proceedings pending the determination of the Supreme Court. Thus in RALPH OBIOHA v. PRESIDENT OF NIGERIA[67], it was held that when the Supreme Court being the Highest Court in Nigeria, is seized of a matter whether in its original or in its appellate jurisdiction, it is the duty of the High Court dealing with similar matter to stay its proceeding pending the determination of such matter in the Supreme Court.

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65. Governor of Ondo State v. President of the Federal Republic of Nigeria & Others (1982)3 NCLR. p. 940;

The President of the Federal Republic of Nigeria v. The Governor of Kano State (1982)3 NCLR 819;

Governor of Gongola State v. The President of Federal Republic of Nigeria (1982)3 NCLR. p. 574.

66. Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 1-2 SC. 13.

67. (1981)2 NCLR. 701.

(b) CONSTITUTIONAL DISPUTES BETWEEN THE FEDERAL AND STATE GOVERNMENTS DURING THE SECOND REPUBLIC SETTLED BY THE SUPREME COURT IN ITS ORIGINAL JURISDICTION

The Supreme Court being the highest Court in the country is entrusted with the jurisdiction to decide disputes between the Federal and State Governments, which may arise as a result of conflict between the laws of both governments. Conflict between Federal and State laws is inherent in a Federal system because both governments are autonomous and stand on equal footing in relation to division of powers, and neither can impose functions or duties on the other. The Supreme Court considered impartial and independent of the control of each government is given the power to decide disputes that might arise between the two governments by the 1979 Constitution under Section 212. Thus during the Second Republic three important cases between the Federal Government and State Governments were decided by the Supreme Court in its original jurisdiction.

The first case that came up before this Court is that on the New Revenue Allocation formula enacted by the National Assembly in 1981.[68]

In the ATTORNEY-GENERAL OF BENDEL STATE v. ATTORNEY-GENERAL OF THE FEDERATION, the President of the Federal Republic of Nigeria on 28th October 1980 forwarded to the National Assembly a Bill entitled Allocation of Revenue (Federation Account etc) Bill 1980 setting out new formula for the distribution of the

68. Attorney-General of Bendel State v. Attorney-General of the Federation (1982)3 NCLR. 1.

amount standing to the Credit of the Federation Account between the Federal and State Governments and the Local Government Councils of each State for the consideration and enactment by the National Assembly pursuant to Section 149 of the Constitution of the Federal Republic of Nigeria 1979.

The Bill was given first reading in the House of Representatives on 3rd November 1980 and was passed with some amendments on 22nd January 1981. On the 4th of November 1980 the Bill was read in the Senate and was also passed with some amendments different from those made by the House of Representatives, on the 15th of January 1981.

In order to resolve the differences on the amendments made in the two Houses the President of the Senate under the power given to him in Section 55(2) convened a meeting of Joint Committee of the National Assembly on finance which comprised of 24 members 12 from each House to examine the Bill.

The Committee met on the 28th and 29th of January 1981 and varied and adopted the Senate set of amendments by votes of 13 in favour and 11 against.

The approved version of the Bill was then presented by the Clerk to the National Assembly to the President of the Federal Republic of Nigeria for his assent and he assented to the Bill on 3rd February 1981. The Bill thus became an Act i.e. Allocation of Revenue (Federation Account etc) Act 1981.

Dissatisfied with the mode and manner by which the National Assembly had exercised its Legislative power in respect of the Bill, the Government of Bendel State, as plaintiff, challenged the Constitutionality of the Act by filing an originating summons in the Supreme Court of Nigeria and invoking the jurisdiction of that Highest Court under Section 212 of the Constitution.

The Supreme Court held that by the combined effects of Sections 4(8), 149, 212 and 272 of the Constitution, the plaintiff has a right to sue the Federal Government in the Supreme Court for a declaration that the Act is null and void and that the Court has the jurisdiction to entertain the suit.

Secondly the Court held that if a Bill (whether or not it is a money Bill) originates in either the Senate or the House of Representatives, it shall not become law unless it has been passed by both Houses and agreement has been reached between the two Houses on any amendment made thereto and thereafter assented to by the President. The Court stated that Section 55(2) gives the President of the Senate power to appoint a Joint Finance Committee, where there are differences between the two Houses in respect of the Bill, in order to resolve the differences, the new version of the Bill should be sent back to each of the two Houses for adoption. Until the two Houses, sitting either separately or jointly as the case maybe pass the Bill, or the Committee version of it into law, it is not a Bill passed by the National Assembly and cannot, therefore, be assented to by the President of the Federal Republic of Nigeria.

As Fatayi-Williams CJN puts it:

> "A legislature which operates a Federal written Constitution in which the exercise of legislative power and its limits are clearly set out has no power to ignore the conditions of law-making that are imposed by that Constitution which itself regulates its power to make law".

The Court finally held that as the National Assembly did not follow the Constitutional provision laid down for passing a Bill, the Act is therefore null and void and of no effect.

The second case between the Federal and State Governments that came up before the Supreme Court during the Second Republic was the case that arose as a result of the dispute on the adaptations made by the President in the Public Order Act 1979.[69] In this case, THE ATTORNEY-GENERAL OF OGUN STATE v. ATTORNEY-GENERAL OF THE FEDERATION, the President of Nigeria issued an Order - the Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order 1981 - commencing on 10th February 1981 in the purported exercise of the powers conferred on him under Section 274(2) of the Constitution, as the appropriate authority modifying certain provisions of the Public Order Act 1979, an existing law, by virtue of Section 274 of the Constitution. In three separate actions which were consolidated the Governments of Ogun, Bendel and Borno States challenged the power and authority of the President to make the Adaptation Order. The Order was attacked as being unconstitutional and ultra vires

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69. Attorney-General of Ogun State v. Attorney-General of the Federation (1982)3 NCLR. 166.

the President, unlawful exercise of legislative power which does not reside in the President, and as repugnant to and inconsistent with the Constitution as it imposedduties and functions on the State Governors. Finally they contended that the Public Order Act is a State law.

The Supreme Court held that by the promulgation of the Public Order Act 1979 in pursuance of its constitutional power under the Constitution (Basic Provision) Decree 1975, the Federal Military Government expressed completely, exhaustively and exclusively what should be the law governing the proper and peaceful conduct of public assemblies, meetings and processions throughout Nigeria. Therefore, the Public Order Act was at the commencement date, the 16th February 1979, meant only to be and indeed it was a Federal legislation and not a State law.

Secondly, that on 1st October 1979 when the 1979 Constitution came into force the Public Order Act as an existing law by virtue of Section 274(4) of the Constitution took effect as an Act of the National Assembly under Section 274(1)(a) of the Constitution, it being a law the National Assembly has power to enact by virtue of sections 4(2), 11(1) and part 1 of the 2nd schedule of the Constitution.

Thirdly, by virtue of Sections 274(2) and 274(4)(a)(i) of the Constitution, the President is the only competent authority to adapt the Public Order Act so as to bring the law into conformity with the Constitution.

Fourthly, neither the National Assembly nor the President has the Constitutional power to regulate or interfere with the exercise by a State Governor of his Executive functions. It would also not be competent for a State Assembly or Governor to regulate or interfere with the exercise by the President of his executive function. Consequently, the President in exercise of his power to adapt the Public Order Act would be acting unconstitutionally if he imposed in the adaption order duties and obligations on the Governor of a State or other State public officers.

The third dispute between the Federal Government and the State Government decided by the Supreme Court in its original jurisdiction was the case of ATTORNEY-GENERAL OF BENDEL STATE v. ATTORNEY-GENERAL OF THE FEDERATION AND 18 OTHERS.[70] In this case the Government of Bendel State challenged the constitutionality of Sections 1, 2 and 6 of the Allocation of Revenue (Federation Account etc.) Act 1981 enacted by the National Assembly purporting to act on the enabling provision of Section 149 of the 1979 Constitution.

The Bendel State contended that-

(1) Section 2(1) and (2) of the Act offended Section 149(2) and (3) of the 1979 Constitution.

(2) Section 6(1) of the said Act imposed duties and functions on the State by the establishment of a Joint Local Government Account Allocation Committee.

(3) The Bendel State Government was entitled to Statements of Account of the Federal Account.

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70. (1984) 5 NCLR. 101.

The plaintiff's claim therefore reads thus:-

> "(1) A declaration that subsection (1) and (2) of Section 2 of the Allocation of Revenue (Federation Account etc) Act, 1981 is unconstitutional and void in so far as each of the said subsections makes provision for a fund to be administered by the Federal Government.
>
> (2) A declaration that subsection (1) of Section 6 of the aforesaid Act is unconstitutional and void in so far as it enacts the establishment of a body to be known as the Joint Local Government Account Allocation Committee.
>
> (3) A declaration that the Government of Bendel State is entitled to have from time to time a true and correct statement of all moneys paid by the Federal Government into the Federation Account kept pursuant to section 149 of the Constitution."

The Supreme Court held that by the enabling Section 149 (3) of the 1979 Constitution, Section 2(1) and (2) of the Allocation of Revenue (Federation Account etc) Act 1981 is unconstitutional and void in that-

(a) The National Assembly has by that provision imported foreign elements into Section 149(3) by the 1% and 1.5% of State's monies which amounts to a further "sharing out" by that same body, of the States' monies in the Federation Account (i.e. a sharing out subsequent to the first exercise under subsection (3) of Section 149 of the Constitution.

(b) Section 149(3) of the Constitution does not empower the National Assembly to set aside any portion of the amount thereof as a trust to be administered or expended by the Federal Government for the benefit of the beneficiary States at the absolute discretion of the Federal Government.

(c) The National Assembly omitted to prescribe the formula by which the funds for the amelioration of ecological

problems and the development of mineral producing areas are to be distributed among the beneficiary States.

The Court also held that the establishment of the Joint Local Government Account Allocation Committee by Section 6(1) of the Act is intra vires the National Assembly and therefore valid in that since under the 1979 Constitution the National Assembly can by express or implied provision impose duty on or give power to the State and ditto for the State Assembly (vice-versa), it is clear that impliedly under Section 149 subsection (4) and (6) of the 1979 Constitution, the National Assembly enact such law establishing the Joint Committee of both the Federal Government and the State Governments.

The Court finally held that since the position of the Federal Government in maintaining the Federation Account is, by virtue of Section 149(1) of the 1979 Constitution, that of a Trustee for the State Governments and the Local Government Councils of the States, it is the duty of the Federal Government to keep a proper account of the trust it administers and the States as beneficiaries have a right to call upon it for accurate information as to the State of trust. Consequently, the Federal Government must render accurate and regular account to the beneficiaries of all monies paid into the Federation Account when requested to do so.

(c) FEDERAL AND STATE JUDICIAL SYSTEM

The Federal and State Judicial System of the Federal Republic of Nigeria are provided for in Sections 6, 212, 213, 219, 230, 236, 237 and 250 of the 1979 Constitution. Section 6 subsection (1) provides that:

> "The judicial powers of the Federation shall be vested in the Courts to which this Section relates being courts established for the Federation".
>
> (2) "The judicial powers of a State shall be vested in the courts to which this Section relates, being courts established, subject as provided by this Constitution, for a State".

The Supreme Court being the highest Court of the country and classified as a Federal Court has original and appellate jurisdiction over matters specified in Sections 212 and 213 of the 1979 Constitution. Section 212 provides that:

> "(1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.
>
> (2) In addition to the jurisdiction conferred upon it by subsection (1) of this Section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly:
>
> Provided that no original jurisdiction shall be conferrred upon the Supreme Court with respect to any criminal matter".

Section 213 of the Constitution which provides for the appellate jurisdiction of the Supreme Court states that:

> "(1) The Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal Court of Appeal.
>
> (2) An appeal shall lie from decisions of the Federal Court of appeal to the Supreme Court of Appeal to the Supreme Court as of right in the following cases:-
>
> (a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Federal Court of Appeal;

(b) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;

(d) .....

(e) decisions on any question whether any person has been validly elected to any office under this Constitution or to the membership of any legislative house or whether the term of office of any person has ceased or the seat of a person in a legislative house has become vacant; and

(f) such other cases as maybe prescribed by any law in force in any State".

The Federal Court of Appeal also classified as a Federal Court has its jurisdiction stipulated in Section 219 of the Constitution which provides that:

"Subject to the provisions of this Constitution, the Federal Court of Appeal shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, High Court of a State, Sharia Court of Appeal of a State and Customary Court of Appeal of a State".

The jurisdiction of the Federal High Court are stipulated in Sections 230 and 237 of the Constitution.

"Section 230(1) subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon if by an Act of the National Assembly, the Federal High Court shall have jurisdiction-

(a) in such m atters connected with or pertaining to the revenue of the Government of the Federation as may be prescribed by the National Assembly; and

(b) in such other matters as may be prescribed as respects which the National Assembly has power to make laws".

Section 237 provides that:

"(1) Without prejudice to the generaltiy of the provisions of Section 236 of this Constitution, the competent High Court shall, to the exclusion of any other court, have original jurisdiction to hear and determine any question whether any person

has been validly elected to any office or to the membership of any legislative house, or whether the term of office of any person has ceased or the seat of a person in a legislative house has become vacant.

(2) In this Section "competent High Court means-

(a) in any case involving the office of President or Vice-President, the Federal High Court .....
.....
.....".

The jurisdiction of the State High Courts being the Highest State Courts are provided for in Sections 236, 237 and 250:

"Section 236(1) subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is on issue.....
.....
.....".

"Section 237(2) in this Section,'competent High Court' means-

(a) .....

(b) in any case involving any other office, the High Court of the State as respect such office is established under this Constitution; and

(c) in any case involving the membership of or the seat of a person in a legislative house, the High Court of the State where the Senatorial district, Federal Constituency or State Constituency of that member or person is located".

"Section 250(1) subject to the provisions of this Constitution-

(a) where by the law of a State jurisdiction is conferred upon any court for the hearing and determination of civil causes and of appeals arising out of such causes, the court shall have like jurisdiction with respect to the hearing and determination of Federal causes and of appeals arising out of such causes".

On examination of the provisions of the Constitution

it will be noticed that while Section 6 contemplates two separate judicial systems, one exercising the Federal judicial powers and the other exercising State judicial powers, the other provisions of the Constitution particularly those relating to Supreme Court, Court of Appeal and State High Courts jurisdiction contemplate that these Courts are to exercise both Federal and State judicial powers. Section 250 however contemplates State subordinate courts exercising jurisdiction in Federal matters until separate Federal Courts are established. Section 230 also contemplates National Assembly conferring jurisdiction on the Federal High Court in respect of Federal matters under the Exclusive Legislative List as well as Concurrent Legislative List. The dual judicial system envisaged by Sections 6, 230 and 250 should be read subject to the specific provisions dealing with the jurisdiction and powers of the Supreme Court, Court of Appeal and State High Courts under Sections 212, 213, 219, 236 and 237.

This question came up before the Court of Appeal in SHUGABA'S and MOMOH'S CASES under Section 42 of the Constitution and before the Supreme Court in the BRONIK MOTOR'S CASE under Sections 230 and 236 of the Constitution. In BRONIK MOTOR'S CASE[71] two rival contentions were advanced as follows:

The Counsel for appellants contended that under Section 6 of 1979 Constitution judicial power has been so vested in the courts that the Federal Courts and State Courts exercise Federal judicial power and State judicial power respectively.

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71. (1985) 6 NCLR. 1.

Counsel for the appellants submitted that Federal judicial power is co-extensive with Federal legislative power (which of course extends to the subjects in respect of which the National Assembly can make laws).

Counsel for the respondents urged that while under our Constitution the lines between Federal executive and legislative power and State executive and legislative power appear precise and well set down (Sections 4(1), 4(6), 5(1) (a) and 5(2)(a), the same cannot be said of the Federal and State judicial power. This is because jurisdiction has been given to 2 Federal Courts - the Supreme Court and the Court of Appeal - in appeals from State Courts in respect to subjects within the competence of the State House of Assembly. And State Courts, particularly the State High Courts, have been given, by the Constitution, not the National Assembly, jurisdiction in Federal causes and matters (Sections 250 and 237(2)(c). Thus he finally submitted that this undermines to a substantial extent the platform on which much of the submission of learned senior counsel to the appellant's was constructed.

The Supreme Court unanimously rejected the proposition that the Constitution provides for a dual mutually exclusive judicial system. The dicta of the judges on this point are note worthy. Commenting on the issue, Nnamani JSC said that:

> "The provision of Section 6 clearly shows that the line between Federal judicial power and State judicial power is not so precise and certainly not so rigid. The Courts, that is those vested with judicial power in Section 6(1) and 6(2) of the 1979 Constitution and enumerated in Section 6(3) are to enjoy inherent powers and sanctions of a court of law' and then power is to extend to 'all matters .... and to all actions and proceedings relating thereto'. As

> Nwabueze observes in his book - The Presidential Constitution of Nigeria, 'It is not a delimitation of the extent of Federal and State judicial power. It is rather a definition of the nature of judicial power'".[72]

Bello JSC on the same issue said that:

> "The division of judicial powers of Nigeria between the courts established for the Federation and the courts established for the component States under Section 6 of the Constitution, wherein the judicial powers of the Federation are vested in the Federal Courts and the judicial powers of the States in the State Courts, is not exclusive. Other provisions of the Constitution permit some Federal Courts to exercise jurisdiction on matters that are within the judicial powers of the States. Thus in the exercise of their appelate jurisdictions under Sections 213 and 219 of the Constitution, the Supreme Court and Federal Court of Appeal, which are both Federal Courts, are endowed with the judicial powers of the States in the determination of appeals from the State Courts. In the same vein, in addition to the general jurisdiction of State High Courts under Section 236, the State Courts are empowered by Section 250 of the Constitution subject to the qualifications stated therein to exercise jurisdiction over the judicial powers of the Federation".[73]

In the same vein Idigbe, JSC said that:

> "Although Sections 4 and 5 of the 1979 Constitution clearly set out the extent of Federal and State legislative as well as executive powers there is no such clear and precise boundary or delimitation of Federal and State judicial powers. The provisions in Section 6(6) of the Constitution aforesaid, in my views are not in any way intended to delimit the extent of Federal and State judicial powers, rather they tend to define the nature of judicial power as authority for the determination of the rights of parties in suits before the Courts".[74]

On the same issue Obaseki, JSC stressed that:

> "The argument that the courts established by the Constitution for the Federation and for the States

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72. Ibid at p. 23.

73. Ibid at p. 31.

74. Ibid at p. 33.

> must have their jurisdiction limited to the matters over which the legislative powers of the legislatures for the Federation and for the States can be exercised cannot find support in the Constitution. If that argument is accepted, it would mean that jurisdiction of Federal Courts exercising the judicial powers of the Federation is co-extensive with the matters in respect of which the National Assembly exercises legislative powers, Sections 4(2), 4(4) (a)) as prescribed in the Exclusive and Concurrent Legislative Lists while the jurisdiction of the State Courts exerdising the judicial powers of the State is co-extensive with matters in respect of which the House of Assembly exercises legislative powers (Section 4(7)(a)(b)(c)). The judicial powers vested in the courts be they Federal or State Courts being the same in content the legical basis for that contention disappears".[75]

Lastly, adding to the strong body of opinions on the issue Kayode Eso, JSC said that:

> "It is seen therefore, from the examination of all these constitutional provisions, that notwithstanding the provision of Section 6 of the Constitution which vests judicial powers of the Federation and of the States in the Courts established for the Federation and for the States respectively, detailed provisions are still contained in the Constitution with regard to the jurisdiction of these courts (Sections 42, 213, 219, 230, 236, 237 and 250). It follows therefore that if learned senior advocate is right in his submission that following the provision of Section 6 of the Constitution 'Federal Courts' are to deal exclusively with matters in the legislative lists while 'State Courts' are restricted to matters within the Concurrent List and other residual matters, it would be pointless for the framers of the Constitution to have gone to such length of providing the provisions aforesaid, dealing with jurisdiction as respects the various courts".[76]

(d) JURISDICTION OF THE STATE HIGH COURTS OVER FEDERAL MATTERS

From the above discussion it would follow that quite unlike the Federal systems of America and Australia that operate the

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75. Ibid at p. 45.

76. Ibid at p. 54.

dual court system where the Federal Courts have exclusive jurisdiction over Federal matters and State Courts have exclusive jurisdiction over State matters, in Nigeria there is no dualism in the Court system. Thus the Federal Courts exercise jurisdiction over Federal and State matters, likewise the State Courts have jurisdiction over Federal and State matters. The power of the State Courts to exercise jurisdiction over Federal matters is specifically granted under Section 250 of the 1979 Constitution. Section 250 which empowers State Courts to determine Federal causes aims at preventing a situation where a part of a cause will become triable in a State Court and the other part in a Federal Court. Thus as Justice Kazeem observed in THE FEDERAL REPUBLIC OF NIGERIA v. EZE;[77]

> "But it may well happen that when determining State civil and criminal causes, it may be necessary to determine as well Federal causes which might have arisen out of those State causes. In my view, it is in order to prevent a situation whereby part of such causes will become triable in a State Court and another part in a Federal Court, that provision was made in Section 250 which falls within Part III of Chapter VII relating to the judicature and which deals with supplemental matters, that when such a situation has arisen, State courts are conferred with jurisdiction to determine Federal causes and offences as defined under subsection (3) of the Section along with State causes".

The State High Court being the highest Court of the State is conferred with jurisdiction under Section 236 of the 1979 Constitution which provides that:

> "(1) subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege interest obligation or claim is in issue ....."

The general jurisdiction conferred on the State High Court by

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77. (1982) 3 NCLR. 259.

Section 236, together with Sections 42, 250 and 237 gives the High Court of a State jurisdiction over Federal causes and matters also.

Section 42 provides that:

> "(1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress".

Section 237 provides that:

> "(1) Without prejudice to the generality of the provisions of Section 236 of this Constitution, the competent High Court shall, to the exclusion of any other court, have original jurisdiction to hear and determine any question whether any person has been validly elected to any office or to the membership of any legislative house, or whether the term of office of any person has ceased or the seat of a person in a legislative house has become vacant.
>
> (2) In this Section "Competent High Court" means-
>
> (a) .....
>
> (b) in any case involving any other office, the High Court of the State as respect which such office is established under this Constitution; and
>
> (c) in any case involving the membership of or the seat of a person in a legislative house, the High Court of the State where the Senatorial district, Federal Constituency or State Constituency of that member or person is located".

Section 250 provides that:

> "(1) subject to the provisions of this Constitution-
>
> (a) where by the law of a State jurisdiction is conferred upon any court for the hearing and determination of civil causes and of appeals arising out of such causes, the court shall have like jurisdiction with respect to hearing and determination of Federal causes or of appeals arising out of such causes".

These provisions of the Constitution emphatically declare that a State High Court has jurisdiction over Federal causes.

The jurisdiction of the Federal High Court is provided in Sections 42, 230, 237(2)(a) of the 1979 Constitution and Sections 7 and 8 of the Federal High Court Act 1973. Section 7 of the Federal High Court Act provides:

> "(1) The Federal High Court shall have and exercise jurisdiction in civil causes and matters-
>
> (a) relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;
>
> (b) connected with or pertaining to-
>
> (i) the taxation of Companies and of other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation;
>
> (ii) customs and excise duties;
>
> (iii) banking, foreign exchange, currency or other fiscal measures;
>
> (c) arising from
>
> (i) the operation of Companies Decree 1968 or any other enactment regulating the operation of Companies incorporated under the Companies Decree 1968;
>
> (ii) any enactment relating to copyright, potent, designs, trade marks and merchandise marks;
>
> (d) of Admiralty jurisdiction.

Section 8 of the Federal High Court Act provides:

> "(1) In so far as jurisdiction is conferred upon the Federal High Court in respect of the causes or matters mentioned in the foregoing provisions of this Part the High Court or any other Court of a State shall, to the extent that jurisdiction is so conferred upon the Federal High Court cease to have jurisdiction in relation to such matters".

These Sections show that the jurisdiction of the Federal High Court are limited to Federal causes and matters.

(i) ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER SECTION 42 OF THE 1979 CONSTITUTION

Section 42 of the Constitution confers jurisdiction on the High Court in a State in which the fundamental right of a person has been, is being or likely to be infringed. This provision gave rise to a question as to which High Court, Federal or State has jurisdiction to enforce a fundamental right which has been, is being or likely to be infringed by a Federal action, executive, legislative or judicial. In the case of FEDERAL MINISTER OF INTERNAL AFFAIRS v. SHUGABA[78] where Shugaba a member of the Great Nigeria People's Party and the majority leader in the Borno State House of Assembly was deported from the country under the orders of the Federal Minister of Internal Affairs, issued on 24th January 1980 on the ground that he was an alien. The Minister purported to act under the Immigration Act 1963 and published in an Extra-Ordinary Federal Government Gazette No. 7 Vol. 67, classifying Shugaba as a prohibited immigrant. Shugaba thereby invoked the jurisdiction of the State High Court of Maiduguri under Section 42 of the Constitution claiming to be a Nigerian and sought declaration that his fundamental rights had been violated. The High Court gave judgment in favour of the plaintiff. The defendants then appealed to the Federal Court of Appeal (Kaduna Division). During the course of the proceeding counsel for the defendant contended inter alia: that notwithstanding the provisions of Section 42 of the 1979 Constitution the State High Court of Maiduguri has no jurisdiction in that in all matters specified under Part 1 of the 2nd Schedule of the 1979 Constitution i.e. the Exclusive

78. (1982) 3 NCLR. 915.

Legislative List, jurisdiction is conferred on the Federal High Court. Citizenship, they observed is one of the items therein listed and therefore the Federal High Court and not the State High Court has jurisdiction over the case in which the issue is 'citizenship'. Counsel firstly submitted that the correct interpretation of Section 250 is that it provides for the exercise by State High Courts of jurisdiction in respect of Federal Causes only when the Federal Cause is incidental to the main State cause being considered.

In the judgment of the Court in which all the judges concurred except Mamman Nasir who dissented, the Court held that the State High Court had jurisdiction to entertain the action as an action for the enforcement of Fundamental right can be brought either in the Federal High Court or in the State High Court in respect of Federal action. Coker JCA delivering the opinion of the majority held:

> "In my view, it is clear and beyond doubt that both the Federal High Court and the High Court of a State have Concurrent original jurisdiction to hear and determine any proceedings involving infraction of any fundamental rights irrespective of whether the right involved comes within the legislative competence of the National Assembly or the State House of Assembly. No such distinction is expressed in Section 42 and there is no room to import same. There can be no justification for determining the jurisdiction of the court by reference to the constituent element of the right alleged infringed with the competent legislative arm, State . . . or Federal. The concept is completely extraneous to the very letter and spirit of the rights concerned in Chapter IV it is completely irrelevant that the right alleged infringed comes within the legislative competence of the National Assembly or a State House of Assembly. An applicant for relief under Section 42 has the choice of whether to commence the proceedings either in the Federal High Court or a State High Court, in the State where the right is alleged to be or likely to be infringed. The argument that the subject-matter

> of right comes within the legislative list of the National Assembly is irrelevant and cannot on that account alone give rise to distinguishing between the jurisdiction of the two High Courts. This is because the rights conferred in Chapter IV are neither within the Exclusive Legislative List of National Assembly nor of the State House of Assembly".[79]

However, in his dissenting opinion Mamman Nasir, P. said:

> "As each government is supreme within its sphere of authority and independent of the other, the Federal Government cannot be sued in a State Court except where jurisdiction is specifically vested in the State Court by the Constitution or by an Act of the National Assembly. To hold otherwise will knock the bottom off the citadel upon which the principle of the separation of powers is based. In cases therefore where jurisdiction is given by the Constitution in respect of the same subject matter to both the Federal High Court and High Court of a State the only logical conclusion is that the Federal Government or any of its agencies cannot be sued in the High Court of a State but only in the Federal High Court nor can any infringement of a fundamental right in respect of which only the Federal Government can be accused, such as deportation, be tried in any High Court except the Federal High Court. I find it difficult to subscribe to the view that it is the litigant who ultimately decides which court has jurisdiction by his choice of it. It is also contrary to principle and the integrity of the judiciary to say when a complaint is against the Federal Government the litigant shall go to the State High Court for redress and if the complaint is against a State Government the litigant shall go to the Federal High Court in the belief that he is more likely to get justice by this arrangement. This is very dangerous as it amplies, to say the least, an element of lack of faith in the judiciary."[80]

Dismissing the contention of the Federal Government on the interpretation of Section 250 of the Constitution Uche Omo, JCA (one of the majority concurring judges) said that:

> "I am unable to appreciate how such a meaning can be read into the very unambiquous provision of Section 250. The fact that Chapter VII Part III is headed 'supplemental' seems to me entirely irrelevant. If what is intended is jurisdiction in respect of incidental (Federal) matters it cannot be difficult for the Constitution to so provide".[81]

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80. Ibid at p. 926.
81. Ibid at p. 921.

On the same issue Karibi-Whyte, JCA said that:

> "This section was not intended and does not confer original jurisdiction in respect of Federal causes in State courts but enables State Courts exercising jurisdiction under State law to exercise the same jurisdiction in respect of Federal causes arising thereform"[82]

In TONY MOMOH v. SENATE OF THE NATIONAL ASSEMBLY[83], the plaintiff editor of daily times was summoned by Senate of the National Assembly pursuant to the provisions of Sections 82 and 83 of the Constitution of 1979 to come and disclose sources of his information of an article about Senators and their lobbying for contracts from the executive branch of government. Editor therefore challenged the summons in the High Court of Lagos State on the ground that it was a violation of his right to freedom of expression guaranteed by the Constitution. Counsel for the respondent contended that the State High Court has no jurisdiction to entertain the matter. But Counsel for the applicant/plaintiff contended that Section 42(1) of the Constitution confers jurisdiction on the State High Court in a matter of this nature.

The High Court held that Section 42 of the Constitution is a provision designed to protect the right of freedom of expression and other guaranteed rights under the Constitution by providing a special jurisdiction of the High Court and legal aid' and vesting a general jurisdiction in the High Court of a State under Section 236 of the Constitution. The Court finally held that the Lagos State High Court has jurisdiction

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82. Ibid at p. 925.

83. (1981) 1 NCLR. 105. In appeal to the Federal Court of Appeal decided on 19th July 1982 (unreported). See reference to this case in the Supreme Court decision in Bronik Motor's Case (Supra).

to entertain the matter. However in appeal the Federal Court of Appeal distinguishing SHUGABA majority decision on the ground of per incuriam that the Court did not advert its mind to Section 42(2) of the Constitution, disagreed with the above view and held per majority that the combined effect of Sections 6(1) and 230, items 34 and 67 of the Exclusive Legislative List, and paragraph 2(a) and (b) of Part III to the Second Schedule to the Constitution is to vest in the Federal High Court full jurisdiction over Federal causes and matters at first instance. It is supposed to fulfill for the Federal Government similar functions and is thereby enabled to exercise similar jurisdiction and powers thereof as the High Court of a State. Nnaemeka-Agu JCA in his lead judgment stated the combined effect of the relevant provisions of the Constitution as follows:-

> "I am satisfied that the combined effect of Sections 6(1) and 230, items 34 and 67 of the Exclusive Legislative List, and paragraphs 2(a) and (b) of Part III to the Second Schedule to the Constitution is to vest in the Federal High Court full jurisdiction over Federal causes and matters at first instance. It is supposed to fulfill for the Federal Government similar jurisdiction and powers therefore as the High Court of a State. Any lingering doubts I might have entertained about the plenitude of its powers is dispelled by a glance at Section 231 which provides that for the purpose of exercising any jurisdiction conferred upon it by the Constitution or the National Assembly, that Court shall have all the powers of the High Court of a State. Reading together [illegible] Sections 6(1), 230 and 231, items 34, 67 and paragraphs 2(a) and (b) of Part III to the Second Schedule to the Constitution, the fallacy of Mr. Momoh's attempt to equate that court to the defunct Federal Revenue Court becomes only too palpable. Incidentally, Mr. Momoh is not alone among lawyers who still see the Federal High Court from the coloured glass of the drastically reduced jurisdiction of the defunct Federal Revenue Court. They ignore its inherent powers as a superior court of record now given to it by a combination of Section 6(3) and 6(6)(a) and its powers being equated to those of State High Courts by Section 231(1) of the Constitution. They overlook the wide provisions of Section 230, particularly Section 230

> (1)(b). In spite of the above provisions some say it has no inherent power to grant bail to a convicted person. In my view the whole attitude needs, be changed. In my opinion we must reconcile ourselves to the reality that by a deliberate choice we have elected federalism with all its implications; that the raison d'etre is avoidance of internal conflicts by constitutionally recognising our internal diversity by having States which are sovereign within their spheres of authority and a Federal Government which is not only equally Supreme but also independent of State Governments in its own sphere - each in the legislative, executive, and judicial arms of government".

These two cases on the enforcement of fundamental rights were referred to by the Supreme Court in BRONIK MOTORS CASE. The majority view of the Federal Court of Appeal Kaduna in SHUGABA'S CASE seems to have received the approval of the Supreme Court as found in the various judgments of the justices e.g. Irikefe, Bello, Kayode, Uwais, JSC. To quote (only one of them) Irikefe JSC observed that:

> "The Federal High Court enjoys concurrent jurisdiction with the State High Courts under Section 42 of the Constitution to grant redress for any infringement of a fundamental right".[84]

(ii) JURISDICTION IN OTHER MATTERS

Sections 236, 237 and 250 of the Constitution give the State High Courts jurisdiction in respect of Federal causes and matters while Sections 230 and 237 of the Constitution and Sections 7 and 8 of the Federal High Court Act 1973 give jurisdiction to the Federal High Court in respect of Federal matters and causes. It had been contended that Section 230 of the Constitution and Sections 7 and 8 of the Federal High Court Act exclude the jurisdiction of the State High Court over federal matters except those federal matters incidental

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84. Ibid at p. 30.

to the State matter being determined. This issue came up in the cases discussed below.

Thus in JAMMAL STEEL STRUCTURES LTD v. AFRICAN CONTINENTAL BANK LTD[85], where the claim was for ₦641,328.38k from the defendants/ appellants being the balance due to the plaintiffs for an over-draft granted by the plaintiffs to the defendants at their Idomota branch Lagos, in the normal course of their business as bankers to the defendants and for money paid by the plaintiffs to the defendants as bankers at the latter's request, which said 'sum the defendants have refused and/or neglected to pay inspite of repeated demands. The learned trial judge before whom the matter was first taken having ruled that his Court had jurisdiction an appeal was lodged to the Supreme Court. In the Supreme Court it was argued by the Counsel to the appellants in view of the provisions of Section 7(1)(b)(III) the Federal Revenue Court had exclusive jurisdiction over the matter involved in the case. Dismissing this contention the Court held that where there is involved only a dispute between a bank and one or more of its customers in the ordinary course of banking business or transaction as in the case with the subject matter of the present case any State High Court is competent to entertain the case because the Government is not really interest in the outcome of the dispute.

T. Elias CJN delivering the opinion of the majority held that:

> "The ejusdem generis rule applies to the interpretation of Section 7(1)(b)(III) with

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85. (1973) 1 All NLR. (Part II) 208.

> the result that the word 'measures' must be taken to qualify each of the preceding specifically enumerated subjects, including 'banking'. This means that the natural and ordinary meaning to be given to the sub-section is that it should be read as 'banking measures, foreign exchange measures, currency measures or other fiscal measures. The words 'or' and 'other' in this context are not disjunctive within the meaning of Section 18(3) of the Interpretation Act 1964 but, by virtue of Section 1(4) of the same Act, they imply similarity as between the preceding specifically enumerated subjects - banking, foreign exchange and currency - and the generic words 'other fiscal measures'. That it does not seem that the legislative intention behind the Decree was to clutter up the new Revenue Court with ordinary cases involving banker/customer relationship such as disputes in respect of overdraft, all banking transactions having nothing to do with Federal Revenue and therefore any State High Court is competent to entertain the case".

However in his dissenting opinion Fatayi-Williams JSC (as he then was) said:

> "It seems to me that the use of the comma after the word 'banking' and the insertion of the word 'or' before the phrase 'other fiscal measures' show clearly that the intention of those who promulgated the Decree is that the word banking as well as the word 'foreign exchange' and 'currency' for that matter, should stand alone and be construed as such".

The learned Justice of the Supreme Court then said that the word 'banking is used as a noun in the Section and 'banking' in its ordinary sense is wide enough to embrace every transaction coming within the legitimate business of a banker and therefore the jurisdiction of the State High Court in relation to such matters is excluded.

In BRONIK MOTORS v. WEMA BANK[86], the plaintiff sued the defendants in the High Court of Lagos State principally for

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86. (1985) 6 NCLR. 1.

specific performance, debt arising from overdrafts etc. Judgment was entered for the plaintiff Bank. The defendants appealed to the Federal Court of Appeal which dismissed the appeal and confirmed the judgment of the High Court in part. The defendant appellant then appealed to the Supreme Court where they raised inter alia the following important ground of appeal that:

> "The Federal Court of Appeal and the Lagos High Court erred in law in failing to observe that jurisdiction over the claim in this action is vested in the Federal High Court and not in the High Court of Lagos State".

This is because

(a) Section 230(1) of the 1979 Constitution confers jurisdiction in respect of all matters in the Exclusive Legislative List on the Federal High Court.

(b) In the alternative, Section 7 of the Federal High Court Act 1973 confers jurisdiction in respect of "civil causes and matters .... connected with or pertaining to ... banking" on the Federal High Court.

(c) Section 8(1) of the said 'Act prohibits the High Court or any other Court of a State from exercising jurisdiction.

Counsel for the appellants urged the Supreme Court to overrule its majority judgments in HAMMALIS CASE[87] where the Court after construing the provision of Section 7(1)(b)(III) had held that banking transaction which was in issue in that case fell within the jurisdiction of the State High Court and

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87. (1973) 1 All NLR. (Part II) 208.

not the Federal Revenue Court (as the Federal High Court was then known), because all matters pertaining to Banking including the banker/customer relationship which was in issue in this suit fell within the jurisdiction of the Federal High Court and not State High Court which actually disposed of the case. The Counsel contended that it was wrong for the Supreme Court to have interpreted Section 7(1)(b)(iii) of the Federal High Court Act 1973 the way it did, by maintaining that the word measures should qualify the preceding words "banking","foreign exchange" and "currency" notwithstanding the commas which separated each word or the word other preceding the words "fiscal measures". The Counsel further submitted that the ejusdem generis rule applied by the Court in this case should result in narrowing down general words so that they do not go beyond the scope of the specifically enumerated words. Thus it will not affect the meaning or scope of the specifically enumerated words such as 'banking'. He argued that "other fiscal measures" must be construed ejusdem generis with "banking" "foreign exchange" and currency. He contended that what the majority had done was to apply the ejusdem generis rule in reverse for it was the generic words "other measures" which were now giving colour to the specifically enumerated words instead of the other way round. He finally submitted that under Sections 3(1) and 18(3) of the interpretation Act, 1964 effect must be given to punctuation, so that "or" and "other" should be construed disjunctively. And that the provision of Section 7(1)(b)(iii) should be interpreted in such a way that independent meaning is given to the words "currency", "foreign exchange", "banking", "fiscal measures" so that no word is wasted and this

is also in accord with the view of the minority judgment.

In supporting the majority judgment in JAMIAL'S CASE Counsel for the respondent contended that the ejusdem generis rule applied in the reverse in the interpretation of Section 7(1)(b)(iii) of the Act. He argued that if the Federal Military Government intended to exclude the jurisdiction of other courts in all banking matters it would have easily stated so. He referred to Section 7(1)(c) of the Act which mentions the Company Act and maintained that the Act would have mentioned the Banking Act specifically,too, for if banking was included in Section 7(1)(c)(ii) of the Act there would have been no argument as to its full meaning. He finally contended that the Supreme Court should be cautious in overruling itself except on very high principles of law.

On the part of the case concerning Section 230 of the 1979 Constitution Counsel for the appellant submitted that Section 6 of the 1979 Constitution read with Chapter 7 of the Constitution - which deals with the judicature clearly intend a division of judicial power between the Federation on one hand and the States on the other. He contended that the only Federal Courts that can exercise State judicial powers are the Supreme Court and Federal Court of Appeal. But that the Federal High Court will exercise jurisdiction of the Federation which relates to legislative subjects within the competence of the National Assembly and that unless the Constitution expressly say so State Courts have no federal jurisdiction. He argued that the phrase "as prescribed" in Section 230 ought to be read as relating to the present and relied on Section 275(4) of the Constitution.

He also argued that since Section 230(1)(b) gives the Federal High Court jurisdiction over such matters, prescribed under the Constitution in respect of which the National Assembly has power to make laws which refers to the Exclusive Legislative List, "banking" in the Exclusive List encompass all matters including banker/customer relationship and therefore the Federal High Court has exclusive jurisdiction over all banking matters.

Counsel for the respondent argued that the Constitution did not clearly differentiate between federal judicial power and State judicial power. This is because the State courts have been given federal judicial power and the federal court exercise some State judicial powers. Counsel did not agree that the jurisdiction of Federal High Court is co-extensive with Federal legislative power. He contended that Section 230(1)(a) is not self-executing. The National Assembly, has to prescribe. As regards Section 230(1)(b) he submitted that it gives power to the National Assembly in relation to the future. The National Assembly has as yet not prescribed. He said that such an interpretation was not absurd having regard to the provision of Section 236 of the Constitution. He contended that Sections 42, 230 and 237 confer jurisdiction on the Federal High Court and this is to be contrasted with Section 236 which confer unlimited jurisdiction on State High Court, Section 237(2)(c) and Section 250. He finally submitted that though the subject of the dispute in the suit in hand - banking - was in the Exclusive List it did not mean that the State High Courts had no jurisdiction by relying on Section 275(1), Regional Courts (Federal Jurisdiction Act) 1958 and Sections 10 and 11 of the High Court Law Cap. 52 of Lagos State.

In deciding whether the Lagos State High Court has jurisdiction in this case Eso JSC dismissing the contention of the counsel for the appellant and concurring with the lead judgment delivered by Nnamani JSC held the view that:

> "It would be sufficient to determine .... which of the two views held in the JAMMAL'S CASE is legally tenable
> .....
> if we hold that the majority decision is the correct one then the Lagos High Court has jurisdiction but if Fatayi-Williams JSC (as he then was) is right in the minority decision which he gave then jurisdiction would be in the Federal High Court and the jurisdiction of the Lagos State High Court will be ousted.
>
> With respect, I do not agree with Fatayi-Williams JSC (as he then was) that the words 'banking' 'foreign exchange' and 'currency' stand alone to be construed as such in the light of the commas which separate them nor do I think that 'banking' is used as a noun in the subsection. The words 'banking', 'foreign exchange' and currency are used as adjectival nouns and they each qualify the words measures. It would have been a different matter if the text had run thus:-
>
> (iii) civil causes and matters -
> (iv) connected with or pertaining to banking
> (v) foreign exchange
> (vi) currency, or other fiscal measures.
>
> But there is no semi-colon after the word 'banking' nor are each of the words dealt with as separate items so as to leade to separating it completely from 'other fiscal measurcs'. On the contrary the text of the legislation runs together and the commas separating the words have not treated each word as a separate entity.
>
> Again, with the use of the word 'other' preceding 'fiscal measures', it seems to me that 'banking', 'foreign exchange',. 'currency' are all regarded as fiscal measures. This at least, with respect accords with ordinary English Usage. If Fatayi-Williams JSC (as he then was) had seen those words as adjectiual nouns, that they are, and not nouns that they are not,

> there would hardly have been any difference between the majority and minority judgments
> .....
>
> With this interpretation placed on Section 7(1)(b)(iii) of the Federal High Court Act it follows that the jurisdiction of the Federal High Court in so far as this case is concerned is limited to banking (fiscal) measures and not to everything pertaining to banking. It definitely does not include the ordinary day to day banking activities between the Bank and its customers. It follows that the State High Court still has jurisdiction in the matter".[88]

In his lead judgment Nnamani JSC further maintained that:

> "Having held that the majority judgment is right in construing Section 7(1)(b)(iii) such that the Federal Revenue Court is restricted to its essentially revenue protection functions while the State High Courts deals with such matters in which no issue of the Revenue of the Government of the Federation arises, I would agree that there has to be express provision and a more definitive provision than Section 7(1)(b)(iii) before one can accept the contention that 'all banking matters' must fall within the jurisdiction of the Federal High Court".[89]

The Court also held that the only jurisdiction expressly conferred on the Federal High Court by the 1979 Constitution are contained in Sections 42 and 237(2)(a). The Court further held that, there does not appear to be controversy as to the proper meaning of Section 230(2) of the 1979 Constitution. The Section not only restyles the old "Federal Revenue Court" Federal High Court" but vests in the Federal High Court all the powers and jurisdiction enjoyed by the old Revenue Court. Accordingly pursuant to Section 274 of the 1979 Constitution, the Federal High Court will continue to enjoy such jurisdiction and powers

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88. Ibid at pp. 56-58.

89. Ibid at p. 16.

as were conferred on the Federal Revenue Court by the Federal Revenue Court Act No. 13 of 1973, Section 8(3) of the Counterfeit Currency (Special Provisions) Act, 1974 No. 22 of 1974 as amended by the Constitution of the Federation (Consequential Repeals) Act. No. 105 of 1979, Sections 21(1), 49(1), 62 of the Insurance Act 1976 No. 59 of 1976, and the Bankruptacy Act 1979 No. 16 of 1979. The Court then held that the phrase "as may be prescribed" refers to the future i.e. as the National Assembly may prescribe at a future date subsequent to the coming into operation of the 1979 Constitution. On this interpretation the National Assembly which was not functioning at the time the Constitution came into force on 1st October 1979, would in future confer jurisdiction on the Federal High Court in matters connected with or pertaining to the Revenue of the Government of the Federation (Section 230(1)(a))and in such other matters contained in the Exclusive Legislative List (Section 230(1)(b). Acting under Section 230(1)(b), the National Assembly could increase the jurisdiction of the Federal High Court as it were on a piecemeal basis.

Nnamani JSC finally held that:

> "Those historical facts leave me in no doubt that it was the intention of the framers of the Constitution to confer unlimited jurisdiction on the State High Courts. It was deliberate. In my view that jurisdiction will diminish with time as in addition to the jurisdiction which I have conceded in this judgment it already has under Sections 230, 237 and 42 of the Constitution, the Federal High Court is conferred by the National Assembly with more jurisdiction in relation to other matters in the Exclusive and Concurrent Legislative Lists".[90]

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90. Ibid at p. 27.

The other six judges of the Supreme Court agreed with this view and reasoning in their separate concurring judgments.

In WESTERN STEEL WORKS v. IRON AND STEEL WORKERS,[19] Karibi-Whyte, JSC in his lead judgment considered the ratio of JAMMAL AND BRONIK MOTORS CASES. The learned Justice pointed out that the view of the Court of Appeal in these cases that "the civil jurisdiction of the Federal High Court was finally settled in the case of BRONIK MOTORS CASE and is to be found in the four corners of Section 7(1) of Federal High Court Act 1973" has been too broadly stated going beyond the claim before the court in that case. He further observed that "whereas the civil jurisdiction of the Federal High Court is contained in Section 7(1) of the Federal High Court Act 1973, BRONIK MOTORS CASE was not concerned with the determination of any of the subject matters in Section 7(1). Infact none of the subject matters was positively relevant to the determination of the claim in that case". Finally he expressed the view that:

> "The claim in this case is clearly different from the JAMMAL and BRONIK MOTORS CASES, the rationes decidendi of those cases therefore do not constitute binding judicial authority in respect of this case. The only common factor between the JAMMAL and BRONIK MOTORS CASES and the appeal before us is that the subject matter of the claim in all the cases do not come within the provisions of Section 7(1) of the Federal High Court Act No. 13 of 1973. Since the subject matter of the claim in the JAMMAL and BRONIK MOTORS CASES do not fall within the provisions of Section 7(1)(b)(iii), it will be juridically appropriate to

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91. (1987)1 NWLR. 284.

> limit their bindingness to decisions not relating to such matters in Section 7(1)(b)(iii) not within the provisions of the Act. They clearly were not intended, and could not be correctly regarded as having decided the plenitude of the civil jurisdiction of the Federal High Court as prescribed in Section 7(1) of the Federal High Court Act.
>
> It is conceded that the unanimous judgment of this Court in BRONIK MOTORS CASE is entitled to very great respect. Especially relevant are the views expressed on the entire scope of the civil jurisdiction of the Federal High Court which covered the other subject matters in Section 7(1), I do not think the facts of this appeal, concerned with different matters, fall within any of the opinions so expressed".[92]

With due respect to the learned justice this is not the correct principle of the issue in BRONIK MOTORS CASE. The principle involved in the case revolved around Section 7(1)(b)(iii) of the Federal High Court Act 1973 and the civil jurisdiction of the Federal High Court and State High Courts. The matter was fully argued before the Supreme Court in the case and the fate of the case depended on the interpretation given by the Supreme Court to Section 7(1)(b)(iii) of the Federal High Court Act 1973.

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92. Ibid at p. 298.

Aniagolu JSC pointed out in WESTERN STEEL WORKS CASE that in SAVANNAH BANK OF NIGERIA v. PAN ATLANTIC SHIPPING AND TRANSPORT LTD AND NICANNAH FOOD COMPANY LTD[93], the Supreme Court decided that with the inception of the 1979 Constitution the Federal Republic of Nigeria, Section 236 thereof, which gave unlimited jurisdiction to the State High Court, has conferred jurisdiction in Admiralty matters concurrent in the Federal High Court and the State High Courts.

It was also held in SAVANNAH BANK case that by reason of the inconsistency of the provision of Section 8(1) of the Federal High Court Act 1973 with the said Section 236, the said Section 8(1) of the Federal High Court Act 1973 was void. Section 8 had provided for the exclusion of State High Court's jurisdiction in respect of matters specified in Section 7 to which Federal High Court's jurisdiction was extended (in this case it was relating to Admiralty matters).

However Coker, JSC in that case adopted the view that the State High Court by virtue of their unlimited jurisdiction under Section 236(1) of the 1979 Constitution, are competent to try cases involving federal matters. No Act of the National Assembly including the Trade Disputes Act 1976 or the Federal High Court Act 1973, can cut down or oust the jurisdiction conferred on State High Courts by and under Section 236(1) of the 1979 Constitution.

In the WESTERN STEEL WORKS v. IRON AND STEEL WORKERS[94], where there was a trade dispute between the employers and

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93. SC. 139/1985 of 3/1/87 (unreported).
94. (1987)1 NWLR. 284.

employees, which involved the employers terminating the appointment of the employees on the ground that the possibility of obtaining raw material was remote. No redundancy or any other benefits were paid the employees. The Company also locked out and barred all employees from entering the premises of the Company. The employees sued in the Lagos State High Court and contended that the laying-off and lock-out of the employees was illegal and contrary to the provisions of the Labour Act 1974 and Trade Disputes Act 1976 respectively. The question that came up before the Court was whether the State High Court has jurisdiction to entertain the case. The Lagos State High Court ruled in affirmative and the defendants appealed. On appeal Counsel for the appellant contended that the unlimited jurisdiction of the State High Court operates subject to Section 8(1) of the Federal High Court Act 1973 which excludes the jurisdiction of other courts in respect of matters in Section 7(1). It followed therefore that the State High Court cannot exercise jurisdiction in respect of matters in Section 7 of the Federal High Court Act 1973.

The Supreme Court consisting of 5 Judges (Karibi-Whyte, JSC delivering lead judgment) held that the subject matter does not fall under Section 7(1) of the Federal High Court Act 1973 and therefore the Lagos State High Court has jurisdiction. Concurring with the lead judgment Aniagolu JSC relied upon the Court's decision in SAVANNAH BANK CASE and Coker, JSC maintained and relied upon his own opinion in SAVANNAH BANK CASE (considered above).

Conclusion:-

All the above clearly state the principle that the unlimited jurisdiction vested in the State High Court by the 1979 Constitution cannot be limited by any Act of the National Assembly i.e. Trade Disputes Act 1976 or the Federal High Court Act 1973, but by the provisions of the Constitution itself. The unlimited jurisdiction of the State High Court was limited by Section 237(2) which excludes the jurisdiction of the State High Court in respect of any case involving the office of the President or Vice-President and specifically grant it to the Federal High Court or (Federal Capital Territory High Court when established).

The unlimited jurisdiction of the State High Courts is further limited by the expression 'to the exclusion of any other court', which appears in Sections 212(1), 213(1) and 219 of the 1979 Constitution. The expression excludes the jurisdiction of the State High Court in respect of such matters specified in these Sections. Since Section 230 of the Constitution does not contain a similar expression, the Federal Court of Appeal rightly rejected the contention of the Counsel for the appellant that the wordings of Section 230, clearly excludes the jurisdiction of the State High Courts over federal matters except those incidental to the State matter being determined.[95]

The full Court decision in BRONIK MOTORS CASE clearly suggest that as and when by the law of the National Assembly

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95. Federal Minister of Internal Affairs v. Shugaba (1982)3 NCLR. 915.

additional jurisdiction is conferred on the Federal High Court in respect of any of the matters to which the National Assembly has power to make laws (exclusive and concurrent matters) the State High Court's jurisdiction in that respect will correspondingly get reduced or excluded. It therefore means that with this decision the unlimited jurisdiction of the State High Court provided for in Section 236 will be limited and Section 250 of the Constitution which gives the State High Courts jurisdiction over federal causes and matters will be of no effect. It might also give rise to a situation where the State High Court's jurisdiction will be limited to State matters and causes only and the federal matters and causes will be in the exclusive perview of the Federal High Court. This will give rise to dualism in the hierarchy of the courts in Nigeria, thereby raising problem in most cases as to whether there is jurisdiction in Federal or States Courts, which is being experienced in other Federations, i.e. United States of America and Australia, that operate the dual court system.

SAVANNAH'S CASE and WESTERN STEEL WORKS CASE give full effect to the State High Court's jurisdiction under Section 236 of the Constitution, any law of the National Assembly to the contrary notwithstanding. In other words according to these two decisions the State High Court will have concurrent jurisdiction under the Constitution in respect of federal matters even though by the law of the National Assembly specific jurisdiction is conferred on the Federal High Court in respect of them. This development creates duality of jurisdiction in respect of many of the federal matters. That would result in confusion and resort to unhealthy practises. The position can

be made clear and the Constitution intention realised when Sections 236 and 230 are suitably modified, so as to provide that the State High Court jurisdiction under Section 236 of the Constitution will be correspondingly excluded as and when the National Assembly by law confers on the Federal High Court jurisdiction in respect of any of the matters to which National Assembly has power to make laws.

However, if the single hierarchy of Courts for Federal and State matters is considered the true intention of the Constitution, then Section 230 should be amended by deleting that part of the Section which enables the National Assembly to confer additional jurisdiction on the Federal High Court.

(e) POWERS OF THE ATTORNEY-GENERAL

Under the 1979 Constitution Section 160(1) provides that the Attorney-General of the Federation shall have the power -
(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under any Act of the National Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person and
(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or under taken by him or any other authority or person. (2) The powers conferred upon the Attorney-General of the Federation may be exercised by

him in person or through officers of his department.

(3) In exercising his powers under this Section the Attorney-General shall have regard to the public interest, the interests of justice and the need to prevent abuse of legal process.

This section thus empowers the Attorney-General of the Federation to institute or discontinue criminal proceedings against any person in any court of law in respect of federal offences. This power could be exercised personally by the Attorney-General or through his officers on his instructions or directions. In the exercise of this power the Attorney-General must have regard to public interest, the interest of justice and the need to prevent abuse of legal process.

Section 191(1) provides that the Attorney-General of a State shall have power -

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created by or under any law of the House of Assembly;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person;

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers conferred upon the Attorney-General under subsection (1) of this Section may be exercised by him in person or through officers of his department.

(3) In exercising his powers under this section the Attorney-General shall have regard to the public interest, the interests of justice and the need to prevent abuse of legal process.

Under this section the Attorney-General of the State can bring or discontinue criminal proceedings against any person before any court of law in Nigeria in respect of State offences. This power can also be exercised by officers of his department. In the exercise of this power he should have regard to public interest, the interests of justice and the need to prevent abuse of legal process.

The question that arises therefore from the assessment of these two sections is whether a State Attorney-General can institute criminal proceedings against any person in any court in Nigeria in respect of Federal offences without express authorization of the Attorney-General of the Federation? The answer to this question was adequately supplied in the case of ANYEBE v. THE STATE[96]. In this case the appellant was prosecuted by the Attorney-General of Benue State and convicted for unlawful possession of firearms (a double barrel short gun) without a valid license duly granted, contrary to Section 4 and punishable under Section 28 of the Firearms Act as amended by the Firearms (Amendment) Act No. 31 of 1966. The Court of Appeal, Jos Division upheld the conviction, but altered the sentence of three years to a fine of ₦100.00 or six months imprisonment in default. The appellant appealed to the Supreme Court contending that the Attorney-General of Benue State had no constitutional

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96. (1986) N.W.L.R. 39.

authority to prosecute him for what is patently a federal offence, firearms being a matter in the Exclusive Legislative List of the 1979 Constitution. The Supreme Court unanimously allowing the appeal held that under Section 160(1) (a) and (2) of the Constitution of the Federal Republic of Nigeria 1979, as amended, it is only the Attorney-General of the Federation who can institute and undertake proceedings against any person in relation to matters within the Exclusive Legislative List of the Constitution or in respect of offences created by or under any Act of the National Assembly or Decree of the Federal Military Government. He can do this either personally or through officers of his department who are expressly delegated to exercise them. The Attorney-General of Benue State is not an officer of the department of the Attorney-General of the Federation, and so it is incompetent of him to have instituted the prosecution without any delegation from the Attorney-General of the Federation. It was further held that the legal Notice 73/1958 which gave a general authority to the Attorney-General of the Northern Region, among others, to prosecute federal offences has become spent since Nigeria attained independence in 1960 and the Independence Constitution of that year has altered the situation. As it stands today, the Attorneys-General of the States have no general authority to exercise the powers of the Attorney-General of the Federation.

As regards the appeal Nnamani JSC maintained that:

> "The only constitutional issue arising from this appeal is whether the Attorney-General of Benue State could institute proceedings in this criminal matter which by common ground related to a matter in the Exclusive Legislative List - Firearms. It was therefore

a federal offence. Under Section 160(1)(a) of the Constitution of the Federal Republic of Nigeria, 1979 as amended, it is only the Attorney-General of the Federation who can institute and undertake proceedings against any person in relation to such offences. By Section 160(2), the Attorney-General of the Federation can delegate his powers under subsection (1) to officers of his department. The Attorney-General of Benue State is not an officer of his department. If he has to prosecute in what is obviously a federal offence it has to be by express delegation. There was none here".[97]

CHAPTER FOUR

CONFLICTS BETWEEN THE FEDERAL AND STATE GOVERNMENTS

The 1979 Constitution is a unique constitution. This is a constitution that provided two distinct governments (Federal and State) to share the executive and legislative functions. Because the 1979 Constitution adopted the federal system of government, both Governments are sovereign in their respective domains. Thus both Governments being independent and autonomous neither can impose duties or functions on the other as was decided by the Supreme Court in ATTORNEY-GENERAL OF OGUN STATES' CASE[1].

During the Second Republic the autonomy of each tier of government was misconstrued by both to mean competition and confrontation with each government trying to frustrate the other, whereas the conception underlying the system is that the Federal and State Governments are mutually complementary parts of a single governmental mechanism. What is demanded of them is co-operation with one another in order to promote the welfare of the people through their combined powers. What is advocated is a co-operative Federalism. As justice Mckenna observed in HOKE v. UNITED STATES[2]

> "our dual form of government has its perplexities, state and nation having different spheres of jurisdiction.... but it must be kept in mind that we are one people, and the powers reserved to the States and those conferred on the nation are adopted to be exercised, whether independently or concurrently to promote the general welfare, material and moral."

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1. (1982) 1-2 SC 13.
2. 227 U.S. 308.

What this means is that there must be areas of intercourse between the Federal Government and the States. The 1979 Constitution makes adequate provisions for this intercourse in respect to the judiciary and police. In view of this both tiers of government must therefore endeavour to work in harmony in order to achieve a common goal and this can only be possible if there is co-operation between the two governments.

The main areas of conflict between the Federal and State Governments which arose during the Second Republic and were decided upon by the Supreme Court are as follows;

(a) Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order 1981.
(b) Revenue Allocation formula enacted in 1981
(c) Acquisition of Land under the Land Use Act 1978.
(d) Federal and State judicial system
(e) Confrontation between the two tiers of government.
(f) Application of the Federal character principle.

Some of the conflicts mentioned above have been fully discussed in chapter three. This chapter concentrates on the conflicts that arose as a result of;

(a) Revenue Allocation formula enacted in 1981.
(b) Confrontation between the two tiers of government.
(e) Application of the Federal Character Principle
(d) Trade and Commerce Power.

4.1 REVENUE ALLOCATION IN NIGERIA

In any country great importance is always attached to allocation of revenue. This is because a government cannot carry out all the important functions assigned to it in the constitution without adequate revenue. In a federal system, there is always the problem of how to allocate the revenue between the two tiers of government (Federal and State), so that each tier of government will have financial capacity to perform the functions assigned to it under the constitution.

(a) HISTORICAL DEVELOPMENT OF REVENUE ALLOCATION IN NIGERIA (1951 - 1979)

The division of revenue between the various parts of Nigeria has been a recurrent problem since the amalgamation of the Northern and Southern Protectorates by Lord Lugard in 1914. Thus each successive government had tried to solve the problem of distribution of revenue among the different groups of the country and to ensure that there was fair distribution of the resources amongs the people. This, the government did by setting up Commissions to look into the problems of revenue allocation and make recommendations thereof. Based on this the 1946 Constitution introduced the Revenue Equalisation Fund which was designed primarily to prevent mismanagement of financial resources.

The first Commission appointed was the Hick-Phillipson Commission 1951 with the following terms of reference: To look into the question of fiscal jurisdiction between the centre and the Regions and the need to increase the regional autonomy, proper financial responsibility and efficiency of administration. The Commission recommended that the Regions should be given the power to regulate by law the items of revenue (including direct tax). It also recommended that the Regional Government should have control of the taxation of motor spirit. Thus for the first time the principle of independent revenues came into picture which in the view of the Commission, was desirable both in the interests of regional autonomy and of proper financial responsibility and efficiency of administration.[3] The Commission considered 3 main principles of allocation which were (a) Principle of Derivation, (b) Principle of Needs and (c) Principle of National Interests but relied on the last two as the dominant principles of allocating centrally raised revenues to the Regions. The Commission therefore recommended that the centrally raised revenue should be distributed amongs the Regions as follows:

Northern Region	34%
Western Region	37%
Eastern Region	28%
Southern Cameroon	1%

3. Nigeria; Report of the Fiscal Commission 1951 p.35

The recommendations made by the Commission were accepted and given constitutional sanction in the Nigeria (Revenue Allocation) Order in Council 1951[4]. Thus the sources and distributional basis of actual revenue allocation between 1951 and 1954 can be summarised as follows:-

(a) Revenue collected and retained by the Central Government were: 50% of import and excise duties on tobacco, excise duty on beer brewed in Nigeria, income tax assessed under the Income Tax Ordinance (including the tax on incorporated Companies), mining Royalties, Licence fees and fees for services centrally provided, Court fees, stamp duties, interest on loans, earnings of central Government departments and other revenues accruing from central services and undertakings.

(b) Revenue collected by the Central Government but assigned wholly or partly to the Regions according to consumption within each region were: 100% of the gross proceeds of import duty on motor spirit and 50% of the gross proceeds of the import and excise duties on tobacco.

(c) Revenue collected and retained by the regions were: direct tax, produce sales tax, licence fees and service fees, interest on loans and surplus funds, revenue from regionalised departments, Regional Government undertakings and other miscellaneous items.

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4. SS 10 - 14 of the Nigeria (Revenue Allocation) Order in Council 1951.

In 1953 the Louis Chick Commission was appointed with the following terms of reference; The Commission was to have regard to;

> "the need to provide to the Regions and the Centre an adequate measure of fiscal autonomy within their own sphere of government and,... the importance of ensuring that the principle of Derivation is followed to the fullest degree compatible with meeting the reasonable needs of the Centre and each of the Regions"[5]

The Commission recommended that the principle of Derivation should be extended to the whole of centrally - raised revenues allocable to the Regions. It also recommended the retention of existing independent Regional revenues. The recommendations of this Commission with minor modifications were accepted by the Nigerian Government and adopted as the basis of revenue allocation system between 1954 - 1959. The main elements of the revenue allocation within this period were as follows:
(a) Revenue collected and wholly retained by the Federal Government were 50% of the net proceeds of all export duties; 25% of the import duties on tobacco; 50% of all excise duties; 50% of the net proceeds of import duties other than those on motor spirit and tobacco company tax.
(b) Revenue collected by the Federal Government but assigned wholly or in part to the Regions according to and in proportion to Regional consumption or origin of products or commodities were 50% of the import duty on tobacco; 50% of all excise duties; 100% of the import duty on motor spirit; 50% of all export duties. The

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5. Nigeria: Report of the Fiscal Commission on the Financial Effects of the proposed New Constitutional Arrangements 1953 p.1.

full amount of personal income tax levied and collected by the Federal Government is returned to the Region in which the tax payers (Africans) are resident, all mining royalties and rents, and fees for small craft licences.

(c) Revenue collected by the Federal Government but shared out to the various Regions in the fixed proportions of; Western Region - 40%

Northern Region - 30%

Eastern Region - 29%

Southern Cameroon 1%

was the 50% of the proceeds of import duties other than those on motor spirit and tobacco.

(d) Revenue collected and retained by the Regional Government were direct tax, produce sales tax, licence fees and services fees, interest on loans and earning on surplus fund invested, revenue from Regional departments and undertakings.

The revenue allocation system based on the recommendations of Louis Chick Commission, as that of the previous Commission was subject of many criticisms. In 1957 the Raisman Commission was appointed to examine the current division of powers to levy taxation in the Federation and the system of allocation of revenues and to make recommendations thereon. The Commission was to take into account, the idea of giving each Regional Government the power to raise revenue within its area of jurisdiction and also the national well being of Nigeria as an integrated unit. The Commission considered two main principles of allocation:

(1) Principle of Derivation and (2) Principle of Needs. With reference to the principle of Derivation, it recommended that proceeds of import duties on motor fuel and of import and excise duties on tobacco products be distributed to Regional Government in proportion to regional consumption. In accordance with the principle of Needs, it recommended that 30% of the proceeds of general import duties and, as well as, of mining rents and royalties be allocated into the distributable pool account. The Commission further recommended that the Federal Government should retain 5% of the distributable pool account while the remaining 95% should be distributed amongs the Regions in the following fixed proportions:

Northern Region - 40%

Western Region - 24%

Eastern Region - 31%

The 24% allocated to the Western Region was divided between the Western Region and the Mid-Western Region When the later was created on the basis of:

Western Region - 18%

Mid-Western Region - 6%

The Commission's proposal on revenue allocation was incorporated into the 1963 Constitution[6] and could be summarised as follows:

(a) Revenue collected and retained by Federal Government were import duties on beer, wine and liquor; 70% of all other import duties except those on motor spirit,

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6. SS. 136 - 141 of the 1963 Constitution of Nigeria

diesel oil and tobacco; Excise duty on beer; 70% of Excise taxes on soap and mineral waters; company taxes; Lagos Personal Income Tax; 20% of mining royalties and rents.

(b) Revenue collected by the Federal Government but assigned to the Regional Government according to derivation or consumption were all export duties according to Region of origin of product; import duties on motor spirit, diesel oil, tobacco as well as excise duties on tobacco according to Regional consumption of the products involved; 50% of mining rents and royalties according to Region of deposit of mineral concerned.

(c) Revenue collected by the Federal Government but allocated into a Distributable Pool and shared out between the various Regions in the proportions of 40% to the North, 24% to the West, and 31% to the East were 30% of all import duties except those on beer, wine, liquor, motor spirit, diesel oil and tobacco; 30% of mining rents and royalties.

(d) Revenue collected and retained by the Regions were personal income tax of Africans and non-Africans in the Region; Taxes on partnerships, club, trusts and other unincorporated associations; Licence fees and service fees; Interest on loans and surplus funds invested; revenue from Regional departments and undertakings; sales tax on produce other than tobacco, motor fuel, hides and skins.

Also adopted was the Commission's recommendation that the Constitution should make specific provisions for the Federal Government after consultation with the Regional Government to appoint from time to time a Fiscal Review Commission to review in the light of the general revenue situation, the distribution of the proceeds of mining and mineral royalties and rents, and the size, composition and distribution of the distributable Pool.[7]

Based on the above recommendation which was incorporated into the 1963 Constitution, the Binns Fiscal Review Commission was appointed in 1964. This Commission while agreeing with the recommendations of Raisman Fiscal Commission, recommended that the distributable pool acount should be increased from 30% to 35% of the value of general import duties and mining royalties and rents and that the share of each of the Regions out of the pool account should be as follows:

Northern Region - 42%
Eastern Region - 30%
Western Region - 20%
Mid-Western Region 8%

Thus from the Commission's recommendation the whole of the pool account was shared between the Regions and as a result the Federal Government gave up the 5% of the account which it previously retained.

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7. Nigeria; Report of the Fiscal Commission 1958 p.44.

The recommendations of the Commission were suppose to be operational on 1st April 1966 but the Military Coup of January 15 1966 rendered it ineffective. But the recommendation became operative in 1967 when the country was divided into 12 states. The 42% for the Northern Region was shared equally among the 6 states created out of the former Northern Region, the 30% share for the Eastern Region was distributed among the 3 new states created out of the Region on the basis of population and the Western State and Lagos State shared the 28% share of the former Western Region on the basis of population. Thus the pool account was therefore shared among the states as follows:-

7% to each of the 6 Northern States
17½% to East Central State
7½% to South Eastern State
5% to Rivers State
18% to Western State
2% to Lagos State
8% to Mid-Western State.

During the Military rule, the revenue allocation formula and the composition of the pool account changed several times especially between 1970 - 1975 even without the appointment of any Fiscal Review Commission. The changes that were introduced by the Federal Government in the revenue allocation formula by Decree 13[8] of that

8. Constitution (Distributable Pool Account) Decree 1970 - Decree No.13 of 1970.

year were as follows:

(a) The 100 percent export duties that went to the States of origin was reduced to 60 percent while 40 percent was retained by the Federal Government.

(b) The 100 percent duty on fuel paid to the states of consumption was reduced to 50 percent, while Federal Government retained 50 percent.

(c) The 50 percent mining rents and royalties paid to the states of origin was reduced to 45 percent and the Federal Government retained 5%. The distributable pool account was credited with 50 percent.

(d) Excise duties were shared equally between the Federal Government and the distributable pool account.

(e) The distributable pool account was divided between that states as follows: 50 percent on the basis of equality of states and 50 percent on the basis of population.

In 1971 the change introduced was that by Decree No.9[9], rents and royalties of off share petroleum mines were transferred from the States to the Federal Government.

In 1975 by Decrees Nos.6[10] and 7[11] the following changes were introduced;

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9. Off-shore Oil Revenue Decree 1971 - Decree No.9 of 1971

10. Constitution (Financial Provisions etc) Decree 1975 - Decree No.6 of 1975.

11. Income Tax Management (Uniform Taxation Provisions etc) Decree 1975 - Decree No.7 of 1975.

(a) The 45 percent mining rents and royalties paid to the States of origin were reduced to 20 percent while the balance was credited to the pool account.

(b) The Federal Government retained 65 percent of import duties on all goods except motor spirit, diesel oil, tobacco, wine, portable spirit and beer. 35% of these duties together with the 100% import duties on motor spirit and tobacco were paid into the distributable pool account.

(c) 50 percent of the excise duties was paid into the pool account and 50% of the excise duties goes to the Federal Government.

(d) The distributable pool account was shared on the basis of 50% on equality of States and 50% on population.

(e) Personal Income Tax was standardised throughout the Federation. In effect the State Governments' power to vary income tax rates was taken away from them.

These changes introduced during this period made the Federal Government financially superior to the State Government. The Aboyade Committee on revenue allocation appointed by the Federal Military Government in 1975 revealed in its report that the Federal Government was financially superior to the State Government as it retained 65 percent of the federally collected revenue.

The Committee therefore recommended 3 ways in which the Federal Government financial superiority over the States could be curbed which are;

(a) Responsibilities in the field of agriculture, housing, primary and secondary education, basic health, youth and sports should be returned to State and Local Governments.

(b) Greater efforts should be made by State Governments in tax management through increased efficiency in assessment and collection.

(c) A return to the position nearer to the division of responsibilities between the Centre and the States as contained in the 1963 Constitution.[12]

The Committee's recommendations were incorporated into the 1979 Constitution (S.149(1)and (2)) and this considerably reduced the financial superiority of the Federal Government towards the State Governments.

(b) REVENUE ALLOCATION UNDER THE 1979 CONSTITUTION

When the civilians came into power on the 1st of October 1979, they had to adopt the revenue allocation formula administered under the Military Regime, pending when the National Assembly under section 149 of the 1979 Constitution enacted a new revenue allocation formula for the nation. The 1979 Constitution empowered them to do so under section 272 which provides that;

12. Report of the Aboyade Technical Committee on Revenue Allocation (1977) p.44.

> "pending any Act of the National Assembly for the provision of a system of revenue allocation between the Federation and the States, among the states, between the states and local government councils and among the local government councils in the States, the system of revenue allocation in existence for the financial year beginning from April 1, 1978, and ending on March 31, 1979, shall, subject to the provisions of this Constitution and as from the date when this section comes into force, continue to apply:
> Provided that where functions have been transferred under this Constitution from the Government of the Federation to the States and from the States to local government councils the appropriations in respect of such function shall also be transferred to the States and the local government councils, as the case may require".

In recognition of the fact that change in the political structure and constitutional provisions signal impending changes in revenue allocation formula, the civilian government in November 1979 set up a Presidential Commission on Reveune Allocation headed by Dr. Pius Okigbo, to recommend a new revenue allocation formula. The Commission was to examine the formula for revenue allocation under the Military Regime, having regard to such factors as national interest, derivation, population, even development, equitable distribution and equality of states. In writing their report they were to take into account the deliberation of the Constituent Assembly and the representations from the Federal, State and Local Governments.

The Commission thus embodied in its report the views of State Government, State Assemblies, Local Governments and those of the Federal Executive and Legislatures. It was noted that there were too much party considerations in the various recommendations. For instance the NPN that controlled the centre felt that the whittling down of the federal share would affect its efficiency at the centre. The other parties held precisely the opposite view, that if a large portion of the revenue is given to the Federal Government, this would increase federal patronage to states and strengthen the party at the centre. Thus the Bendel State a UPN front-line state recommended as low as 28 percent of federally collected revenue to the Federal Government while Sokoto State an NPN State recommend 50 percent for the Federal Government.

After taking into account the relative weights in financial terms of the functions and responsibilities of the tiers of governments, the Commission recommended that the Federation Account provided for in section 149(1) of the Constitution should be shared among the three levels of government as follows: Government of the Federation 53 percent, State Governments 30 percent, Local Government Councils 10 percent and Special Fund 7 percent.

The Commission recommended that the Special Fund, should be applied as follows;
Initial development of the Federal Capital Territory 2.5 percent, Special problems of mineral producing areas, 2.0 percent, other continuing ecological problems ie. soil erosion, desert encroachment, flood control etc. 1.0 percent and revenue equalisation fund 1.5 percent.[13]

The recommendation of the States on the sharing among the states was also coloured with politics and selfish interests. A state favoured only the principles that would maximise its total revenue. Thus a State like Bauchi, while accepting population and equality of states as the principles for sharing, gave population 25 percent and equality of states 75 percent while Imo State maintained that population should be given 70 percent since it is a proxy for need and development. Anambra State rejected the principle of derivation but it was supported by all the oil-producing States.

On the whole the commission, after noting the conflicting proposals of the States, recommended the following formula for the states.
(a) minimum responsibilities of government ie equality of states - 40%
(b) population - 40%

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13. Federal Government White Paper on the Okigbo Commission Report, Federal Government Press Appapa (1980) p.13.

(c) Social development factor as represented by Primary School enrolment

(a) direct enrolment - 11.25%
(b) inverse enrolment - 3.75%
} 15%

(d) Internal revenue efforts - 5%[14]

The Federal Government accepted the recommendations with slight modifications which is, that the Federal Government increased its share to 55 percent. It also increased the 2.0 percent recommended by the Commission for the special problems of the oil producing areas to 3.5 percent, by adding to it the 1.5 percent recommended by the Commission as a revenue equalisation fund. The Federal Government also reduced the share allocated to the Local Government Councils by the Commission from 10 percent to 8 percent. The reason given by the Federal Government for increasing its share from 53 percent to 55 percent was that the Commission had not assessed very well the very important constitutional functions imposed on it and their financial implications. The Federal Government accepted the recommendations of the Commission on the State Governments share of the pool account without modifications.

The modifications made by the Federal Government on the recommendation of the Commission were therefore embodied in a Bill and presented by the President to

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14. Federal Government White Paper on the Okigbo Commission Report, Federal Government Press Apapa (1980) p.18.

the National Asembly, so that the National Assembly in pursuant of the power given to it under section 149 of the 1979 Constitution will enact a revenue allocation formula for the country.

The Bill was given its first reading in the House of Representatives on the 3rd of November 1980 and was passed with some amendments on the 22nd January 1981. On the amendments made by the House of Representatives the share of the States was increased to 40 percent, out of which 3.5 percent was for the oil producing States. The local government councils' share was increased to 10 percent and the Federal Government share was reduced to 50 percent which also includes the 2.5 percent for the initial development of the Federal Capital Territory.

On the State Governments share of the pool account contained in the Bill, the House of Representatives amended it by increasing minimum responsibility of government to 45 percent, population to 50 percent thereby deleting the social development factor.

The Bill which was read in the Senate on the 4th of November 1980 was passed with some amendments different from those of the House of Representatives on 15th January 1981. The Senate amendments which seem to favour the Federal Government increased the Federal Government share to 58.5 percent out of which 2.5 percent was to be used for the initial development of the Federal Capital Territory and percent for ecological problems, 31.5 percent

to the State Governments, and 10 percent to the local government councils. The Senate also amended the State Government share of the pool account as follows; it gave population 40 percent, minimum responsibility of government 50 percent, land area a new factor was introduced and was given 10 percent. It thus deleted the social development factor and internal revenue effort.

In order to resolve the differences on the amendments by the two Houses the President of the Senate under the power given to him in section 55(2) of the 1979 Constitution appointed a Joint Finance Committee to examine the Bill, with a view to resolve the differences between the two Houses. The Joint Finance Committee consisted of 24 members out of which 12 members are from each House. The two sets of amendments were presented to the Joint Finance Committee. The Committee which met on the 28th and 29th of January 1981 varied and adopted the Senate set of amendments by votes of 13 in favour and 11 against. The approved Committee version of the Bill was then presented by the clerk to the National Assembly to the President of the Federal Republic of Nigeria for his assent and he assented to the Bill on the 3rd February 1981. The Bill thereby became an Act ie Allocation of Revenue (Federation Account etc) Act 1981.

Being dissatisfied with the mode and manner by which the National Assembly had exercised its legislative power in respect of the Bill, the Government of Bendel State challenged the constitutionality of the Act in the Supreme Court.[15] The Bendel State Government contended that the procedure adopted for passing the Act was unconstitutional on the ground that the National Assembly did not abide by the provision of section 55(3) of the Constitution which states that where the Joint Committee appointed to resolve the differences between the two Houses has resolved the difference, the Committee's version of the Bill shall be presented to the National Assembly sitting either separately or jointly and until it is passed by the National Assembly sitting either separately or jointly, it cannot be referred as a Bill passed by the National Assembly. This is because it has been fully stated in section 58(4) that the National Assembly cannot delegate its law making power to the Committee. They also argued that the failure to refer the Committee's version of the Bill to the National Assembly sitting separately or jointly prevented them from getting the larger share proposed by the House of Representatives.

15. Attorney-General of Bendel State v. Attorney-General of the Federation (1982) 3 NCLR 1

The Supreme Court agreed with the contention of Bendel State Government and held that the Act is unconstitutional and therefore void. The court further held that where there are differences between the two Houses, the President of the Senate is empowered under section 55(2) to appoint a Joint Committee to resolve the differences. And that where the Committee succeeds in resolving the differences, the new version of the Bill which will show how the differences have been resolved should be sent back to each of the two Houses for adoption. But this was not done in the present case. Commenting on this Fatayi -Williams CJN said that

> "The so called resolution of differences is no more than a substitution, by the Joint Finance Committee, of its own version of the Bill, passed by its members by a slight majority of two votes. I am unable to accept this as a resolution of the differences between the version passed by the Senate and that passed by the House of Representatives Be that as it may, one thing is clear from the procedure adopted and that is that the Bill has not been passed by the National Assembly as provided for in the Constitution".[16]

The Court further held that until the two Houses, sitting either separately or jointly as the case may be pass the Committee's version of the Bill into law, it is not a Bill passed by the National Assembly and cannot, therefore, be assented to by the President of the Federal Republic of Nigeria. As Fatayi-Williams CJN puts it:

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16. Ibid at p.39.

> "a legislature which operates a Federal written constitution in which the exercise of Legislative power and its limits are clearly set out has no power to ignore the conditions of law-making that are imposed by that constitution which itself, regulates its power to make law. I am therefore, unable to accept the proposition that such National Assembly, once established, has some inherent power, derived from the mere fact of its establishment, to delegate or transfer to its Joint Finance Committee, established or appointed for the purpose of resolving differences which have arisen between the two Houses of that National Assembly during the passage of a money-bill, its exclusive constitutional power to make a valid law. The limits of the power of such a joint committee are set out in unambiquous terms in section 58(3) and (4).

After the Supreme Court declared the Allocation of Revenue (Federation Account etc) Act 1981 void and of no effect, it stated that all officers, servants and functionaries of the Government of the Federal Republic of Nigeria or any other public officer are hereby restrained from dividing or otherwise allocating the public revenue of the Republic between the Federation and the States of the Federation or among the said States as prescribed under the said Allocation of Revenue (Federation Account, etc.) Act, 1981.

Due to the decision of the Supreme Court, the President had to present another Bill to the National Assembly. This new Bill based substantially on the recommendation of the Okigbo Commission was passed by the House of Representatives without amendments, though it was passed in the Senate with some amendments. The President of the Senate, thus appointed the Joint Committee to resolve the differences, between the two Houses.

After resolving the differences, the Committee's version of the Bill was presented to the National Assembly sitting at a joint session. This time the Bill was passed without amendments. The Clerk to the National Assembly then presented the Bill to the President for his assent and it was signed into law by the President, and it became the Allocation of Revenue (Federation Account etc) Act 1982 (No.1 of 1982).

Under the new Allocation of Revenue (Federation Account etc) Act 1982 enacted by the National Assembly by the enabling provision of section 149 of the 1979 constitution, sections 1, 2 and 6 of the Act provides as follows:

> "S.1 The amount standing to the Federation Account (as specified in sub-section(1) of section 149 of the Constitution of the Federal Republic of Nigeria, 1979) shall be distributed by the Government of the Federation among the various governments in Nigeria on the following basis, that is to say -
>
> (a) Federal Government - 55%
> (b) State Government - 35%
> (c) Local Government - 10%"
>
> "S.2(1) The 35 percent specified in section 1(b) of this Act shall be sub-divided and allocated as follows, that is as to 30.5 percent thereof, to all the States, as to 1 percent thereof, to be paid into a fund to be administered by the Federal Government for the amelioration of ecological problems in any part of Nigeria and as to the balance of 3.5 percent thereof, to be shared on the basis of derivation, in the manner set out in subsection(2) below.
>
> (2) The 3.5 percent specified in subsection (1) above shall be sub-divided and allocated as follows, that is 2 percent shall be paid directly to the States concerned in direct proportion to the value of minerals extracted from the territory of the state and the balance of 1.5 percent shall be paid by the Government of the Federation into

a fund to be administered by the Federal Government for the development of the mineral producing areas in Nigeria, which fund shall be managed in accordance with such directions as may be issued in that behalf from time to time by the President having due regard to the value of minerals extracted from the around the particular areas."

"S.6(1) There is hereby established for each State in the Federation a body to be known as the State Joint Local Government Account Allocation Committee which shall comprise the following members, that is to say:-

(a) the Commissioner charged with the responsibility for local government in the State to be the Chairman thereof;

(b) the Chairman of each local government council in the State;

(c) two persons to be appointed by the Governor of the State;

(d) two representatives of the Accountant-General of the Federation; and

(e) the Accountant-General of the State.

(2) The Permanent Secretary of the State Ministry charged with responsibility for local government or such officer as may be designated by the said Commissioner shall be the Secretary to the Committee.

(3) The functions of the Committee shall be to ensure that allocations made to the local government councils in the State from the Federation Account and from the State Concerned are promptly paid into the State Joint Local Government Account and distributed to local government councils in accordance with the provisions of any law made in that behalf by the House of Assembly of the State".

The Bendel State Government[17] complaining against sections 2(1) and (2) and 6(1) of the Allocation of Revenue (Federation Account etc) Act 1982 in the Supreme Court contended (1) that section 2(1) and (2) offended section 149(2) and (3) of the 1979 Constitution.

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17. Attorney-General Bendel State v. Attorney-General of the Federation and 18 others (1984)5 NCLR 101.

(2) That section 6(1) of the said Act imposed duties or functions on the State by the establishment of a Joint Local Government Account Allocation Committee and was therefore unconstitutional and void.
(3) That the Bendel State Government is entitled to have from time to time a true and correct statement of all moneys paid by the Federal Government into the Federation Account kept pursuant to section 149 of the Constitution.

The Supreme Court upheld the first and third contentions but dismissed the second contention. The Court held that by the enabling section 149(3) of the 1979 Constitution, section 2(1) and (2) of the Allocation of Revenue (Federation Account etc) Act 1982 is unconstitutional and void in that -
(a) the National Assembly by that provision imported foreign elements into section 149(3) by the 1% and 1.5% of States' monies which amounts to a further "sharing out" by that same body, of the states' monies in the Federation Account (ie a sharing out subsequent to the first exercise under sub-section (3) of section 149 of the Constitution.
(b) Section 149(3) of the Constitution does not empower the National Assembly to set aside any portion of the amount thereof as a trust to be administered or expended by the Federal Government for the benefit of the beneficiary States at the absolute discretion of the Federal Government.

(c) The National Assembly omitted to prescribe the formula by which the funds for the amelioration of ecological problems and the development of mineral producing areas are to be distributed among the beneficiary States.

Commenting on the provisions of section 149 of the Constitution Uwais J.S.C. said,

> "Section 149 of the Constitution is of special importance, and, indeed, contains the scheme for the establishment, allocation and distribution of the public revenue that constitutes the Federation Account! The power of the National Assembly as regards the prescription of the 'terms and manner' of the allocation or distribution of the Federation Account ... is undoubtedly very wide. However, we had occasion to point out in Attorney-General of Bendel State v. Attorney-General of the Federation and 22 others[18] that in exercising the power the National Assembly should be cautious not to infringe on the constitutional powers of the States".

He further said that:

> "There is no provision under section 149 or indeed under any other part of the Constitution which expressly or impliedly authorises the Federal Government to retain on behalf of the beneficiary States any portion of the revenue due to the States from the Federation Account. It seems to me therefore that once the Federation Account is divided amongst the three tiers of government, the State Governments collectively become the absolute owners of the share that is allocated to them (ie 35 per cent). So that it would normally be their prerogative to exercise full control over the share. Consequently, it will not be appropriate for the Federal Government to administer the share without the authorisation of the State Governments.

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18. (1982)3 NCLR1

> This appears to be logical and in keeping with the fundamental principle of federalism on the autonomy of the constituent states".

He finally said that:

> "The National Assembly failed to keep to the contemplation of section 149(3) of the Constitution. And that the creation of funds from the amelioration of ecological problems and the development of mineral producing areas together with the authorisation of the Federal Government to administer the funds are ultra vires the National Assembly".

Secondly it was held by the Court that the establishment of the Joint Local Government Account Allocation Committee by section 6(1) of the Allocation of Revenue (Federation Account etc) Act 1982 is intra vires the National Assembly and therefore valid in that since under the 1979 Constitution the National Assembly can by express or implied provision impose duty on or give power to the State and ditto for the State Assembly (vice-versa) as stated in item D of the concurrent List, Sections 150(b), 152, 195(4), 250(1) and 251(3) of the Constitution. Thus under section 149(4) and (6) of the 1979 Constitution, the National Assembly can enact such law establishing the Joint Committee of both the Federal Government and the State Governments.

Finally the Supreme Court held that since the position of the Federal Government in maintaining the Federation Account is, by virtue of section 149(1) of the 1979 Constitution, that of a Trustee for the State Governments, and the Local Government Councils of the States, it is the duty of the Federal Government to keep a proper account of the trust it administers and the

States as beneficiaries have a right to call upon it for accurate information as to the state of trust. Consequently, the Federal Government must render accurate and regular account to the beneficiaries of all monies paid into the Federation Account when requested to do so.

As regards the share due to the Local Government Councils it is provided in section 149(5) of the 1979 Constitution that each state shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State. Thus the 10 percent due to the local government council from the Federation Account and the 10 percent of the State Governments total revenue[19] are paid into State Joint Local Government Account. This amount paid into the State Joint Local Government Account are distributed among the local government councils on such terms and in such manner as may be prescribed by the National Assembly and the State House of Assembly (S.149(6) and (7).

In the case of ATTORNEY-GENERAL OF BENDEL STATE V. ATTORNEY-GENERAL OF THE FEDERATION AND 18 OTHERS,[20] it has been contended, that the provisions of item A paragraph 1(a)(iv) conflict with the provisions of section 149(7) of the Constitution because the latter

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19. Section 4 of the Allocation of Revenue (Federation Account etc) Act 1982.

20. (1984)5 NCLR 101.

vests in the State House of Assembly the power to distribute the revenue due to Local Government Councils while the former gives the same power to the National Assembly. It was submitted, that since the provisions of Item A paragraph 1 can only come into operation "subject to any other provisions of the Constitution" then, any law enacted under section 149(7) by a House of Assembly will prevail over similar enactment made by the National Assembly under item A paragraph 1(a)(iv). Hence, it was argued, that the provisions of Bendel State Local Government Law, 1980 (No.1 of 1980) with regard to the composition and establishment of the Joint Local Government Allocation Committee prevail over those of section 6 of the Allocation of Revenue (Federation Account etc) Act 1982 (No.1 of 1982). The Supreme Court dismissing this contention held that there is no indication any where in Act No.1 of 1982 that in enacting section 6 thereof the National Assembly was exercising its powers under item A paragraph 1(a)(iv) alone or at all. Nor can it be so inferred because, apart from the provisions of item A paragraph 1(a)(iv) the National Assembly is empowered under section 149(6) of the Constitution to prescribe the "terms and manner" for the payment by the State Government of its contribution to the revenue of State Local Government Councils. Accordingly, the powers of the National Assembly under section 149(6) and those of a State House of Assembly under section 149(7) are concurrent.

Therefore any laws made under the two subsections of section 149 are subject to the provision of section 4(5) which states that if any law enacted by the House of Assembly of a Stateis inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void. In view of the provision of section 4(5) the Court held that if any of the provisions of Bendel State Local Government Law 1980 is inconsistent with the provisions of the Federal Act No.1 of 1982, the provisions of the Act will prevail and the provisions of the State Law will to that extent be void.

CONCLUSION:

Revenue allocation will continue to evoke federal/ state and states intense controversy except the formula for the allocation of revenue at a given time takes into account the following principles: (a) The principle of derivation, (b) the principle of Need, (c) the principle of population and (d) the principle of equality of States. This is because from past exprience any formulae based wholly on only one of the above mentioned principles will always be subject to criticisms. This was why the revenue allocation based on the recommendations of the Hicks-Phillpson Commission and the Louis Chick Commission were criticised because they based their recommendations mainly on the principle of derivation. This principle of derivation is noted to have brought about inter-regional

or inter-state friction and antagonism because under this principle the wealthier Regions or States have invariably received more than the poor Regions or States.

The revenue allocation based on the Raisman Commission recommendations was more acceptable because the Commission based its recommendation on the principle of needs and derivation.

The Binns Committee introduced a new concept, the principle of even progress which ensured an equitable distribution of the distributable pool among the Regions irrespective of whether the Region is rich or poor based on its revenue prospects.

The Okigbo Commission set up in 1979 while recommending the basis for the distribution of revenue between the Federal Government and the State Governments took into account the functions and responsibilities of each tier of government. The Commission based its recommendation for the distribution of revenue between the States on the principles of equality of states, population and social development factor.

Thus none of the Commissions in its recommendation took into account all the above mentioned principles. This is why controversy is always linked with revenue allocation in Nigeria. A revenue allocation that takes into account all the principles mentioned above will thus remove this controversy inherent in the revenue allocation.

4.2 FEDERAL TRADE AND COMMERCE POWER AND STATE ENACTMENT OF SALES TAX LAWS

The 1979 Constitution gives very wide powers to the Federation in respect of trade and commerce. This is provided in item 61 of the Exclusive Legislative List which stipulates that;

> "Trade and Commerce, and in particular
>
> (a) trade and commerce between Nigeria and other countries including import of commodities into and export of commodities from Nigeria, and trade and commerce between the states;
>
> (b) establishment of a purchasing authority with power to acquire for export or sale in world markets such agricultural produce as may be designated by the National Assembly;
>
> (c) inspection of produce to be exported from Nigeria and the enforcement of grades and standards of quality in respect of produce so inspected;
>
> (d) establishment of a body to prescribe and enforce standards of goods and commodities offered by sale;
>
> (e) control of the prices of goods and commodities designated by the National Assembly as essential goods or commodities; and
>
> (f) registration of business names".

From the wordings of item 61 of the Exclusive List it seems that the exclusive power of the Federation over trade and commerce extends not only to foreign and inter-state trade and commerce but also to intra-state trade and commerce. The scope of federal power being so wide it may be necessary to limit this power so that the States would have regulatory powers in respect of at least such aspects of trade and commerce that have

purely local significance. This seems doubtful in view of the fact that the Exclusive Legislative List deals with "trade and commerce", and the mention of "foreign and inter-state trade and commerce" after the words "in particular" is only by way of particularisation or emphasis and those particular instances cannot be used to cut down the otherwise literal meaning of the words "Trade and Commerce". Therefore under the 1979 Constitution the federal power extends to trade and commerce which includes purely intra-state trade and commerce as well.

Nwabueze (1983) observed that;

> "But the context of trade and commerce provision in the Nigerian Constitution really puts its beyond question that the federal power over the matters extend to trade and commerce (as defined) within each State... The particularation of international and inter-state trade and commerce shows that, the power is not limited to it but extends also to trade and commerce within each state[12]".

It is imperative to note that with the power given to the Federal Government under item 61 of the Exclusive List to control trade and commerce also goes the inherent right of taxation on matters contained therein. If we accept that the words "in particular" are words of emphasis not of limitation then since the sale of products within the State (intra-state) or into the State (inter-state) is "trade and commerce", the

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21. Nwabueze B.O. (1983) Federalism in Nigeria under the Presidential Constitution; Sweet & Maxwell London p. 240.

imposition of tax on such trade should therefore be within the exclusive purview of the Federal Government. Therefore the State Governments cannot levy tax on sales of product within the State.

This issue came up for the consideration of the Court of Appeal and the Supreme Court in the case of ATTORNEY-GENERAL OF OGUN STATE V. ABERUAGBA.[22] In this case the House of Assembly of Ogun State enacted the Sales Tax Law 1982 which imposed a tax upon the purchase of specified goods and services within the States and made provisions for the collection of the same. The plaintiffs who are wholesale purchasers of beer in Ogun State for themselves and on behalf of wholesale purchasers in the State challenged the validity of the Sales Tax Law 1982 and claimed that it violated section 4(2),(3) and items 15 and 61 of the Exclusive Legislative List.

The matter was fully argued before Craig, C.J. of Ogun State High Court and in the course of hearing, counsel for the plaintiffs requested the Court to refer the question as to the constitutional validity of the law to the Court of Appeal for determination pursuant to the provisions of section 259(2) of the 1979 Constitution. The learned Chief Judge accordingly referred the following questions to the Court of Appeal:

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22. (1985)1 N.W.L.R. 395.

(1) Whether the omission to include item 38 of the Exclusive List in 1963 and 1960 Constitutions in the 1979 Constitution shows an intention to regard the Sales Tax Law as a residual subject or whether the power to legislate on all fiscal subjects have been vested in the Federal Government.

(2) Whether the tax imposed under the Tax Law of Ogun State is an excise duty within the meaning of that term in item 15 of the Exclusive Legislative List.

(3) Whether the enactment of the Sales Tax Law is an exercise of power with respect to Trade and Commerce in item 61 of the Exclusive Legislative List.

(4) Is the Sales Tax Law valid and constitutional in so far as it imposes tax on purchasers of taxable goods.

(5) If the answer to question 4 is in the affirmative, are sections 4,5 and 8 valid and constitutional as being incidental to the execution of the Sales Tax Law.

In his lead judgment Omo, J.C.A., after he had extensively considered the submissions of learned counsel and reviewed the Australian and Canadian cases cited by counsel in support of their submissions answered the questions on reference as follows:

Question 1

Answer: The power to legislate on trade and commerce is vested in the Federal Government. The omission of item 38 as set out does not show any intention to regard the Sales Tax Law as a residual subject. Power conferred on the States by item 38 is covered by item 15 and/or 61 of the exclusive legislative list in the 1979

Constitution.

Question 2

Answer: yes, it is, except as to the tax on the supply on goods and services in an Inn.

Question 3

Answer: Yes

Question 4

Answer: No, but it imposes tax on products not on purchaser (of goods.)

Question 5

Answer: The answer to question 4 above is negative. The second part of this question therefore does not arise.

The Court of Appeal therefore held that the Ogun State Sales Tax Law 1982 by imposing sales tax on taxable products brought into the State imposes excise tax within the meaning of item 15 of the Exclusive Legislative List of the 1979 Constitution. It further held that sales tax comes within "Trade and Commerce" in item 61 of the Exclusive Legislative List to the 1979 Constitution. As Omo,JCA observed in his judgment

> "In my view the plain effect of the phrase "in particular" as set out in item 61 is one of emphasis and not limitation. It unequivocally means that the 'trade and commerce' without any limitation is the exclusive legislative province of the Federal Government"[23]

The Court finally held that since the sale of products within the State (Intra-State) or into the State (inter-State) is "trade and Commerce", the imposition of tax on

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23. Ibid at p.410.

such trade is therefore within the exclusive purview of the Federal Government. The Ogun State Sales Tax Law which imposes tax on such trade is therefore ultra vires, null and void.

The Defendant/Appellant being dissatisfied with the decision of the Court of Appeal appealed to the Supreme Court. Learned counsel for the Appellant, submitted that the Court of Appeal was wrong in its interpretation of the provisions of item 61 in holding that all aspects of trade and commerce are exclusive to the Federation and a State has no power whatever over trade and commerce. He said that the Constitution does not intend the Federal Government to concern itself with petty matters such as control of street trading, regulation and collection of market fees, licensing of beer parlours, control of advertising etc which are the responsibilities of a State or a Local Government. For this reason counsel contended, that item 61 should be construed as to limit the exclusive powers of the Federation therein to matters specifically listed in paragraphs (a) to (f) inclusive. The words "in particular" are words of limitation and not of particularisation. Since the Constitution makes no specific provision for sales taxing power, it was intended to be a residuary matter which is within the competence of a State.

Referring to item 61 counsel for the respondents submitted that "trade and Commerce" are not restricted to sub-items (a) to (f) therein which are not exhaustive.

He urged the Supreme Court to hold as the Court of Appeal had done, that the words "in particular" are words of emphasis and not of limitation. He said the item 61 covers all aspect of trade and commerce and consequently, a State has no power to regulate trade or make Sales Tax Law. With regard to the 1960 and 1963 Constitution which conferred general legislative power on the Federal Government and limited power on the Regions to make Sales Tax Law, learned counsel contended that that power has been taken away from the State by the 1979 Constitution and the provision of the former Constitution cannot be imported into the 1979 Constitution.

The Supreme Court agreed with the contention of the learned counsel for the appellant and held;

> "that in the absence of any constitutional provision, express or implied, to the contrary the respective taxing power of the Federation and of a State includes sales taxing power. Accordingly, the Federation is entitled to levy sale tax on any saleable matters within its competence. A state can also do the same within its competence. It must, however, be emphasized that it is not within the competence of a State:
>
> (1) to make sales tax law affecting any of the matters in the Exclusive Legislative List; or
>
> (2) to make any sales tax law in the Concurrent Legislative List which is inconsistent with any law validly made by the Federation;
>
> (3) to make any sales tax law in the Concurrent List where any law validly made by the Federation has covered the field. .... and that words 'in particular' are words of Limitation and not of emphasis".

Bello J.S.C.(as he then was) in his lead judgment after considering item H18 of Part 11 of the second schedule and section 7(1) and (3) of the 1979 Constitution observed;

> "that the Constitution does not confer on the Federation exclusive power over trade and commerce in item 61. I hold that all the Governments (Federal, State and Local) have been accorded their respective shares to control trade and commerce. Accordingly, I would construe the words 'in particular' in item 61 to be words of limitation and that the trade and commerce power of the Federation is limited to the sub-items(a) to (f) therein. For the avoidance of any doubt, I may emphasize that the Federal Government had power to make law on the items specified in sub-items (a) to (f). In this respect international trade and commerce and inter-state trade and commerce are specifically reserved for the Federation. While trade and commerce within a State is left as a residuary matter to the States"[24].

The learned judge gave the following reasons in support of his interpretation of the scope of item 61 of the Exclusive Legislative List.

> ".... the control of the economy is not within the exclusive power of the Federation. Each government (Federal, State and Local) has a share in the control. While the Constitution requires the Federation to control the national economy, it also empowers the State to participate in the development of the economy within the State and Local Government in the development of the economy within its area of jurisdiction. It is therefore wrong for the court of Appeal to conclude that because section 16 obliges the Federal Government to control the national economy and since trade and commerce is an integral part of the national economy the words 'in particular' are words of emphasis and, accordingly as it held a State has no power to regulate any aspect of trade and commerce. With all due respect, this conclusion is inconsistent with the provisions of item H18 of part 11 of the second schedule and section 7(3) of the Constitution.

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24. Ibid at p.415

Again, the court of Appeal did not advert to section 7(1) which provides that;

> 'The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly the Government of every State shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.

Section 7(5) states that the functions to be conferred ... include control and regulation of out-door advertising and hoarding, control and regulation of shops, kiosks .. These functions, in my view, are invariably matters relating to trade and commerce. That being the case, the Constitution having specifically empowered a State to confer trade and commerce power on its Local Governments, it must be inferred that the Constitution reserves some trade and commerce power to a State. Otherwise, it would be ridiculous for the Constitution to oblige a State to give what it does not possess."[25]

The Supreme Court further held that a State has the power to impose tax on all matters in the Concurrent List and residuary matters. However, the taxing power of a State over the concurrent matters is subject to the rule of inconsistency under section 4(5) of the Constitution and the doctrine of covering the field.

On the meaning of the word 'excise' the Court held as follows:-

> "Under the provisions of our statutes 'excise duty' has always been levied on goods manufactured within the country and the tax is payable by the manufacturers before the goods are removed from the factories or warehouses. It was only on the happening of two events, ... that excise duty was formerly imposed on goods that had left the factories or warehouses and

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25. Ibid at p. 415.

> had entered into the process of distribution. Such goods are now automatically forfeited. Liability for the payment of excise duty has never been imposed on distributors or retailers of manufactured goods. What then is the constitutional meaning of 'excise' in item 15? I think the meanings given to the word by other common law countries would hardly assist in finding the answer to the question because each meaning was decided within the context of the Constitution of the country concerned. Hence there is no universal meaning of the word. Each case must be view through the spectacles of its constitutional perspectives."[26] .....
>
> "After having taken into account all the aforestated considerations I would respectfully define 'excise' within the purview of item 15 to be a duty tax charged on goods manufactured or produced in Nigeria whether in the process of their manufacture or production or their storage or distribution before their sale to the consumers in Nigeria but does not include a tax imposed on the sale of goods to a distributor, retailer or consumer. For emphasis, 'excise' is a tax on the good while sales tax is a tax on their sale".[27]

The Court also held that the sale tax imposed under section 3(1) and (4)(ii) of the Ogun State Sales Tax Law is not an excise duty. The mere appointment of wholesalers which include manufacturers, as the tax collectors is not sufficient to change the character of the sales tax to make it excise duty.

The Supreme Court finally held that Section 3(1) of the Ogun State Sales Tax Law in so far as it imposes sales tax on products brought into Ogun State and not on the same goods produced within the state is a discriminating tax directed against inter-state or international trade and commerce which are within the exclusive regulatory power of the Federation under item 61(a) and therefore

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26. Ibid at p.426
27. Ibid at p.428

unconstitutional for offending Section 4(3) of the Constitution. But the law remains valid in respect of tax on the supply of goods and services.

The decision of the Supreme Court in the above case seems more practical than that of the Court of Appeal although it disregarded the plain and literary meaning of the words of item H 18 Part II of the Second Schedule. This is because according to the Court of Appeal decision it means that a State Government is denied the right to participate in the development of the economy within the State and the Federal Government has the exclusive power to control the economy of the Federation. The court arrived at its decision because it did not avert its mind to item H 18 of Part 11 of the Second Schedule which give the House of Assembly the power to make laws for the State with respect to industry, commercial and agricultural development of the State. And item D9 of Part 11 of the Second Schedule which stipulates that a House of Assembly may, subject to such conditions as it may prescribe make provisions for the collection of any tax, fee or rate. Thus pursuant to Section 4 and item D of Part 11 of the Second Schedule a State has the power to impose tax on all matters in the Concurrent List and residuary matters. However, it must be noted that the taxing power of a State over the Concurrent matters is subject to the rule of inconsistency under Section 4(5) and the doctrine of covering the field.

4.3. CONFRONTATION BETWEEN THE FEDERAL AND STATE GOVERNMENTS DURING THE SECOND REPUBLIC

It has been accepted by the generality of the people that the most suitable system of government for Nigeria is federalism.

This notwithstanding the Nigerian leaders seem not be have appreciated the fact that for the successful working of a federal system of government there must be co-operation between the Federal and State Governments. Because of non co-operation between the two tiers of government, the relationship between the Federal and State Governments was marked by intense rivalry and confrontation during the Second Republic. This was mainly pronounced amongst the State Governments not controlled by the NPN.

Due to the fact that the 1979 Constitution provides for a Concurrent Legislative List concurrent to both the Federal Government and the State Governments there are bound to be disputes about the extent of each governments legislative powers. Conflicts of interest, difference of opinion, confrontation and intense rivalry which characterised the disputes between the Federal and State Governments with respect to the limits of federal powers and how it is exercised, stemmed from the fact that some State Governments within this period refused to accept the leadership of the Federal Government.

Conflicts of interest, difference of opinion and confrontation between the two tiers of government manifested in many areas which will be discussed below:-

(a) <u>APPOINTMENT OF THE PRESIDENTIAL LIAISON OFFICERS (PLOS)</u>

In the past many important Federal Government projects in the States were neglected or abandoned largely because effective and direct control over such projects was not available. To put an end to this President Shehu Shagari appointed PLOs for the 18 States of the Federation whose main function was to excute Federal Government projects in the States.

Thus the Federal Government enumerated the following as the main reasons for appointing the PLOs

(i) They will represent the Federal Government and co-ordinate its activities in the States

(ii) The appointment will facilitate the awareness of State Government problems to the Federal Government.

(iii) It will make provision for a link between State and Federal agencies.

(iv) It will make it easier for the Federal Government to dscharge its reponsibilities under the Constitution.

Explaining the main aim behind the appointment of the PLOs the New Nigerian in its editorial reported that;

> "President Shehu Shagari's appointment of Federal Liaison Officers to the 18 States is, on the surface of it, a most laudable effort to remove communication and executive bottle-necks relations for as long as Nigeria has existed. Some State Governments e.g. Imo, Anambra, Niger, Bendel and Oyo have all along accused the Federal Government of ignoring to execute federal projects in their States. Thus the PLOs were appointed to take care and if possible, eliminate the causes of such perennial complaints. This notwithstanding some state Governments suspected that the appointments were made to plant 'Federal Spies' in their State Machinery. Others felt that the appointments were made to provide unconstitutional largesse for party stalwarts who could not make various elective or statutory offices."[28]

The appointment of the PLOs generated a lot of controversy among State Governments who refused to recognise the PLOs. The appointment of the PLOs was even resented by the NPN-controlled State Governments. This was because some of the PLOs contested the governorship of the state against the then State Governors or were known

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28. New Nigerian Editorial Feburary 13 1980.

to be gubernatorial aspirants. But this resentment was removed when these PLOs were reposted outside their States of origin. The non-NPN controlled State Governments objected to the appointment on the ground that it is unconstitutional. They maintained that they prefer to deal with the federal agencies in the states rather than dealing with the PLOs. Thus the non-recognition of the PLOs by the State Governments was two demensional; there is objection to the principle and then objection to the person.

Among the non-NPN controlled State Governments, the Governor of Kano State was the first to declare that his government would have nothing to do with the PLO assigned to his State and thus directed all its functionaries not to have any dealings with the PLO. The State Government maintained that the appointment was unconstitutional. It maintained that a proposal to appoint such officers was brought before a meeting held by the National Economic Council and received the opposition of all the 19 state Governments. The Governor maintained that it was therefore a shock to all Governors that the President later implemented the idea against all sincere advice from Governors whose co-operations are necessary if the liaison officers are to succeed in their assignments. The appointment, the State Government further commented will result to unnecessary delays and gross inefficiency in view of the fact that each branch of a federal depart in every state has its own head who deals directly

with Lagos headquarters and also liaise with the State Government. For the above reasons the Governor of Kano State Maintained strongly that its government and functionaries will have no official dealings with the PLO. Thus it was reported that the State Government issued a query on the Emir of Kano who accepted membership of a relief committee set up by the PLO in the State, and was asked to explain why disciplinary action should not be taken against him.[29] The Governor of Kano State also called on the National Assembly not to approve the salaries for the PLOs.

The Governor of Kaduna State in a similar vein also refused to co-operate with the PLO for the State maintaining that he would rather deal directly with the President.

The Plateau State Government also refused to recognise or have any official dealings with the PLO posted to the state. In view of this it was reported that the secretary to the Plateau State Government returned all the forms for the allocation of plots in the new Federal Capital Abuja, distributed to various state establishments by the PLO, back to the State PLO on the ground that the State Government did not recognise him in the State and will not deal with him.[30]

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29. National Concord October 26 1981.

30. New Nigeria March 18 1980.

The Anambra State Governor in order to maintain its stand that it objects to the appointment of the PLO to the State refused to allocate land to the Federal Government for the building of low cost houses in the State, because the state liaison officer meant to handle the project, was not recognised by the State Government and therefore the State will have nothing to do with him.[31]

The presence of the PLO in Bendel State was strongly opposed by the Governor of the State. Thus the New Nigerian Newspaper reported that the Bendel State Government directed that his administration would have nothing to do with any liaison officer assigned to the State and therefore all public officers in the State should have no dealings with the liaison Officer. The State Government further maintained that any Public Officer who deals with PLO assigned to the State will be summarily dismmissed.[32] As if this was not enough the Governor of Bendel State did everything within his powers to see that the PLO did not pack into the house being renovated for him by the Federal Ministry of Housing and Environment in Benin. The house in question was given as a gift by the then Military Governor to the State to the University of Benin in 1972, but the University vacated from the house in 1979. As an officer of the Federal Ministry of Housing and Environment averred in his affidavit, that while renovation works

31. New Nigerian June 5 1980

32. New Nigerian April 20 1980

were being carried on, on the said house they received a warning letter from the Secretary to the Bendel State Government that they should stop work on the site. After this, the Governor personally came to the site on the 20th August 1981 to warn that none of the workers there should show up for work the following day. And when the next day the employees of the Federal Ministry of Housing and Environment were busy working at the site, bulldozers and about 200 workers of Bendel State Government arrived at the site. But the Nigeria Police who were earlier alerted of the Governor's threat to forcibly pull down the said building and destroy the premises stopped the Bendel State agents from carrying out the directives of the Governor. The Bendel State Government then went to court and asked for an interlocutory injunction restraining the PLO or officers of the Federal Ministry of Housing and Environment from trespassing on the said house.[33] The Attorney-General of Bendel State contended that the gift made by the Military Governor to the University of Benin is not binding on the civilian Governor and that when the University of Benin packed out from the premises in 1979, the property became that of the Bendel State. And that since 1979 to date the Bendel State had been maintaining the House. The Counsel for the defendant contended that Since the Government of Bendel State made a gift of the house to the University of Benin which is a federal institution the Federal Ministry of Housing and Environment was entitled to take over the

33. Attorney-General Bendel State v. Dr. G.I. Omonuwa (1982)3 NCLR 472.

property of the University.

Dismissing the contention of the defence counsel the court held that by Exhibit "C" a purported gift of the house and premises was made to the University in 1972 and in 1979 the University vacated the premises. Exhibit "C" did not go beyond a mere intention of the Government of Bendel State to make a grant of the premises to the University of Benin. When on the basis of Exhibit "C" the University went into occupation of the premises, the law ascribes possession and not title to the University and the legal estate in or title to remains in Bendel State Government until a formal conveyance is made in favour of the University of Benin.

The trial judge observed in his judgment that

> if one were to give a most liberal interpretation to Exhibit "A" it could not be said that it was on the face of it without further evidence a sufficient instrument to create an estate, right title or interest in the property to the Ministry of Housing and Environment without the approval of the Bendel State Government. This is where the 1st respondent made an unfortunate mistake in looking on the property as that of the Federal Ministry of Housing and Environment. If these facts had been acknowledged by the 1st respondent the noise and issues which were generated could not have arisen and it would be sad if any simple matter between a State Government and Federal Government which can quietly be settled out of court is made a political issue by either of them for the purpose of scoring a political advantage".

The trial judge therefore granted the interlocutory injunction.

Being dissatisfied with the decision of the trial judge the defendant appealed to the Court of Appeal Benin.[34] The Court of Appeal dismissed the contention of the Attorney-General of Bendel State that the gift made by the Military Government is not binding on the Civilian Governor. The Court held that they are binding on him is clear from section 276 of the 1979 Constitution. The Court also held that the plaintiff (Respondent) to this appeal, had not shown that he will suffer irreparable loss if the injunction were refused and he eventually succeeds in this case. The Appellate Court went further to hold that since the respondent had not discharged the burden just spoken about, the application for an interlocutory injunction should have been refused. The Court therefore set aside the order of interlocutory injunction made by the trial judge.

In a meeting held by the 9 progressive Governors in Yola in May 24 and 25 1980, they re-affirmed their readiness to co-operate with the Federal Government at all times but only by direct contact with the appropriate Federal agencies. They maintained that their rejuection of the PLOs is irrevocable.[35]

(b) BUILDING AND REHABILITATION OF FEDERAL ROADS IN THE STATES

The building of modern road net works and rehabilitation of existing ones throughout the 19 States of the Federation were prominent features

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34. Omonuwa v. Attorney General, Bendel State of Nigeria (1983)4 NCLR 237.

35. The New Nigerian May 26 1980 p.7.

in the campaigns of political parties during the 1979 general election. In order to fulfill its promise the Federal Government embarked on the construction of one of the most important road networks in Anambra State. The road in question which runs from Ekwulobia, through Oko, Ufuma and Umunze in Aguata Local Government area, was acquired by the Federal Government in 1974 as was clearly indicated in a map captioned Road Map of Nigeria showing Federal trunk roads, The Federal Ministry of Works also declared that the road being a Federal road had been maintained by Federal Government since 1974. But the Anambra State Government declaring that the road is a State road ran into a controversy with the Federal Government over who owns and should construct the road. Due to this fact the State Government stopped construction work being carried on, on the said road by contractors employed by the Federal Government and awarded a fresh contract for the construction of the road to another constructing firm. Commenting on the above controversy, the Vice-President Alex Ekwueme observed that;

> "He regretted that Anambra State Government had abandoned all its roads projects and had resorted to engaging in confrontation with the Federal Government inspite of the latters good intention."[36]

In a similar vein Chief Nsoedo Nnewi Local Government Chairman of the NPN maintained that it was the height of arrogance for a State Government to deny the people

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36. New Nigerian January 5 1981

of the State the opportunity of enjoying Federal Government assistance. He further stated that it will be in the interest of the people if the Federal Government and State Government come together and develope the State irrespective of political leanings instead of the unnecessary confrontation.[37]

Adding to the strong body of opinions on the issue, Nwabueze (1983) commented that;

> "it seems to caricature both logic and reason that a State Government, with resources grossly inadequate to its requirements, should refuse assistance from a 'big brother' in meeting its obligations to the people for such basic amenity as tarred roads. The fact that the road in question was a state road would seem irrelevant to the pressing need of the people of the State for good roads."[38]

(c) CONSTRUCTION OF FEDERAL LOW COST HOUSES IN THE 19 STATES OF THE FEDERATION.

When the Federal Government wanted to embark on the construction of low cost houses in the States, the Minister of Housing and Environment went on a consultation tour to the 19 States. In his consultative mission the Minister explained to the Governors the Federal Government policies on housing which had been fully discussed during the First Conference of the National Council on Housing which took place in Lagos between January 29 and February 1 1980.

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37. Daily Times June 14 1981

38. Nwabueze B.O.(1983) Federalism in Nigeria under the Presidential Constitution. Sweet & Maxwell London p.354.

The Minister also briefed the Governors on the Federal Government plan to build 2000 housing units in each State of the Federation and the Federal Capital Territory. The Minister then appealed to the Governors to make land available in both State Capitals and Local Government headquarters for the building of these housing units. Above all, the Minister appealed for co-operation from the State Governments to ensure speed and smooth implementation of the Federal Housing Programme.

The reactions of the State Governments to the Federal Housing Policy and Programme were much in keeping with party political groups in the country with very few exceptions. Some States embraced the programme whole-heartedly and offered some useful suggestions. While some States presented a stiff opposition to the Federal Government proposal to build 2,000 housing units in each State of the Federation. These States did not see any rationale in the Federal Government's physical presence in the States while implementing its housing programme. They maintained that the Federal Government should give the States money meant for the implementation of the programme so that they can carryout the programme on behalf of the Federal Government. To this the Minister refused and recalled that past experience had shown that States more often than not, divert federal funds meant for specific projects for other uses and this situation could not be tolerated in the present administration's effort to fulfill its housing promise

to the people.[39] Some States also argued that it is unconstitutional for the Federal Government to undertake the building of low cost houses in the State.

Based on the above arguments the States mostly the non-NPN controlled States ie Anambra and Bendel initially refused to make land available to the Federal Government for the project, and requested that the Federal Government should give them the money to execute the projects themselves. When the Federal Government refused to release the money for the project to the State Governments, Anambra State relunctantly made available land for the project at the outskirts of Enugu. The main aim of Anambra State Government was to make a nonsense of the Federal Government project because it was fully aware of the fact that the locations of the Federal houses not being convinent for living that people will not occupy the houses. Infact up till the end of the Second Republic the houses were not occupied. Again the Anambra State Government failed to make land available to the Federal Government to build the Federal Secretariat being built in the 19 States of the Federation on the strength of the above reason. That is why up till today Anambra State has no Federal Secretariat.

An obvious confrontational stance of the State Government towards the Federal Government with regard to the Federal Low Cost Housing Programme in the States

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39. New Nigerian August 25 1981

was the demolition, by the Oyo State Government, of the houses under construction in Ibadan by the Federal Government on the flimsy excuse that the Land on which the Federal Government built the houses had not been allocated to it by the State Government. It further argued that the building of the Federal housing Scheme in the States was unconstitutional.

It was noted, that due to this refusal of some State Governments to make land available to the Federal Government, during the Second Republic some federal functionaries called for the amendment of the Land Use Act, so as to enable the Federal Government acquire land directly in any State of the Federation. This call was regarded as unnecessary by the 9 progressive Governors who maintained that they will not support such an amendment since they have a duty to protect their citizens against such an unwarranted encroachment.[40]

It is therefore questionable whether a State Government can refuse to make Land available to the Federal Government where the Land is needed for public purposes. Considering the decision of the Supreme Court in CHIEF R.O. NKWOCHA V. GOVERNOR OF ANAMBRA STATE,[41] where the plaintiff instituted an action against the defendants in the Enugu High Court and claimed as follows:-

> "(1) A declaration that section 28 of the Land Use Act does not apply to the Plaintiff's deed of assignment of plots NO.M-17 and No. 09 Independence Layout Enugu registered as No.40 at page 40 in volume 1043 Lands Registry at Enugu or

40. The New Nigerian May 26 1980 p.9
41. (1984)6 SC 362

leasehold interests in the said plots".

(2) A declaration that the defendants have no right to power or competence to revoke the leasehold interests of the plaintiff in the said plots for the purposes specified in the Revocation Notices dated 16th February 1981 (Re.N.LEN: 3007/215 and that the said leasehold interests are still subsisting".

The Court of Appeal referred the following question for the consideration of the Supreme Court:-

Whether the Governor of Anambra State is the proper authority to exercise the powers or functions vested in or exercisable by the Military Governor under the provisions of the Land Use Act?

The Supreme Court answered the question in the affirmative. It held that the trust constituted under the Land Use Act being a right to property which right is preserved under section 274 of the 1979 Constitution, would vest in the Governor of the State without further assurance. Thus while it is plain that a Governor under a civilian regime within the concept of the 1979 Constitution is not the same as the Military Governor envisaged under the Land Use Act, it is implicit in section 276 that the vesting of property should be in the Chief Executive of the State for the time being. And by the same token, the State Governor would succeed to the powers of the Military Governor, which restrain him from making a grant of occupancy or consent to assignment...(.7); he would succeed to the power to grant a certificate of occupancy (S.9), power to enter

upon and inspect the land comprised in any statutory right of occupancy (S.11), accept on such terms and conditions as he may think proper, the surrender of any statutory right of occupancy (S.27), revoke right of occupancy for over-riding public interest (S.28) and such other statutory or public power which, obviously without any further assurance were vested by the Act in the Military Governor.

Thus according to the decision of the Supreme Court, the State Governors held the land in their respective States in trust and for the benefit of all Nigerians. This being the case the State Governors are obliged to make land available to the Federal Government, once the land is required for a public purpose for the benefit of all Nigerians.[42]

In ATTORNEY-GENERAL OF LAGOS STATE V. NATIONAL ELECTRIC POWER AUTHORITY,[43] the State Governor required NEPA to pay certain amount of levy on land which NEPA was holding in accordance with the land acquisition notice of the Federal Government under the Land Use Act. The State Governor challenged this as an unlawful act since under the Land Use Act the land is vested in him and without his consent or approval the entering of the land was illegal. The High Court of Oluwa, J. held that the State Governor not being a Military Governor

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42. See for this Lagos High Court decision in Attorney-General of Lagos State V. NEPA (1983)4 NCLR 768.

43. (1983)3 NCLR 768.

has no legal right to impose conditions for the use of any piece or portion of land in Lagos State under the Land Use Act and hence NEPA had the right to remain on the Land. This view stands overruled by the decision of the Supreme Court in NKWOCHA V. GOVERNOR OF ANAMBRA STATE'S CASE. However the Lagos High Court atternatively accepted NEPA's contention based upon section 50 (2) of the Land Use Act, that in so far as there is no evidence that any one was on the land or that it had been acquired by Lagos State Government and since the Federal Government was already on it, the Federal Government was entitled to stay there and use it in conformity with the acquisition notice and held as follows:-

> "electricity is within the executive authority of the Federal Government and section 28(1) and (4) of the Land Use Act[44] rendered it imperative on the Military Governor to revoke any certificate of occupancy it had previously issued in respect of any piece of land whenever the Federal Government issues a notice that it requires the land for public purposes... The Federal Government requires the land in dispute for electricity for the benefit of the citizens of this country. The State Government was ill advised in the face of the provisions of the Constitution [ie section 5(1) and (2) of the 1979 Constitution] and the Land Use Act itself to decide to levy charges and to threaten NEPA an organisation functioning under the aegis of the Federal Government.
>
> Even if the words 'Military Governor' mean 'State Governor' it would be illegal to do so. If the words Military Governor are not replaceable by the words State Governor then the State Executive will surely have no claim to any excuse right

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44. S.28(1) "It shall be lawful for the Military Governor to revoke a right of occupancy for overriding public interest" S.28(4) "The Military Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the Head of the Federal Military Government if such notice declares such Land to be required by the Government for public purpose".

> or legality for levying the conditions herein before mentioned on NEPA."

The Court restated the above view in its summary as follows:-

> "If the Governor of Lagos State can function in place of the Military Governor then he is bound by the provisions of section 28(4) of the Land Use Act to make Land of NEPA's choice available to it for use as required without charge. It would tantamount to impeding the executive powers of the Federal Government to disturb the use by the defendant [NEPA] of the disputed land. Section 5(1) and (2) of the Constitution are relevant in this respect".

Consequently the State Government's claim for trespass against NEPA was dismissed.

From the two decisions above it will be unconstitutional for the State Government to refuse to make land available to the Federal Government where the land is needed for public purposes.

(d) CONFRONTATION BETWEEN THE FEDERAL AND STATE GOVERNMENTS IN RESPECT OF POLICE

Confrontation between the Nigeria Police and the State Governments was peculiar to the non-NPN controlled State Governments who in many occasions have argued that the police had been politicised and turned into an instrument of the NPN- controlled Federal Government for the intimidation and harassment of its political opponents. This belief of these State Governments made them to lose faith in the Nigeria Police. It was reported that Governor Goni held the view that the Police Commissioner was posted to his State by the

Federal Government, for the purpose of destabilising the State.[45] He further spoke of police incompetence to maintain law and order in Borno State, which he alleged, led to various political disturbances and killings in the State. He said that he would soon take over control of the State security, from the Police, since the Federal Government had deliberately ignored repeated appeals made by him, that the Police Command in the State be made to be alert to its duties and responsibilities respecting both the State Government and its people.[46]

The establishment of the Road Safety Corps in some States of the Federation ie Anambra, Lagos and Oyo explains further the confrontational stance of these State Governments towards the Federal Government. By vesting the powers of arrest and detention on the road corps this constitutes an attempt to usurp the functions of the Nigeria Police Force. The enforcement by the Road Corps in these States of whatever they perceive as traffic offences on federal roads is contrary to the stipulations of Federal Highway Act of 1971 and Federal Highway Declaration Acts of 1977. Such acts also offend the Exclucive Legislative List with respect to Federal trunk roads and Police, and are therefore unconstitutional. Thus the road safety corps stimulate confusion and conflict between

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45. National Concord September 11 1981.

46. National Concord September 18 1981

the corps and the Nigeria Police, moreso when the Federal Government has established Traffic Wardens who operate under the command and administration of the Nigeria Police.

(e) NON-ACCEPTANCE OF THE LEADERSHIP OF THE FEDERAL GOVERNMENT BY THE STATE GOVERNMENTS.

It is the unwillingness of some State Governments to accept the leadership of the Federal Government that has been mainly responsible for the confrontational attitude of the State Governments towards the Federal Government. This unwillingness, manifested in many ways. The first was the directive given by the UPN-controlled State Governments to all State and private establishments in the State to ensure that the portraits of the President are not exhibited in the offices. When the secretary to Lagos State Government was questioned about, this, he said that the State Government does not include the display of the President's portrait among its priorities.[47]

Secondly Anambra and Bendel States banned all public receptions, rallies, demonstrations and processions in connection with President Shagari's visit to the State. The Kano State Governor also ordered the people of his not to turn out to receive the President during his official visit to the State. This order made by the three State Governments is an act of bad faith and completely at variance with the constitutional

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47. New Nigerian January 1980.

relationship that should exist between the State Government and the Federal Government.

(f) FEDERAL GOVERNMENT'S CONFRONTATION WITH SOME STATE GOVERNMENTS.

(i) Establishment of Radio/TV Stations

The non-NPN controlled State Governments contended that the federally controlled mass media were being manipulated by federal functioneries so as to black out favourable reports and comments about their States and distort or falsify news about their States. Because of this poor coverage of news in these States, the Lagos State Government applied to the Federal Government for permission to start its own television station. This was granted and a channel was allocated to it. But just as the television was about to go into production the Federal Government attempted to withdraw the channel and subsequently began the jamming of the Lagos State television channel by the NTA 2 Lagos. This matter was challenged by the Lagos State Broadcasting Corporation in LAGOS STATE BROADCASTING CORPORATION V. FEDERAL MINISTER OF COMMUNICATION AND OTHERS.[48] The issue in this case was the revocation of the licence to operate the LTV5 granted the Lagos State Government by the Federal Ministry of Communications under the Wireless Telegraphs Act 1961. Based on the licence the Lagos State Government spent a lot of money to import the necessary equipments for LTV5, installed then

48. Suit No.M/198/80 of 14/5/81 High Court of Lagos (Unreported).

employed technicians, engineers,broadcasters, journalists and other highly skilled personnel to operate the equipments installed. Thus the Lagos State Broadcasting Corporation challenged the alleged revocation as illegal and therefore void.

The grounds for the revocation of the licence were fully stated in the affidavit sworn by the Director of Telecommunications. They are as follows:

(1) The director maintained that he did not authorise the allocation of further frequencies.

(2) That channels 5, 7 and 11 were reserved in 1976 by the Ministry of Communications and registered with IFRB in Geneva for the use of the Gerostat balloon project for television coverage of parts of Nigeria including Lagos State.

(3) The efforts are at an advance stage to examine and resolve all technical issues in the use of broadcasting bands, including television in the whole Federation.

(4) That the said licence was not approved by the Minister of Communications.

It was also contended by the learned counsel for the defendants that the plaintiff is not an agency of the Lagos State Government and as such cannot bring the present action. He contended that only State Governments are entitled to licences under section 31 of the Wireless Telegraphy Act 1961. And that there is no proof of authority to the plaintiff from the President.

On the competence of the Plaintiff to bring this action, section 36 of the Constitution of the Federal Republic of Nigeria provides for the owning, establishment and operation of a television or wireless broadcasting station in the following manner:

> "(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
>
> (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:
> Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever".

It is clear from the above provision that a Government of the Federation or of a State is entitled as of right to own, establish or operate a television or wireless broadcasting station for any purpose whatsoever. With that constitutional provision the authority of the President would be unnecessary in the present case if it is established that it is the Lagos State Government or its agency that owns and established or is operating the television or wireless broadcasting station.

It was claimed that Plaintiff is an agency of the Lagos State Government but this was strongly disputed by the defendants. Section 5 of the Constitution stipulates the exercise of the executive powers of the Governments of the Federation and the State which are vested in the President and the Governor respectively.

The relevant portion in relation to the State is section 5(2) which provides:

> "(2) Subject to the provisions of this Constitution the executive powers of a State -
> (a) shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him either directly or through the deputy Governor and Commissioners of the Government of that State or Officers in the public service of the State; and
>
> (b) shall extend to the execution and maintenance of this Constitution, all Laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws, but such executive powers shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation or to endanger the continuance of a Federal Government of Nigeria."

There is little doubt that powers of the Governor vested by section 5(2) is capable of being exercised through others. Infact section 277 of the Constitution defines Government as follows:-

> "Government includes the Government of the Federation or of any State or of a Local Government Council or any person who exercises power or authority on its behalf."

What then we may ask, is the position of Lagos State Broadcasting Corporation? Is it or is it not an agency of the Lagos State Government? The answer to this would be found in the law establishing the said Corporation. The Law is Edict No.8 of 1978. The title to which reads:

> "An Edict to make provision for Broadcasting Services by the Government of Lagos State and to establish a Corporation for that purpose, and for other purposes incidental thereto or connected therewith."

The Court was therefore of the opinion that from the above provision of the law it will be erroneous to hold that the plaintiff is not an agent of the Lagos State Government. Thus when the plaintiff applied to the 2nd defendant for licence, it did so on behalf of the Lagos State Government and does not therefore require any further authority from the President. The Lagos State Government is deemed to have applied through the hands of the plaintiff. The established principle of law in a situation as this is summed up in the Latin maxim "Quid facit per alium, facit per se" meaning "He who acts through others acts by himself."

Section 31(4) of the Wireless Telegraphy Act 1961 sets out the circumstances under which a Minister could exercise his discretion to withdraw a licence already granted in the following manner:

> "(4) if, in the opinion of the Minister, it is necessary or expedient for any of the purposes mentioned in subsection(2) to cancel the allocation in a licence granted under subsection(1) of a wavelength or alter a wavelength allocated in a licence so granted or alter or add to the conditions of a licence so granted, he may by notice in writing cancel or amend the licence accordingly."

It was not established that any of such conditions in section 31(2)(a)-(c) existed. The plaintiff's application was shown to have been fully considered before approval was given. Even if by the affidavit of the 2nd defendant one were to consider section 31(2)(a) as pertinent, it lacks merit in that it is not shown that the allocation already made to the

Plaintiff in anyway affects the proper and efficient allocation of wavelength throughout Nigeria. By its approval the defendants have vested a right to the allocated channels and wavelengths in the plaintiff and any reorganisation must take cognisance of such vested right, and leave it undistrurbed. The defendants were thereby estopped from revoking the licence. But the learned counsel for the 3rd defendent submitted that the doctrine of estoppel does not cover an ultra vires act. But from the foregoing facts of the case the presumption raised is that the officers of the Ministry of Communications acted intra-vires.

The Court therefore held that on the facts and circumstances of the case that the plaintiff is entitled to a declaration that the purported withdrawal of the licence granted to it is illegal, obstructive, void and of no legal effect. The plaintiff is entitled to own, establish and operate its television broadcasting services on the channels already allocated to it as shown on the Exhibits tendered ie channels 5, 6 and 8.

(ii) State Assembly Power to Summon Federal Officers

Another confrontational stance of the Federal Government towards the State Government was noticed in the case where the Presidential Liaison Officer assigned to Kano State barred Federal Officers in the State from appearing before the State Legislature.

He said that the 1979 Constitution empowered only the Senate and the House of Representatives to invite Federal Functionaries for questioning. But the speaker of the House maintained that the House was empowered under sections 120 and 121 of the Constitution to summon any person to give evidence required by the House. He said that even the Presidential Liaison Officer could be summoned to appear before the House, and if he failed to comply a warrant for his arrest would be issued.[49]

(iii) State declared holidays - Whether it binds Federal Establishments in the State.

In Kaduna State the Federal Establishments defied the May day holiday declared by the Governor on May 1 1980, on the ground that it was a political manoevre intended to make nonsense of workers'genuine celebrations.[50]

4.4 THE FEDERAL CHARACTER PRINCIPLE

The Federal Character Principle was enshrined into the 1979 Constitution with the aim of achieving national unity in the Federation. Section 277 which defines Federal Character of Nigeria States that,

> "Federal Character of Nigeria refers to the distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language or religion which it is their desire to nourish, harness to the enrichment of the Federal Republic of Nigeria".

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40. New Nigerian June 7 1980 P.13

50. New Nigerian May 2 1980 P.7

Section 14(3) which draws attention to the need for ensuring fair and equitable treatment to all the component States and ethnic groups in the country provides that;

> "The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies."

Section 135(3) makes it obligatory on the President to reflect the Federal Character of Nigeria in the appointment of Ministers. Thus there must be at least one nominee from each State in the Federation. The President is empowered to make the following appointments (a) Secretary to the Government of the Federation, (b) Head of the Civil Service (c) Ambassador, (d) High Commissioner and other Principle Representative of Nigeria abroad, (e) Permanent Secretary in any ministry or department of Government of the Federation under section 157(2) of the 1979 Constitution. But this power is subject to only one limitation which is that the President must have regard to the Federal Character of Nigeria and the need to promote national unity. Section 197(2) also provides that the composition of the officers corps and other ranks of the armed forces of the Federation shall reflect the Federal Character of Nigeria.

The National Assembly under section 199 is empowered to establish a body which shall have power to ensure that the composition of the armed forces of the Federation reflects the Federal Character of Nigeria. In section 203(2)(b) it is provided, that the Constitution and Rules of a political party must provide that the Executive Committee must reflect the Federal Character of Nigeria. It will be noted that the right to freedom from discrimination as prescribed under section 39 and its exception as stated therein do not apply to appointments under the State, armed forces, police and statutory bodies, perhaps to leave scope for the operation of the Federal Principle and hence can be said to be controlled by the federal character principle. With the federal character principle all the different sections of people in Nigeria will be fairly represented in the government thus eliminating the fear of domination by a particular group or groups of persons.

The Federal Character Principle is adopted in all countries with the federal system of government. Thus the Political Bureau observed in its report that though federal character "is a feature of all federal systems of government", its policies and and application differ markedly from one Federation to another. While the United States and Brazil have developed the principle to a relatively fine political art, successfully obscuring its negative tendencies, federal character remains a volatile issue in Nigeria.

The application of the federal character principle is problematic in Nigeria because it has to take cognisance of two factors, i.e merit and quota system. Though, most Nigerians agree on the tenents of the policy they disagree very vehemently on the methods of its application. For instance most southerners regard the use of quota system for, say, admission into federal educational institutions and employment in the public service as further entrenchment of the political domination of the country by the North, because they feel its application ignores merit and senority, in employment and promotions. But the Northerners perceive the quota system as a necessary imperative to correct the historical imbalance in the federal bureaucracy, weighed in favour of the South, and serve as a counter-point to the South's strangle hold on the economy.

Thus the main problem with the application of the Federal Character principle in Nigeria is how to apply quota without sacrificing merit. The New Nigerian wrote in its editorial, that;

> "These disadvantaged sections (the Northern States) need special consideration for the sake of this country ... and the much despised quota system is one way of bringing them in ... Quota and merit are not necessarily mutually exclusive."[51]

Mohammed Haruna, New Nigerian News papers managing director wrote in 1985 that competence alone is not enough to keep the country united.

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51. The New Nigerian Editorial December 20 1984.

To remain united, competence must be balanced with quota system.[52] Mr. E.A. Tugbiyele President of National Council of Unity, Peace and Progress, disagreed with the stand of the New Nigerian. He said in 1985 that the use of quota system particularly in admission into post-secondary institutions "is a policy of discriminatory unity". He stressed that the nation's wealth should be measured by "the quality of its human resources and not by number". President Ibrahim Babangida in 1986 enjoined the Federal Civil Service Commission to

> "try always to achieve federal character in appointments and promotions without sacrificing merit".

While commending the federal character principle and recommending its continuity the Political Bureau maintained that,

> "its practise should, however be carried out without prejudice to the criteria of merit, excellence and achievement."

Thus it could be derived from all that have been discussed above, that though the federal character principle is an indispensible facet of our society in its application in all matters of political representation or economic distribution, quota should not taint the quality and standards of the country's services.

The Federal Character Principle though a good tool for national unity is accused of being applied at the expense of efficiency. Thus the President of the Nigerian Economic Society (NES) Prof. M.O. Kayode said in his

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52. The New Nigerian January 15 1985 p.3.

address at a conference of economists held in Kaduna that

> "no attempt had been made to indicate what the acceptable minimum values of efficiency and equity should be for the county".

He went on to say that there was need for the government to clarify in what areas the sacrifice of efficiency should be tolerated to guide those who apply the federal character principle.

Finally the federal character principle will be welcomed by every Nigerian if the aim of the principle which is balancing efficiency and distribution of resources throughout the Federation is achieved. As Nwabueze (1982) observed the tendency for sectional domination of crucial federal portfolios amounts to "infidelity and distortion" of the federal character principle.[53] In order to find out whether the aim of the federal character principle was achieved during the Second Republic, let us assess the following conditions.

(a) APPOINTMENT OF PUBLIC FUNCTIONARIES

During the Second Republic the constitutional stipulations as regards the federal character principle was fully complied with the appointment of ministers from all the States of the Federation. The constitutional stipulation in this regard was provided in section 135(3) which states that;

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53. Nwabueze, B.O. (1982) The Presidential Constitution of Nigeria. London, C. Hurst & Co. In Association with Nwamife Publishers, Enugu and Lagos. P. 370.

"Any appointment under subsection (2) of this section by the President shall be in conformity with the provisions of section 14(3) of this Constitution:

Provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each State, who shall be an indigene of such State."

The total number of Ministers appointed by the President during the Second Republic was 38. Out of this number the President appointed at least one Minister each from the 19 States of the Federation thus adhering to the letter of the Constitution as provided in section 135(3).

In the distribution of Public appointments, such as offices of Secretary to Government, head of civil service, high commissioners or other principle representatives of Nigeria abroad and permanent secretaries, there is no doubt that it will not always be possible to appoint persons from all States, primarily because there may be fewer posts than persons qualified to be appointed, but at least the federal character principle ensured that there is no over predominance of persons from some States while there are none from other States.

In the appointment of ambassadors the Federal Government ensured that all the States of the Federation, are fully represented by appointing at least two ambassadors from each State of the Federation. This was done in order to correct the imbalance that existed in the appointment of ambassadors during the Military Regime.

During this period out of the 53 ambassadors appointed, Rivers State had 1, Cross River State 2, Imo State 3, Bendel State 15, Ondo State 5, Oyo State 6, Lagos State 3, Plateau State 3, Kwara State 4, Gongola State 4, Bauchi State 5, Sokoto State 3, Kaduna State 4, Kano State 5, but Anambra, Niger and Borno States had none. Thus during the Second Republic the Federal Government was called upon to correct this imbalance and reflect the federal character in the appointment of its ambassadors so as to eliminate bitterness among the people of those States of the Federation that felt left out in terms of fair share of representation.

(b) CONTROL OF THE PRESIDENCY

The main object of the federal character principle will be nullified if the Presidency is allowed to be absolutely controlled by one part or sections of the people of the country. It means that the Presidency should move round the various ethnic groups. It has been advocated by many that to comply fully with the federal character principle in this respect Nigeria should adopt and make provision for a rotational Presidency. Infact Mr. S.M.A. Aka a Benin based Publisher and Chief M.K.O. Abiola have in various Newspaper articles and comments argued that the country's leadership should be rotated between the North and South. If only to remove the growing impression that the Nigeria's political leadership is becoming "hereditary" or traditional among a particular ethno-linguistic group.

But the Political Bureau and the Federal Government rejected the suggestion to make a provision for a rotational Presidency. The reason adduced by the Armed Forces Ruling Council for rejecting a constitutional provision for a rotational presidency is that such a provision will imply our inability to manage our national affairs without recourse to tribal and ethnic sentiments.[54]

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54. National Concord August 17 1987 P.3.

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY

In the preceeding chapters, an attempt has been made to analyse and discuss the problems inherent in a Federal system of government which were experienced during the second Republic. The following are the conclusions of the said analysis and discussion and the measures recommended for resolving many of these conflicts and problems.

(a) CREATION OF STATES

The agitation for creation of more States dates back to colonial days. It arose from neglect of minority ethnic groups by the Regional Governments which devoted their resources to the major ethnic groups without consideration for the interest of the minorities. The vital arguments therefore for the creation of more States are motivated by political and economic factors. During the Second Republic there were demands for the creation of about 53 new States, despite the stringent procedure adopted by the 1979 Constitution on the creation of new States, though the National Assembly did not deliberate over the issue before the civilian government was toppled in December 1983.

From the assessment of section 8 of the Constitution which provides the procedure for the creation of States it may appear that in a particular State where the minority demands for the creation of a new State from the existing State, the request will be granted if the conditions stipulated in the section are fulfilled, irrespective of whether or not the majority in that State wants the new

State to be created out of its existing boundaries. This is different from what obtains in other Federations like America and Australia where the federating units were brought about by the coming together of the different States. The Constitutions of these two Federations contain provisions which stipulates that no act which will alter, deminish or increase the limits of the State will become law unless it is supported by a majority of the State.

After the Federal Military Government created the 19 State structure in Nigeria in 1976, it made it clear that it will not entertain future demands for the creation of States. But because the 19 State structure failed to take into account the real reasons why many areas demanded more States and in so far as the problems which the creation of States are expected to solve persist, people in many areas renewed their demands for creation of States which will satisfy their aspirations during the Second Republic. It will be commendable if the Nigerian Federation should consist of 24 States which will be shared equally between the minorities and the majorities, to eliminate the feeling of domination and neglect amongst the minorities, after which there should be a constitutional provision banning the creation of new States for at least 25 years. A period considered necessary for the country to settle down politically and tackle other more fundamental issues of national development. This is because most of the new States created are economically backward and find it almost impossible to meet their responsibility and thus rely heavily on the Federal Government.

This being so if more States which the Federation cannot manage and are not economically viable are created and they have to rely on the Federal Government, then this will pull down the Federation instead of bringing about economic prosperity. Infact it has been noticed that Lagos State is the only State which is economically viable.

(b) FEDERAL CHARACTER PRINCIPLE

The federal character principle was enshrined in the 1979 Constitution solely to achieve national unity, promote national loyalty and give every citizen of Nigeria a sense of belonging to the nation. Thus the federal character principle is the basic principle that should guide governmental actions at all levels. But it should be noted that if ethnic and state considerations have to be the salient factors in determining public appointments, it may be possible that the strong desire to acquire power and high federal offices would lead to inordinate and aggressive identification with the ethnic group or the State to the detriment of higher loyalty to the nation.

The provision of the 1979 Constitution on the freedom from discrimination (S.39) which provides that 'no one should be discriminated against on grounds of his place of origin, tribe, race, sex...' seems to be offended by the quota system in areas not exempted by Sub-section (3) of this section. But there has been no case in the courts to challenge this fact by those affected.

(c) CO-OPERATIVE FEDERALISM

The 1979 Constitution provides a Federation. From the discussions of the relevant provisions of the Constitution in the body of the thesis, it seems that the constitution effectively tilts the power structure in favour of the Federal Government and diminishes the professed autonomy of the States. This is indicative of the type of Federation intended, that is, a centrally strong Federation.

The 1979 Constitution also has some features of co-operative federalism so that the two levels of government (Federal and State) will work together through co-operation. The following are the reasons why the 1979 Constitution incorporated features of co-operative federalism:(i) At times a function assigned to one level of government may overlap with or require supporting services from the other level of government. (ii) For the citizen to be best served in a Federation it is necessary that both levels of government consulted with each other. Towards this end, the 1979 Constitution has set up some machineries i.e. Council of State and National Economic Council for intergovernmental and Federal - State Co-operation.

(d) JUDICIAL SYSTEM

The division of judicial powers of Nigeria between the courts established for the Federation and the courts established for the component States under section 6 of the 1979 Constitution, wherein the judicial powers of the Federation are vested in the federal courts and the judicial powers of the States in the state courts is not exclusive. Other provisions of the Constitution permit some federal

courts to exercise jurisdiction on matters that are within the judicial powers of the States. Thus in the exercise of their appellate jurisdictions under sections 213 and 219 of the Constitution, the Supreme Court and Federal Court of Appeal, which are both federal courts, are endowed with the judicial powers of the States in the determination of appeals from the State courts. In the same vein, in addition to the general jurisdiction of State High Courts under section 236, the state courts are empowered by section 250 of the Constitution subject to the qualifications stated therein to exercise jurisdiction over the judicial powers of the Federation.

But the judicial system is beset by one problem which is that under section 230 the Federal High Court is conferred with jurisdiction over federal matters stated therein. The section also provides that the Federal High Court shall have jurisdiction over such matters as may be prescribed by the National Assembly which it has power to make laws [(s.230(1)(b)]. It was contended in the Bronik Motors case that this means that the Federal High Court will have exclusive jurisdiction over all matters with respect to which the National Assembly has power to make law. But it is worthy to note that the National Assembly has power to make laws in respect to matters in the Concurrent Legislative List and the Exclusive Legislative List. If section 230(1)(b) has the extensive jurisdiction being canvassed it would cover both the Exclusive and Concurrent Lists and so exclude the State High Court's jurisdiction.

This is contrary to the intention of the 1979 Constitution. Because the 1979 Constitution under section 250 conferred jurisdiction on all State High Courts to exercise powers in respect of federal causes, that is, matters in which the National Assembly has powers to make law, and if that is so, the Federal High Court could not have been conferred with the same jurisdiction exclusively. This problem has been finally resolved by the decision of the Supreme Court in the case of SAVANNAH BANK OF NIGERIA V. PAN ATLANTIC SHIPPING AND TRANSPORT LTD. AND NICANNAH FOOD CO. LTD[1] where it was held that the unlimited jurisdiction of the State High Court provided for under section 236 of the 1979 Constitution extends to federal matters and that this power is not limited by the provisions of section 230 of the Constitution which confers jurisdiction on the Federal High Court over federal matters mentioned therein. It was therefore held that jurisdiction in Admiralty which is a federal matter is concurrent in the Federal High Court and the State High Court.

(e) EXECUTIVE POWERS

Section 5 of the 1979 Constitution provides that the executive power of the Federation shall extend to the maintenance and execution of the constitution, likewise the executive power of the State. But this section has a proviso which stipulates that the executive power of the state shall not be exercised in a manner as to impede or prejudice the exercise of the executive powers of the Federation.

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1. S.C.139/1985 of 30/1/87 (unreported)

Unless the provisions of section 5 can be interpreted to mean that the executive power of the Federation extends to such provisions of the Constitution that deal with federal matters, matters in respect of which the National Assembly has power to make laws and any other specific matter (Federal or State) that has been assigned to it. And that the executive power of the State extends to such provisions of the Constitution that pertain to State matters and in respect of which the State legislature has power to make laws, then the proviso to the section would mean that the Federal executive power can be exercised in a manner to impede or prejudice the exercise of the executive powers of the State.

(f) EMERGENCY POWERS

Under section 265 of the 1979 Constitution the State Governor cannot declare a state of emergency in his State even when there is clear and present danger of actual breakdown of public order and public safety in the State but has to request the President to issue a proclaimation of a state of emergency. This means that the proclaimation of state of emergency is the exclusive responsibility of the Federal Government, and the State Government power in this respect is limited. This being so, and for the fact that the police is within the exclusive power of the Federation together with the adaptations made in the Public Order Act, circumscribes the State Governors' executive powers to maintain public order and public safety in his State.

This is inconsistent with the principle of federalism which stipulates that each government should be autonomous

(g) LAND USE ACT

The Supreme Court setting at rest an acute controvers rightly held in CHIEF R.O. NKWOCHA V. GOVERNOR OF ANAMBRA STATE[2] that the State Governor is the proper authority to exercise the power and functions vested in or exercisable by the Military Governor under the provisions of the Land Use Act. Otherwise the provisions of the Land Use Act will be useless and nf no effect since the Act was not modified to substitute the position of the Military Govern which had been abolished with the coming into effect of the 1979 Constitution in 1st October 1979, with another authority.

By this decision the entire land in a State is vested in the State Governor. This therefore gives rise to conflict between the Federal and State Governments as was noticed during the Second Republic when some State Governors refused to make land available to the Federal Government when such land was needed for public purposes.

(h) CONSTITUTIONAL CASES DECIDED BY THE SUPREME COURT

The Decision of the Supreme Court in the Allocation of Revenue (Federation Account) Act 1981[3], which was the first major constitutional case under 1979 Constitution between the Federal Government and State Government, constitutes a major constitutional land mark in the country's legal history.

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2. (1984) S.C. 362
3. Attorney General of Bendel State v. Attorney General of the Federation and 22 others (1982)3 NCLR 1

In this case the Court rejected the myth of the doctrine of separation of powersas a cloak for illegality and a device to avoid judicial interference when there are breaches of the provisions of the constitution in the law making process. The Court maintained that the Constitution is the supreme law of the land and it creates and prescribes the powers of the 3 arms of government i.e. the legislature, executive and judiciary. This being the case, the legislature has no power to ignore the conditions of law-making that are imposed by the Constitution which regulates its powers to make laws. Thus the National Assembly therefore does not possess any inherent powers to delegate or transfer to a Committee its exclusive constitutional powers to make laws.

The decision of the Court in this case also protected the interest of the State Governments vis-a-vis the Federal Government especially when the State Government financial position in the Constitution is precarious.

In the Public Order Act case[4] the State Governments under the concurrent subjects enacted Public Order Laws to control public safety and public order in their respective states. But this power to control public order and public safety was thwarted by the decision of the Supreme Court whereby the Public Order Act was declared a federal law and not a state Law. This therefore means that the State Public Order Law cannot amend the Act and that the Act supercedes the state law in case of conflict.

4. Attorney-General of Ogun State v. Attorney-General of Federation (1982)3 NCLR 166.

By this decision the States were denied the exclusive power to control public order and public safety in their respective territories by stengthening the federal power in this respect.

(i) TRADE AND COMMERCE POWER

By the decision of the Supreme Court in the case of ATTORNEY-GENERAL OF OGUN STATE V. ABERUAGBA[5] (the sales tax case) the wide powers vested on the Federal Government in respect to trade and commerce by item 61 of the Exclusive Legislative List had been stream lined. By this decision the whole of trade and commerce within the State(intra state trade and commerce) is vested in the State Government exclusively while the Federal Government has exclusive control over international and interstate trade and commerce as stipulated in item 61 of the Exclusive List.

(j) CONFRONTATION BETWEEN THE FEDERAL GOVERNMENT AND THE STATE GOVERNMENTS

This problem existed during the Second Republic because the leaders failed to understand the principle behind a federal system of government. They were not aware of the fact that division of powers between the Federal and State Governments did not mean conflicts and confrontation, between the two arms of government, but that both governments should co-operate and work in harmony to achieve a common goal. As the New Nigerian Newspaper reported, it is only co-operation between the Federal and State Governments that could lead to the achievement of national objectives but confrontation between them would only run counter to progress.[6]

5. (1985)1 N.W.L.R. 395

6. New Nigerian January 1 1981 p.7

As justice Mckenna also observed in HOKE V. UNITED STATES[7]

> "Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction ... but it must be kept in mind that we are one people and the powers reserved to the State and those conferred on the Nation are adapted to be exercised, whether independently or concurrently to promote the general welfare, material and moral".

Confrontation between both governments manifested in various areas. There was the controversy over the appointment of the PLOs, confrontation over the control and use of police, there was the case of the revenue allocation formula and the controversy over the building of the federal low cost houses in the 19 States of the Federation, the rehabilitation of federal roads in the States and the non acceptance of federal leadership by the State Governments.

(i) Federal housing units in the States

In each of the above mentioned example the most obvious demonstration of a confrontational attitude was the demolition, by the Oyo State Government of houses under construction in Ibadan by the Federal Government to relief the people of Oyo State of their accommodation problem. With this confrontational stance, the State Government achieved nothing but the wastage of public resources and in the long run the accommodation problem of the State remained unsolved.

(ii) Rehabilitation of Federal Roads in the States

So also is the order given by the Governor of Anambra State to contractors engaged by the Federal Government to stop road construction work being carried on, on one of the most important road network in the

State on the ground that the road is a State road and as such the Federal Government has no constitutional right to construct or maintain the road. By this act of the State Governor, the people of the state were denied the use of a good road needed to evacuate food crops from highly productive agricultural areas of the State. Thus the above two examples show that confrontation between the Federal Government and State Governments brings about hardship on the commonman whose welfare both governments are bound to look after through their combined efforts.

(iii) Control and Use of Police

The 1979 Constitution provides for a single police force for the whole country. According to the provisions of the Constitution the police is under the control of the Federal Government through its power to appoint and remove its head, the Inspector General of Police. The Constitution also prescribes that police is an item in the Exclusive List, which means that the State Government cannot legislate with respect to police. But this notwithstanding the Constitution in section 195(4) provides that the Governor of a State may give lawful directions to the Commissioner of Police of the State with respect to maintenance and securing of public safety and public order within the State and the Commissioner shall comply with those directions. But the section also provides that the Commissioner of Police may request that the matter be referred to the President. For the successful working of this constitutional provision there must be a cordial working relationship between the State Governor and Commissioner of Police, otherwise the Commissioner might request that every direction given to

him by the Governor should be referred to the President. This will definitely cause delay thereby frustrating the efforts of the Governor to keep peace and stability in his State. In Anambra State where the Commissioner of Police refused to comply with the direction given by the State Governor to post a given number of named policemen on security duty at the Government House and did not refer the matter to the President, will be regarded as refusal to carry out a public duty.

It can therefore be queried, can't a State as an incidental power to its legislative power set up an organisation for the enforcement of its laws, prevention, detection and prosecution of crimes under its laws? Among the primary responsibilities of the State is maintenance of law and order in its sphere of authority. Therefore in order to adopt a true federal system of government we ought to provide in the constitution for each State adequate and effective powers which must include police for the discharge of its responsibilities under the constitution. Countries like America, Canada and Australia operate the federal system of government and each State of the Federation has its own police force to carry out law and order in the State. And the Federal Government in these countries give grants to the states to maintain their police forces.

(iv) Revenue Allocation

The conflict between the Federal and State Governments as regards the revenue allocation started around 1973, hitherto the conflict existed between the Regions over the method to be adopted in sharing of federally collected revenue between them. During this period with the series of changes adopted by the Federal Military Government in the revenue allocation system, the federally collected revenue which the Federal Government was entitled to retain considerably increased to about 70% while the State Governments were left with only 30% share of the revenue. This placed the Federal Government in a position of financial superiority and the States financially dependent on the Federation. This is inconsistent with the principle of autonomy of each tier of government in a federal system as true federalism requires that each tier of government should be financially self-sufficient.

The first revenue allocation formula enacted during the Second Republic proved unsatisfactory because the States demanded more share of the federal revenue based on the ground that the formula was inadequate and not commensurate with the constitutional responsibilities of the States relatively to those of the Federal Government. This continued to be a source of major conflict because state's demand could not be satisfied.

There was also rival criterion between the States because the oil producing States always demand more but the revenue allocation formula finally adopted an equity base and fair principle.

The most significant reform introduced into the revenue allocation system, was that the revenue allocation formula is no longer to be embodied in the Constitution as in the past but would be implemented through normal legislation or decrees based on the recommendations of the Commission set up to review the revenue allocation system. The rigidity which plagued the system during the pre-1966 period will be removed by this reform and facilitate speedy and continuous adjustments in the system. As Nwabueze (1983) observed the adjustments required in revenue allocation system are perhaps best effected through the process of ordinary law making rather than that of constitutional amendment.[8]

Recently the Federal Military Government has altered the Revenue Allocation formula. During the Armed Forces Ruling Council (AFRC) meeting held between 14th - 16th March 1988 the Chief of Army Staff Lt. General Sani Abacha revealed that the existing law which gave 1.5 percent of the total amount of revenue accuring to mineral producing States was being looked into.[9]

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8. Nwabueze B.O. (1983) Federalism in Nigeria under the Presidential Constitution, Sweet & Maxwell London p.196.

9. Nigerian Tribune March 17 1988.

The Statesman reported that Air Vice-Marshal Imam said that the Armed Forces Ruling Council was not thinking of reviewing the status quo of the 1.5 percent special revenue allocation to mineral producing States. What was being considered he explained was how the money would be effectively utilised to tackle ecological problems in the affected States.[10] From personal inquiry it was revealed that the 1.5 percent special revenue allocation to mineral producing States which was hitherto paid to the State Governments will now be paid directly to the Local Governments where the minerals are produced, though a Decree to this effect has not been enacted.

(v) Appointment of the PLOS

The Federal Government in order to execute its executive functions effectively is required to have its own officers. This was why the Federal Government appointed the PLOs to the 18 States of the Federation and the State Governments should have accepted them in order to facilitate progress and effective functioning of the Federal Government.

(vi) Non Acceptance of the Federal Government Leadership by some State Governments

This was exhibited by the order given by the UPN controlled State Governments to all State and private establishments in the States not to hang the portrait of the President in their offices.

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10. The Statesman March 17 1988.

Though this order is not unconstitutional because the Constitution did not specifically mandate federal, state or private establishments to exhibit the portrait of the President in their offices. But it is contrary to the normal practise which has been in existence since the creation of Nigeria, whereby the portaits of Head of States are exhibited in all federal, state and private offices. This is because the President is not only Chief Executive of the Federation but Head of the State and in that capacity he is not only a federal officer but the Head of the Nation, thus he represents the country and as such his portrait is supposed to be hanged in all offices whether Federal, State or private.

(vii) Political Parties

It was noticed in the main body of the thesis that the multi-party system was highly responsible for the conflicts and confrontation between the Federal Government and some State Governments. This was because confrontation occured mainly between the Federal Government and the State Governments not controlled by the National Party of Nigeria (NPN) which controlled the Federal Government. The non-NPN controlled State Governments misconstrued one of the principles of federalism, which is that each government is autonomous and sovereign, to mean that the territory within their respective States belong to them and thus their rights over the territory and the citizens therein

were superior to that of the Federal Government. Therefore they maintained that they were bound to protect their citizens against any unwarranted enroachment by the Federal Government. But this is contrary to the provision of the 1979 Constitution which stipulates that though Nigeria consists of 19 States it is one indivisible and indissoluble sovereign State (S.2). Based on this constitutional provision the New Nigerian argued that the ultimate goal of all political parties should be the improvement of the lot of the people so that this country will survive as an indivisible entity.[11]

The sad state of affairs brought about by politics of confrontation provoked the New Nigerian into making this observation:

> "Political behaviour in the 80's ought to have graduated from holiganism of the 50's and early 60's. That was a wind that blew this country no good. Governments have a lot to do. They have been voted into power to implement the programmes of their parties. They should work in that direction. But instead of doing that they are just dissipating energy quarreling with or confronting each other."[12]

The political parties should have been aware of the fact that no meaningful headway could be made if the nation's body corporate is threatened by politics of confrontation; but that tolerance and

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11. New Nigerian June 18 1980 P.28.

12. New Nigerian February 16 1981 p.15

compromise are the basis of stability, peace and concord in whatever country they exist.

Governor Sam Mbakwe of Imo State who was the only non-NPN controlled State Governor, that was aware of this fact, appealed to other State Governors to stop their confrontational attitude towards the Federal Government and resort to politics without bitterness.[13] This was why intense rivalry and confrontation between the State and the Federal Government rarely occured in Imo State. The State Government always welcomed any assistance that the Federal Government wished to render and never viewed it as a means of lobbying for the support of the people of Imo State.

The multiparty system also encouraged political victimisation. This was noticed in the deportation of Shugaba by the Federal Government. The High Court of Maiduguri took judicial notice of the fact that the President and the Minister of Internal Affairs belonged to the same party while Borno State where Shugaba was majority leader of the House was under control of another party, a party to which Shugaba also belonged. The Court then noted that it could not rule out the possibility that the deportation was a political victimisation. The Court finally observed that the establishment of a tribunal to determine the nationality of the deportee after he had been deported was a hypocritical exercise.[14] On political victimisation the National Concord reported that;

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13. National Concord September 25 1981 p.13

14. Shugaba Darman v. Federal Minister of Internal Affairs (1981)1 NCLR p.1.

> "Anybody in his right senses will agree that the kind of political vandalism in the States have reached an intolerable limit. Whether it is the GNPP in Borno, NPP in Plateau, PRP in Kano, the NPN in Sokoto or the UPN in Ogun, none is free from blemish. If local leaders belonging to opponent political party are not threatened with removal contracts are cancelled and awarded to party loyalists"[15]

(viii) Federally controlled Mass Media

The way the federally controlled mass media were manipulated by federal functionaries so as to black out favourable reports and comments about non-NPN States and to distort or falsify news about these States and to suppress criticisms about the Federal Government showed that the Federal Government failed to realise that a democratic government could not be deemed to exist in a country where the opposition parties were not free to give alternative opinions or have full assess to the federally controlled mass media.

Since Federalism demands that the Federal Government and State Governments must co-operate with one another in order to promote the welfare of the people through their combined powers, the Nigerian leaders should note that for a constitutional government to be a success in Nigeria there must be a greater commitment to the spirit of Federalism.

5.2 RECOMMENDATIONS

(a) Independence of Federal Electoral Commission

The viability of a political system depends in part whether a free and fair election was conducted.

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15. National Concord July 18 1982 p.10.

The concept of free and fair election requires that the election shall be unimpeded by official interference, i.e. the absence of rigging, and that every adult citizen who is not otherwise disqualified, shall be free to contest an election, to vote and to campaign for votes.

Contravention of the requirements of a free and fair election was a major contributory factor in the failure of the Second Republic. The contraventions were overwhelmingly the result of human failing, but there is one important respect in which the Constitution itself stands to blame, that is the requirement that those entrusted with the conduct of elections should be independent of the contestants. The Federal Electoral Commission (FEDECO), the body entrusted with the conduct of elections, was envisaged as an independent body. The purpose of vesting the conduct of elections in a Commission, away from the President was to enable elections to be conducted independently of his control in order to avoid undue political influence. This purpose would have been defeated if the conduct of elections by the Commission could be controlled by the President.

But a more significant source of influence was the power of the President to appoint the Chairman and members of the Commission, and the fact that the appointment was for five years subject to re-appointment for further period of five years. The natural tendency of an office holder to favour his appointer especially if he is desirous for re-appointment and the way the Commission conceived its position under the Constitution

seem to have created the impression that it was under the President's executive authority as regards some aspects of its functions. For example the Commission's acquiescence in the Federal Government ordering and taking delivery of ballot boxes and ballot papers used in the 1983 general elections. Unquestionably, the function involved here properly belongs to the Commission as part of its constitutional responsibility to "organise" the elections. Even assuming that the orders for the ballot boxes and ballot papers had been placed by the Federal Government at the request or with the consent of the Commission, still the delegation to the President of a function crucial to the regularity of the entire electoral process cannot have portrayed the Commission in an impartial light, for it had enabled one party to the elections to control and, if it wished, to exploit to its own advantage the very instrument for recording the votes at the elections. It was quite justifiable, therefore, for the Ondo State Government to complain that the ordering of ballot boxes and ballot papers by the Federal Government had compromised the impartiality and fairness of the elections.

The way in which the Commission had allowed itself to be guided by the Federal Attorney-General on questions involving the application of provisions of the Constitution to the political parties is yet another instance of this attitude. Surely, its impartiality is compromised if its decision on such questions are allowed to be

influenced or governed by the opinion of the Federal Attorney-General. Considering that the incumbent of the office at all times material to the 1983 elections was, apart from being an appointee and agent of the President, a die-hard and leading NPN politician, his views on such questions might be expected to be coloured by partisan considerations.

There is a strong case therefore for strengthening the independence of FEDECO by a positive constitutional provision so that it will not be subject to the control or direction of anybody, in the conduct of an election and by vesting the appointment of its members in an independent person or body.

(b) Political Parties

Our political experience has shown political parties to be an evil force in government and politics in the country. Since Nigeria is engulfed by such viruses as ethnicity, regionalism, corruption and religion, if we genuinely need a profoundly stable political arrangement, we must focus our attention on how to fight these evils. From the experiences of countries like Tanzania and China where an impressive system of intra-party democracy exists, it appears that we can only fight these evils by adopting a one-party system.

This is because the one-party system has advantages which must be acknowledged;

(i) It is less expensive in terms of election campaigns, since the competition is only at the nomination level.

(ii) It provides a single leadership for both the party and the government thereby eliminating all possible conflicts.

(iii) It reduces the number of partisan politicians due to the principle of unanimity and therefore dominates party rivalry and conflicts.

(iv) It also eliminates lobbying as there are no parties in the opposition interested in blocking executive measures.

(v) The confrontation between the Federal Government and some State Governments will be reduced considerably as one party will now control the centre and the States.

(vi) It eliminates rigging and corruption.

(vii) The one-party system will definitely end the tensions and wranglings of multipartism which bred disorder during the last civilian government. Furthermore a national party aggregating diverse elements in a plural society will perform an integrating role.

In order to allay the fear of domination, we can rotate the leadership every five years among four mutually exclusive zones. The Zones are:
North West; (Kano, Kaduna, Sokoto, Niger and Abuja)
North East; (Bauchi, Gongola, Bornu, Benue and Plateau).
South West; (Oyo, Ogun, Ondo, Lagos and Kwara).
South East; (Anambra, Bendel, Cross River, Imo and Rivers).
In the case of deputy leader, he/she should always come from the zone which is diagonal to that of the leader,

in order to avoid having lopsided growth and development within the country.

The Cookey Political Bureau criticised the one-party system as being inherently dictatorial and therefore prone to instability especially in a complex society as Nigeria. They expressed fears about regimentation of option and maintained that the diverse socio-economic structure of Nigeria cannot except by imposition, be contained in a one-party system. Based on the above arguments they recommended the two-party system for the country. The reasons they gave for doing so are as follows:

(i) They maintained that the two-party system will solve the problem of lack of accomodation among political rivals, intolerance and ethnic tendencies will be minimised.

(ii) The two-party system also ensure the working together of the people of Nigeria as one and hence the nation can be said to be politically developed.

(iii) With the two-party system one party will form the government and the opposition party keeps its "eyes" on the activities of the government. All progressive nations of the world, they maintained, have discovered the benefit of this arrangement and have made it part of their political governance.

The critics of the one-party system should take note that under a multi-party system or two-party system

rivalry and conflicts cannot be eliminated and that these rivalry and conflicts are distruptive to nation-building and stability. I strongly feel that the two-party system is not the best option for Nigeria because such a system will give rise to North-South dichotomy and polarisation on religious line. Naturally there is bound to be a healthy rivalry between two parties when they are competing for something. Regrettably, this has not been true of political parties in Nigeria. While in some parts of the World, Political parties allow free and fair elections; the reverse is the case in Nigeria. In Nigeria our political parties rig elections with impunity.

After what we experienced in the Second Republic, we should adopt the one-party system for Nigeria, provided the individual's freedom of choice is preserved by writing it into the Constitution, and that the presidential office is contested by at least two candidates between who the voters are to choose. Finally, to me the advantages of the one-party system out-weigh its disadvantages.

(c) Revenue Allocation

After a careful review of the historical facts that led to the controversy inherent in the revenue allocation, it is suggested that the present formula be re-examined.

In re-examining the present revenue allocation formula, proper recognition should be given to the constitutional responsibilities of various arms of government to ensure that the responsibilities were matched with adequate resources. This is because it would tantamount to misallocation of resources if any tier of government which has the least executive capacity was allocated more resources than it was capable of utilising. The recent reform in the revenue allocation formula adopted by the Federal Military Government has not taken into account the above suggestion, it just dealt with the problem involved in the 1.5 percent special revenue allocation to mineral-producing States.

(d) Control of the Police

The power vested solely in the President to appoint and remove the Inspector General of Police is incompatible with the autonomy of a State Government under a federal system. The only organised coercive force on which it relies to maintain its authority and enforce its laws should not be under the control of the Federal Government, particularly through the power to appoint and remove its head and commander. Thus the appointment and removal of the Inspector General of Police should either be a joint responsibility of the Federal and State Governments or be vested in a non-partisan body. Also the powerlessness of State Chief Executives in their dealings with Police Commissioners in their States could only be corrected if the Police Commissioners are made accountable to the State Chief Executives.

The State Chief Executives should also be involved in the appointment and removal of Police Commissioners. The situation under the 1963 Constitution whereby the different States could have their own police should be adopted.

(e) Creation of States

Three more new States should be created. Thus the Nigerian Federation should comprise of 24 States created on the formula of Hausa/Fulani (4 States) Igbos (4 States), Yorubas (4 States) while the ethnic minorities have 12 States between them. This will remove the feeling among the ethnic minorities, that they are cheated or dominated by the major ethnic groups in the running of the affairs of the country, since the States are now divided equally amongs them. This will also solve the controversial problem of 2/3 majority of the States.

(f) Federal Character Principle

Since the basis of, incorporating the 'Federal Character' principle into the 1979 Constitution is to ensure unity among the different tribes in Nigeria, the government should ensure, without sacrificing merit and competence that the leadership positions in all facets of national life are distributed equally amongst the States of the Federation.

(g) The Judicial System

The provision of the Constitution in relation to the Federal High Court should be amended in such a

way that the jurisdiction of the Court should be restricted to matters pertaining to the revenue of the Government of the Federation as the Court was established to replace the Federal Revenue Court. This will remove the problem of conflict between the jurisdiction of State High Court and the Federal High Court over federal causes and matters.

(h) The Land Use Act

The Land Use Act should be modified so that the Federal Government could compulsorily acquire land directly from the State once the land is needed by it for public purpose, without relying on the State Government to allocate the land to it.

(i) Adoption of the 1979 Presidential Constitution

The pith and substance of what I have been trying to say is that the 1979 Presidential Constitution should be restored with the amendments I have indicated above, as this will reduce considerably the conflicts and confrontations between the Federal Government and State Governments.

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