LET US REMEMBER:

ONE BOOK, ONE PEN, ONE CHILD AND ONE TEACHER CAN CHANGE THE WORLD.

HAPPY RESUMPTION AND WELCOME BACK TO SCHOOL

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NUASA' 19

CITIZENS AND STATE (PAD 106)

MEANING, NATURE AND SCOPE OF GOVERNMENT

1.0 INTRODUCTION

You need to know that the agency through which the purpose and cardinal objectives of a State (properly so-called) are achieved is called *government*, whose organization could be seen either through the territorial structure or by functionality. Government could be defined as the orderly control and direction of the affairs of a group of people in an organized society. Government is a creation of a state and could be geographically structured at three-tier as the case in Nigeria, thus: Federal, States and Local Government Councils. Each of these tiers is recognized by the nation's constitution and has different constituted authority running the affairs at the level, as enshrined in the constitution.

However, another prism through which a government could be viewed is the organs or institutions through which the day-to-day activities of the state are carried out. These are The *Executive*, the *Legislature* and *Judiciary*, which are the bodies responsible for the enactment, enforcement, formulation and implementation of laws and as policies for the betterment of the people. You are going to learn more about this in this unit as we progress.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain the concept of government
- Discuss the basic functions of government
- Identify the difference between government and the State

3.0 MAIN CONTENT

3.1 Concept of Government

The word "government" is conceived in abstraction b y some people and in most cases, exempt themselves from being part of the concept. Such people often refer to public properties e.g. funds, hospitals, offices, vehicles, etc. as belonging to "government" which is a phenomenon you cannot see w ith your eyes. This perception explains why some people feel unconcerned when public fund is mismanaged or embezzled by some corrupt public officials or public properties or infrastructure become object of attack during protest against a public policy. This category of people are probably unaware that the people (including themselves) eventually withstand the worst for such vandalization which they do through taxation. Yet some people believe that only official such as public/civil servants, military and paramilitary personnel or foreign envoys are government. The truth here is that these are merely functionaries or agents of government as government itself is the agent of the state. Therefore, the concept of government has to be seen beyond these purview or narrow definitions because it has to do with the way in which people conduct themselves as they carry out their personal and community affairs. According to Wikipedia:

> A government is the organization, machinery or agency, through which a political unit exercises its authority, controls and administers public policy, and directs and controls the actions of its members or subjects. en.wikipedia.org/wiki/Government

Frank Beasley (ed. 1999:147) defines government within the context of the social sciences, as "the particular group of people, the a dministrative bureaucracy, who

control a (nation-)state at a given time, and the manner in which their governing organizations are structured." However, Flint, Coli n & Taylor, Peter (2007:137), opine thus:

> Governments are the means through which state power is employed. States are served by a continuous succession of different governments. Each successive government is composed of a specialized and privileged body of individuals, who monopolize political decision-making, and are separated by status and organization from the population as a whole. Their function is to enforce existing laws, legislate new ones and arbitrate conflicts via their monopoly on violence.

Harold Barclay (1990:31) submits that in some societies, this group is often a self-perpetuating or hereditary class. In other societies, such as democracies, the political roles remain, but there is frequent turnover of the people actually filling the positions. In a nutshell, you should understand that for people or group of people to live together there is the need for rules guiding individual conducts in the larger society to ensure peace and stability. The central authority called "government" decides what is best for the individuals and groups and how to utilise its resources to provide the best living standard for members. Can you imagine living in a society without transportation, water supply, road network and without other social infrastructural facilities? How it would be like if nobody was charged with the responsibility to make sure laws are made and respected or to provide plan where buildings should go and keep our environment clean and safe? We need government to take care of many of these things.

Self-Assessment Exercise (SAE) 3.1

Explain the concept of government from various perspectives

3.2 Functions of Government

To appreciate the duties or roles of government in a society or a Nation-State, we should first discuss the state of nature as explained by Thomas Hobbes as the hypothetical condition of humanity before the evolution of modern states with the aid of the Social Contract theory. He submits that "the state of nature is the condition before the rule of positive law comes into being, thus being a synonym of anarchy." In his book, Leviathan (1651, Ch.13), Hob bes describes man as selfish, pursuing his own interest at the expense of others in a condition he hypothetically explains as "kill whom you can and take away what y ou can and from this spring all possibilities of internecine warfare." He conclude s, "the state of nature is the ill, unhappy and intolerable condition of life. The life of man is solitary, nasty, poor, brutish and short."

It is against the background of the above scenario that there is the need for a central authority called "government" to be saddled with th e primary responsibility of maintaining law and order in order to ensure peace and tranquility in the society. However, the extent and nature of duties undertaken by government in the modern societies are functions of the level of socio-economic development and the type of political system adopted by individual society. For instance, in democratic nations, the roles, powers and responsibilities of the government are set out in the constitution of such countries - e.g. Nigeria, United States of America, France, Canada, India, etc.

For instance, the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), gives an insight to the nature and extent of duties and obligations of the country. It says:

> **WE THE PEOPLE** of the Federal Republic of Nigeria: **HAVING** firmly and solemnly resolved …. **TO LIVE** in unity and harmony as one indivisible and indissoluble Sovereign Nation under God dedicated to the promotion of inter-African solidarity, world peace,

> international co-operation and understanding: …… **AND TO PROVIDE** for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equity and Justice, and for the purpose of consolidating the Unity of our people ……

In the same vein, the purpose and primary responsibilities of the government of the United States of America are enshrined in the Preamble to the Constitution of the country. It says:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The above phrases from the Preamble describe purposes or functions of government but generally, what could be regarded as the primary duties of a government in a society are:

- Maintenance of law and order
- Protection of life and properties to guarantee individual's rights and liberties
- To defend the nation's corporate existence from either external invasion or internal insurrection by providing security through Land borders, Airspace and territorial waters
- Administration of justice and conflict resolution between the government and the citizens on the one hand, and amongst the citizens on the other

In Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), other responsibilities - Political Objectives, Economic Objectives, Social Objectives and Educational Objectives - of the Federal government of Nigeria are clearly set out and well articulated under "Fundame ntal Objectives and Directive Principles of State Policy". Section 13 states:

> It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or

judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.

Section 14(2) (b) states that the security and welfare of the people shall be the primary purpose of government while under the Political Objective, the provisions of Sec. 15(2) states thus:

> ……Accordingly, national integration shall be act ively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited …….

What could be regarded as the economic duties (Economic Objectives) of the Federal government of Nigeria are enshrined in Sec. 16(1-4), which states as follow: the State shall:

- Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
- Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;
- Without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

Self-Assessment Exercise (SAE) 3.2

Examine some primary duties of the government of the Federal Republic of Nigeria.

3.3 Government and State: Similarities and Differences

3.3.3 What is a State?

A state is a geographical entity made up of people who have or believe they have the followings in common: culture, language, history, tradition, and religion in a fixed territory (boundary). The term State is interchangeably used to mean a

Country or a Nation. A State is an independent and sovereign entity with a system of law and an organized government, which has certain administrative tasks to be carried out for its proper functioning. The government carries out these administrative tasks. This entity has the right to exercise power over the territory and the people. State is the territory in which the government can practice its authority. A state is like an organization and the government is like the management team. A State has the following characteristics: Sovereignty; Population; Territory and Government, which distinguish it from any other union or association. Government, on the other hand, is a political or ruling administration that serves as the agent or machinery through which the purpose or goals for which the State or Country is established are achieved. However, while State exists in perpetuity except it collapses, governments the world over change by elections or by other means. Another difference is that while government functionaries are visible, State exists in a 'spiritual realm', you only hear refere nces made to the State but you cannot see the entity called the State physically even though the day to day activities of the government are done in her name. Below is the summary of important distinctions between the State and government.

- The State has four elements like population; territory; government and sovereignty. Government is a narrow concept and it is an element of the State. The State is regarded as an organic concept, which the government is a part thereof.
- The State is more or less permanent and continues from time immemorial. But the government is temporary. It changes frequently. A government may come and go, but the State continues forever.
- It is a known fact that citizens are a member of the State but not all of them are members of the government. The government consists of only a few selected citizens. The organ of the government consists of only a few selected citizens.
- The State possesses sovereignty. Its authority is absolute and unlimited. Any other institution cannot take its power away. Government possesses no sovereignty, no original authority, but only derivative powers delegated by

the State through its constitution. Powers of government are delegated and limited.

- The State is an abstract concept whereas government is a concrete one. Nobody sees the State and the State never acts. The government is a physical manifestation and it acts for the State.
- All States are identical in character and nature. Whether big or small, the characteristics of the State do not undergo changes. But governments are of different types and they may vary from State to State. Government may be based on democracy, monarchy, theocracy, or oligarchy. Various political scientists have given different classifications of government.
- Lastly, the citizens have a right to go against government and not against the State. The State only acts through the government and the government may make mistakes and may be sanctioned for it but not the State. The State can do no wrong or make mistake, therefore, the citizens only have rights to go against the government and not the State.

Self-Assessment Exercise (SAE) 3.3

Distinguish between the State and government.

4.0 SUMMARY

The State and government are like semen's twins because without a State, there cannot be a government and a government cannot operate except on the authority of the State. The State has set objectives, which can only be accomplished through the machinery of the government that holds power in trust for the people based on the authority of the State.

5.0 CONCLUSION

The evolution theories of State make the need for a government imperative in human society for without government humanity may not live in peace and harmony, which are the important elements for development and growth. The relationship between the State and government is that of a principal and an agent.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Define government from different perspectives
2. Differentiate between the State and government
3. Mention important duties of the government of the Federal Republic of Nigeria

MODULE 1

UNIT 2: ORGANS OF GOVERNMENT

1.0 INTRODUCTION

Peoples' expectation in any civilized society is effective and efficient governance, the role that only the government performs as one of the four essential elements of the State. As stated earlier, there is no State without a government, which not only provides security to the people but also looks after their basic needs and ensures their socio-economic development.

Generally, modern governments operate on three pillars called organs and it is through this that the government operates. The three organs are: The Legislature; The Executive and, The Judiciary but, in the recent time, The Press has come up to be regarded as the 'fourth estate of the realm' bec ause of the important roles play by the mass communication media in the society. This unit shall look into the organs with emphasis on their composition, functions and the inter-relationship amongst them.

2.0 OBJECTIVES

After studying this unit, you should be able to:

- Explain the composition of the Executive, Legislature and the Judiciary
- Discuss the functions and distinction between the bodies
- Critically analyse how each of the organ acts as checks and balances on the other.

3.0 MAIN CONTENT

3.1. The Executive

3.1.1 Meaning and composition

The executive is the arm of the government composed of the followings: The President/Head of State or Head of government; Ministers; Civil Servants; Police and the Armed Forces. In Nigeria where there are three tiers of government, the Chief Executive at the level of state and local government, are the Governor (assisted by Commissioners) and the Council Chairman (assisted by Supervisory Councilors) respectively. In a democracy, the head of the Executive are elected by popular votes and they, in turn, appoint the Ministers, the Commissioners or the Supervisory Councilors, as the case may be, with the approval of the Legislature.

3.1.2 Types of Executive

The two popular types of Executive are Presidential and Parliamentary as practiced by the United States and Britain as exponents. In between these two models, there is the model of French executive that can be called a quasi-parliamentary or quasi-presidential. In the French model of executive, the President is the real executive but

the Prime Minister and the cabinet are under his control and, at the same time, they are accountable to the Parliament. So, the French model imbibes some features of both parliamentary and presidential forms of governments. Presidential system is a model in which the executive powers are vested in our person called Mr. President. Section 5(1)(a)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is explicit on this, it says:

> Subject to the provisions of this Constitution, the executive powers of the Federation 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 Ministers of the Government of the Federation or officers in the public service of the Federation and shall extend 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, powers to make laws.

3.1.3 Functions of Executive

The executive formulates and then implements public policies and executes laws enacted by the Legislature. As stated earlier, this organ of government refers to all agencies and officials of government that get involved in the day-to-day running of the business of government. It directs, supervises and coordinates the policies, maintains law and order, promotes social services as well as initiates legislation, among other things.

Self-Assessment Exercise (SAE) 3.1

Examine the composition, types and functions of the Executive

3.2 The Legislature

3.2.1 Composition of Legislature

This is an arm of government composed of honorable men and women who are elected from various constituencies (either federal or state) to represent the people in the parliament. In Nigeria, the legislature at the central is called National Assembly, which is made up of two chambers: the Senate and the House of Representatives. In

the United States of America, the body is called the Congress while in Britain, it is known as Parliament, comprising the House of Commons and the House of Lords.

3.2.2 Functions of Legislature

The Legislature's main function is law-making for the peace, order and good governance of the people. Section 4(2) of the Constitution of the Federal Republic of Nigeria, 1999 (amended) states:

> The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative list……..

However, it must be stated here that legislation is not the only function performed by modern Legislature as they also perform other responsibilities as charged by the constitution, within the purview of the doctrine of *checks and balances*. For instance, they perform oversight functions on the Executive. Other important functions of the Legislature are: Approval of budget presented by the Executive; Control over finance to ensure compliance by the Executive; Ventilation of grievances of the people they represent, and approval of nominee for appointments into public offices and foreign services.

3.2.3 Types of Legislature

Legislatures are either unicameral or bicameral. The issue o f bicameralism has however, gained more importance. A unicameral legislature has only one chamber based upon popular representation and is responsible for the entire function of law making. This kind of legislature is good for smaller countries with relatively homogenous ethnic nationality. On the other hand, a bicameral legislature consists of two chambers, namely, the Upper and the Lower Houses. The lower chamber is generally more popular in character and has a greater say in law making because representation is based on population while that of the upper chamber is based on equal representation. Members of both Upper and Lower Houses are directly elected as in Nigeria and some other countries such as the Senate in the United States. In

Britain, members of the Upper House, the House of Lords, are nominated while members of the House of Commons are elected.

In a bicameral legislature, there is many party politics and the process of law making is much more complex as it requires the concurrence of both the Houses to pass bills into laws. In a federation, each component unit has representatives in the upper chambers, which enables their viewpoints also to be represented in the parliament, and which enables them to safeguard their rights. A bicameral legislature easily manages to maintain a balance between the centre and the federating units, which is very essential for the successful functioning o f the federal system.

Self-Assessment Exercise (SAE) 3.2

Discuss Bicameral and Unicameral Legislature.

3.3 Judiciary

3.3.1 Structure and Officials

Judiciary is the law-interpreting organ of government, which, in Nigeria, is composed of the following bodies, in descending order of hierarchy:-

- Chief Justice and Justices of the Supreme Court
- President and Justices of the Court of Appeal
- Grand Khadi and Khadis of the Sharia Court of Appeal
- Justices of Federal High Courts
- Judges of State High Courts
- The Magistrates, and
- Presidents of Customary Courts

Judiciary is an independent arm of government and its responsibility is to, among others, resolve conflicts either between citizens and citizens or between central authority and the component states or between the states and local government authority. That the laws of the state have been a matter of fairly common agreement

among thinkers that the judicial power should be regarded in its nature and even more in the persons who administer it as separate from other aspects of political authority (Laski, 1967:464).

3.3.2 Functions of Judiciary

Important functions of the Judiciary are, a *priori*, contained in its definition - justice administration and dispensation - being a minimum requirement of any government in maintaining law and order, peace and tranquility in the society. However, depending on political system, the followings could be itemized as the functions of the Judiciary:

a) Adjudication

Judiciary entertains and decides cases - criminal, civil or constitutional - based on the strength of arguments put forward by the concerned parties. Judiciary is the last hope of ordinary person, as a defender of citizens' fundamental human rights.

b) Interpretation of Constitution

In a federation like Nigeria, United States, Canada, etc, Judiciary acts as the custodian of the Constitution and as arbitrator between the central and governments of the component units. Its decision (Supreme Court) is final on any constitutional matters arising between central authority and state governments. Stressing the indispensability of an independent and impartial court in a federal state to keep the governments within reasonable limits as laid down by the constitution. J. S. Mill says:

> It is evidently necessary not only that the constitutional limits of the authority of each should be precisely and clearly defined, but that the power to decide between them in any case of dispute should not reside in either of the Governments or in any functionary subject to it, but in an umpire independent of both…….. (see Johari, 2007 :401)

c) Legislation

Although, legislation is the primary function of the Legislature, courts of law also make laws in a different way through decided cases and judicial pronouncements.

Where the law is silent or ambiguous or appears to be inconsistent with the letters and spirits of the constitution, the decision of the law courts prevails as what the law should be. No law, when enacted, can possibly envisage all cases that may arise under it. Thus, judges frequently have to decide cases in which no direct law is applicable, on various principles such as equity, natural justice, necessity or good conscience. Through this, what is known as precedents that are followed to decide future cases, are formed.

d) Advisory

Judiciary also has advisory roles to play to the government as Mr. President may refer some matters of public importance to the Supreme Court for clarification and advice. Although, such advice is not binding, it has great persuasive influence on policies.

e) Judicial Review

Judiciary acts as checks on both Executive and Legislative arms of government in that actions/inactions of government or laws that are not consistent with the constitution could be declared illegal, null and void and of no effect by a Court of competent jurisdiction. This is known as the power of judicial review, which has now form an integral part of the constitutional system in Nigeria, United States, Canada, Australia and India.

3.3.3 Judicial Independence

The question here is what does it mean by 'judicial independence' and what are the conditions required for judicial independence to exist? There has not been a consensus on this. The concept, to some, requires little more than life tenure for judges (Stephen Burbank, et al, 2002), while for others, judicial independence requires budgetary control (Pilar Domingo, 2000) or an appointment process that involves more than legislators doing the choosing (Erika Moreno, et al, 2003). Still other scholars tout the virtues of judicial independence without defining clearly, what they mean by "independence" (Eugenia F. Toma, 1991) and others (such as

legal realists and most political scientists) suggest that judges are at least partially independent because they exercise discretion with every decision.

Judicial independence could mean a judiciary that is separated from other arms of government and immune from partisanship or undue influences from external bodies in the discharge of its constitutional responsibilities so impartially and expeditiously without fear or favour, affection or ill will. To achieve this, the following conditions ought to prevail in the polity.

a) Security of job

A secured, long and fixed tenure are very important for judges to make their appointment secured and free from unnecessary manipulation or intimidation by the Executive. In Nigeria, a judge retires on the attainment of 65 years of age and their appointment is made on permanent basis after meeting certain requirements.

b) Mode of Appointment

In some countries judges are elected but this might make them liable to political pressures whimsicalities but in Nigeria and some other countries in the world, judicial officers are appointed by the President/Governors on the recommendation of major stakeholders in the judiciary - National Judicial Council, and subject to ratification by the Legislature (see Sec. 231(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended). In addition, Article III of the United States Constitution establishes the Federal Courts as part of the Federal government responsibility. It provides that Federal judges, including judges of the Supreme Court of the United States, are appointed by the President "by and with the advice and consent of the Senate." In order to maintain judicial independence the Constitution states further that, once appointed, Federal judges, both of the Supreme and inferior Courts shall:

> …..hold their Offices during good Behavior, and sha ll, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office. Federal judges vacate office only upon death, resignation, or impeachment and removal from office by Congress.

c) Better Salaries/Emoluments

To ensure independence, judges should be paid better salaries and allowances. This is not only to attract brilliant lawyers to the bench but also to distract them away from corruption and unethical tendencies. In addition to this, salaries of judiciary are to be charged on the first line i.e. consolidated fund, which no other arm of government could manipulate for a purpose.

3.3.4 Interrelationship of governmental organs

In a presidential system of government, the doctrine of separation of powers is well pronounced unlike the parliamentary model of democracy where there is 'fusion of powers'. However, it must be stated that much as the theory of 'separation of powers' is salient in the presidential system; the organs of government are not mutually exclusive to one another. The practice of using power to check power, which is known as 'checks and balances, is not necessarily, a violation of the theory of separation of powers; it merely seeks to promote some interrelationships among the organs in order to check abuse of power by any of the organs of government. For example, the laws made by the Legislature are interpreted by the Judiciary and could be declared void if found not to be consistent with the provisions of the constitution of the land.

The Executive also initiates laws and presents budgets for the approval of the Legislature; otherwise such budgets could not be spent by the Executive. In the same vein, laws made by the Legislature cannot become operative until it given assent by Mr. President. The president can however withhold his assent which amount to an exercise of *veto power.* The Legislature can similarly decide to upturn the veto of Mr. President by the use of *two-thirds majority*. The Executive makes

the appointment of senior judicial officers but it has to be ratified by the Legislature to take effect.

Self-Assessment Exercise (SAE) 3.3

Critically assess the three organs of government in a democracy

4.0 CONCLUSION

The three arms of government appear to be different compartments in line with the doctrine of the *separation of powers* but there is interrelationship between them in other to check excesses, abuse of powers or dictatorship, which is inimical to the survival of democracy.

5.0 SUMMARY

Government is divided into three main organs viz: Executive, Legislative and the Judiciary, which work concurrently and separately to achieve the purpose of the government as the agent of the State. Under a democratic dispensation, members of the Executive and Legislature are elected for a term (usually four in Nigeria) fixed by the constitution but members of the Judiciary are appointed through a procedure laid down by the constitution for a fixed tenure until attaining the retirement age (usually sixty-five in Nigeria).

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain the interrelationship between the three organs of government
2. Mention important functions of three arms of government in Nigeria
3. Critically examine the composition of the Executive, Legislature and the Judiciary in Nigeria

MODULE 1

UNIT 3: CLASSIFICATIONS OF GOVERNMENT

1.0 INTRODUCTION

When a term is used to describe a State or her agent (government) in comparison with others, it simply refers to certain features and characteristics they either have in common or differences. It is a terminology used by the political scientist concerning certain selected items from tradition, customs, institutions and the system of laws guiding the administrative system of a society or organization. A government reflects one of the institutional forms depending on the type of specific functions the government and the governed play in the system.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Explain various classifications of government
- Discuss different types of government
- Differentiate between different governments

3.0 MAIN CONTENT

3.1 Means of Classifying Governments

3.1.1. Aristotle's Classification

In ancient time, Aristotle classified government based on two principles viz: number of persons in whose hands the authority of state is vested and of purpose of the state on which he postulates that the government is of two types – *normal* and the *perverted* forms of government. He further explains the former as one when the ultimate aim of the government is the welfare of the people while the *perverted* form is one where the government machineries are used in promoting personal or group interest of the functionaries or a select few in the society. The real purpose of Aristotle's classification is to justify the excellence of a particular form of rule – mixed government - called 'polity'. As regards the number of persons holding power, he says that the ruling power may reside in the hands of one, a few, or many persons while the nature of the exercise of their authority may be either good or bad. He makes use of the grounds of quality and quantity of the ruling persons that eventually enables him to justify 'polity' as the b est form of an attainable or a practicable government (Johari, 2007:408).

3.1.2 Thomas Hobbes

Hobbes was aware of other names of government such as Tyranny, Oligarchy and Anarchy but he refused to consider them as other forms of government. According to him, those who were discontented under Monarchy called it Tyranny; those who were displeased with Aristocracy called it Oligarchy; and those who nursed some grudges against Democracy called it Anarchy (see Leviathan, p. 96-7).

3.1.3 John Locke

John Locke substantially follows Hobbes in his classification, with some differences of detail, he says, 'according as the power of making laws is placed, such is the form of the commonwealth'. If the majority, in whom the whole power of the community is placed at the dawn of civil society, retains the legislative power in their own hands and executes those laws by officers of their own appointing, the form of the

government is a perfect democracy. If they put the power of making laws into the hands of a few select men and their heirs or successors, then it is an oligarchy but if into the hands of one man, then, it is a monarchy either hereditary or elective.

3.1.4 Montesquieu (1699-1785)

Montesquieu, a French political philosopher, held that States are of three types, the republican, the monarchic and the despotic. If all or part of the people has the sovereign power, the State is a republic, a democratic or an aristocratic one. A monarchy is the rule of a single person according to law; a despotism, the rule of a single person arbitrarily. Montesquieu indicates the various principles animating the various forms of government, the sustaining and driving powers behind them. In a democracy, the citizens' principle of a republic takes the shape of love of country and desire for equality.

That the members of a ruling class will be moderate towards the people, maintain equality among themselves and enforce the laws against persons of rank - this is the virtue of an aristocracy. The mainspring of monarchy is honour: the confidence or conceit of the individual and of the governing classes concerning their own special importance, a confidence that spurs men to accomplish things quite as much as virtue itself. Despotism requires neither virtue nor honour, but fear that suppresses both courage and ambition among subjects.

States or governments could be classified according to the type of political system in the country, with respect to who exercises the effective or nominal political powers. Aristotle refers to the *quality* and *quantity* of the ruling persons, which makes him to conclude that 'polity' is the best form of governme nt attainable by a state (Johari, J. C., 207:408). A state or government could be in the hands of one person, usually a Monarch; or in the hands of a few people - an oligarchy; many people, usually in a democracy, could control the state.

Self-Assessment Exercise (SAE) 3.1

Critically examine various views of classification of government.

3.2 Factors that Determine Types of Government

During the twentieth century, political scientists have created numerous typologies for classifying political systems and forms of government and there is no consensus on one best or the ideal method because the one chosen depends on the aspect of politics that interests the people most (Leeds, C. A., 1981). Some of the factors are as follow:

- **Modernity:** Countries of the world differ from one another in terms of per capita income, level of education, technological development, industrialization, urbanization and availability of social infrastructural facilities. However, such factors tend to be highly inter-correlated because a country lacking in one respect is most likely to be less developed in other respects.
- **Location of authority:** Under a federal system for instance, the powers for making important decisions are shared between the central, the component units and local authorities and in most cases, such are explained by the constitution. In a unitary system, the right to make decisions on all political matters rests with the national government while the component units exist at the mercy of the central authority.
- **Integration:** This refers to the extent to which the state's apparatus are linked with the activities of individuals and groups in society. In some cases, the exercise of state powers is total while in some other climes, it is liberal or egalitarian. At one end of the spectrum is anarchism or belief in limited or no government, which is a utopian but on the other edge is *laissez-fair* rule in which the government limits itself to limited obligatory functions that are considered necessary for the survival of the state. The next stage involves the 'mixed economy' where the government undertakes ext ensive political and economic functions under the influence of state socialism. At the far end of the spectrum is totalitarianism.

Self-Assessment Exercise (SAE) 3.2

Examine factors determining typologies of government

3.3 Institutional Differentiation of Government

Ordinarily, it appears easy to identify a form of government through institutions. For example, many people would infer that the United States of America is a federal republic while the defunct Soviet Union was a totalitarian state. However, defining a form of government is especially problematic when trying to identify those elements that are essential to that form. There is a world of difference between the ability to identify a form of government and identifying the necessary characteristics of that form of government. For example, in trying to identify the essential characteristics of a democracy, one might say "elections", “party s ystem”, “judicial independence”, etc. However, it may be noted that the authorities in both the former Soviet Union of the United States of America lay claims to some of these elements because citizens voted for candidates to public offices in their respective states. The problem with such a comparison is that most people are not likely to accept it because it does not comport with their sense of reality. Since most people are not going to accept an evaluation that makes the former Soviet Union as democratic as the United States, the usefulness of the concept is undermined.

Therefore, in political science, it has long been a goal to create a typology or nomenclature of polities, as typologies of political systems are not obvious, especially in the comparative politics and international relations (Lewellen, T. C., 2003). One approach is to elaborate on the nature of the characteristics found within each regime. In the example of the United States and the Soviet Union, both did conduct elections, and yet one important difference between these two regimes is that the USSR had a single-party system, with all other parties being outlawed. In contrast, the United States effectively has a bipartisan system with political parties being regulated, but not forbidden. In addition, most Westminster democracies such as the United Kingdom or countries in the Commonwealth of Nations usually have at least three major parties. A system generally seen as a representative democracy

(for instance Canada, India and the United States) may also include measures providing for a degree of direct democracy in the form of referenda and for deliberative democracy in the form of the extensive processes required for constitutional amendment.

Another complication is that a huge number of political systems originate as socio-economic movements and are then carried into governments by specific parties naming themselves after those movements. Experience with those movements in power, and the strong ties they may have to particular forms of government, can cause them to be considered as forms of government in themselves.

Self-Assessment Exercise (SAE) 3.3

Analyse classification of government by institution

4.0 CONCLUSION

From the foregoing, it has been established, from the study of the present and past governments in a society, that we should be in a position to explain, through inductive process, principles regarding the organization of government, its structure and workings in different states or societies, especially after careful study of differences and similarities between them. Some scholars prefer the term 'classification of the forms of government' on the ground that the 'form of States' is same as the form of government. However, we consider that States differ not only in their forms of government but in their stated *goals* (e.g. totalitarian vs. democratic States) and in their very *nature* (e.g. unitary vs. federal States), yet the term 'the classification of States' seems preferable (Appadorai, 1975).

5.0 SUMMARY

A political system is a system of politics and government that could be compared to the legal system, economic system, cultural system, and other social systems but it is different from them in some respects. Political system could be defined on a spectrum from left, e.g. communism and to the right, e.g. capitalism. However, this

is a very simplified view of a much more complex system of categories involving the views about who should have authority, how religious questions should be handled and what the government's control should be on its people and economy.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Critically examine various views of classification of government.
2. Examine the factors determining typologies of government
3. Analyse classification of government by institutions

UNIT 4: FORMS/TYPES OF GOVERNMENT

1.0 INTRODUCTION

In any country, the rights and liberties enjoy by citizens are affected by the type or form of government adopted by the State. For example, it is obvious that citizens' freedom are better guaranteed under a (democratic) government chosen by the people than a dictatorial regime whose power runs through the barrels of the gun. It should be noted that this topic could be classified into two categories i.e. main and subsidiary. Main forms of government are those that can easily be identified such as monarchy, democracy or dictatorship, while subsidiaries are those that exist under the cover of the main forms. For example, parliamentary government is associated with monarchical system, which could be democratic, federal or unitary in nature while presidential or parliamentary system of government could be subsidiaries of a democratic system. Therefore, examining types of government is an important issue

in the discussion of political theory and we are going to consider some of them in this unit.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Discuss different types of government
- Explain the merits and demerits of each type
- Compare and contrast different types of government

3.0 MAIN CONTENT

3.1 Monarchy

This is the oldest type of government in which a King or Queen exercise the ruling powers of the State. In an absolute monarchy, the King or Queen has unlimited powers to rule the country and his/her authority is not subject to any legal limitations and cannot be challenged because he/she is sovereign and it is believed that he/she does no wrong especially when it is by hereditary succession. Perhaps to emphasise the powerful nature the position of a monarch, King James I of England in his book *'The Trew Law of Free Monarchies* (1603)' has this to say:

> Even if the King is wicked, it means God has sent him as a punishment for people's sins, and it is unlawful to shake off the burden that God has laid upon them. Patience, earnest prayer and amendment of their lives are the only lawful means to move God to relieve them of that heavy curse! (Appadorai, A., 1975:230)

However, in an elective or constitutional monarchy, the King or Queen reigns but does not rule. The monarch has his/her powers regulated by the constitution; he/she is a titular Head of State and simply performs ceremonial functions while a Prime Minister who is appointed amongst the elected Parliament, exercises effective powers of the State as the Head government. In administration, the King or ceremonial President is obliged to accept the advice of the Prime Minister or Ministers with cabinet rank as occasion arises and can only enjoy obedience as recognized by the constitution or conventions. This is the practice in Britain, India

and most Commonwealth Nations. This system was practiced in Nigeria's First Republic (1960 - 1966) when Dr. Nnamdi Azikiwe was the ceremonial President (Head of State) who performed dignified functions while Sir Abubakar Tafawa Balewa was the Head of government. It must be stressed that some scholars have differentiated constitutional monarchy by classifying it under democracy because the manifestations of democratic features in the system.

3.1.1 Some Merits and Demerits of Absolute Monarchy

a) Merits

- It is undisputable that Monarchy is the oldest form of government and has passed through centuries to the modern times hence, it has been seen as the most stable system of government since the succession is by hereditary and once he attains the position the monarch cannot be removed from office by either impeachment or a vote of no confidence. The system provides for less rancor and animosity in the decision making process since the final say belongs to the monarch who his not obliged to seem or accept the advice from anybody. In African settings, a monarch is seen as the pivot of unity and centre of dispute resolution, which guarantees peace and tranquility.
- The policy formulation and implementation is easier and quicker under a monarchy than in any other systems of government. The society is saved of the trouble of time wasting on debates, claims, counter-claims and lengthy discussions on public issues.
- With the longevity of the position of a monarch, there is consistency and continuity on both domestic and foreign policies that makes for sustainable development.

b) Demerits

- One of the greatest demerits of a monarchical system of government is that it is undemocratic in nature and in practice. The process of ascension to office is not through popular elections or any democratic norms other than by 'divine right' as the only qualification, which can not be challenged by

anybody. Under this system, there are no citizens but subjects of the monarch who has no right to any freedom except as granted by the monarch.

- Since the system does not accommodate the doctrine of checks and balances, the tendency is that the monarch becomes, more often than not, a despot and tyrant to the people. This explains why King Charles I of England was beheaded in a revolution led by Oliver Cromwell in 1625.
- Absolute monarchy is associated with inefficiency, corruption, nepotism, and high-handedness culminating into turning the subjects to sycophants in order to enter the good books of the monarch for patronage.

Self-Assessment Exercise (SAE) 3.1

Examine the merits and drawbacks of monarchy as a form of government

3.2 Aristocracy

This could be defined as a system of government in which a few wealthy, gifted or the nobles rule, which Rousseau literally describes as 'government by the best citizens' (Appadorai, A., 1975:134). The fulcrum of aristocracy depends on the respectability accorded it by other members of the society, which is usually enhanced more by deeds than words. Aristocracy stands for the exercise of power by a few persons distinguished by their superiority, ability and merit. Joharis (2007), defines it as 'a form of government in which only a relatively small proportion of the citizens have a voice in the choosing of public officials and in determining public policies'. The followings are some of the distinctions of aristocracy:

- Circumstances of birth (aristocratic family)
- Culture and education (aristocracy of intellectuals)
- Military prowess or talent
- Property or wealth (aristocracy of landowners)
- Charismatic potentialities
- Religious position

In other words, aristocracy is a government by the nobles or chief persons, a privileged class or patrician in a state. Those who are seen as superior to the rest of the community in rank, fortune, or intellect are regarded as aristocrats or elite class.

3.2.1 Merits and Demerits of Aristocracy

3.2.1.1 Merits of Aristocracy

- One of the advantages of aristocracy as a form of government is that it is conservative, which is an element necessary for political stability and good health of the economy in the body politic. Aristocracy does not believe in sudden change and it is averse to irrational political experimentation but rather advance slowly but steadily.
- Aristocrats are moderates for the sake of their security as they are always conscious of the fact that the citizens are greater in number, therefore, excessive use of power may lead to insurgence and instability in the polity.
- It is argued that nature that creates inequality and uneven distribution of resources among people and nations stands in favour of aristocracy, which makes a few privileged and talented people to rule in a society.
- Finally, aristocracy gives premium to merit and quality because political power is given to people who deserve it because they are chosen few by virtue of their blood, wisdom, wealth, physical strength and skill.

3.2.1.2 Demerits of Aristocracy

- The greatest drawback of aristocracies is that it tends to degenerate quickly into oligarchy and dictatorship
- It is anti-democracy because it does not allow for mass participation by the people in the decision making process of their affairs
- The ruling class often treats the lower class in the society with disdain, as it undermines their wisdom and ability and the fact that the system is naturally rigid makes it unsuitable because no human society is static.

Self-Assessment Exercise (SAE) 3.2

Critically assess Aristocracy as a form of government

3.3 Theocracy

This is a system of government in which a religious or Spiritual Leader is the Head of State or Head of government or both combined. According to Merriam-Webster online dictionary, ‘it is a system in which a state is understood as governed by immediate divine guidance especially a state ruled by clergy, or by officials who are regarded as divinely guided.’ From the perspective of the theocratic government, "God Himself is recognized as the head" of the state, hence the term *theocracy*, "rule of God", a term used by Josephus of the kingdoms of Israel and Judah (see Catholic Encyclopedia).

A theocracy has the administrative hierarchy of the government, which is identical with the administrative hierarchy of the religion, or it may have two 'arms,' but with the state administrative hierarchy subordinate to the religious hierarchy. This system of government should be distinguished from other secular forms of government that have a state religion, or are merely influenced by theological or moral concepts, and monarchies held "By the Grace of God".

An example of a Theocratic government is that of the Vatican City in Rome where the Pope is both the Head of State and Head of government. The system has similar characteristic with monarchy except that the source of authority of a Theocrat is not by hereditary succession like that of the King or Queen. Another example of Theocracy was that of Iran under the Sheik Ayathullah Khomaini.

Self-Assessment Exercise (SAE) 3.3

Define Theocracy with relevant examples

3.4 Oligarchy

This is a form of government in which power structure effectively rests with a small number of people (Frank Elwell, 2006). These people could be distinguished by

royalty; wealth; family ties; corporate or military control. Oligarchy is from Greek words, (*olígos*), "a few" (Darcy K. Leach, 2005) and the verb (*archo*), "to rule, to govern, to command" (Nicos P. Mouzelis, 1968). A few prominent families who pass their influence from one generation to the next often control such states.

Throughout history, most oligarchies have been tyrannical, relying on public servitude to exist, although others have been relatively benign. Aristotle pioneered the use of the term as a synonym for rule by the rich, for which the exact term is plutocracy, but *oligarchy* is not always a rule by wealth, as oligarchs can simply be a privileged group, and do not have to be connected by bloodlines as in a monarchy. Some city-states from ancient Greece were oligarchies.

Iron Law of Oligarchy

The iron law of oligarchy is a political theory, first developed by the German sociologist Robert Michels in his book, *Political Parties (1911)*. It states that all forms of organization, regardless of how democratic or autocratic they may be at the start, will eventually develop into oligarchies. Following are the reasons for this process:

- The indispensability of leadership;
- The tendency of all groups, including the organization leadership, to defend their interests; and
- The passivity of the led individuals, more often than not taking the form of actual gratitude towards the leaders

He concluded that the formal organization of bureaucracies inevitably leads to oligarchy, under which organizations originally idealistic and democratic eventually become dominated by a small, self-serving clique who pervert the positions of power and responsibility. This can occur in large organizations because it becomes physically impossible for everyone to get together every time a decision has to be made. Imaging the trouble and rowdiness it would create, bringing all the *Ordinary Shareholders* of a reputable Commercial Bank e.g. UBA, or a bottling company

(CocaCola) etc. together for the day-to-day running of the company. Therefore, a small group is given the responsibility of making such decisions.

Michels believes that the people in this group would become engrossed with their elitist positions and becoming more fascinated in making decisions that protect their power rather than represent the will of the group they are supposed to serve. In effect, he says that bureaucracy and democracy do not mix. Despite any protestations and promises that they would not become like all the rest, those placed in positions of responsibility and power often come to believe that they too are indispensable, and more knowledgeable than those they serve. Eventually, they become further isolated from the regular members.

Robert Michels found a contradiction in the socialist parties of Europe, that despite their democratic ideology and provisions for mass participation, seemed to be dominated by their leaders, just like traditional conservative parties. His conclusion was that the problem lay in the very nature of organizations. The more liberal and democratic modern era allowed the formation of organizations with innovative and revolutionary goals, but as such organizations become more complex, they became less and less democratic and revolutionary. He formulates the "*Iron Law of Oligarchy*": "Who says organization, says oligarchy."

Self-Assessment Exercise (SAE) 3.4

Critically assess this statement, “He who says orga nization says oligarchy”

3.5 Gerontocracy

This is a form of government in which a polity is ruled by leaders who are regarded as senior citizens because they are significantly older than most of the adult population. Often the political structure is such that political power within the ruling class accumulates with age, so that the oldest hold the most power. Those holding the most power may not be in formal leadership positions, but often dominate those who are. An example of this was the pre-colonial Ibadan confederacy where the

position of the leader was (and still is) never open for contest. Such a system of government is also common in communist states where the length of one's service to the party is held to be the main criteria for leadership.

Paul Spencer (1965) describes *Samburu* society in Kenya as a gerontocracy. According to Spencer, the power of elders is linked to the belief in their curse, underpinning their monopoly over arranging marriages and taking on further wives. This is at the expense of unmarried younger men, whose development up to the age of thirty is in a state of social suspension, prolonging their adolescent status. The paradox of *Samburu* gerontocracy is that popular attention focuses on the glamour and deviant activities of these footloose bachelors, which extend to a form of gang warfare, widespread suspicions of adultery with the wives of older men, and theft of their stock.

However, the greatest advantage of the system is that it provides for stability, which is seen as its strength and could be better for countries or societies that teach principles that do not vary over time. However, in institutions of the modern societies that have to cope with rapid changes then, the system may not be fashionable in providing effective administration because of antiquated ideas and decreased faculties resulting from aging.

Self-Assessment Exercise (SAE) 3.5

Discuss gerontocracy

3.6 Plutocracy

Plutocracy is a system of government in which the wealthy in the society have a great influence on the political process. For example, the United States is a plutocracy in which there is a fusion of money and government. The wealthy minority exerts influence over the political arena via many methods. Most western democracies permit partisan organizations to raise funds for politicians, and political

parties frequently accept significant donations from various individuals either directly or through corporations or advocacy groups.

These donations may be part of a patronage system, in which major contributors and fund-raisers are rewarded with high-ranking government appointments. While campaign donations need not directly affect the legislative decisions of elected representatives, politicians have a personal interest in serving the needs of their campaign contributors: if they fail to do so, those contributors will likely give their money to candidates who do support their interests in the future. Unless there is a stringent constitutional constraint, it is the practice for politicians to advocate policies favorable to their contributors, or grant appointed government positions to them.

In some instances, extremely wealthy individuals have financed their own political campaigns. Many corporations and business interest groups pay lobbyists to maintain constant contact with elected officials, and press them for favorable legislation. Owners of mass media outlets, and the advertisement buyers, which financially support them, can shape public perception of political issues by controlling the information available to the population and the manner in which it is presented.

Self-Assessment Exercise (SAE) 3.6

Explain Plutocracy as a form of government

3.7 Dictatorship

Dictatorship as a system of government could be defined as a rule by a powerful individual, called dictator. A government controlled by one person, or a small group of people. In this form of government, the power rests entirely on the person or group of people, and can be obtained by force or by inheritance. The dictator(s) may also take away much of its peoples' freedom. This system of government became

popular shortly after the First World War (WWI) when its manifestation became noticeable in Turkey under the leadership of Kamal Ataturk and in Russia under Joseph Stalin and in Italy under the leadership of Benito Mussolini from 1925 to 1943. Others are Adolf Hitler of Germany from 1933 to 1945 and Gen. Francisco of Spain. A dictator is usually not elected or appointed by the people but emerges in a particular circumstance and once he gets to office, he sits tight until either death do him part or he his forced to abdicate the power. Dictatorship has a very vast power and he gives an ideological turn to the character of his autocratic position.

A dictator is a maximum ruler who brooks no opposition to his authority. Late Gen. Sani Abacha of Nigeria, Field Marshall Dada Idi Amin of Uganda and Col. Mohammad Gaddafi of Libya are good examples of modern dictators in Africa. Dictatorship is anti-democracy as the powers of the government are not controlled or regulated by the constitution, therefore, the government is not accountable responsible or responsive to the people.

Self-Assessment Exercise (SAE) 3.7

Define dictatorship as a form of government with relevant examples.

3.9 Democracy

This is the most popular form of government, which has become a benchmark for measuring the level of socio-political civilization of any society or a nation in the international community. What makes democracy popular and peculiar is that 'it is a form of state, a form of government, a form of society, and, above all, an ethical idea or a way of life'(Johari, J. C., 2001:429). Democracy prevails where the rule of law is observed and the power is truly vested in the power or what is known as political sovereignty belongs to the people in the state. A state becomes democratic irrespective of the administrative system if fundamental rights of citizens and the residence of sovereignty are entrenched in the constitution.

The word democracy is a derivative of two Greek words - ' *demos*', meaning people, and ' *kratia*', meaning rule, which implies the 'rule by the peo ple'. Democracy is a

difficult concept to define because of the relativity of its meaning to different societies. But an attempt at the exercise of defining the concept may drag us to the conclusion that it is a system of government in which a majority of the people participates in the decision making process. A system that recognizes everybody as a stakeholder in a joint stock company or venture. However, the most popular definition of democracy is the one given by Abraham Lincoln who sees it as 'government of the people, by the people and for the people'.

Elements of Democracy

For any society to be regarded as democratic, the following elements must not only feature in the settings but must be cultivated by the people:

a) Periodic elections

There should be elections to be conducted regularly, say, every three or four years in which every adult of voting age should participate to elect their leaders and the result of such election should reflect the wishes of the people.

b) Independent Judiciary

The courts in the land must not only be free from the control of the Executive or any other arm of government but the judicial officers must be above board in the dispensation of justice.

c) Free Press

The press and mass media should be free to disseminate information to the public without fear of being arrested or molested by the authority. The media practitioners should be free to have access to information to inform the members of the public about government policies and also give the government a feedback on the feelings and aspirations of the people.

d) Open Competition

Democracy thrives well when there are alternative in terms of political ideologies, manifestos and programmes, rather than a situation whereby the people are left with no option than to file behind a single party. People should be free to join political parties of their choice and to be able to determine their level of participation in

political activities and government. This is a necessary condition because democracy is about freedom of choice, which is only available in a multi-party system.

Merits of Democracy

- There is almost a consensus by scholars that this is the best form of government in that it allows for mass participation of the people and it is a system that recognizes the people as owners of political sovereignty. It allows the people to choose the leaders who could be changed periodically, through the ballot, which is the only peaceful means of leadership change rather than the ones that encourage violent change when the peaceful change has been made impossible.
- Democracy provides the people a sense of belonging and satisfaction because they know that the power to elect and remove the leaders belongs to them. People will therefore not think of extra-legal means of attaining the power to control the government. Even if the leadership and the governance is bad, they would rather exercise patience until election period to effect a change.
- Democracy is also rated high because it is a system that provides education about the running of the government to the people. This is done through the inter-relationship between different organs of government, political parties, non-governmental agencies and the activities of the free press, which the system condones unlike dictatorship.
- Above all, democracy is said to have no alternative because it recognizes and respects the fundamental human rights of the citizens, and as well as the decision of courts on any issue.

Demerits of Democracy

Since there is no rose without thorns, so goes a saying, therefore, as beautiful as democracy appears to be, it also has its own drawbacks some of which are enumerated below:

- One of the demerits of democracy is that it breeds mediocrity because in democratic contests, it is not always the 'best' am ong the candidates that wins either the primary or general elections to represent the people. More often than not, many of the elected representatives end up as bench-warmers, sycophants either because of their educational or other deficiencies that make them submissive to moral and intellectual superiority of others.
- Another drawback of democracy is the attendant high cost of governance. It requires a huge amount of national income to maintain the National and state Assemblies and the Executives with the retinue of personal assistants attach to each of the offices. Enormous wealth is needed for elections and electioneering campaigns periodically, which could have been avoided under a non-democratic government.
- Democracy is also criticized because it encourages continuity and slow progress of development if leadership changes hands too often through elections. The tendency is that the new leadership may abandon the policies and programmes on ground, to start afresh in order to impress the electorates that it is delivering on promise. Also, it takes a lot of time and resources to take a decision in a democracy because issues are to be well articulated and widely debated before taking a decision to be generally acceptable to the people. This will invariably affect the rate of growth and development in the country.

Self-Assessment Exercise (SAE) 3.9

Critically assess democracy against any other form of government.

4.0 CONCLUSION

It is important to understand the typology of government in order to appreciate the workings of a particular government in any society. In addition to this, analysts should also consider some environmental factors under which any particular

government operates or emerges, so as to have a balanced ideal of the political challenges of the society.

5.0 SUMMARY

Democracy appears to enjoy popular appeal the world over as the 'best' form of government because of the emphasis it places on liberty and freedom that the people enjoy under it. The fact that the government and the governed are conscious of the ' *Social Contract*' that is binding on both sides, makes the system to be more preferable to any other forms of government. The demerits of democracy should not become a template of hatred for the system because every system of government has its strong and weak points but no alternative has been found for democracy.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain what is meant by typology of government
2. Compare democracy with monarchy and recommend one for your country
3. Describe necessary conditions for the practice of democracy

MODULE 2

UNIT I: THE LEGISLATURE: FUNCTIONS AND STRUCTURE

1.0 INTRODUCTION

The legislature is perhaps the most important organ of government in the sense that no society can exist without law. It is also believed that an elected legislature is a major distinguishing feature between a democratic and a military government, since all forms of government do law making. This unit examines the place and role of the legislature as a major institution of government. It also discusses the different types of legislature and the reasons why some countries prefer one to the other.

2.0 OBJECTIVES

At the end of this unit, you are expected to:

1. Know the origin and the development of the legislative arm of government
2. Understand the functions it performs in the process of governance
3. Explain the reasons why countries operate different legislative structures

3.0 MAIN CONTENT

3.1 The Origins and Development of the Legislature

The Legislature is one of the three organs of government. A democratic society is composed of the representatives of the people. The legislature is perhaps the earliest organ of government. The history of this organ of government can be traced back to the classical days of the Greece and Roman Empire. Both countries had legislative bodies. Indeed the idea of the senate as the upper house had its origin in Rome. The Roman's Senate was exclusively composed of the leading aristocrats in the country and thus, members were proudly referred to as the " Fathers of Rome. The term senate has since struck as many countries; including Italy, France, the United States and Nigeria have copied it into their constitutional framework, without doubt, as the upper house. The equivalent of the senate in the British system is the House of Lords, which is the oldest second chamber in modern world, and the largest.

In order to capture the interest of the vast majority of the citizenry, Rome also created the popular assemblies. This is the precursor of the modern day representative legislature, which has increasingly assumed more prominence since it conforms to the democratic principle of popular sovereignty or the mandate theory of representation. The struggle between the then pliant or rubber stamp parliament and the absolute monarchy, popularly known as the Puritan "Revolt" which later culminated in what is today known in Britain as the concept of parliamentary supremacy is a major event in the evolution of today's legislature. It was meant to underscore the fact that the legislature should occupy a pre-eminent position in its relation with the executive.

Since then, other countries have accepted the legislative institution as the bedrock of democracy. It is however possible to have some countries that claim to be democratic where the legislatures have been pitiably transformed into appendages of the executive arms of government. But in some countries like the Nazi Germany or Fascist Italy of the inter-war years, there was no pretence about what their leaders saw as the subservient place of the legislature in the countries' political systems.

This was also true of the Supreme Soviet, the legislative body of the former Soviet Union, which the constitution of the country made an integral and subordinate institution to the communist party, and its rigid imposition of conformity throughout the country. The picture is not different with the China's National People's Congress. There also some countries in the Middle East such as the Kingdom of Saudi Arabia where no legislative bodies exist; while others make use of members of the royal family to play advisory roles to the monarchs ruling the countries. Under military dispensations, unelected bodies are often set up to perform legislative functions, though in abridged, if not attenuated capacities.

Self-Assessment Exercise (SAE) 3.1

Trace the origin of the legislature as an organ of government in your country

3.2 Functions of the Legislature

a) Law-Making

The fundamental and primary function of the legislature is to make laws for the good and well-being of the people as well as for the order and security of the country. Such laws are made in accordance with the constitution of a country and in line with the standing laws and procedure that the assembly has stipulated. We shall fully examine the stages involved in law making in Unit 2. Though law making is exclusively preserve of the legislature, it is also possible to find the other two organs of government legally intruding into this domain. This process, which is far from an aberration but borne of expediency or even necessity is known as delegated legislation. The concept will also be exhaustively discussed in Unit 3.

b) Representative function

This function derives from the status of the legislature as a body composed of elected representatives of the people. Individual members of the legislature in a democracy are representing different constituencies. The theories of representation, especially the mandate theory, require them to mirror the interests and aspiration of their constituents, which forms the basis of their elections. As the major link

between the government and the governed, they are expected to visit their constituencies regularly and consult with the voters in order to feel their pulse, gauge public opinion to better represent them in the legislative chambers.

c) Deliberative function

To be able to discharge its duties effectively the legislature is also an arena for keen deliberations; and for this reason, it has been correctly described as a deliberative body. Some people derisively described the legislature a "talking chamber" by some people. But in order to stress the importance of keen and animated deliberations before vital decisions the laws of most democratic countries grant to law makers what is called legislative or parliamentary immunity. Under the law no law legislator can be held accountable for anything he or she says on the floor of the legislative assembly. The idea of filibustering-prolong speaking with the intention of obstructing progress in the business of the assembly- is also permitted, especially by the minority members who always believe that they must have their say before the majority have their way.

d) Approval of Annual Budgets

In most countries, the legislature is always known to possess what is called the power of the purse. This implies that the executive cannot legally make any spending without the authorisation of the legislature. For this reason, the law requires the executive to lay before the legislature its annual spending proposals and its sectoral break down for the consideration, vetting and possible approval of the assembly. It is only after approval has been given that any valid withdrawal can be made from the Federation Account or the Consolidated Revenue Fund in Nigeria, for example. The same applies to supplementary budgets. It is through this power that the legislature, on behalf of the electorate, can hold the government and its officials accountable either for misappropriation, miss-application or outright misuse of public funds (corruption)

e) Confirmation of Nominations made by the Executive

Under the constitution, the executive can only make nominations to major government positions as ministers, judges and ambassadors. Until these nominees are screened and confirmed by the legislature they remain only designates into positions. They can be deemed to have been validly appointed only after the approval of the legislature, usually the Senate, the upper chamber in Nigeria. In the United States for example the President must submit the names of nominees along with the assigned portfolios to the Congress to enable members determine the suitability of such persons into positions assigned to them. This is not the case in Nigeria where the President is at liberty to assign or re-assign portfolios after the confirmation by the Senate.

f) Oversight Functions

It is also the responsibility of the legislature to conduct investigations into the activities of government ministries, departments and agencies. This oversight function belongs to the legislature as a body. But to make it more effective a standing committee responsible for relevant government ministry is usually mandated by other members to closely oversee, monitor and if need be, scrutinize the accounts and documents of government agencies in relation to the enabling legislations. A standing committee can also organize public hearings or summon government officials to appear before it to clarify certain issues or defend decisions already made, or proposals under consideration by the agency concerned.

g) Selection of Political Heads

There are situations where the legislators can also constitute itself into an electoral college, particular after a general election is inconclusive, or has failed to produce a clear winner. The electoral laws in both the United States and Nigeria require the Congress and the National Assembly respectively to select a President among the two leading candidates if none of the contestants has fully satisfied the conditions provided by the electoral law, especially the requirement of electoral spread in two-

thirds of the states in the federation, in addition to that of single majority of validly cast votes.

h) Censure/Impeachment of the Executive

The legislature also reserves the power to invoke the extreme step of censoring and impeaching the President in a presidential system or forcing the resignation of a Prime Minister and the government he presides over, if the parliament passes a vote of no confidence on it. In the United States President Richard Nixon resigned from office on August 9, 1974 to escape his impeachment the process, which had already commenced in the congress. The move to impeach President Bill Clinton of the United States failed because the Senate could not muster the mandatory two-thirds majority. At the state level, the House of Assembly can also remove a Governor from office.

i) Ratification of Treaties/Agreements

The constitution of most countries stipulates that for a treaty or agreement between one country and another to have a full force of the law, and have a binding effect on the peoples of both countries, it must be ratified by the legislature. In 1920 the United States could not join the League of Nations simply because the country's Senate refuse to ratify the Treaty of Versailles, in which was embodied the Covenant of the League. This was in spite of U. S's President Woodrow Wilson dominant role in nurturing the idea that crystallised in the formation of the League of Nations.

j) Approval of declaration of Wars

Although the constitutions of Nigeria and the United States vest in the President the power of commander-in-chief of the armed forces, yet he cannot singly commit his country to war against another country without the approval of the legislature. For this reason, President George Herbert Bush sought and obtained the consent of the U.S. congress before he could proceed militarily against Iraq in 1991 over its illegal invasion of Kuwait. Similarly, his son, George W. Bush was satisfied with the approval of U.S. congress, even without the authorization of the United Nations to

effect his policy of regime change of Saddam Hussein's government in Iraq in March 2003. Even in the exceptional circumstances where the expediency of national security dictates that a U.S. President, as the chief security officer of the whole nation must take a swift military action, such a step must be reported to the congress within one month for what is called, anticipatory approval.

k) Constitutional Amendments

Another important function of the legislature is the power to amend the nation's constitution. It may modify sections of the constitution or replace it in its entirety. In a federal system, this power is shared between the inclusive government and the government of the component states. In the recent constitutional amendments carried out in Nigeria in 2010, the procedure commenced with the National Assembly before it went to the states for their concurrent consideration and approval. Under the Nigerian constitution, a bill for the amendment of the constitution must receive the support of two-thirds of members of both houses of the National assembly as well as 24 out of the 36 of the states presently in the country. Without meeting these stringent requirements, the bill cannot receive presidential assent.

Self-Assessment Exercise (SAE) 3.2

Explain the functions of the Legislature that is most central in the process of governance

3.3 The Structure of the Legislature

There are two types of legislature: the unicameral and the bicameral legislatures.

3.3.1 Unicameral National Legislature

If a country has a single legislative chamber it is called a unicameral legislature, but if on the other hand, it has two chambers or houses it is called a bicameral legislature. Countries with unicameral legislature include Ghana, Turkey and Greece. There are a few other countries that started with bicameral legislature but ended with bicameral legislature because they later abolished the upper chamber.

They include New Zealand, which abolished her upper chamber in 1950, Denmark in 1954, and Sweden in 1970 (Mbah, 2007: 165).

3.3.2 Advantages of Unicameral National Legislature

i) A Unicameral legislature is less expensive to run. The salaries and allowances that would have been paid to the members of the second chamber can be easily spent on other facilities and infrastructures. This is a major form of relief in countries such as Nigeria where the emoluments of the legislators constitute a large chunk of government recurrent expenditure.

ii) The passage of bill can also be done without delays that are associated with another round of scrutiny in the second chamber. This has the advantage of making government business easier, less cumbersome as well as making the response of government to challenges quicker, especially in situations of emergency.

iii) In a Unicameral legislature the state is spared of the internal rivalry and conflict that are associated with a bicameral structure where the two houses often disagree on supremacy claims. This was witnessed in Nigeria when the Joint Committee of the Senate and House of Representatives on Constitutional Amendments openly disagreed over which of the two houses would produce the chairman. There is also no need to set up a joint committee to harmonise differences between the two houses in a unicameral legislature, thereby saving time.

3.3.3 Disadvantages of Unicameral National Legislature

i) It is possible in a unicameral legislature for hasty laws to be passed since the opportunity of a second look by the other chamber is not available. There is therefore the danger that the single chamber may fall victim to public hysteria and pass legislations based on the mood of the moment without carefully weighing the long term implications of such laws on the society.

ii) Since the second chamber is usually composed of matured, seasoned and distinguished citizens in a country, a country operating a unicameral legislature is denied the benefit of wisdom, experience and partisan detachment that are usually associated with people who had previously served the country in many capacities in

the past, and who see service at the upper chamber as unique recognition of their abilities and a call to higher national service.

iii) A unicameral structure is not suitable for large and heterogeneous federal states like the United States and Nigeria where the second chamber is usually designed to allay the fears of the minorities and promote their interests. Therefore unicameral legislature can only work well in smaller states like Ghana and Gambia where centrifugal forces are not salient.

3.3.4 Bicameral Legislature

There are more countries with bicameral legislature, and they include the United States, Britain and Nigeria. The Senate in the United States has 100 members elected based on two Senators from each of the fifty states in the country while 436 members of the House of Representatives are elected on the basis of population from the country's single member constituency. In Nigeria, there are 107 senators elected based on three Senators to represent each of the country's thirty-six states and one senator to represent Abuja, the Federal Capital Territory. There also 360 members in the nation's House of Representatives elected, like its equivalent in U.S.A. on the basis of population. The equal representation in the U.S. and Nigerian Senate seeks to balance bigness and smallness, majority rule and majority rules, centripetal and centrifugal forces that are typical of most federal systems. The upper house of the British Parliament has about 900 members, although only about 250 are normally present. Among the members who sit in Britain's upper chamber are Archbishops, Bishops, Law-lords and hereditary peers. The lower house, the House of Commons is composed of 650 elected members.

3.3.5 Merits of Bicameral Legislature

i) Bicameral legislature has the advantage of wider representation, including those of minorities and special interests. Since representation in the second chamber countries like the United States and Nigeria is based on equality of states irrespective of population disparities bicameral legislature enables the countries operating it to cope with, and manage the pull of centrifugal forces.

ii) The second chamber can also help a country in checking hasty legislation since bills emanating from the first chamber can always go to the second for fresh considerations, during which amendments can be made to enrich the quality of legislations, since is said that two heads are better than one.

iii) Bicameralism can also guard against the potential despotism of a single chamber. It can therefore save the nation from the corrupting influence of undivided power. A second chamber therefore serves as guarantee of liberty and safeguard against legislative tyranny of a single house.

iv) The second chamber also performs the role of a conservative stabilizer since it is usually composed of senior citizens of a country who can always bring their wisdom to bear on law-making, thereby tempering the youthful radicalism of members of the lower house.

3.3.6 Shortcomings of Bicameral Legislature

i) A two-chamber legislature is very expensive to operate, especially in term of financial outlay, for not only the conduct of elections into the houses but also for the payment of salaries, allowances and other benefits for the members and their personal aides and support staff within the bureaucracy. In Nigeria presently there are 360 members in the House of Representatives and 107 in the Senate. And the number will certainly increase if new states are created, especially in the Senate where the law allocates equal representation to each state irrespective of population.

ii) From the above, it could be argued that the second chamber is a duplication of effort, and a waste of material, financial and human resources especially in less-developed countries where resources are acutely scarce. The process of election, which is a major element of democracy, is in itself, a very expensive project and to again burden the national treasury with a second chamber is nothing but a superfluous exercise.

iii) The establishment of two legislative houses can also create conditions for avoidable conflict between the two chambers. This conflict usually crop up during the passage of bills, and which under the law must involve the two houses, or at the

point of harmonizing differences between the two chambers or during joint sessions.

A case in point in Nigeria was a proposed joint sitting of members of 6th National Assembly to be addressed by late President Musa Yar'Adua was put off because the two Chambers could not agree on the venue of the sitting and who to preside between the Senate President and the Speaker.

iv). It is also possible in countries where membership of the second chamber is not by election for the executive to convert it to an avenue for political patronage. This was the case in Nigeria in the First Republic when the Senate was turned into arena to reward politicians who had been rejected by the electorate during elections. The same possibility exists in Britain where peers were appointed into the House of Lords as reward for political loyalty to the Crown, and by implication the Prime Minister on whose advice the Monarch always acted.

Self-Assessment Exercise (SAE) 3.3

Differentiate between unicameral and bicameral legislature

3.4 The Significance of the Legislature

From what we have discussed so far, it is obvious that the legislature is a very important organ of government. Indeed, in any reference to democratic governance, whether parliamentary or presidential, the organ that captures the mind of many citizens as a symbol of democracy is the legislature. The Legislative assembly is the place where the public sees democracy in action, in form of debates and consideration of motions, resolutions and bills. Indeed, the closest politician to the voter is the representative of his constituency in the legislature, like the councilor in a local government council. Ben Nwabueze (2004) a leading constitutional lawyer in Nigeria, acknowledged the significance of the legislature when he wrote:

> The legislature is the distinctive mark of a country's sovereignty, the index of its status as a state and the source of much of the power exercised by the executive in the administration of government.

Professor Nwabueze further argues that the common reference to the President of a country and the Governor of a state as the first citizen is not meant to displace the primacy that the legislature occupies in the organisation and structure of government. According to him, the president of a country like Nigeria is the first citizen of the country because he is also the head of state, and not because he is the chief executive. He buttressed his argument with the example of Britain where the two offices are separated, and in which the head of state (the Queen) is the first citizen, and not the Prime Minister, who is the chief executive and head of government. Therefore, if the legislature of any state is not viewed with high esteem it is not from lack of legislative primacy, but from the exhibition of negative values and practices by those who are supposed to be honourable or distinguished members of the hallowed chambers. According to Itse Sagay:

> The sovereignty of the state is believed to be identified in the organ that has power to make laws by legislation, and to issue 'commands' in the form of legislation binding on the community.

A closer look at the arrangement of the Constitution of the Federal Republic of Nigeria, 1999, will reveal that the legislature is dealt with before the other organs of government. Thus, Section 4 deals with Legislative powers, Section 5 with Executive powers and Section 6 with judicial powers.

During the Fourth Republic in Nigeria, for example the Legislative branch both at the federal and states levels have acted in manners that seem to bring its members into public odium, and the institution itself into disrespect, or even derogate from its independence. First, in the enactment of the Electoral Act of 2001 the National Assembly wrongly assumed sweeping legislative powers by elongating the tenure of elected local government councils. In A.G. Abia State vs. A. G. of the Federation and others, the Supreme Court voided this flagrant legislative excess when it ruled that the legislative powers of the National Assembly were limited to only subjects included in the Exclusive Legislative List. In the other example, during the process of amendments to the 1999 Constitution Houses of Assemblies from 16 states of

Nigeria curiously rejected the plan to give the state Legislature financial autonomy. While members of the National Assembly voted in support of the amendment proposed to Sec. 9 of the Constitution to make the funding of the Houses of Assembly to be charged on Consolidated Revenue Fund (first line charge) members of 16 state Assemblies opted to remain tied to the apron strings of the Executive.

In spite of the legislative excess and self-imposed limitation cited above the legislature remains a very important institution of government in any state. The greatest authority of the legislature in a democracy, says Sagay, "is not in its legal powers as contained in the constitution, but its moral authority, as the conscience of the nation and the protector of the sovereignty of the people". In summing up John Stuart Mill wrote, it is the duty of the legislature "to watch and control the government (Executive); to throw the light of publicity in its acts, to compel a full exposition and justification of all of them, which anyone considers questionable".

4.0 CONCLUSION

Within the classical conception in political science, there is no debate about the primacy of the legislature in its relation with the other arms of government. However, over time in many countries, and for different reasons the legislature is loosing ground to the executive. For example, though the legislature still retains the power to appropriate, it is the executive that exercises the real power of when to release funds, where to spend the monies and how (in tranches or supplementary) to allocate the funds. This problem is more acute in developing states where the Legislators are still struggling to wean their independence from over-bearing executives where the Legislature enjoys primacy *de jure,* while the Executive exercises power *de facto.*

5.0 SUMMARY

In this unit, we examined the origin and evolution of the legislature as an organ of government. We also discussed the functions being performed by the legislative arm and noted that for this reason, the legislature is, arguably, the most important institution of government, especially in a democratic society. We also looked into

the different types of legislature as well as the reasons why some countries operate a unicameral while others prefer a bicameral legislature.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain the major functions of the legislative arm of government
2. Mention some advantages and disadvantages of unicameral legislature
3. List conditions that can make a country adopt a bicameral legislature

MODULE 2

UNIT 2: LEGISLATION/LAW-MAKING PROCESSES

1.0 INTRODUCTION

Law making is perhaps the most important function of the legislature and it is also significant for the peace, order and good governance of any society. Law is generally seen as the overt expression of the general will of the society. Lawyers also conceive of law as a body of rules binding upon those who come within its jurisdiction. But laws must be made first before they can be applied or enforced, or their principles form the basis of interpretation. This unit therefore examines the law-making procedure that is usually followed by the parliament or legislature of any country.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Explain the procedure that is followed in law making by every parliament.
2. Know at what point this procedure is not followed or violated
3. Differentiate the law making process between an elected parliament and a military government.

3.0MAIN CONTENT

3.1 Law Making as a Core Function of the Legislature

According to the Oxford Advanced Learner's Dictionary, a bill is defined as "a written suggestion for a new law that is presented to a country's parliament so that its members can discuss it". Due to the aforementio ned definition, we all realized that the bill simply means process of a making bye-law at the local Government council. Though law making -process is cumbersome; yet it is very significant in the life of a parliament since its success or failure is measured by the numbers and types of bills it passed, motions that are moved and resolutions that are…

Self-Assessment Exercise 3.1

Explain the significance of parliamentary immunity enjoy by Legislators in the law-making process

3.2The Stages involved in Law making in a Parliament

A bill normally passes through many stages before it becomes an Act or Law. In most cases, modifications are made in the original bill during its consideration by the legislature before it becomes law. The Process involved in law making in a democratic system of government include the stages stated below:

1. First Reading

A printed copy of the proposed bill is presented to the House through the clerk. The Clerk reads the short-title of the bill to let lawmakers know it was received. This stage involves the introduction of the bill with a title and no discussion on it. The order of business for the day will give the name of the Minister responsible for the bill. Members are also given copies of the document to enable them to begin private or party discussion on it. The Rules and Business Committee will then fix a convenient date for the second reading. Usually members are given sufficient time to fully study and digest the bill before the appointed date when a detailed consideration of the bill is carried out. It is important to stress that the first reading is a mere formality for the purposes of notification since no discussion of bill is done.

2. Second Reading

The bill then goes for a second reading. This allows for a full parliamentary debate on the content of the bill. The sponsor of the bill will explain the import of the bill, its merits and general principles underlying it. He will then move a motion that the bill be read the second time. This must be duly seconded. Members will fully discuss and criticize it at plenary, that is the entire membership of a Legislative House. This is a critical stage when a bill may either survive, be killed or an amended. After a thorough debate of the bill has been done, the presiding officer, either the President of the Senate in the Upper House or the Speaker of the House of Representatives will call for a vote on whether the bill should be read. If it succeeds, that is if majority of the members supports the bill, it is then read for the second time. The Rules Committee will then refer the bill to the Committee for further consideration.

3. Committee Stage

The Second Reading is followed by the Committee Stage. There are two types of committees: A Standing Committee and a Committee of the Whole House. Bills of a technical or specialized nature are referred to a Standing Committees Usually there are committees constituted to handle technical subjects like aviation, education, foreign affairs etc and members are often assigned into committees where they have specialties, which they can bring to bear on deliberations at the committee stage. There are other situations when the committee of the whole house will sit to consider a bill of special significance. To indicate that the house is at the committee stage, the mace, which is the symbol of authority of the house, is placed under the table. At this stage, members of the house are also free to speak more than once, since enforcement of the standing rules, which guide deliberations at plenary are relaxed. It should be noted that the bulk of work on a bill is done at this stage when the proposed law is considered clause by clause. The bill is given special consideration and attention at this stage. The job of the Committee is to examine the bill in detail, hold public hearings, receive and consider memoranda from the public

and propose amendments, if and where necessary. One can liken what happen at the committee stage to panel beating of the bill to the point that will meet the requirements, not only of the sponsor but of the Constitution (the grundnorm), relevant interest groups and the larger society

4. Report Stage

The Standing Committee then report back to the Committee of the Whole House with the revised bill. The bill, as amended at the Committee stage, will be circulated to all members and then thoroughly debated upon by the House. If necessary there may be further modifications of the Committee's recommendation. A motion will be raised for adoption of the bill and thereafter it is ready for third reading.

5. Third Reading

The third reading is a formality because it is minor changes in the wording that is allowed, and the substance (bill) cannot be amended again. Any amendment is usually of a formal nature. After the third reading, a well-printed copy of the bill be the Clerk of the House and endorsed by the Speaker is forwarded to the Second House. If the bill is pass without amendments, the originating house is accordingly informed, but if amendments are proposed, the bill together with such amendments are sent back to the First House.

6. Joint Session

A Joint Conference of the two houses will be called to debate and reconcile the differences if any, between the two legislative houses in a bicameral legislature such as the United States of America or Nigeria. When the differences have been harmonized the members of the joint committee take a common position. The harmonized version is then re-presented to the chambers for their respective adoption before the bill is sent to the President in Nigeria and USA or the Queen in the United Kingdom for assent. This latter point need to be properly stressed because in the Second Republic in Nigeria, a bill already assented to by President Shehu Shagari was annulled by the Supreme Court on the ground that the harmonized version by the Joint Committee did not receive the imprimatur of the

two chambers. This was sequel a legal suit filed by the then Bendel State government on the unconstitutionality of Revenue Allocation Act as allegedly passed by the National Assembly.

Similarly, during the Fourth Republic President Olusegun Obasanjo signed into law a bill, which extended the tenure of Elected Local Government Councils, by one year, with retroactive effect. But the Supreme Court later annulled the Electoral Act with the effect that local councils were dissolved after the expiration of the statutory three year tenure, as contained in the electoral Decree promulgated by the military, under which councils elections were conducted in 1999. Many viewed the behind the door arms twisting and doctoring of a bill already passed the National Assembly by some principal officials of the two houses in league with the Presidency as amounting to legislative indiscretion and executive lawlessness.

7. Presidential Assent or Veto

If both houses accept the report, a clean copy signed by the clerks of the two houses and endorsed by the Speaker of the House of Representatives and the President of the Senate is submitted to the President for his assent. In Nigeria, after passing of the bill by both houses, the Assembly Clerk sends it to the President for assent within 30 days. If the President withholds assent at the expiration of the 30 days the bill automatically becomes law provided the two houses can muster a two-thirds majority of the members of the two houses. In Britain, the Queen of England does not have the power to deny assent to bills already passed by the two houses of parliament. To be able to effectively discharge its law making functions, every legislative assembly should have established procedure for the orderly conduct of its proceedings. The procedures are usually derived from the standing rules/Orders, and rulings by the presiding officer and guided by the relevant constitutional provisions.

Self-Assessment Exercise 3.2

Explain conditions under which a joint session of both Legislative Chambers to happen during a Law-making process.

3.3 Law-Making at the Local Government Level

The 1976 Local Government Reform defines local government as "Government at local level exercised through representative councils, established by law to exercise specific powers within defined areas. In Nigeria, the local government constitutes the third-tier level of government and usually described as the closest to the grassroots. The local government performs numerous functions and they are specified in the fourth schedule of the 1999 constitution, as amended. In order to discharge their functions the local government councils are expected to make byelaws. The 199 constitution of the federal republic of Nigeria also defines bye-law as enactment of Local Government Council whose source is a State Law. Bye-law can also be defined as Ordinance affecting the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. It involves restriction of liberty of action by person who comes under its operation as to do or not to do as they please. There are three types of draft bye-laws viz: Executive draft bye-law; Member draft bye-law and Private bye-law

Executive Draft Bye-Law

This is a draft bye-law proposed by the chairman of the Local Government and forwarded the Legislative arm for processing and passed it becomes an executive bye-law.

Member Draft By-Law

Member Draft Bye-Law is a draft bye-law initiated by a member or group of Members of the Council as legislative proposals of the Members. The primary concern of a lawmaker is the enactment of legislative.

Private Draft Bye-Law

A Private Draft bye-law is draft bye-law other than the one mentioned above. It could be sponsored by pressure groups like the labour unions, teachers or private individuals, but introduced in council by a member or group of members. The law making process at the local government level in Nigeria is similar to what obtains at both the federal and state levels, especially with the adoption of the presidential system of government at that level of government. But in view of the importance that the local

governments in Nigeria now assume as a potential, but often displaced, catalyst of development, we may need to lay more emphasis now on the nature of the laws they make, the stages and process involved in law making, and how they can be more inclusive and participatory.

The stages and process at the local government level are virtually the same as those at the federal and state level, except minor differences, change in emphasis that are introduced at the local level to take account to take account of its specific needs and challenges. First, after a draft bye-law has been introduced into a local government council, any member who wishes to introduce a substantive motion on it shall give notice of such motion by sending a copy of the provisions proposed to be embodied on the bye-law to the clerk in advance. The clerk shall cause them to be published for at least 45 days calling for representations from the public. A copy of the draft bye-law shall be pasted on the Council's Notice Board at the Local Government Headquarters and at the Local Government Area Offices and District Offices.

Self-Assessment Exercise 3.3

Compare the differences of Law-making processes at the Local Government level with that at the State or Federal level in Nigeria.

3.4 Law-Making under a Military dispensation

Firstly, the major distinguishing feature of a democratic government that sets it apart from other system of governance (including Military System) is the presence of a legislature. The legislature in a democratic society exists as an independent institution with its unique system, life and process. Secondly, in a democratic government, there is the existence of checks and balances among the organs of government, a mechanism that gives other organs of government a concurrent role in law making: executive in giving or refusing assent and the judiciary that exercises the power of judicial review. This is to ensure that only laws that conform to the constitution are enacted as well as to safeguard against the invasion by the centre of the legislative powers of other tiers of government.

This is not so in a military administration where there is centralized administration by virtue of the unified command structure of the military. For example, the Supreme Military Council under General Gowon, the

Armed Forces Ruling Council (AFRC) of the Babangida's era and the Provisional Ruling Council under Gen Abacha, all in Nigeria had unlimited powers to make laws, which were called decrees at the centers, and edicts at the state level. In addition, the military ruling council had the power to suspend the constitution in part, or in whole, oust the jurisdiction of the courts to entertain certain cases, and make laws to have retroactive effect or even abridge the fundamental human rights of the citizens while making laws. All these could be justified since a military regime by definition is a state of emergency. In a democratic society the existence of competitive political parties, allow for more diversified inputs into the Law-making process. The realization that the day of reckoning will certainly come when elected representatives will be expected to render account of their stewardship will make them take the opinion of their constituents and the

larger public opinion into account in deciding the type of laws they will make.

Self-Assessment Exercise 3.4

Identify the differences between Decrees and Edicts under a military dispensation.

4.0 CONCLUSION

Law is useful to any society because it is said to embody the societal reason and value as well its general ends or purpose. But law in any given society is the expression of the push and pull of social forces in that society; and we cannot explain its substance or its operation without regard to those forces. The role of the legislators is, no doubt, crucial in molding the law and its essence, therefore, it is only Legislature that has no hidden agenda and can correctly read the pulse of the citizens that will make laws strictly in accordance with the nation's Constitution.

5.0 SUMMARY

In this unit, we examined the law making process as a core function of the legislature. We also explained the many stages that are involved in making law and stressed that it is important for a parliament to regard the procedure as sacrosanct, because failure to comply with the procedure will render the law a nullity, no matter its intrinsic merit. We also noted that this procedure is common to all the tiers of government in a democracy while it is only in a military setting where the whims of the ruler constitute the law that the contrary obtains.

6.0 TUTOR-MARKED ASSIGNMENTS

1. Evaluate the significance of the structure of the legislature in the law making process.

2. Explain how Law-making process under a military regime could lead to dictatorship.

3. Discuss how the Law-making powers of the Local Government Councils are limited by the State governments.

MODULE 2

UNIT 3 DELEGATED LEGISLATION

1.0 INTRODUCTION

Ideally, law making is the exclusive responsibility of the legislature. However due to several reasons this function may be performed by other organs of government, particularly the executive. In this Unit, we are going to discuss the concept of delegated legislation and provide the reasons why it has become imperative in modern government.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Define the concept and types of delegated legislation
2. Explain reasons for the transfer of power to make laws to another organ of government
3. Argue for and against the practice of delegated legislation
4. Understand how to safeguard against the abuse of delegated legislative powers

3.0 MAIN CONTENT

3.1 Concepts/Reasons for Delegated Legislations

The concept of Rule of Law implies the separation of powers of government. However, the practice in some political systems for some years past is the delegation of the legislative functions of government to the Executive arm of government. The Executive here refers to the ministers exercising some of the legislative and judicial functions of government. Delegated legislation is a system whereby Acts of Parliament delegate legislative powers to Ministries, Government Departments, Local Government Authorities and Public Corporations. In reality, the legislative function is expected to be performed by the legislature i.e. the Parliament in accordance with the principle of the constitution but the custom of delegating legislative function to other bodies or institutions other than Parliament has, for many reasons become imperative. The Acts of Parliament in most countries usually lay down general lines of policy and giving the ministers and the other bodies such authority to make rules, orders, and regulations in accordance with the policy. In other words, the right to legislate in detailed matters, within the limits prescribed by the law has been given by Acts to companies and local government authorities whose bye-laws are enforceable in the law courts. Similarly, powers of issuing detailed orders, rules and regulations are given to government departments and to the public corporations like the Electricity, Broadcasting, and Railway Corporations etc.

In the United Kingdom, for example, as far back as 1835, Borough Councils were given power to make bye-laws with the consent of the Secretary of State for the good rule and government of their towns; and similar powers have been conferred upon other local authorities and for other purposes. Similar powers were given to railway companies, tramway companies, gas, water and electricity companies and other statutory undertakers. The modern ‘scheme’ sy stem whereby private rights are

affected by clearance orders, town/country planning schemes and the like produce the same result after confirmation by the Minister of Health.

In every modern system of government, delegated legislation is now a common feature. This is because the volume of legislation required nowadays is so great that Parliament finds it impossible to do all detailed work involved in laws. Therefore, Parliament finds it more convenient to lay down the general or broad principles of laws and allowing technical and administrative details to be carried out by extra-legislative bodies. Thus, delegated legislation can be described as a system whereby non-legislative bodies are authorized by Acts of Parliament to make rules, orders, and regulations (which are laws) as directed by such Acts and having legal backing i.e. any disobedience to them is punishable in the law courts. These rules, orders, and regulations made by the Executive i.e. the ministers are referred to as 'Statutory Instruments' to distinguish them from Acts of Parliament.

Self-Assessment Exercise 3.1

Explain the concept and process of delegated legislation

3.2 Types of Delegated legislation

In any modern system of government, delegated legislation has taken various forms. In an attempt to examine the various types of delegated legislation, the United Kingdom offers a good example to rely on in this unit. In fact, in the United Kingdom there are various forms of delegated legislation, which we are going to discuss under three main headings

1. Order-in-Council

These are the orders made by the Privy Council. The Sovereign-the Queen usually presides over the Privy Council, or in her absence, the Lord President of the Council. The Privy Council includes all Cabinet ministers as confidential advisers of the Crown. It meets as the situation arises to carry out formal acts of state such as the admission of a minister into office; and particularly to transact business like the issuing of proclamations and the submission of Order-in-Council to the Queen, after

whose assent the Order is confirmed by the signature of the Clerk of the Privy Council.

2. Statutory Instruments (by Ministers)

These are the orders, rules and regulations emanating from ministers. These statutory Instruments came into use by the Statutory Instruments Act 1946, and they are of three types:

3. Provisional Orders

These are the Orders conferred mostly upon government departments. When a minister is authorized to make a provisional order the normal procedure is for the prompters to apply to the appropriate government department concerned. The minister as the head of government department shall consider any objection to the application, which may be made by any person affected. The person concerned shall cause a local inquiry to be held, of which a notice shall be given in such a manner as the minister may direct and at which all persons interested shall be permitted to attend and make objections. After the inquiry, if the minister is satisfied that there is a genuine reason for the cause to be laid before the parliament, the order is then scheduled to a Provisional Orders Confirmation Bill which is then introduced to the Parliament by the appropriate minister as a Public Bill.

The order will not take effect until it has been confirmed by the Parliament. Should the order be opposed a committee stage similar to that on a Private Bill is usually resorted to. In fact it is more beneficial if the promoters adopt the Provisional Orders procedure in the Parliament than by the Private Bill procedure, particularly where procedure by Provisional Order is an alternative to procedure by Private Bill; because should the minister concerned refuse to make the order the great expense of promoting Private Bill is therefore avoided. Secondly, majority of the Provisional Orders are usually confirmed by the Parliament. This is because the local inquiry held gives an opportunity for the promoters to be informed of the case for the opponents of the order. The officials of the government departments concerned are often able to act as arbitrators and to suggest a compromise, which may satisfy both

sides such that when the minister lays the orders before parliament they are likely to meet minor or no opposition. Indeed Provisional Orders procedure can help relieve the complicated procedure involved in passing Private Bill, which may even fail at the end of the day. Unlike a private Bill, once a Minister issues a Provisional Order it is very rare for the Parliament to refuse to confirm it.

4. Statutory Instruments (Departmental Orders)

These are rules, orders and regulations issued by Government Departments under statutory powers. In Great Britain, for example, these types of statutory instruments are usually made in accordance with the Statutory Instrument Act of 1946. This Act provides that all delegate legislation should be known as Statutory Instruments. With regards to each problem the head of Government Department (a minister) issues out such rules, orders and regulations to carry out certain urgent and essential governmental functions under such Parliamentary Acts conferring such delegated powers on ministers.

5. Special Orders

These are orders usually presented or laid in draft before the House of Lords in Britain and where an affirmative resolution is required before the Orders or any part of it can become effective. Such 'Special Orders' a re now included in Statutory Instruments Act 1946 in Britain, but it should be noted that its definition here is expansive since it embrace what were formerly known as rules regulations and orders. Before 'Special Order' could be issued noti ce of the proposal must be made, objections, if any considered, and if the objections are not withdrawn, a local inquiry is instituted. Special Orders can therefore not come into force unless approved with or without modifications by a resolution passed by each House of Parliament.

6. Statutory Orders (Special Procedure)

These are orders made through special parliamentary procedure. The parliament is empowered to entertain petitions against these orders but it can also amend or annul or permit such orders to take effect.

Self-Assessment Exercise 3.2

Explain the meaning and importance of Statutory Instrument as a form of delegated legislation.

3.3.1 Arguments for Delegated Legislation

i) Some political scientists believed that the letter of the rule of law has not been infringed by the practice of delegated legislation because the legislative power conferred upon the executive-minister-is given to them by Acts of Parliament, which are general and skeletal in nature; laying down general lines of policy, which the rules, orders and regulations made as a result of delegated legislation are expected to follow. The method have been considered to be extremely convenient for; the rules, orders and regulations made by the executives are what the parliament would have made had it have enough time to do so.

ii) Delegated legislation is also valuable because it does not only make bills easy to draft but also it makes act of parliament more flexible and capable of being adapted to changing condition or circumstances without necessarily making regular recourse to parliament when the need for prompt action arises. This implies that actions can be taken to address unforeseen future conditions that may require immediate attention of the government. Delegated legislation therefore makes decision making easier without the necessity of going through the rigour of parliamentary procedure to amend any legislation. Indeed, without the practice of delegated legislation matters of urgency could have been delayed until such a time that the Act of Parliament would have been amended, or a new one enacted.

iii) The method of delegated legislation can also be considered as unavoidable because of great deal and scale of legislations, which are necessary in modern states. Legislation has been viewed to be too elaborate and complicated, and in some cases technical, for its details to be properly dealt with by the parliament, or understood by its members; having neither the time nor the expertise to come to terms to

various issues, or attend to the numerous questions that may arise. Therefore, it is considered more advantageous for the parliament to devote itself to the consideration of essential of principles of legislation rather than involving itself in the detail of parliamentary legislations that could be better handled by functionaries of the executive, especially the professional cadre in the civil service.

iv) Furthermore, apart from the outline of broad principles in modern legislations, they also involve such technicalities, the details of which are difficult, or at times impossible to include in a bill to avoid turning the eventual act into a cumbersome piece of legislation. Delegated legislation therefore makes it possible for an Act of Parliament to be used to address issues in a piece meal and selective manner, without subverting the original intent or essence of the Act.

3.3.2 Arguments against Delegated Legislation

i) The practice of delegated legislation has been described as one, which kicks against the essential principles of the rule of law-the separation of powers- in the sense that the citizens are not subject only to the laws made by regularly constituted legislature but also to the dictates and discretion of the executive. The rule of law actually implies that laws are made by a body of representatives chosen by the people and not to lie at the whims and caprice of the executive arm. Although in theory, the laws guiding delegated power require parliament to exercise some forms of control over the rules, orders and regulations made by the Executive. This is done by laying them before the Parliament before they come into force and reserve the power to annul any, which is not in keeping with the general lines of policy. The reason being that rather than the orders being laid on the table, they are usually kept in the library of the House and in many cases it locked up in the Assembly storage facilities.

ii) Delegated legislation has also been viewed with inherent dangers of promoting executive tyranny because of a situation whereby the executive combines law-

making functions with its primary responsibility of implementation of policies. It was this fear, which made Montesquieu in his theory of separations of powers to warn about the consequences of combining different powers of government in a single person or body of persons.

Whatever the merits and the demerits of delegated legislation, it has become an integral part of the process of government, not only in Britain where it originated, but has been adopted in the administration of government of other states. Those who initially opposed it on the ground that it is a violation of legislative competence therefore, no longer view it with favour. Although the practice is subject to the danger of abuse, it is the responsibility of the Parliament to be very vigilant and effective in exercising control over delegated legislation

3.4 Control of Delegated Legislation

We already know that though the practice of delegated legislation has its advantages, but there are steps that are usually put in place by most governments to guide against its inherent dangers, and possible abuse of delegated powers. First, while there is no general act which requires rules, orders or regulations to be laid before the parliament ,in many cases the act delegating power requires the rule, order or regulation to be laid in parliament and the latter is empowered either to amend, annul or approve it. The five ways by which the legislature can control delegated legislation are:

i) A rule may be ordered to lie before parliament for 40 days during which it may be annulled by order-in-council. This method is referred to as 'negative resolution'. The motion for annulment has to be passed by the House.

ii) The act that authorises the making of rules may require them to be laid before the house when made; this implies that 40 days public notice of the proposed rules must be made.

iii) An order may have to be laid in draft for 40days, sometimes with a provision for an affirmative resolution before it can become operational.

iv) It may be provided that an order shall be laid before the House, or a joint secession of both Houses, which shall not come into force until expiration of 40 days.

v) It may be provided that the order shall lapse after 40 days unless expressly approved by the parliament, either of the houses in a bicameral setting, or one of the two, or the only chamber in a unicameral structure. This is what is referred to as affirmative 'resolution' method.

There is no justification for the existence of so many forms of control by the parliament in deciding which legislated power should be adopted. This is because ministers are given free hand by the parliament in this matter of statutory instrument to the extent that each government department decides which of this method to adopt. These five methods of laying before Parliament except the third, which requires the affirmative resolution of the legislature may be circumvented or abused by the executive. Only the method of control, which insists that an affirmative resolution is mandatory before delegated power can be exercised, or come into force, can be regarded as an effective way of controlling delegated legislation parliament.

Apart from these methods mentioned above, there are other ways by which parliament exercise control over all forms of delegated legislation. In 1944, in Britain, as a result of the recommendation of the Committee on Ministers Powers' each of the two houses of parliament set up a committee to examine all delegated legislation with the purpose of bringing to the notice of the house such rules, orders or regulations laid before it. In fact in the House of Commons the elected Committee on Statutory Instruments, generally referred to as 'scrutiny' committee is to consider every statutory instrument or draft of any instrument laid before the house with a view to ascertain which of them require special attention. These orders or instrument may be considered for adoption or rejection by the house on the following grounds:-

a) If it imposes a charge in the public revenue.

b) If it appears to make some unusual or unexpected use of the powers conferred by act of parliament under which it is made.

c) If it contains provisions excluding challenge by the law courts

d) If it has retrospective effect particularly where the parent act does not confers such power.

e) If it seems to require elucidation or elaboration.

f) And if it has been unjustifiably delayed in publication.

Judicial Control

According to the theory of separation of powers, the function of the judicial arm of government is to interpret and apply the law to individual cases bought before it. Nevertheless, the judges possess the power over delegated legislation. The specific power of the judiciary over delegated legislation is the power to determine whether any particular delegated legislation has the force of power. In other words, judges are expected to determine whether such subordinate legislation has been made in accordance with the Parent Act that delegates such power. If such legislation has been legally made, its validity cannot be questioned in the law courts. But if on the other hand, it breaches the Parent Act the courts have the power to declare such rule, order or regulation *ultra vires*, null and void, i.e. it is beyond the powers of the Executive to make, and therefore illegal. However the effectiveness of this form of control is limited since the minister who is responsible for the drafting of the Parent supervises its drafting process in such a way as to, as far as possible, carefully exclude the challenging authority of the law courts in the process.

Self-Assessment Exercise 3.4

Explain the effectiveness or otherwise of measures to check possible abuse of delegated powers.

3.5 Delegated Judicial Power

Before we end this Unit, it is necessary that we discuss another type of delegated power, which is known as delegated judicial power. This involves the delegation of judicial functions to the executive to the exclusion of the regular law courts established for the purpose. Under the relevant Acts of Parliament for delegation of judicial powers, there are specific provisions that disputes shall be settled either by the supervising ministers of the ministries/departments or a Tribunal set up by him.

The practice of using judicial or administrative tribunal to settle disputes is common in most states today because it is faster, less cumbersome and more effective in the administration and dispensation of justice.

One of the reasons for this is that most of the legal technicalities that are usually employed by lawyers to prolong litigations, thereby delaying justice are scrupulously avoided in cases before tribunals. Tribunal judges also enjoy high level of latitude and exercises the same level of flexibility in the rules of proceedings in order to fast-track the disposal of cases brought before them. There are advantages and disadvantages of using tribunals to dispense cases. One major advantage of tribunals is that a dis-satisfied litigant is permitted to appeal from them to the regular courts. This is to ensure that justice is not sacrificed on the altar of expediency. Similarly, tribunals are also better able than the regular courts to attend to specialized cases involving labour, land, sanitation and rent disputes. The Industrial Administrative Tribunals to which strikes and other labour related disputes in Nigeria are referred to is a case in point.

On the other hand, one major disadvantage of tribunals is that they may not have the same quality of impartiality as the ordinary courts because the Executive itself is usually a party to the cases that are always brought before them. The activities of Tribunal therefore violate a fundamental principle of natural justice, which says, “a man should not be a judge in his own course.” Anot her demerit is that unlike judges who preside over cases in regular courts members of tribunals are not trained in

judicial methods; they therefore lack the magisterial ability and forensic disposition of trained judges. Thirdly, tribunals may also chose not to sit in public unlike regular courts in which proceeding are open to prying eyes of the public, other interested pressure and interest groups, including the press.

4.0 CONCLUSION

Although law making is constitutionally, usually assigned to the legislature; but due to several reasons including the volume of work before the legislature as well as the technical nature of some legislation, delegated legislation has become an accepted practice in most countries. While the arguments for this practice appears convincing, the challenge is how operators will ensure that what has been accepted as an expedient is not used as ploy to take away from the elected representatives of the people the critical business of law making.

5.0 SUMMARY

In this unit we have examined the concept of delegated legislation as well as the reasons why the power to make laws may be exercised by another organ of government. We also discussed various types of delegated legislations and how constitutional and statutory safeguards have been put in place by governments to prevent misuse of delegated powers.

6.0 TUTOR-MARKED ASSIGNMENTS

1. Articulate reasons for the practice of delegated legislation

2. Critically assess different types of delegated legislation with explanation

3. Explain how the practice of delegated legislation rob the Legislature of its primary responsibilities

MODULE 2

UNIT 4: EXECUTIVE - DEFINITION AND FUNCTIONS

1.0 INTRODUCTION

The executive is the organ of government responsible for the implementation of public policies and decisions. In this Unit, we will examine the role and importance of the executive arm in the organization of government. The discussion will entails examination of the types, structure and functions of the executive as an organ of government.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Discuss the concept and the place of the executive as an arm of government
2. Explain the structure and types of Executive organ of government
3. Mention the functions and responsibilities of the executive branch of government

3.0 MAIN CONTENT

3.1 Definitions of the Executive Organ

The executive is the organ of government charged with the implementation and execution of government policies. Anifowose and Enemuo (1999:171), define the executive as those who apply the authoritative rules and policies of a society. In a

general sense the executive branch, in their view, is that branch of government, which gives binding effect to the will of the state by carrying out or executing laws of a country. According to Olisa, et al (1990:47), the executive is "one of the three arms of government whose principal duty is to carry out the general administration of the country. In the course of administering a country, the executive enforces laws, introduces bills into parliament and organise the structure of the civil service or the bureaucracy of a country to make it perform optimally. Ball and Guy Peter (2000:197), conceive the executive as "those primar ily responsible for executing the laws but who are gradually intruding into the law-making responsibility of the legislature".

Presently at the federal level in Nigeria, for example, the president is chief executive of the whole federation, a position that puts him at the head of federal executive council. The council composed of ministers and the secretary to the government of the federation meet once in a week (every Wednesday) to attend to the business of government. At every session of the council usually presided over by the president, or in his absence, the vice-president memoranda presented by each ministers are considered, vetted and approved. At the state level, the Governor is the head of the state's executive council composed of commissioners. Otherwise called the cabinet, this body also formulates government policies at the state level and sees to their faithful implementation. This arrangement is also replicated at the local government where the chairman and his supervisory councilors take charge of the execution of government programmes at the third tier level of government.

The executive is often described as the most powerful, not necessarily the most important organ of government. For this reason, those who occupy executive positions may be tempted to be authoritarian, or at times, predatory simply because they control and deploy state funds and coercive forces. In many countries, the head and members of the executive arm of government are increasingly assuming importance. In the first place, the head of executive at all level is often regarded as the head, symbol and personification of government. The office he occupies is either

described as the State House or government House. It is for this reason that the White House, the resident of United States President, No. 10 Downing Street the office of the British Prime Minister and Aso Rock that of Nigeria's President are widely known and regarded as green zones.

Similarly, due to the importance attached to the functionaries of the executive branch of government, especially the head and his senior officers, their personal security including that of members of their immediate family is of utmost concern to the state. There are also protocol and scheduling officers attached to them to ensure that their daily activities and official assignments are routinely streamlined, timed and regulated to avoid mix-ups. All these steps are taken to surround the occupants of the executive arm, and the offices they occupy with dignity, since as it is said; authority is increased by a show of dignity. The heads of executive arm of government are also aware of this to the extent that some of them are always ready to flaunt, use or even misuse the privileges or prerogatives they enjoy.

Furthermore, in less developed societies executive privileges are better known as incumbency power or advantages, which are often deployed for purposes other than those for which they were originally intended, especially in relations to the opposition members, or perceived opponents. Though not entirely free from occasional misuse, leaders of more developed countries have demonstrated more restraint and circumspection in the manner they use executive orders, which are meant to be rarely exercised without recourse to the legislature. But the extent to which the head of the executive seek to free himself from legislative control will depend on the type of executive that a country operates. This is the focus of the next section of this unit

Self-Assessment Exercise 3.1

Explain the role of the Executive as an organ of government

3.3 Functions of the Executive Arm

It is important to stress here that the functions of the executive devolve primarily in the office of the president in a presidential system, or the office of the prime minister in a parliamentary system of government, respectively. In Nigeria, for example, apart from expressly stating the functions of the President who is the chief executive of the country, and his vice, the 1999 Constitution did not elaborate on the functions of the executive as an organ of government. The President is to, among other functions determine the general direction of domestic and foreign policies of the government of the federation and co-ordinate the activities of the vice president, ministers and the agencies of government in the discharge of their executive responsibilities. From this sketchy provision, we can distil the following functions of the executive arm of government.

i) Providing policy making leadership in a government

The primarily function of the executive is to formulate and decide the policy direction for the state. In a democratic system, such policies are usually derived from the manifesto presented to the citizens during the elections and upon which the power was voted into office. While in office, it is the responsibility of the party in government to translate this blue print into concrete policies and programmes of the government of the day. During the Second Republic in Nigeria, for instance, President Shehu Shagari at the federal level saw to the implementation of his party's housing and agricultural (Green Revolution) programmes. Similarly, in the states where the Unity Party of Nigeria was in control the chief executive of those states ensured the implementation of the party's four cardinal programmes. The Seven-Point Agenda is also the policy thrust of President Musa Yar'Adua and Goodluck presidency because it was so promised during the electioneering campaign. This is however not to say that the government cannot change, or reshape a policy if the chief executive considers it necessary in view of changing realities, which may be different from what, obtains during the period of elections. For this reason policy

evaluation, re-orientation and enrichment constitute additional responsibility of the executive of a state.

ii) Legislative Functions

The executive whether as a chief executive in a presidential system or in a dual executive, where power is shared between the ceremonial and substantive heads perform the following functions that fall within the legislative realm. The Chief executive in the United States or the monarch in Britain inaugurates the congress or summons the parliament after the periodic general elections. In Britain, he also dissolves the parliament after a vote of no confidence on a subsisting on or after a defeat at a general election to pave way for a new government. The chief executive or ceremonial head of state also gives assent to bills already passed by both houses of the congress or parliament before they can become law. He can also withhold assent if he is not satisfied with the content of a bill or aspects of it.

iii) Judicial Functions

The executive make appointments into judicial positions into offices such as those of the chief justice and other justices of the Supreme Court at the centre and judges at the states level. The executive also exercises the power of prerogative of mercy. This is the power to grant pardon to a convicted person or an offender who is yet to be tried in a court of law, including the power to commute a death sentence into life imprisonment, or the substitution of a less serious form of punishment for a more severe one. The power to discontinue a case already being tried in a court of law, known as *nolle prosequie* (decision not to proceed with case) is also exercised by the Attorney-General at the instance and on behalf of the executive.

iv) Miscellaneous and Emergency Functions

The executive perform other functions like award of national honours to distinguished citizens and foreigners who have made positive contributions to the affairs of a country. The exercise of emergency powers during civil wars or war with other nations, internal disturbances or during constitutional crises also falls within the purview of the executive arm. In the definition of what constitutes a state

of public emergency the executives of modern governments exercise high degree of flexibility, which forms the basis of which they assume emergency powers. Indeed, as early as the First Republic in Nigeria there were controversies on the justifications or not for the exercise of emergency powers by the federal government over the affairs of the former Western region in 1962. Similar reactions greeted the declarations of a state emergency in both Plateau and Ekiti states by the federal government during the reign of President Olusegun Obasanjo.

To make the discharge of these executive functions and responsibilities easier and more effective the Nigerian constitution also established some bodies that are meant to assist the chief executive of the country. They include the National Council of State, Federal Civil Service Commission, Federal Electoral Commission, Federal Judicial Service Commission, National Defence Council, National Economic Commission, National Population Commission, National Security Council and Police Service Commission. Some of these bodies are replicated at the state level, in addition to the State Council of Chiefs, which specifically fall under the residual powers of state governments.

Self-Assessment Exercise 3.3

Discuss the importance of policy leadership to the functions of the executive arm of government.

3.4 Structure of the Executive Organ

The executive branch of government is broadly divided into two: the members of the cabinet and other political office holders who hold temporary or tenure appointments, and career civil or public servants who hold permanent and pensionable positions. While the former are in charge of initiating government policies, or deciding the direction of the government of the day, the latter concern themselves with the implementation of such approved policies. In the parlance of public administration, while the political head is the master of policy, the administrators are the instruments of policy. Therefore, the executive arm can only

function effectively if there is cooperation and mutual understanding between its two segments.

It is common to hear people describe the political office holders as birds of passage. The reason is that their grip on government's policies is tenuous and also changes to reflect the swings of popular electoral mandate periodically given to political parties. This is not the same with career officers who regularly see every government in and out of power. For this reason, their role in preserving the integrity of the executive arm, and ensuring the continuity of the government as a whole cannot be overemphasized. But for them to be able to discharge this role with respect and dignity they are guided by certain principles and ethos, which over time become second nature to members of this class. It is beyond the scope of this course to expatiate on these principles.

The principles of impartiality and anonymity of the civil service, to mention just two of them, is so fully developed in the advanced countries of the world that they have gradually evolved into a distinct culture. This is why Max Weber says:

> The code which must guide the administrator in the tropics is to be found in no book of regulations. It demands that in every circumstance and under all conditions, he shall act in accordance with the tradition of an English gentleman. The job in hand comes first: the interests and opinions of the person carrying out the work should be subordinates.

This is the essence of what is known as bureaucracy, the backbone of the major activities of the executive arm. While there is virtue in the practice of bureaucracy, yet there are dangers in over-reliance on it and its rigid, almost mechanical prescriptions. It creates the dual problem of how to preserve customary values and practices as well as how best to use the human and material resources of the state to effect rapid economic development. This challenge has led to introduction of the concept of development administration as a new philosophy of public administration, which has already been adopted by developing countries. It has also

contributed to the clamour for the eradication of, or less emphasis on the practice of the spoils system by the executives in the administration of a country.

The spoils system, according to the World Book Encyclopedia Vol. 18, 2006 edition, is the practice of giving public offices as political rewards for party services. This system can be found in any country that practices multiparty democracy. When a political party comes into power, some of its faithful followers or officials are given political or public as a reward for supporting the party, or compensation for their roles in assisting the party to win elections. Many people feel this system is justified because they argue that a victorious party must shape policies to satisfy its supporters. Others however feel that the practice is not justified because able occupants are being displaced from their positions to make room for others who may not be competent, but whose recruitments are based solely to party affiliation or loyalty. Historically, the idea of using the spoils system to enhance presidential control of the bureaucracy had its origin in the United States during the reign of President Andrew Jackson. His friend, Senator William L. Marcy of New York popularised the slogan "to the victor belong the sp oils of the enemy".

The consequence of the spoils system is that it bred corruption in the public service of the United States. Opponents of the system were unrelenting in their agitation against. Indeed a disappointed office seeker in the United States shot and killed President Garfield and his death increased the momentum of public demand for the reform of the civil service in U.S. Despite the reforms, it has not been possible to dissuade the executives in the United States, and indeed of most governments in the world from the practice of the spoils system, with the consequence that the performance of the government where the practice is the norm has been less optimal.

Self-Assessment Exercise 3.4

Enumerate how the *spoils system* is inimical to the performance or efficiency of administration of a government in a state.

4.0 CONCLUSION

In theory, the legislature is said to enjoy primacy in its relations with the executive. This is premised on the classical proposition and constitutional requirements that every major executive action must receive legislative sanction before it can become operation, as well as the assumption that popular sovereignty primarily inheres in the elected representatives of the people who sit in the legislative council. However, in practice the executive arm in many countries today has become more powerful than the legislature, and arguably the most powerful organ of government, largely because it controls the power of the purse and sword. More importantly, as the process and activities of government become more complex and sophisticated those who control the executive arm have devised numerous ways by which they circumvent legislative scrutiny or even subvert its oversight functions.

4.0 SUMMARY

In this Unit, we have examined the executive organ of government, its structure, types and functions. We also observed that though the function of the executive is primarily the implementation of the policies and programmes of government, but it has become increasingly involved in certain activities that were previously the exclusive preserve of the two other organs. This intrusion by the executive has become imperative for the purposes of the organic working of government, and prompt response to situations that could not be readily or immediately foreseen.

6.0 TUTOR-MARKED ASSIGNMENTS

1. Mention major functions of the Executive arm of government

2. Explain why the Executive arm is increasingly becoming more important in relation to the Legislature

3. Discuss the various ways by which the Executive arm exercises control over the Legislature

MODULE 2

UNIT 5: THE JUDICIARY: ITS ROLE AND INDEPENDENCE

1.0 INTRODUCTION

The judiciary is a very important organ government, and it is often referred to as the last hope of the common man. In this Unit, we are going to discuss the role and functions of the judiciary as well the notion of judicial independence which is meant to enhance the performance of the functions of judicial officers. We will also discuss how judicial pronouncements can, over time become laws when they are cited as precedents as well as the concept of delegated judicial power.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Understand the functions of the Judiciary as an arm of government.
2. Know the concept and ingredients of the independence of the Judiciary and its limitations.
3. Appreciate that judicial officers in the discharge of their duties can sometimes perform legislative functions, or the executive intruding into the judicial realm.

3.0 MAIN CONTENT

3.1 Institution of the Judiciary

The Judiciary is the institution charged with the responsibility of seeing that the society's laws are observed and of adjudicating over disputes, arising from non-observance or breach of these laws and of awarding redress. It is in furtherance of these objectives that the Court System was established. The establishment of the Court System and the emergence of an organized legal profession are significant landmarks in society's search for justice. Before Courts were established every man was law unto himself. Then the weak were at the mercy of the powerful. It was then the age of quest and conquest, comparable to the Hobbesian's 'State of Nature'.

But with the establishment of Courts men laid aside their arms and took their grievances to those courts with the fervent hope of obtaining justice. Thereafter courts soon become the tribunals for the administration of justice, for the punishment of offences against the peace and tranquility of the state, and for the settlement of disputes and disagreements between individuals on one hand, as well as between individuals and the state on the other. This manner of administration of justice can happen in a democratic society where the citizens have enforceable rights and not in a totalitarian setting where the identity of the individual is absorbed by, and dissolved in and into the omnipotent state.

In the United States Article III Section (1) of the country's Constitution, invest the Supreme Court and such inferior courts as may be established by Congress, with judicial power covering "all cases in law and Equit y arising under this constitution". In Nigeria it is the judiciary that is vested with the power to ensure due observance of the constitution and that can pronounce on non-compliance by any of the levels or organs of government. Therefore, for the judiciary to meet up the expectations imposed on it by the constitution of the various countries, especially in the arduous task of sustaining democratic values in any society, it must strive to entrench

constitutionalism, due process, rule of law, transparency, accountability, and respect for human right.

Without this, no society, especially the developing states can optimize good governance or realize the much expected democratic dividends. In the particular of Nigeria a major expectation from the judiciary is what it can offer to protect the sanctity of the ballot box and assist in ensuring that truly sovereignty returns to the people. The only way the judiciary can meet these challenges, including that of growth and development is by helping in consolidating the country's democratic process. For the judiciary to effectively perform its role there must be courageous judges, who are of great of learning and integrity; judges that cannot be compromised. We also need capable hands to man judicial offices.

Self-Assessment Exercise 3.1

Analyse the place of the judiciary in the organization of government.

3.2 Functions of the Judiciary

i) Interpretation of the laws and Settlement of Disputes

The main function of the judiciary is the interpretation of the laws and the settlement of disputes that may arise between one individual and the other, or between individuals and government or any of its agencies. The cases that usually come before the courts may range from civil and criminal cases. These different courts are structured in hierarchical basis and they entertain cases that fall within their jurisdictions, while appeals are made from lower to higher courts, until the cases are finally determined at the Supreme Court, usually the apex of the judicial ladder in countries such as the United States and Nigeria. A.V. Dicey once declared that the American Courts had "become the pivot on w hich the constitutional arrangements of the country turn"

ii) Interpretation of the Constitution

Whenever there is any conflict or ambiguity over the actual meaning, import or intent of a constitutional provision such misunderstanding or confusion is usually

referred to the judiciary to make a pronouncement or declaration on both the letter, and even the spirit of the constitution. Section 231 subsections (1) and (2) of the 1999 Constitution of Nigeria gives the Supreme Court original jurisdiction over Constitutional interpretations. As at October 2010, the federal government is at the Supreme Court to seek a legal pronouncement from the apex court in the country on whether an ascent of the president to the amended constitution was required before the document becomes operational.

iii) Power of Judicial Review

The power of judicial review undertaken by the courts is in two categories. The first is review of legislative enactments to ensure that they keep with the provisions of the constitution. Where the contrary is the case such laws becomes invalid to the extent of their inconsistencies with the supreme law of the country. This is particularly the case in a federal system where there is constitutional division of powers between different levels of government, and where one level is not meant to encroach in the other's areas of competence. The practice in federal state is that where states law conflict with federal laws, the laws of the latter will prevail. These two categories of conflict when they cannot be managed politically are usually referred to the judiciary to make its declaration on their legality or otherwise.

The 1999 constitution of the federal republic of Nigeria specifically safeguards the sanctity of the supervisory powers it conferred on the judiciary in the country against encroachment by the other organs of government. In section 4 (8) reads:

> …….Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly shall be subject to the jurisdiction of the courts of law and of judicial tribunals established by law and accordingly the National Assembly or a House of Assembly shall not enact any law that oust or purports to oust the jurisdiction of a Court of Law or a judicial tribunal established by law……..

It is important to stress that this type of protective provision is consistent with the practice under a democratic government, since it is in the tradition of military government to amputate the judiciary by ousting the jurisdictions of the courts of

laws. But whether in a civilian or military setting certain attributes are required of judge before they can effectively perform the functions we have stated above. First, judicial decision on important and controversial cases and issues should be based on merit and principle, rather than based on political expediency. Judges should also resist the pressure of hysteria and fanaticism. It is this spirit that can make a judge rise above passion, public clamour and above the politics of the moment. It is obvious that the united effort of the three branches of government is the search for justice through the law. Justice is the end which all the laws passed by the legislator, all the executive functions of government, and the administration of laws in the courts must seek to attain.

We also need to emphasise that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary roles of the courts and the citizens' last line of defence in their unequal combat with power. This is why the idea of the independence of the judiciary is imperative for the courts to be able to discharge the functions discussed above. Therefore, it is not only an erudite, courageous and fearless judge but also an independent Bench that can protect the citizens of a country from the abuse of power. The independence of the judiciary is thus the citizens' bulwark against oppression, his charter of liberties and a force for stability, peace and progress in a country. It might be pertinent at this point to explore the concept of the independent of the judiciary in greater detail.

Self-Assessment Exercise 3.2

Critically assess the essence of judicial review as a major function of the judiciary.

3.3.1 The Meaning of Independence of the Judiciary

In order to better to understand the concept of the independent of the judiciary, it is more appropriate to know what the concept is not:

- The independence of the judiciary does not mean, nor does it imply that judges should have unlimited power. As Cicero once observed during the days of Roman Jurisprudence: "We are all slaves of the law so that we may be free"
- Judicial independence does not give the judge freedom to sit when he likes, to rise when he likes, thus leaving unattended to a backlog of cases.
- Judicial independence does not give the judge the licence to treat counsel and witnesses as he likes. Every judge should appreciate that the counsel and witnesses are as much indispensable functionaries of justice delivery as himself.

Having understood what judicial independence is not, the next pertinent question then is: What is judicial independence? The independence of the judiciary means that the court and judges must be free from the influence of both the governmental and individuals in the discharge of their functions or duties if justice is to be obtained. It must be noted that in a state or country where judicial decisions are subject to the dictates or preference of those in government there can hardly be justice. Therefore, only courts**,** which are not tied to the apron, string of the executive; courts that are free from legislative pressure, political pressure, and even mob pressure can guarantee judicial independence. As Ojo (1973:22) pointed out "if judges are under the control of the government of the day their judgments become the dictate of the government and such judgments are subject to change if there are changes in government". In other words, the idea of justice will lie at the discretion of the government of the day.

Under this condition, it becomes difficult if not impossible for the citizens of a country to obtain justice, especially when their rights clash with the rights of those in government. The implication of a situation where government is able to hamper justice is that its functionaries become tyrannical and oppressive. It is for this reason that Montesquieu in his theory of Separation of Powers argued that for the life and liberty of the citizens to be guaranteed and for justice to reign, the three organs of

government must be exercised independently. Without judicial independence no judge however brilliant and hardworking, however well prepared by qualities of heart, mind and professional training can give full effect to the enduring values enshrined in the constitution, or even to "do justi ce to justice" (Shittu, The Punch , Monday July 12, 2010:62)

3.3.2 Ingredients of the Independence of the

Judiciary i) Mode of Appointments

The methods of appointing judges and other judicial officials must be insulated from political or partisan considerations. In Nigeria, such appointed by the chief executive at the federal or state level is usually based on the recommendations of the Judicial Service Commission. Similarly, judges can only be removed or dismissed from office on ground of misdemeanor or incompetence. If judges can be removed at the will of the government it means that judges who fail to dance to the tune of the government of the day cannot be sure of retaining their positions, thereby hampering the independence of the judiciary. In the opinion of Lateef Adegbite (1978:49), removal of judges is more crucial to the independence of the judiciary than their appointment "for a judge who refuses to toe a particular line may be removed on one pretext or the other."

ii) Qualifications for Appointments

Appointments to the bench or judicial positions should also be open to those who have met the stipulated constitutional and statutory requirements. In Nigeria for example the possession of a bachelor's degree in law, a successful attendance at the Nigerian Law School and a legal practice of between twelve and fifteen years, depending on the level of such appointments are minimum criteria. The danger of rewarding unqualified lawyers with elevation from the bar to the bench is that their benefactors in government can easily manipulate judges who benefit from such unmerited appointments. Thus, the independence of the judiciary is impaired.

iii) Security of Tenure

In order to ensure independence of the judiciary judges must enjoy secured tenure of office. Like other career public servants, judges are expected to retain their jobs until they are due for retirement. The only acceptable exceptions to this rule are when they are no longer productive or have proven to be incompetent, or can no longer retain the quality of good conduct in the dispensation of justice.

iv) Adequate and Unalterable Salaries

The independence of the judiciary will largely depend on the remunerations and allowances that are attached to the office of judicial officers. It is necessary that the salaries and allowances of judges are reasonably adequate and constitutionally secured so that a political executive not satisfied with a judgment by a judge will not be able to tamper with the latter's remunerations. To achieve this, the practice in many countries is to make salaries of judges a first line in the Consolidated Revenue Fund, a dedicated government account usually insulated from routine meddling by the executive arm.

v) Immunity of judges from prosecution

If provisions are made in a country's statute books to immune judges from prosecution for all their conduct in the course of performing their duties, it will help in securing the independence of the judiciary. But if the conduct of a judge can be subject to scrutiny on the floor of parliament, or a legal proceedings be brought against a judge in another court, except for the determination of an appeal on a case earlier decided by him, the fear of personal liability may make a judge tilt towards self preservation rather than the cause of justice.

3.3.3 Limitations to the Independence of the Judiciary

The reality, of course, that cannot be disputed is that the judiciary in its determination to support the democratic project is constrained in several ways: undue delays in the justice delivery system, absence of infrastructure, disobedience of court orders by the Executive, needless pressures from several quarters, corruption, perpetual adjournment of cases, poor working environment, pitiable

emoluments, and congestion of cases in courts of law due to administrative bottlenecks. The law is often treated as synonymous with justice. It is for this reason that we often refer to 'courts of justice' as a syn onym of 'courts of law' even though in practice the former may often fall far short of the ideals of the former. There have been allegations of bribery and corruption against judges and biases against individual in cases involving the citizens. Under the Buhari Regime Justice Okoro-Idogu once confessed that he surrendered to pressure mounted on him by government to convict Fela Anikulapo Kuti under Decree No. 7 of 1984. On the strength of this disclosure, the late Afro-beat King was immediately released from prison and the judge was retired (Newswatch, May 26, 1986).

There is no doubt that in certain instances the judiciary may not have acquitted itself beyond all reasonable doubt. But more often than not the judiciary has been the sacrificial lamb on the altar of societal imperfections and contradictions. When politicians rig elections it is the judiciary that is called upon in place of the electorate or voters to decide who actually won the election. When the national treasury is looted it is the judges that are called upon to determine the culprits either at regular courts or special tribunals. Whatever the verdict the judiciaries is in the middle of a cross-fire and in no-win situations since the looser or culprit charge the judges with allegations of bias, partisanship or miscarriage of justice. This is why it has been argued that there is no justification for serving judges to sit in the determination of election petitions or judicial inquiries into political activities since such involvements may drag their names to political mud. But if judges must sit on such matters then retired judges with unimpeachable record should be used.

It is important to stress that constitutional guarantees of judicial independence will come to naught if efforts are not made to insulate the judiciary from politically sensitive matters. Yet constitutional provisions designed to guarantee judicial independence can also be re-examined with a view to ensuring that they are free from political manipulations. If the Judicial Service Commission is peopled by political appointees it futile to expect the body to be detached in the exercise of its

advisory role to the executive, or expect the beneficiaries of such padded appointments not to return favours to those made their appointment possible. Even in the United States where the patronage or spoils system has become accepted it is difficult not to see partisan colour in the appointment of judges, especially given that quasi-political role that the Supreme Court and the federal judiciary perform as guardians and interpreters of the country's constitution.

There is no doubt that the encroachments by the executive and the legislature in the realm of the judiciary as a result of constitutional provisions on the appointments of judges takes something away from the independence of the judiciary. This is notwithstanding what may in the statute books to guarantee judicial independence. Indeed in countries such as the United States and Britain, the independence of the judiciary has depended more on the force of tradition than on express constitutional guarantees. Where there is a tradition of judges, standing up for justice, their independence can only be minimally threatened and the cause of justice met. But that is not the case with developing countries like Nigeria where the politicians are yet to imbibe the culture of non-interference and the judges a culture of impartiality irrespective of the desires of their appointer.

The Constitutional basis for the removal of a judge on grounds of 'inability to discharge the functions of his office' or 'miscondu ct' is nebulous and can be abused by a willing political head. With this type of provision the fear of possible removal from office always hang over judges like a *Sword of Damocles*. More over the provision under the Nigerian law that judicial officers upon their retirements cannot appear as a legal practitioner before any court or tribunal will make most judges faced with this impossible choice to be too willing to hold on to their appointments, at whatever costs, rather than retire to starvation. The hierarchical structure of the judiciary in the country also makes judges to look to the politicians for promotion or elevation to the upper echelon of the judicial ladder. Such judges who know that the prospect of advancements depend on their rating by politicians will not want to incur the wrath of politicians.

Self-Assessment Exercise 3.3

Discuss dictatorship as a form of government

In the final analysis, the ultimate guarantee of judicial independence is the caliber of men and women appointed to the bench. Therefore, only men of unimpeachable character, high probity and unassailable intellect can dignify their calling to the bench and guarantee their independence from executive meddlesomeness or legislative emasculation. As a renowned American Constitutional Lawyer profoundly puts it thus:

> The quality of justice depends more on the quality of the men who administer the law than on the content of the law they administer. Unless those appointed to the bench are competent and upright and free to judge without fear or favour, a judicial system, however sound its structure may be on paper is bound to function poorly in practice.

Self-Assessment Exercise 3.4

Enumerate the conditions that can guarantee the independence of the judiciary.

4.0 SUMMARY

In this Unit, we have examined the judiciary as a vital institution and organ of government. We have in addition explained its role as a vital component in the organization of government as well as the functions it performs. We also noted that for it to perform its functions fairly and impartially the judiciary must retain its independence from the other organs of government, particularly the executive. We however recognised that inspite of the merit and attractions of the idea of independence of the judiciary it is impossible to fully have it in absolute terms.

5.0 CONCLUSION

The significance of the role of the judiciary cannot be overemphasized in the organization of government. The courts of law which have become the instruments through which the judiciary discharges its functions have been variously described as the temple of justice, or the last hope of the common man. But for the judiciary in any country to acquit itself creditably the political environment within which it

operates must be readily supportive, by providing the needed administrative and legal framework, as well as the complement of adequate resources, without which the judiciary will suffer deficit in both performance and credibility.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain the basic functions of the judiciary

2. Discuss the significance of the concept of judicial independence.

3. Justify delegated judicial legislation despite the technicalities involved.

MODULE 3

UNIT 1: THE THEORY OF SEPARATION OF POWERS

1.0 INTRODUCTION

Separation of Powers is an important principle in the organization of modern government. In this Unit, we will examine the principle behind the doctrine of separation of powers, its objectives and applications in selected countries. In the course of this Unit we will also know whether the theory of separation is compatible with what obtains in practice in the relationship among the three organs of government.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Define the doctrine of separation of power and explain its objectives
2. Understand the limitations of the theory of separation of power when applied to the reality of the organization of modern government
3. Know why some countries operate separation of powers while others prefer fusion of powers

3.0 MAIN CONTENT

3.1. Origin and concept of Separation of Powers

The origin of the doctrine of separation of powers could be traced to earlier political philosophers. But the doctrine received its finest formulation by a French political thinker and jurist, Montesquieu in his book, " *Esprit des lois*" The Spirit of Law published in 1748. In view of the relevance of Montesquieu's classical formulation to the theory of separation of powers, it will not be out of place if we quote him extensively thus:

> When the Legislative and Executive powers are united in the same person or in the same body of magistrates, there can be no liberty. Again there is no liberty if the judicial power is not separated from the legislative and executive powers. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control-for the judge would be the legislator…

Jean Bodin in his *Republic* (1576) also wrote that some separation of power was essential, advising that the prince should not administer justice but should leave such matters to independent judges (quoted in Laski). The idea of separation of powers, according to Wale and Phillip may mean three different things:

(a) That the same persons should not form part of more than one of the three organs of government e.g. that ministers should not sit in parliament

(b) That one organ of government should not control or interfere with the exercise of its functions by another organ e.g. that the judiciary should be independent of the ministers or that ministers should not be responsible to the parliament.

(c) That one organ of government should not exercise the functions of another e.g. that minister should not exercise legislative power.

In his Second *Treaties on Civil Government,* John Locke wrote:

> It may be too great a temptation o human frailty, apt to gab power, for the same person who have the power of making law to have also in their hands the power to execute them, thereby they may exempt themselves from obedience to the laws they made and suit the law both in its making and execution to their own private advantage.

Like Locke, Montesquieu was also concerned about the danger posed to the liberty of the citizens by the concentration of powers. According to him:

> Concentration of governmental powers in the hands of one individual is the very definition of dictatorship, and absolute power is, by its very nature, arbitrary, capricious and despotic…For it i s not that repository of the combined power can pass tyrannical laws and then execute them tyrannically, he can also act arbitrarily in flagrant disregard of the limits of his powers and then proceeds to legalise his action by retroactive legislation

Government in such a situation is not conducted according to pre-determined rules; it is a government not of laws but of will, a government according to the whims and caprices of the ruler. Limited government is therefore the objective of separation of powers and it demands that the organisation of government should be based on some concept of structure, whereby the function of law making, execution and adjudication are vested in separate agencies, operating with separate personnel and procedure. We must however emphasise that it is not possible to have complete separation of powers in which there is no interaction whatsoever between the three arms of government. In actual practice, the three organs of government must function by mutual cooperation.

The theory simply enjoys that the same body or person should not be in control of more than one arm of government. Power must not only be separated but must also be exercised by different persons or body of persons, i.e. these powers must not be combined in the same person or body of persons, but that they should be entrusted to three separate agencies, that are co-ordinate and mutually independent. In the language of law, the same person should not be the prosecutor, judge and jury. Put differently, separation of powers can be described as the political application of the economic concept of division of labour.

Self-Assessment Exercise (SAE) 3.1 Discuss

the concept of Separation of Powers

3.2 Reasons for Separation of Powers

The theory of separation of powers has been instituted to serve or fulfill certain objectives. These objectives can also be viewed as the advantages or merits of separation of powers. They include the following:

i) Prevention of Tyranny

It reduces the abuse of power because powers are separated from one another. There is a political term, which says, “power corrupts an d absolute power corrupts absolutely”. Because there is no concentration of g overnmental powers in one authority, the tendency of having arbitrary rule is very low.

ii) Specialisation and Efficiency

The theory of separation of powers, which is the political application of economic theory of division of labour, makes for specialization and efficiency in the administration of government. By concentrating on the same job in routine like manner the maxim practice makes perfect becomes the order of the day. It means that by concentrating in law making the legislators will gain expertise in it while the executive also becomes more adept in the task of policy formulation and its execution. Similarly, the judiciary acquires better erudition and distinction in its duty of interpretation of the law and settlement of disputes.

iii) Preservation of Liberty

The theory of separation of power also preserve and specialization guarantee the rights and liberty of the citizens. If the powers of the three organs of government are placed under one authority there is the likelihood that tyranny and arbitrariness may ensue. According to Lord Action, “Power intoxicates and absolute, power intoxicates absolutely”. Therefore, when power is s pread and not concentrated in one authority, the expectation is that the system will promote the observance of the fundamental human rights of the citizens, such as right to life, freedom of association and freedom to own property etc.

iv) Safeguards independence of each organ

Separation of powers also ensures the independence of each of the organs of government in the functions and also recognizes that the function assigned to each organ by the constitution requires distinct specialties. A judge must possess the qualities of impartiality and detachment combined with brilliance and erudition for him to succeed. A legislator must not only be able to connect and emphatise with his constituents, he must also possess the power of communication that will enable him push his proposals through among other members in the parliament. Similarly a chief executive must have the capacity to rank his priorities among many competing issues within the policy agenda. Given the different qualities that are required by those that will occupy these different positions, it is most unlikely that these attributes can be found in one person. Therefore, it is only through separation of powers that individuals with these different but complimentary attributes can be assembled to discharge the three functions of government.

3.3 Disadvantages of Separation of Powers

i) A rigid separation of powers may produce negative consequences because it can make it difficult for the legislature and executive, in particular, to cooperate. In the event of lack of cooperation between the law makers and those who enforce these laws the machinery of government may be at best, be impeded, or at worse, grind to a halt.

ii) The theory of separation of powers as propounded by Montesquieu has been criticised for been too idealistic and mechanistic, and therefore not realistic. The reason is that given the nature and process of government, it is impossible to keep the three organs of government in separate watertight compartments. Woodrow Wilson, a former U.S. President in his critique of separation power wrote:

> The trouble with the theory is that government is not a machine but a living thing…No living thing can have its organs of fset against each other as check and live…Government is not a body of blind forces, it

is a body of men with highly differential functions…but
with common purposes.

This view was shared by Mbah (2007:192) who rightly opined that any attempt to achieve the idea of separation of powers as conceptualized by Montesquieu will amount to 'a motionless balance'.

iii) The idea of checks and balances is meant to introduce flexibility or a lubricating force separation of powers. Yet the mechanism of separation of powers can produce the unintended consequences of preventing government functionaries from taking quick decisions.

iv) Critics of separation of powers argue that complete separation of the functions of government is impossible in reality. They argue that it is not possible to define the area of concern of each organ in such a manner that each is independent and supreme in its area without the other having a role to play. According to them the process of law-making is incomplete until the executive gives its assent.

Self-Assessment Exercise (SAE) 3.3

Discuss the possible danger associated with the theory of Separation of Powers

3.4 Applications of Separation of Powers

3.4.1 Separation of Powers in the United States

The principle of separation of powers is clearly incorporated in the constitution of the United States. Richard Neustadt (1960:13) described Separation of Powers under the U.S.'s government as a system not of separated powers but of "separated institutions sharing power". Similarly, S .E. Finer (1949) also stated that the American constitution was consciously and elaborately made an essay in the separation of powers and is today "the most important polity in the world which opera tes upon the principle. The United State's Constitution divides the Congress into two bodies: the Senate and the House of Representatives; and the two legislative chambers are primarily and exclusively vested with the law making powers. The executive powers also solely lie with the executive arm, while the judicial functions are handled by independent courts. Through the

mechanism of checks and balances, which we shall discuss in the next unit, the needed flexibility is introduced into the operations of separation of powers in the United States.

3.4.2 Fusion of Powers in Britain

The British constitution does not provide for the principle of separation of powers. Rather what obtains in Britain is what is popularly known as fusion of powers. This is manifested in different ways. First, the members of the legislature and the executive are brought into their different offices through the same election. Put differently, the Prime Minister, who is the head of the executive and his ministers who with him forms the cabinet must have been elected into the parliament before they can qualify to serve in the executive arm. Second, the parliament in Britain comprises the House of Commons, House of Lords, and the Queen, and interestingly the monarch is the head of state in Britain, which makes him or her ceremonial head of the executive. Third, the Lord Chancellor is not only the head of the House of Lords, the upper house in Britain, he is also the minister of justice, and the head of the Privy Council, the equivalent of U.S.' Supreme Court. The implication of the examples cited above is that there is no separation of powers in the operations of the British government.

Self-Assessment Exercise (SAE) 3.4

Distinguish between the idea of fusion of power in Britain and separation of powers in the United States.

4.0 SUMMARY

In this Unit, we have discussed the doctrine of separation of powers, its origin and objectives. We further looked into the advantages and disadvantages of separation of powers and cited the examples of the United States and Britain to illustrate the two extremes in the application of the principle of separation of powers in the two countries.

5.0 CONCLUSION

The principle behind the idea of separation of power is unassailable, especially in the expectation that it can help safeguard the liberty of the citizens by preventing accumulation and possible abuse of power. However in reality it is not possible to have water tight or complete separation of powers as it was conceived in the classical sense.

This is why the practice of checks and balances, which we will discuss in the next unit, has been accepted by some countries as an inevitable corollary of separation of powers, without which the operations of government may be deadlocked.

6.0TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Discuss the possible dangers of concentration of powers of government in one hand.

2. Explain the nature and pattern of separation of powers under the American presidential system of government

3. Justify the adoption of fusion of powers under the British parliamentary system of government.

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MODULE 3

UNIT 2: THE CONCEPT OF CHECKS AND BALANCES

1.0 INTRODUCTION

The concept of checks and balances is generally referred to as a corollary to the theory of separation of powers. In other words the mechanism of checks and balances is to ensure that the process of governance is devoid of the gridlock that would have occurred if the theory of separation of powers is strictly followed. This unit examines the mechanism of checks and balances, its relevance and applications in some countries.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Define the mechanism of checks and balances
2. Explain its objectives and relevance to the organization and operation of government.
3. Understand its application, especially in countries practicing the presidential system of government

3.0 MAIN CONTENT

3.1 Meaning and Objectives of the concept of Checks and Balances

Checks and balances works with the existence of separation of power because it deals with the process whereby the organs of government look into or control the affairs and duties of one another to ensure that governmental functions are properly performed. It is only when the powers of each organ of government are separated before they can check by one another and correct the mistakes made by the other organs. The legislature looks into the activities of both executive and judiciary. The executive looks into the activities of both legislature and judiciary while the judiciary looks into the activities of the legislature and the executive. To discuss the subject satisfactorily we need to understand the American system of government where separation of powers is in full swing. The 1787 American constitution specifically provides for the principle of division of power and checks and balances. American is widely known as a model of the presidential system because it is the first country in the world to practice it.

The legislature in America is the Congress, which is bicameral, meaning two legislative chambers, the upper house (Senate) and the lower house (House of Representatives). Law making is the primary function of the members of the Congress who are elected directly by the electorate. The executive functions are vested in the president who is equally elected by the people. The Supreme Court exercises judicial powers together with other courts like the High Court, Court of Appeal etc. This will show that the powers of the three organs of government are clearly delineated and separated. Yet checks and balances ensures that the president can only appoint ministers , judges, ambassadors with the approval of the Senate, even though these appointees are answerable to him in the discharge of their functions. The President also presents annual budgets to the legislature for approval; this serve as checks by the legislature on the executive. The president and the staff are not members of the congress nor are they members of the judiciary.

If a member of the congress wishes to join the executives, he has to resign and vice versa. The president is elected to hold office for a fixed period of four years while members of the Congress stay in office for two years. The Congress has no power to remove the president except through the process of impeachment while the president cannot dissolve the congress. The people also check the executive by writing to criticize the government and suggesting ways of remedying the situation. The judiciary checks the executive policies by declaring its actions unconstitutional to the point of inconsistency.

The bills passed into laws by the legislature can also not become laws until the executive gives them assent. Judiciary checks the legislature by interpreting laws made by the congress. The control, which the executive has over the judiciary, is that the executive nominate the judges to the various courts. Due to the aforementioned points, separation of powers and checks and balances exist in the American presidential system of government.

Self-Assessment Exercise (SAE) 3.1 Examine

the principle of Checks and Balances

3.2 Process and Application of Checks and Balances

This is a mechanism through which each branch of government in USA is able to participate in and influence the activities of the other branches. Its major examples include the power of the President to veto Congressional legislations, the Senate's power to confirm presidential appointments and the power of the Judiciary to review laws enacted by the Congress. According to Ray (2006: 145) the primary objective of the Federalist Papers for instituting the doctrine of checks and balances was "to provide for an equilibrated system of interaction among the three principal institutions of the executive, the legislature and the judiciary". Indeed, the doctrine of checks and balances is recognition of the reality in the process of government: To run a government, powers must not only coordinate, they must also overlap. This is a mechanism through which each branch of government in USA is able to

participate in and influence the activities of the other branches. Its major examples include the power of the President to veto Congressional legislations, the Senate's power to confirm presidential appointments and the power of the Judiciary to review laws enacted by the Congress. According to Ray (2006: 145) the primary objective of the Federalist Papers for instituting the doctrine of checks and balances was "to provide for an equilibrated system of interaction among the three principal institutions of the executive, the legislature and the judiciary". Indeed, the doctrine of checks and balances is recognition of the reality in the process of government: To run a government, powers must not only coordinate, they must also overlap.

Self-Assessment Exercise (SAE) 3.2 Enumerate the objectives of checks and balances

3.3 The Relevance of Checks and Balances

The relevance of checks and balances are as follows:

Accountability

It makes possible accountability due to the fact that powers are **s**eparated and it becomes easy to assess the performance of any of the organs of government. Through this mechanism the three organs of government will be accountable to themselves and to the people. The people can sue the legislature and the executive to the court of law for any breach of the law or misconduct. They can also write to criticise any government policies or implementation of policies and also suggest ways to correct the abnormalities

Rule of Law

The rule of law comprises of three things: equality before the law, supremacy of the law and fundamental human rights. Through checks and balances and separation of power, the rule of law is encouraged. The principle is introduced to encourage government of law and not government of men. This is to ensure that those who rule do so according to the laid down rules and regulations. The constitution stipulates the various functions of the organs of government and how they are controlled. Due to the existence of

checks and balances, the principle of the rule of law is strictly observed because everybody, both government and the governed see themselves as equal before he law, supreme before it and no one must infringe on each other's right. Due to check and balances we are able to practice the rule of law when you know that if you don't follow it, you are bound to be checked and prosecuted by other separated organ.

Passage of Bills into Laws

Laws made by the legislature are bound to be good laws because the passage of law takes rigorous process and also as a result of the mechanism of separation of powers, the legislature will not want a situation of it becoming a laughing stock in the eyes of the executive or the judiciary if its laws are regularly vetoed by the former or constantly annulled by the latter.

Good governance

The leader will rule well to get the acceptance of the people because he knows that if he does not rule to satisfaction of the people, he will be checked by the other organs and which may lead to impeachment. Therefore when there is good governance there is bound to be social justice, rapid development, good security, peace and tranquility, law and order, good infrastructural facilities and also development of the individual towards being patriotic and being a nationalist who have the emotional attachment towards the development of his country.

Self-Assessment Exercise (SAE) 3.3

Explain the extent to which the idea of checks and balances could reduce the rigidity of the theory of separation of power.

4.0 SUMMARY

In this Unit, we have discussed the concept of checks and balances. We further examined its objectives and advantages. The unit also examined the application of checks and balances in the United States, and how it has been applied to qualify and complement the theory of separation of powers in the country.

5.0 CONCLUSION

It is obvious from the discussion in this unit that the mechanism and operations of checks and balances in countries like the United States and Nigeria are meant to ensure a good and accountable government. This is not to say that the mechanism does not have its inherent complications, such as creating delays, power tussles and conflicting claims in the operations of government. Yet it remains a very important means of putting breaks, where necessary, on legislative rashness, executive recklessness and judicial arrogance.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain the application of checks and balances under the American/Nigerian presidential system of government

2. Mention how checks and balances prevent abuse of office by the Executive.

3. Describe the ways the doctrine of checks and balances constitutes a corollary to the theory of Separation of Powers.

MODULE 3

UNIT 3: THE CONCEPT OF THE RULE OF LAW

1.0 INTRODUCTION

The concept of rule of law has become a popular mantra in the lexicon of political science and government. It is one-way one distinguishing a government that is guided by laws from one that is dictated by the whims and caprices of the rulers. This unit examines the concept of rule of law, its principles and limitations. The unit in addition compares the observance of rule of law in a democratic government from that of a military or a dictatorial government.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Define the concept of rule of law and its principles
2. Know that there are limitations to the concept of rule of law in practice
3. Explain the distinction in the application of rule of law between a democratic and military government.

3.0 MAIN CONTENT

3.1The concept of Rule of Law

The rule of law, also called supremacy of law, is a general legal maxim according to which decisions should be made by applying known principles of laws, without the intervention of discretion in their application. This maxim is intended to be a safeguard against arbitrary governance (Rawls, 2003:206-207). The word "arbitrary" (from the Latin *arbiter*) signifies a judgment made at the discretion of the arbiter, rather than according to the rule of law. Generally speaking, law is a body of rules prescribed by the state subject to sanctions or consequences. The predominant view is that the concept of "rule of law" *per se* says nothing about the "justness" of the laws themselves, but simply how the legal system operates. As a consequence of this, a very undemocratic nation or one without respect for human rights can exist with a rule of law - a situation which may be occurring in several modern dictatorships.

What is taken as the classical definition of the concept of the rule of law was given by A.V. Dicey (1958). In his conception, the rule of law means: 'the absolute supremacy of regular law as opposed to the influence of arbitrary power, and exclude the existence of arbitrariness or prerogative or even of wide discretionary authority on the part of government'. This definition perceives the rule of law as a principle that seeks to curb government powers by insisting that governance should be in accordance with the laws of the land and not according to the arbitrary rule of office holders. It also implies that no man can be punished except for a proven breach of law. The other major element of the rule of law is the equality of all classes of people before the law as administered by the ordinary courts.

The rule of law is further defined as the "principl e" that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedures. The principle is

intended to be a safeguard against arbitrary governance. Today, the concept of rule of law has been expanded beyond the classic formulation provided by Dicey. The doctrine is now recognised to include:

i. the supremacy of the law including judicial authority over all persons and authority in a state;
ii. the supremacy of the constitution;
iii. the independence of the judiciary;
iv. the right to personal liberty; and
v. observance of democratic practices including conduct of regular, free and
vi. fair elections as a basis for assuming political power (Anifowose and Enemuo, 2005:151- 152).

In short, rule of law stipulates that government is instituted and limited to its power according to the law and should be devoted to the preservation of the liberties of individual citizens, all of whom are deemed to be equal before the law. By guaranteeing civil rights, the rule of law also creates the basic conditions in which individuals can pursue their own personal development as they choose. The fundamental human rights of the citizens are defined and enforced by the law of the land. One of the main purposes of the rule of law is to ensure that the civil liberties of the citizens are safeguarded from the arbitrary interference of those in authority.

Self-Assessment Exercise (SAE) 3.1

Define the concept and principles of rule of law

3.2 Rule of law and Democracy

Rule of law is also better realized under a democracy than a dictatorship (Alonge, 2005:131-135). Democratic governance is based on the will of the people and is the form of governance best suited to allowing all people to live in dignity and freedom. This is also emphasised by the Millennium Declaration, in which the international

community undertook to promote democracy worldwide. Democracy requires a "rule of law" framework in order to govern the inte raction and co-existence of all citizens.The doctrine of rule of law is intimately bound with the practice of democracy. As Sagay (1996:13) has suggested, 'there can be no democracy without the rule of law and vice versa'. The rule of law may be a necessary condition for democracy but it is not a sufficient condition. For much of human history, rulers and laws were synonymous -- law was simply the will of the ruler. A first step away from such tyranny was the notion of rule by law, including the notion that even a ruler is under the law and should rule by virtue of legal means. Democracies went further by establishing the rule of` law. Although no society or government system is problem-free, rule of law protects fundamental political, social, and economic rights and reminds us that tyranny and lawlessness are not the only alternatives. But a democratic government is not a guarantee for the respect of rule of law. As argued by Doug Hammerstrom (2002):

> We who seek to build democracy must not be bound by the false assertion that the rule of law is democratic. A re-examination of our history teaches us that our powerful legal system is a massive fortress against popular sovereignty. One of our most important tasks is to revisit fundamental questions that were resolved by undemocratic means in the past.

Indeed, there are countries in the world today such as North Korea, which has democracy prefixed before their names, and yet their citizens contend with the worst form of dictatorship under their oppressive government. Therefore the mere presence of laws is no sufficient guarantee that such laws are in the public interest. Echoing Hammerstrom, Tacitus says: "The more corrup t the Republic, the more the Laws". Thus within the rule of law or within a soci ety or state that is governed in accordance with rule of law, the agreed organic law of the land determines 'who gets what, when and how' and not the idiosyncratic behaviour of the ruler(s), be

they elected or otherwise. This is why it is argued that within rule of law, there is total supremacy of law.

It is obvious that united effort of the three branches of government is the search for justice through the law. Justice is the end, the *terminus adquem* towards which all the laws passed by the legislator, all the executive function of government, and the administration of law in our courts, naturally end. It is to be emphasized that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary roles of the courts and the citizens' last line of defence in their unequal combat with power. It is only an erudite, courageous, fearless and independent Bench that can protect the citizens from the abuse of power. The independence of the judiciary is thus the citizens' bulwark against oppression, his charter of liberties and a force for stability, peace and progress in our land.

Self-Assessment Exercise (SAE) 3.2

Outline the relationship between the concept of democracy and the principles inherent in rule of law.

3.3 Limitations of Rule of Law

Thomas Jefferson, the third President of the United States in his Inaugural Address stated "equal and exact justice to all men of whate ver state or persuasion, religious or political". In other words, he was emphasising t hat all men are equal before the law. Under the portal of the Supreme Court building in Washington, United States, a similar injunction is scribble: "Equal Justice unde r Law". These two quotes represent a statement of the desire of the government and citizens of the country but in reality, these precepts may not be observed or may even be reached on the altar of

expediency. Abraham Lincoln, another famous American was once quoted to have said: “Let reverence for the laws be breathed by ev ery American mother to the lisping babe that prattles on her lap, let it be taught in the schools, in the seminaries and in colleges”, but he was the first to suspend t he habeas corpus in Maryland in the early days of the American Civil War in violation of U.S.’s constitution.

Woodrow Wilson found a precedent in Lincoln’s denial of rights to justify a similar action by the U.S. government during World War I. What happened in the two cases cited in the United States in the mid 19th century and early 20th century is that the two American Presidents abandoned the principle of justice upon which the doctrine of rule of law is based for the principle of expediency. In totalitarian states, there is no pretence about rule of law, because in those states the law and the courts are regarded as instruments of state policy. Put differently, the law is used to serve the interest of the strong to the detriment of the weak.

This is evident that violation of laws or denials of rights for political ends are not peculiar to African and other third world countries. The only difference is that why the abuse and violations are gross in developing societies there are subtle ways by which developed nations dress up or mitigate these denials where they cannot be avoided. We must also note that when compared with the other arms of government-the legislature and the executive - the judiciary that is expected to ensure justice, is a cripple. Justice Samuel Miller of the United States once puts it succinctly:

> Dependent as its courts are for the enforcement of their judgements upon officers appointed by the executive and removable at its pleasure, with no patronage and no control of the purse or the sword, their power and influence rest solely upon public sense of necessity for existence of a tribunal to which all may appeal...

The principle of equality before the law also has its limitations. The modern state maintains vast paraphernalia for the prosecution of alleged offenders, there is no such organisation for their adequate defence. For example, if a poor person steals conviction follows instantly; if a rich person steals, he is usually set free on the plea of nervous or mental trouble; but if directors of a company in high position pay no attention to the affairs of the company, they are not held responsible when the company is compulsorily liquidated, but if a petty official is confused in his accounts, charges of embezzlement are preferred against him or her. Worse still the legal aid council in Nigeria that is supposed to come to the assistance of the poor does not enjoy the required support from government that can enable it discharge its functions effectively. Fundamental human rights such as rights to life, freedoms of expression, association and movement also have their limitations, and can also be suspended or abridged.

Right to Life

A government can deny or deprive a citizen right to life under the following conditions: For the defence of any person from unlawful violence or for the defence of property in order to effect arrest or to prevent the escape of person lawfully detained and for the purpose of suppressing a riot.

Right to dignity of human persons

This states that no one shall be subjected to torture or inhuman treatment.-No person shall be held in slavery or be expected to perform forced labour except labour necessary in the event of any emergency threatening the life of a people in a state or compulsory labour for the members of the armed forces, compulsory national service which forms part of the education and training of the Nigerian citizens.

Right to personal Liberty

Conditions under which a citizen can be deprived of this right include if one commits a serious crime or fails to obey the order of court; for the purpose of one's age or if one has infectious disease or is a person of unsound mind or to prevent unlawful entry into Nigerian or effecting expulsion from Nigeria. Under this right,

the following factors must be considered in the case of an arrested person or a detainee; avoidance of false evidence against himself. -a detainee must be informed within 24 hours why he has been detained; shall be entitled to compensation and public apology if unlawful arrested.

Right to fair hearing

If for the case of this a tribunal is set up, the following procedures must be followed: the tribunal must seat in public, the person so affected must be allowed representation before the tribunal; the decision of the tribunal must not be influent by the government. For one charged with criminal offence shall be presumed innocent until he is proved guilty; informed promptly in the language he understands the nature of his offence; shall be given adequate time and facilities for the preparation of his defence; shall be allowed to defend himself in person or by legal practitioner of his own choice.

Right to freedom of expression

This emphasizes that individual is entitled to hold opinion, to receive and influence ideas and information without interference. Also every person has right to establish and operate any medium for the dissemination of information, ideas and opinions.

Right to peaceful assembly and association, freedom of movement, right to freedom from discrimination and right to own property are also entrenched in the constitution. Most of these rights can be curtailed when a country is under emergency or under an undemocratic government. Also these rights are protected by the judiciary. Anyone whose rights are encroached upon can go to court to seek redress.

Self-Assessment Exercise (SAE) 3.3

Critically assess the immunity from prosecution enjoyed by certain categories of public officials constitute a negation of the principle of equality before the law.

3.4 Rule of law under Military administrations in Nigeria

Under the various military regimes in Nigeria, and despite their pretences to conducting governance, the nature and antecedent of a military government does not allow for strict adherence to the principle of rule of law. Indeed, by definition a military regime is equated to a dictatorship and is always regarded as an aberration. Therefore, for almost three decades in Nigeria, the military relegated the rule of law to the background. For example the Buhari military regime promulgated Decree No.2 under which many Nigerians were detained without trial. The same government also enacted Decree No. 4, which made it an offence to publish the truth if it embarrassed those in government. Two journalists of the *GUARDIAN* newspaper in Nigeria, (Nduka Irabor and Tunde Thompson) were jailed by the Buhari regime for contravening the Decree number 4. Three cocaine pushers were also publicly executed by the Buhari regime, under a decree that was applied in a retroactive manner, contrary to practice within a society/state governed by rule of law.

Although the succeeding Babangida regime revoked Decree number 4, it however retained the more obnoxious Decree No. 2, under which his predecessor, Buhari, and his deputy, Tunde Idiagbon were clamped into detention. To placate the political class, Babangida released several politicians jailed by Buhari in a gesture meant to promote a new image for the military as a responsive government, but not as a country within the ambit of the rule of law. The Babangida's regime, under the pretext of what was called "guided democracy" also experimented with all sorts of political contrivances. He severally extended his tenure in office, which ended in the annulment of June 12, 1993 presidential election; which marked a grand repudiation of Nigerians' will entrusted in Moshood Abiola. The Abacha's regime was more notorious in its disregard of the principles of rule of law and respect for human rights. During his era, political activists were forced into exile because the political environment was not made conducive for an open and contested terrain

which democracy demanded. The Abdusalam's administration was too short to merit any significant analysis except that in 1999, his administration re-enacted the Obasanjo's record of 1979, when it mid-wived another successful transition programme, which was concluded within a comparatively shorter period of ten months. His military dis- engagement brought Obasanjo into power again as a democratically elected President.

Self-Assessment Exercise (SAE) 3.4

Examine why military decrees are superior to a Constitution under military regime

3.5 Rule of Law under Democratic Governments in Nigeria

An evaluation of rule of law under a democratic dispensation will always be different from the one done within a military setting. In the First Republic in Nigeria, there were several political crises, which put the observance of rule of law to test. A prominent case was the declaration of a state of public emergency in the then western region of the country in 1962. This was over a fracas, which broke out on the floor of the House of Assembly of the region. A legal suite was then instituted by the Action Group, which sought for the declaration that the action taken by the federal government was illegal and unconstitutional, and for its reversal. In its ruling the Supreme Court refused to rule on the legality or otherwise of the action, but merely affirmed that there was a proper resolution passed by the Parliament. When the Privy Council in London in an appeal brought before it later declared the act null and void the Balewa led federal government promptly ended the jurisdiction of the Privy Council from entertaining cases that emanated from Nigeria.

Another case in which the observance of the rule was put to question was over the creation of Mid-western state from the then Western region in 1963. The crux of the

debate was on whether the action was right when it was done without the concurrence of the state from which the new region was to be carved out. Many believed that the action was politically motivated to whittle down the influence of Chief Obafemi Awolowo and his party, the Action Group, in the minority areas of Western region. This view sound plausible especially when the same federal government refused to accede to state creation exercise in the then Northern region which was the biggest in both size and population in the country, and in which agitations for more regions/states were most rife.

During the administration of President Shehu Shagari between 1979 and 1983 there were also test cases for the rule of law. A major one was the deportation of Alhaji Shugaba Abdul Rhaman, the then minority leader of the old Borno State House of Assembly on the order of the then Minister of Internal Affairs, Alhaji Maitama Yusuf. Like that of the two cases cited in the First Republic partisan political motives were also insinuated given, the objective of the ruling party in the country then being to silence the voices of opposition as then symbolized in the personality of Alhaji Shugaba. However, a Supreme Court judgment later quashed the deportation order. Similarly a Revenue Allocation Act already signed into law by President Shehu Shagari was annulled by the Supreme Court in a case brought against the federal government by the then Bendel State government on the ground that proper procedures were not followed by the National Assembly in the passage of the bill.

After almost three decades of political independence and return to democratic governance under President Olusegun Obasanjo, Nigerians legitimately aspire to the type of government that will meet universal standards of respect for the rule of law. But on the contrary, while in office, Obasanjo elevated constitutional abuses and executive indiscretions into a virtue. The list is endless. For example, in Odi, Rivers state a whole community was razed down by the Nigerian military acting on the

President's fiat. Secondly, in a flagrant disobedience of the Supreme Court's judgment, Obasanjo refused to release the statutory allocations meant for the local governments in Lagos. Under Obasanjo, the country also witnessed unresolved murder cases; prominent among which are those of Chief Bola Ige, Chief Dekibo and Engineer Funsho Williams.

President Obasanjo also sought to elongate the tenure of elected local government councils from three to four years, which was aborted midstream. This, he did by rushing to assent a bill which emanated from a joint sitting of the National Assembly, without recourse to the two houses which appointed the body. The move was however invalidated by a Supreme Court judgment. Obasanjo also severally violated appropriation laws by either exceeding, or spending on unauthorized projects, in acts of questionable constitutional breaches, which led to the several moves by the National Assembly to impeach him in 2002. Also in both Plateau and Ekiti states the Presidency, under Obansanjo imposed equally unjustified state of public emergencies, ostensibly for security reasons, but which many people believed had partisan imprint. He also pressurised the National Assembly to approve same, with scant regard for constitutional provisions; thereby displacing elected legislative and executive institutions, and replaced them with appointed sole administrators.

Similarly, controversial impeachments were carried out in some states, notably Bayelsa and Oyo, where the hands of the Presidency under Obasanjo were visible. What is also common in respect of the former Chief Executives of the two states in question is that they were not persuaded by the sleight of hands for a third term in office, which President Obasanjo was visibly interested in. It is difficult to resist the conclusion that the impeachment axe was the price they had to pay for their effrontery towards a more than determined Presidency, to forge ahead despite massive national opposition. Fortunately for Ladoja of Oyo State, his purported impeachment was declared illegal and unconstitutional by the Supreme Court.

It is paradoxical that Governor Ladoja who invoked and benefited from rule of law had earlier refused to respect a court order in his own state, which directed him to recognise and swear in a Local Government Chairman who had won the election, but was wrongly barred from taking office. The irony goes full circle when it is realised that it was Gov Ladoja's deputy, Alao-Akala, during his now illegal succession to the governorship seat who finally obeyed the court order.

If the aborted attempt by President Obasanjo to amend the 1999 constitution to pave way for his third term in office is added to the list, it will not be far-fetched to conclude that the former president operated outside the framework of rule of law in the reign of arbitrariness and impunity under his watch in Aso Rock. Therefore, what has become evident is that the phrase rule of law has become a mantra that is being selectively used in the country to suit particular situations or circumstances, depending on what is at stake or the matrix of political interests.

Unlike the preceding administration headed by a President with a military background, in May, 2007, when Yar'Adua, a man with full civilian antecedents was sworn in, many Nigerians naturally thought that, a watershed had been reached in Nigerian political experiment. This is more so when Yar'Adua in his Seven Point Agenda, among other things, committed himself to the observance of the rule of law. Since the agenda flowed from his electoral campaign promises as the presidential candidate of the People's Democratic Party (PDP) some have criticised it as a mere vote catching device. But when in his inaugural address Yar'Adua reiterated his commitment to the pursuit of the agenda, Nigerians began to take him seriously. In articulating his Seven-Point Agenda, one of the special areas that his administration promised to focus on, was the observance of the rule of law. It is not surprising that Yar'Adua places rule of law as a priority of his administration, given the eight years of executive recklessness under former President Olusegun Obasanjo. Since the major actions taken under late President Yar'Adua fell under contemporary focus, we intend to take the whole gamut in detail in the next unit.

Self-Assessment Exercise (SAE) 3.5

Discuss how a democratic government could enhance the respect for the principles of Rule of Law.

4.0 SUMMARY

This Unit is divided into five sections. In the first section, we examined the concept of rule of law and its basic principles. Section (2) discussed the relationship between rule of law and democracy. In section three, we analysed the limitations to rule of law in practice. Section (4) also examined the observance of rule of law under past military administrations in Nigeria while in section five we compared the rule of law under previous civilian governments in Nigeria against the background of the knowledge gained in section four.

5.0 CONCLUSION

Democratic governance is based on the will of the people and is the form of governance best suited to allowing all people to live in dignity and freedom. This is why the Millennium Declaration in 2000 undertook to promote democracy and rule of law, which *are sine qua non* to good governance worldwide. Democracy requires a "rule of law" framework to thrive and to deliver its dividends to the citizens. It is only those governments that guarantee human rights, a major component of the rule of law that can create the basic conditions in which individuals can pursue their own personal development as they choose.

6.0 TUTOR-MARKED ASSINGMENTS (TMAs)

1. Explain the major postulates of A. V. Dicey in his treatment of the concept of rule of law

2. Justify the saying that the operation of Rule of law in any country is not without some limitations.

3. Examine how the concept of rule of law could guarantee against the violation of human rights.

MODULE: 3

UNIT 4: EVALUATION OF THE RULE OF LAW IN NIGERIA

1.0 INTRODUCTION

After discussing the concept and principle of rule of law it is also necessary to carry out its evaluation. This will enable us know the extent to which the activities of the Nigerian government is keeping with the requirements of rule of law. This unit will therefore focus on specific issues such as the electoral process and democratization, human rights and good governance that we consider to be germane and relevant to the evaluation of rule of law in contemporary Nigeria.

2.0 OBJECTIVES

At the end of this unit you are expected, using Nigeria as a case study to:

1. Possess a practical understanding of the application of the concept of rule of law in the country
2. Know how a correct application of rule of law can be employed to promote democracy and good governance.

3. Appreciate that without a free press, a vigilant citizenry and an independent judiciary government alone cannot guarantee strict adherence to rule of law.

3.0 MAIN CONTENT

The evaluation of the rule of law in contemporary Nigeria in this unit will focus more on the Yar'Adua/Jonathan's administration. The government has been in office in the last eight years. This period will most likely fits into a framework for contemporary evaluation. But in order to do a thorough evaluation we may have to dig into the preceding Olusegun Obasanjo's administration (1999-2007). This evaluation or assessment will now be carried out under some headings, which hopefully will cover the major areas relevant to the rule of law in Nigeria.

3.1 Principle of Separation of Powers

On May 29, 2007, in his inaugural address Yar'Adua declared: "as a nation one of our greatest challenges has been the evolvement of the culture of disrespect of the rule of law, corruption, endemic crime, violence, infrastructure deficit" (The Guardian May 30, 2007: page 1). He therefore promised to address the drift. President Yar'Adua started by demonstrating respect for the principle of separation of powers. Unlike the previous government that interfered in the selection of the leadership of both houses of the National Assembly, which created the abnormality of three Senate Presidents in four years Yar'Adua ignored the temptations to dabble into the internal politics of the legislatives arm of government. No one could sanely accuse late President Yar'Adua of interference during former Speaker Ette's travails, or claim to have seen his hands in the emergence of her successor, Speaker Dimeji Bankole. By keeping this distance, the President was able to demonstrate his commitment to the preservation of the integrity of the hallowed chambers. Yar'Adual also distanced himself from the probe panels instituted by the National Assembly to look into the allegations of financial wrong doings in Power Holding Company of Nigeria (PHCN), the Nigerian National Petroleum Corporation

(NNPC), and in the performance of the oversight functions by the legislature at the Federal level of governance.

Self-Assessment Exercise (SAE) 3.1

Discuss how separation of powers promotes the Rule of Law.

3.2 Electoral Reforms

It is also significant that on assumption of office Yar'Adua recognised the flawed nature of the election that brought him into office. He therefore promised to set up a panel to review the electoral laws in the country. On August 28, 2007, the late President Yar'Adua announced the setting up of electoral reform panel headed by the former Chief Justice of Nigeria, Muhammed Uwais. The Uwais' committee made far-reaching recommendations to the government, especially in the area of granting more autonomy to the Independent National Electoral Commission (TELL, January, 26 2009: page 19-23).

The President later inaugurated a three man panel headed by the then Justice Minister, Chief Aondonka. The Aondoaka's panel tampered heavily with the recommendations of the Electoral Reform Committee (ERC). For example, it submitted that the appointment of Chairman of the National Electoral Commission (INEC) should not be made by the President (Vanguard December 12, 2008: 19). The government in its white paper claimed that the doctrine of separation of powers would be violated if the Uwais panel's recommendation on the appointment of the Chairman of INEC was upheld. The government's argument is that the involvement of the National Judicial Commission in the appointment of INEC chairman was contrary to the principle of Separation of Powers.

Self-Assessment Exercise (SAE) 3.2

Assess the importance of electoral reforms in ensuring free and fair elections in Nigeria.

3.3Anti-Corruption Crusade

The first major and bold step taken by President Yar'Adua on assumption of office was the public declaration of his assets. He also directed his Vice, Goodluck Jonathan to do so. This is commendable when compared to the standard practice of his predecessors to make such declarations secretly to the Code of Conduct Bureau, outside of public glare or scrutiny. In his anti-corruption drive, late President Yar'Adual also called for the removal of the immunity clause from the constitution; a provision, which he believed was shielding corrupt public officials from prompt prosecution and which may make them escape trial on the plea of statute barrel. He therefore specifically requested the National Assembly to expunge the clause from the constitution in order to remove the shield covering the top office holders from prosecution for any act of corruption while in office. He equally launched an initiative called The Anti-Corruption Revolution (ANCOR).

The Economic and Financial Crimes Commission (EFCC) was established by the Obasanjo's administration, and under Nuhu Ribadu the commission proved to be an effective anti-corruption watch dog. This was shown in the courageous manner the agency went about the crusade. Yet under Obasanjo there were allegations that the EFCC was selective in prosecuting alleged corrupt public officials. Indeed, Ribadu was accused of turning the EFCC into a political tool in the hands of Obasanjo to persecute his perceived political enemies. For instance, concerns were expressed under Obasanjo why the EFCC left no stone unturned to get a former Police Inspector General, Tafa Balogun prosecuted and convicted, while Olabode George was not even invited for interrogation by the commission.

It could be argued that the replacement of Ribadu by Farida Waziri was an attempt by Yar'Adua to hearken to public sentiments against the double standards allegedly displayed by the EFCC during the Obasanjo era. It is, however, reassuring that the anti-graft agency has succeeded in getting the court to convict Chief Olabode George. Even, with Farida Waziri in the EFCC again, there is the view that the commission has not gone the whole hog since it appeared it was preoccupied with a

few low profile cases. These include the detention of Mobitel boss over ₦243m deal with the National Communications Commission (NCC), and National Examinations Commission(NECO) officials over ₦5billion scam as reported in the Punch of June 26 and 28 2009:page 9. Under Yar'Adua's Presidency, we have also seen high profile arrests and arraignment of ex- Governors such as Orji Kalu, Saminu Turaki, Jolly Nyame, Chimaroke Nnamani and Joshuau Dariye now that their immunity had lapsed. Although some of these former public officials have been charged to courts, but nothing has happened with the prosecution of their cases long after they were released on bail. A few of them are still sitting as distinguished Senators of the Federal Republic of Nigeria in spite of the corruption charges against them. One hopes the EFCC will see these cases to their logical end including those of former bank chiefs who had been accused of causing terminal distress in the banks they presided over.

Self-Assessment Exercise (SAE) 3.3

Examine the effect of corruption on the public sector and good governance.

3.4 Independence of the Judiciary

The independence of the judiciary is a necessary condition for the preservation of the rule of law. Under President Obasanjo, judicial pronouncements were selectively obeyed. Indeed, nobody was sure of what would happen to court decisions or judgments, until the Justice Minister Chief Bayo Ojo made a declaration whether or not to enforce it. Consequently, more often than not, in those cases in which the interests of the PDP were not favoured, the rule was to instruct the police not to enforce court judgments. However, under Yar'Adua, the government distanced itself from judicial proceedings, thereby upholding the independence of the judiciary. This was why it was easier for the candidates of the Action Congress in Edo state, and Labour party in Ondo state to be inaugurated into their offices as Governors without any delay when the Courts invalidated the elections of their

predecessors. This, indeed, is a victory for rule of law under Yar'Adua, rather than rule of men as it was under Obasanjo.

Self-Assessment Exercise (SAE) 3.4

Discuss the role of the judiciary in promoting the Rule of Law in your country.

3.5 Observance of Human Rights

A democratic government is consistent with respect for human rights. Under Yar'Adua alleged corrupt officials were promptly granted bails by the courts, even though there were complaints of how lawyers employed various forms of technicalities or frivolous reasons, to prolong trials thereby delaying judgments. With the exception of the military action against the Niger-Delta militants, where there were unavoidable civilian displacements or casualties, there is no evidence of deliberate government policy to muzzle human rights under Yar'Adua presidency. However, the other side of the argument is that where elections are rigged and the will of the electorate is not respected, we cannot strictly speaking; talk of a regime of sanctity of human rights or liberty.

At the initial stage, the Yar'Adua's government res ponded to the insurgency in the Niger Delta with military force. The action raised the fears about possibilities of human rights abuse. While one recognises the

security and strategic imperative, which then compelled the federal government to resort to the military option, the Joint Task Force might not be circumspect or discriminate enough in its military offensive. This no doubt led to avoidable loss of innocent civilians. These circumstances led to the idea of amnesty to the militants in the Niger Delta. In a newspaper

editorial comment (The Punch, June 21, 2009: p.16), welcomed the idea of

amnesty to those militants who have foresworn violence, while those who have

turned criminality into a virtue under the guise of fighting for justice should be arrested and ‘be made to face prosecution in a law court’. This is 147

the only way of meeting one of the requirements of the rule of law, which presumes an accused innocent until proven guilty by a court of law**. Self-Assessment Exercise (SAE) 3.5**

Assess the significance of human rights as a major component of the rule of law in Nigeria

3.6 Press Freedom

One of the requirements for the rule of law is freedom of the press. The media is severally regarded as the fourth estate of the realm, the other estates, being the Executive, Legislature and the Judiciary. The press has the responsibility to serve as the watchdog of the three arms of government, in order to ensure accountability, transparency, probity and integrity. To enable the media perform this role better, in additional to the provision for freedom of expression enshrined in the 1999constitution, the return to civil rule in 1999 also witnessed demands for the enactment of the freedom of information act. The objective was to make access to official information easier, and discourage the climate of secrecy, which usually surrounded officialdom; which in turn presently makes independent investigations by media men in Nigeria difficult.

While pressures for the enactment of the freedom of information act were on, the Nigerian press under Obasanjo still suffered intimidations and harassments especially from overzealous security officials. Wale Sadeeq (2008:256-259), chronicled several instances of intimidations of media men. Worthy of mention is the case of African Independent Television (AIT) whose buildings in Abuja were demolished by the FCT authorities ostensibly for contravening the city's master plan; but which many knew was to punish the organization for its role in scuttling the third term agenda
of President Obasanjo. Under President Yar'Adua, the atmosphere seems to have improved, except the isolated cases when the Channels Television

Lagos was shut down and security agents questioned the Director General of the News Agency of Nigeria over reports about the President's ill-health, which then was an open secret, and publicly confirmed by the President himself.

Self-Assessment Exercise (SAE) 3.6

Comment on the performance of the mass media in Nigeria as the Fourth Estate of the realm.

3.7Amendments of the 1999 Constitution

Attempts to amend the 1999 constitution began under former President Obasanjo. However, that effort failed along with the aborted third term bid, which was only one item in the proposed amendment package. The ascension of Yar'Adua to the presidency has also witnessed a re-newed attempt by the National Assembly to resume the exercise. But the process was initially deadlocked due to disagreements between the two Houses of the National Assembly over the leadership of a Joint Committee. This development is clearly a setback for Yar'Adua's rul e of law programme. As the ground norm, or organic law of the state, a suitable constitution is a bed rock upon which rule of law can thrive. Beyond the over flogged fact that the 1999 constitution was imposed by the military, it obviously contains many flaws, especially those inadequacies that were revealed after more than a decade of putting the document into practice. For example the issues of fiscal federalism, or the derivation principle of revenue allocation, electoral laws, immunity clauses, are among other provisions of the constitution, begging for urgent amendments.

With the PDP having a comfortable majority in the two chambers of the National Assembly, as well as controlling more than two thirds of the states in the federation, one would naturally expect the ruling party to push his party members, to act swiftly, without further delays in (re)commencing the

process of constitutional amendments. The delay that was experienced in pushing through the exercise, gave vent to the view made by Chief Ume Ezeoke, former Chairman of the All Nigerian People's Party (ANPP), that the present political leadership in the country is loath and apprehensive of any constitutional review or electoral reform because as the major beneficiaries of the unfair system, they appear not interested in any move that may likely endanger their vested interests (The Guardian, July 1, 2009 p.8).

Self-Assessment Exercise (SAE) 3.7

Explain the relationship between the constitution and the observance of the Rule of Law in any country.

4.0 SUMMARY

In this unit, we have carried out an evaluation of rule of law in Nigeria by employing some indices as benchmarks. The evaluation covered issues such as separation of powers, human rights, electoral reforms and independence of the judiciary, among others. In summary, it was noted in the unit that in spite of the verbal commitment of the government to the contrary, there is yet to be strict compliance to the tenets of rule of law in the country.

5.0 CONCLUSION

It is obvious from the evaluation done in this unit that without the observance of the rule of law, a state cannot be said to be democratic. In Nigeria, the culture of leadership authoritarianism, especially under past military regimes, has been inimical to the observance of rule of law. Added to this is the growing culture of impunity (guilt without consequence) in many areas, especially by those who commit electoral offences and were not brought to justice by the appropriate authorities. In the final analysis without respect for rule of law, the long sought after democratic

sustainability, political stability and economic development in the country would remain a pipe dream.

MODULE 4
UNIT 1: PRESIDENTIAL SYSTEM OF GOVERNMENT

1.0 INTRODUCTION

The presidential system is one of the popular models of government in operation in many countries, developed and developing, in the world today. This unit takes a look at this system of government by first defining it and identifying its major characteristics. It also examines its advantages and disadvantages as well as its practice in specific countries such as the United States and Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Define the presidential system of government including its basic features
2. Identify the benefits as well as the danger that can accrue to a country where the system of government is in practice
3. Use the examples of some countries that will be cited in the unit to understand the practical application of this model of government.

3.0 MAIN CONTENT

3.1 The Meaning of Presidential System of Government

The institution of a single man and non-parliamentary executive chiefly characterizes the presidential system of government. The same person who holds the title of head of state is also head of government. The real political or executive power is combined with the ceremonial powers and are both exercised by a single man who is also addressed as the Commander in Chief of the armed forces. The executive headed by him is the government and it is headed by the president who is also the head of the executive. The president is normally elected directly through popular votes or, indirectly via the collegiate system, otherwise known as the Electoral College and he is directly accountable to the electorate. The election to the office of the president is independent of the election to the legislature. The whole country constitutes a single constituency to the president. On assumption of office the president is seen as the symbol of national unity, a magnet of loyalty, a centre of ceremony and chief administrator for the nation.

Agarwal et al (1994) define the presidential system as that type of government in which the three organs of government, that is the legislature, the executive and the judiciary are separated and co-ordinate in power, each of them acting independently within its own sphere. The holder of the office of president is often called executive president, because he is solely responsible for the implementation of legislative decisions. Examples of countries in the world that practice this system of government are U.S.A, Spain, France, and Nigeria. The tenure office of the president is fixed; he stays in office for a specific tenure and he can be re-elected for a second term. The number of years a president stays in office depends on the constitution of the country concerned. In Nigeria the fixed tenure for any president is four years.

Unlike the Prime Minister who is first among equals in a parliamentary system the President in a presidential system of government does not share his power with any other person. While commenting on the American president and his cabinet, Dennis Brogan (1966:195) said: “There is in American theor y and practice no question of *primus inters pares.* The famous story of Lincoln consulting his cabinet and announcing

'Noes seven, Ayes one, the ayes have it' expresses perfectly the spirit of the American Constitution"

3.1.1 Functions of the President in a Presidential System of government i)

The Executive president is both head of state and head of government.

He has the power to sign a bill into law. He can however refuse signing a bill if he is sufficiently convinced that the content of the bill does not conform to his programmes or if it contain some anomalies, until the adjustments are made to make the bill conform to the president's fancies.

ii) The President addresses the joint session of the National Assembly in Nigeria, for example, or what is called the annual State of the Union Address in the United States. The President prepares the annual budget or supplementary estimates for the consideration and approval of the Legislature, before any spending can be constitutionally made from the Federation Account or the Consolidated Revenue Fund.

iii) The President is the chief security officer of the whole country, and in exercise of this power he sees to the maintenance of law and order in the country. The President he is also the commander-in-chief of the armed forces, which confers on the occupant of that office the power to declare war to defend the independence, sovereignty and territorial integrity of his country.

Self-Assessment Exercise (SAE) 3.1

Analyse the major difference between the functions of a President as Head of State and Head of government.

3.2 Features of Presidential System of Government

The president exercises veto power Under the Presidential system of government, the President who has the whole country as his constituency is elected separately for a fixed term of four years, and separately from the Congress. The President is the head of state, head of government and commander-in-chief of the armed forces. But in some respects despite having the whole country has his constituency, the President in exercising his

major functions of legislations, appointments; treaty making and declaration of war shares his power with the Congress.

i) Combination of two offices in one The combination of the office of head of state and head of government makes for quick and prompt decisions, especially on rare occasions when delays or vacillations may be dangerous for the corporate existence of a nation. To facilitate this, the American presidential system, for instance, allows the president the power to issue executive orders without recourse to the congress, while the Nigerian system also permits a president to take steps in exceptional circumstances, before seeking the approval of the National Assembly. This was in line with the view of the Constitution Drafting Committee, which had recommended in its report that:

> The single executive has the merit of unity, energy and dispatch…This is not, of course to deny the virtue of collective discussion and consultation…Yet it is essential to effective leade rship in government that there should be a single individual in the capacity of a Chief Executive who can decide and act promptly when despatch is demanded and who can impose his will when differences of opinion among cabinet members threatened to paralyse government.

ii) Presidential discretion in Appointments: The President also has a free hand in appointing his ministers and other government appointees. It is possible for ministers to be chosen from outside the president's party. This is due to the insulation of the president from Party Politics under the presidential system of government.

iii) A single countrywide constituency: The whole country constitutes a single constituency for a president in a presidential system of government

iv) Separation of Powers and Checks and Balances: The presidential system of government is anchored on the twin mechanisms of separation of power and checks and balances. This is not the case in the parliamentary system where power what operate is a fusion of power among the three organs of government

v) Fixed Tenure of Office The President under the presidential system has a fixed tenure in office, usually a four-year period before another election is due, when he can seek for a re-election for another term in office. In Nigeria and the United States, no

president can serve in office for more than two terms. The late president Franklin Roosevelt of U.S. however had a singular distinction to be elected into the office of president for more than two terms, a situation which arose partly because of the contingency of the war situation and his immense popularity. But this is no longer possible since the amendment of U.S. constitution.

vi) Veto Power there is adoption of veto power by the president in the presidential system of government, the president is constitutionally empowered to refuse to assent any bill passed by the legislature that he considers to be against public interest, but it isn't a feature in the parliamentary system of government.

x) Primacy is accorded to the Constitution

The constitution is the supreme law in the presidential system. This is unlike most parliamentary system where supremacy lies with the parliament.

Self-Assessment Exercise 3.2

Discuss major features of the American Presidential system.

3.3 Advantages and Disadvantages of Presidential System of Government

3.3.1Advantages

i) Quick and decisiveness in Decision-making

The presidential system of government makes for decisive actions because the president knows that 'the buck stops on his desk', a phrase p opularised by the late Harry Truman, when he decided to use nuclear weapons against two Japanese cities in order to bring about a decisive end to World War II. In America and Nigeria, the constitution did not even make it mandatory for the president to call a meeting of the executive council before he can take action on any issue. The president is at liberty to either consult his ministers or any of them, or refuse to seek their opinion in taking decisions. The ministers or any other functionaries are mere advisers to the president and it is not binding on the president to go along with the council of ministers, unlike the case under the parliamentary where the prime minister is always at pains to secure the support of the cabinet, and unanimity of opinions among its members. This promptness in

decision-making therefore makes the response of government to issues, especially in situations where any delay in taking action may be dangerous.

ii) Presidential discretion in Appointments

One major advantage of the presidential system of government is that the President has a free hand in appointing his ministers and other government appointees. Ministers could be chosen from outside the president's party, a situation that confers high degree of latitude on the president to select the best materials from any part of the country. Since the bulk stops at his desk, the president can easily replace or fire any of his appointees because they are directly responsible to him.

iii) A single countrywide constituency

The fact that the electorate popularly elects the president makes the whole country a single constituency for him, and as such, the party does not have an overbearing control over him, beyond offering him advice at party caucuses. He rather than his party or his appointees bear singular responsibilities for his actions and inactions. This constitutes a consistent source of pressure on him to perform since he cannot shift blame to any other person.

iv) Merits of Separation of Powers and Checks and Balances

The mechanism of separation of power enhances the effective performance of each arm of government in its functions while checks and balances also ensures that a president who by nature is dictatorial can be brought under constitutional checks. The combination of the two devises will obviously improve the performance of government as whole and its capacity for optimal service delivery.

v) Fixed Tenure of Office

The fixed tenure in office enjoyed by a president under the presidential system makes for the stability of the government and the continuity of policies. A stable government also allows for both medium and long term planning, rather than the instability that characterises a parliamentary system of government. A new general election can be called in a parliamentary system any time a vote of no confidence is passed on the government

vi) Individual Ministerial Responsibility

Unlike the parliamentary system, which allows a non-performing minister to shelter under the concept of collective responsibility, the presidential system makes it easier for an ineffective minister to be identified and singled out for blame or even dismissal. His dismissal will not affect other ministers or even, in the extreme make a government to collapse.

vii) Insulation from Party Politics

The president is often described to be above party politics. This therefore offers him unlike the Prime Minister in a parliamentary system who is enmeshed in party politics to view every issue on its merits and not solely, and sometimes unwisely, according to party dictates. This has often been the case in the United States when the two parties are able to rise above the traditional party divisions in what is normally called a bi-partisan approach to national issues. Many past U.S Presidents and congressmen have been able to view major issues like during the Vietnamese War, the Persian Gulf War and the September 11, 2001 terrorist attack outside the prism of political party affiliations.

3.3.2 Disadvantages of the Presidential System of Government

i) Prone to Dictatorship: The presidential system is prone to dictatorship or abuse of office, which is dangerous to the democratic process. This is a result of enormous power that is concentrated in the office of the president. Presidentialism focuses too much on the personality of the president and his capacity; and when that individual is undermined the office is undermine and the system may even be threatened. For instance it took a long time before the presidency in the United States recovered from the shock that gripped the office due to the Watergate Scandal, which occurred due to one moment, though grave act of indiscretion by President Richard Nixon. The disposition of president to be autocratic can also be attributed to the cumbersome process that is required before a sitting president can be impeached. President Obasanjo's tenure in office can best be described as a chronicle of alleged constitutional breaches, yet all attempts to remove him from office through impeachment failed.

ii) Friction among Government Organs: Separation of powers can cause delays in the execution of government programmes, especially in situations where executive-legislative relations are not properly managed. In less matured democracies of the developing world, this problem is more acute when different political parties are in control of the executive and the legislature. A water tight separation of power often inhibits the smooth running of government, especially if attempt by one organ to moderate the activities of the other through the mechanism of checks and balances is being resisted

iii) Lack of flexibility in Tenure of Office: The operation of the presidential system has been criticised for being too rigid and not amenable to changing circumstances. For example in the United States during World War II all the scheduled elections under the stipulated electoral calendar were held since the system did not allow for any flexibility in form of postponement. What only ensured stability of the system and continuity of U.S. 'war policy was the popularity of President Franklin Delano Roosevelt, who was re-elected twice during the World War II. However, during the same period in Britain the tenure of the government that was held together under a war coalition structure was easily extended. Such flexibility is unknown to the presidential system in the United States or Nigerian and could not be contemplated without a prior constitutional amendment. Nigeria is presently (October 2010) embroiled in a debate on whether the Independent National Electoral Commission can conduct credible General Elections in January 2001, in view of the time constraints imposed on it by the amended 1999 constitution and the newly enacted Electoral Law.

iv) Very Expensive to Operate: Another disadvantage of the Presidential system is that it is very expensive to run. The parliamentary system is considered to be more cost effective since it is from the elected members of the parliament that the Prime minister and other ministers, who constitute the nation's cabinet, are appointed. This arrangement is economically more efficient than that of the presidential system, which requires elected members of the legislature to resign before they can be appointed as ministers. The system also put a lot of public funds such as security vote and

contingency fund, which are not subject to legislative scrutiny or public audit at the disposal of the president. This presidential spending latitude creates opportunity for lack of fiscal discipline, or even corruption of all forms.

v) Absence of Party Discipline: Unlike the parliamentary system where party discipline is very strong and which fuses the cabinet and the parliament into one like a Siamese twin which must swim and sink together, this is not the case in a the presidential model. The fluid party under the presidential system structure may make the relationship between the executive and the legislature prone to disagreements and less easy to manage; and thus hamper the operation of the business of government.

vi) The process of Lobbying can encourage Corruption: Although lobbying, if decently applied, has become an acceptable means by which pressure groups influence public policies; yet it is also open to abuse or misuse by a more than determined chief executive who is determined to have his ways at all costs. This was very evident during the early days of the fourth Republic in Nigeria when 'Ghana Must Go' bags allegedly funneled from the presidency and meant to bribe members of the National Assembly were displayed publicly for everyone to see.

Self-Assessment Exercise 3.3

Enumerate some advantages and drawbacks of presidential system of government

3.4. Applications of the Presidential System of Government

The Presidential system of government is in practice or operation in many countries. The countries include the United States, a country that is unarguably the model for that system of government. Indeed Nigeria, with minor modifications, adopted the American type presidential system of government in 1979.The United States' constitution under Article II provided for the establishment of the office of a strong president. As pointed out by Alexander Hamilton, a popular delegate to the 1787 Constitutional Convention, Article II was aimed towards "energy in the Executive". The constitution did so in an effort to overcome the natural stalemate that was built into

the bicameral legislature as well as into the separation of powers among the three organs of government.

The President of the United States exercises Executive powers as the Head of State; Head of government and Commander-in-Chief of the Armed forces. The arrangement almost equally applies to Nigeria. One major difference is that the Vice President in the United States is also the President of the Senate, a position he occupies by the fact of his being the incumbent Vice President. He seldom attends the sittings of the upper house except on the rare occasion when he is expected to use his casting vote to break a tie in voting in the Senate. His Nigerian counterpart is usually first and foremost an elected member of the Senate before he is elected from among his colleagues as the presiding officer of the Senate.

Self-Assessment Exercise (SAE) 3.4

List factors responsible for success of presidential system

4.0 SUMMARY

In this unit we began with the treatment of the presidential system of government by defining it and stating its basic features. We also discussed the advantages and the advantages of this system of government. We finally used the United States and Nigeria as case studies to illustrate the practice of the presidential system of government.

5.0 CONCLUSION

The American experience of over two hundred years has shown that the presidential system of government can be a success story. But the Nigerian experience since 1979 when the system was first adopted does not present a cheery or similar story. For this reason there has been clamour for Nigeria to return to the parliamentary system of government which collapsed fatally in 1966. In spite of its many advantages it is claimed by the opponents of the model that the presidential system of government is too expensive to maintain, especially by less developed countries and that it cannot readily guarantee a responsive, or provide responsible government.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Identify the specific features of presidential system that could lead to dictatorship.

2. Explain how the doctrine of checks and balancesguides the operations of the presidential system from the excesses of an overbearing president

3. Enumerate reasons you can recommend presidential system as a system of government for your country

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MODULE 4

UNIT 2: THE PARLIAMENTARY SYSTEM OF GOVERNMENT

1.0 INTRODUCTION

This unit deals with the parliamentary system of government and discusses its major characteristics and features. It also examines the dual nature of its executive and the balancing role it was meant to serve. The Unit then considers the merits and demerits of the parliamentary system of government.

2.0 OBJECTIVES

At the end of this unit, you should be able to

1. Define and explain the basic features of the parliamentary system of government
2. Understand the primacy of the parliament as well as role of the cabinet as the clearing house, jointly working to ensure the success of the parliamentary system.
3. Know the advantages and the advantages of the Parliamentary system of government.
4. Use Britain as one model to demonstrate the success of the parliamentary system of government

3.0 MAIN CONTENT

3.1 The Meaning and Structure of Parliamentary System of Government

3.1.1 Essentials of Parliamentary System of Government

Parliamentary system of government is the system of government in which the office of the head of government is different from head of government. The head of government performs the real and executive function. In Britain, a good example of a country operating the parliamentary system of government, the prime minister, who is the head of government, performs the substantive executive functions. The prime minister is usually appointed by the head of state from the party that controls majority seats in the legislature. The head of state, like the Queen in Great Britain performs ceremonial duties like welcoming foreign dignitaries, presiding over important national functions or ceremonies, signing bills into law in the parliament and addressing the parliament at the beginning and the end of parliamentary life. The position of head of state in Britain is heredity.

> In Britain the parliament is made up of the Queen, the House of Lords and the House of Commons. In a parliamentary system of government the Prime minister occupies a pivotal and key position; he appoints ministers from the elected members of House of Commons, and they are all answerable and accountable to the parliament for the discharge their functions. The prime minister is the chairman of the cabinet and he has primary responsibility for the execution of policies.

3.1.2 Parliamentary System as a Responsible Government

A Parliamentary system of government is otherwise referred to as a responsible government. This term can be applied to the British system in three ways viz: First, a major characteristic feature of the British system is that Governments act in a responsible manner; in the sense that they do not abuse the wide legal powers that they possess as a result of the various features of the constitution, particularly its unwritten part which concentrates considerable powers in the Government. Thus, in this sense a responsible government is a trustworthy government. Second, a

parliamentary government is responsive to public opinion, and acts in accordance with what it judges to be the wishes of the majority of the people.

Here, there is an overlap between two meanings, for it is assumed today that in order for a government to be regarded as trustworthy it must be responsive to public opinion. Third, a very important feature of a parliamentary system is that government is accountable to parliament. This is based on (a) the principle that ministers are drawn from parliament and (b) that government has to have the support of the majority of members of House of Commons in order to survive. Two doctrines stem from this third meaning (1) Collective Government Responsibility and (2) Individual Ministerial Responsibility to Parliament.

Collective Responsibility

This means that all members of the government are collectively responsible for the successes/failures of the government and all ministers, not just departmental ministers concerned, must collectively share moral responsibility for its policies. Implicit in the doctrine is the notion that all ministers are bound to support government decisions before the public, parliament and the party, and at the very least, must refrain from openly criticising government policy. This doctrine also implies that a minister who dislikes a particular government policy must reconcile his differences or resign from the government. Sometimes resignation comes immediately, as Mr. Christopher Mayhow did when he resigned over defence policy in 1966. Alternatively, the ministers may remain for a time in the cabinet hoping to convert its views as with Mr. Frank Cousins who was known to be hostile to the prices and incomes policy of the then Labour government long before he eventually resigned in 1966.

A similar lack of cabinet solidarity on a fundamental issue was revealed in 1974 when both Michael Foot (Secretary of State for Employment) and Eric Heffer (Minister of State for Industry) openly disagreed with the Labour Government's decision to supply arms to the then new anti-Communist regime in Chile. The maintenance of a united government front is an essential prerequisite for the

preservation of party discipline in the Commons, and to the answering of opposition and public criticism of government policy. In this respect collective responsibility also serves as a means of suppressing differences of opinion within the government itself. The doctrine applies to all ministers, from senior cabinet ministers to junior ministers.

Ministerial Responsibility

This related concept also has a number of meanings: In a legal sense it means that the ministers not the monarch, is responsible for a particular aspect of governmental activity, and in this sense it is the logical expression of the principle that the monarch exercise prerogatives only on the advice of ministers.

Self-Assessment Exercise 3.1

Mention major distinctions between *Collective Responsibility* and *Ministerial Responsibility*

3.2 Features of Parliamentary System of Government

3.2.1 It might be appropriate here to examine the differences between the presidential system, which we have discussed in the previous unit (Unit 1.) and the parliamentary (cabinet) system which we are examining presently. This will also help to bring out vividly the major characteristics of the parliamentary system of government. The two systems differ in a number of ways which we shall examine below.

i) DUAL EXECUTIVE

In the cabinet system of government, the head to state is different from the head of government; the Queen performs the ceremonial functions while the Prime Minister performs the executive functions (as it operates in Great Britain). However in the presidential system of government, the head of state is also the head of government, as it obtains in Nigeria presently where President Goodluck Jonathan combines both the ceremonial functions and the executive duties.

ii) FUSION OF POWERS

The theory of separation of power is not strictly observed in the cabinet system of government, since there is no separation of powers between the executive and legislature, the cabinet members are also members of the legislature; they both take part in drafting bills (The minister in Britain is also a member of the legislature which makes it possible for him to combine an executive and legislature functions), but in the presidential system of government, there is clear cut separation of powers, the president and the member of the executive are not member of the legislature and if any member of the executive wants to join the legislature, such a person would have to resign his position and contest election, and vice versa. In the cabinet system of government, the executive depends on the legislature for its existence since there is fusion of power but in the presidential system of government no organ of government depends on the other for its existence since they have distinct functions to carry out, and also acts as watch dogs over one another.

iii) TENURE NOT GUARRANTTEED

In the cabinet system of government the head of government Prime Minster will loose his position while the government he heads will resign when a vote of no confidence is passed against him in parliament. This implies that the Prime Minister can only remain in office for as long as his party still control majority of seats in parliament. This is unlike the presidential system of government where there is a stated tenure during which a president would remain in office, except if he willingly resigns or if he is removed from office through the rigorous process of impeachment (the stated tenure in Nigeria is four years).

iv) POWER OF ATTAINMENT

Another difference between these two systems of government is the power of attainment, which can throw up an elected member of the legislature into the position of a prime minister, on the strength of his ability to command the loyalty of his former colleagues. In Britain today, the Prime Minister, Mr. David Cameron initially an elected member of House of Commons on the ticket of the Conservative

Party before he rose to become the British prime minister. His party presently leads a coalition government with the Liberal Democratic Party while the Labour Party becomes the official opposition party. This is not the case in a presidential system of government where the president is elected through popular votes and the candidate from the party that has the highest number of votes and a nation wide spread becomes the president.

v) OFFICIAL OPOSITION

In the parliamentary system of government the opposition party is officially recognized, i.e. the party that is strongly recognized with the majority seats in the legislature forms the government while the other party constitutes the opposition. The leader of the opposition party forms the shadow cabinet and is ever ready to form a new government on the collapse of the ruling party. However in the presidential system of government no party is officially recognized as the opposition party in the legislature. Indeed members of the ruling or the president's party can form a cluster of opposition against their party's position or even combine with members of the opposition parties to defeat programmes sponsored by their party.

vi) PARLIAMENTARY SUPREMACY

In the parliamentary system of government, the constitution is not supreme, rather the primacy lies with the legislature, or the parliament as it is called in Britain. The legislature can re-write or edit the written parts of the constitution and also dissolve the cabinet at anytime. In Great Britain the Queen can dissolve the parliament when advised to do so by the Prime Minister. The situation is different in the president system government where the constitution is supreme since all the three organs of government derive their power from it. Here, the president has no power to dissolve the legislature.

vii) PARTY DISCIPLINE

In the parliamentary system of government there is existence of party discipline (adherence to party ideals and proposal) if the party discipline is weak the party in power would find it difficult to maintain a majority in the legislature and so some of

its policies may be defeated. It is also essential that ministers must come from the same party with the prime minister in the cabinet. However in the presidential system of government ministers may belong or may not belong to the same party with the president. This gives a president a free hand in appointing his ministers.

Self-Assessment Exercise 3.2

Analyse major characteristics of the parliamentary system of government

3.3.1 Applications of the Parliamentary System of Government

Britain is one country in the world that is foremost in its adoption and practice of the Parliamentary system of government. It is a system of dual executive in which there is separation between the head of state (the Queen) and the head of government (the Prime Minister). Under this system which is also referred to as cabinet government the parliament is the supreme legislative body in Britain. Nigeria also operated the parliamentary system of government in the First Republic, and like Britain its Parliament was bicameral (the Senate and House of Representatives, but unlike the British model, she operated a written constitution. Before Nigeria became a republic in 1963, the head of state was designated a Governor-General, then a titular head just like the Queen he represented. But after 1963 when Nigeria became a republic the post of head of state was renamed the president. The title of Prime Minister for the head of government was retained in 1963, as it was in 1960 when Nigeria became independent.

Nigeria however discarded the parliamentary system in 1979 after the return to democratic government, because the ills and consequent failure of the First Republic was partly blamed on the parliamentary system of government. In Britain the parliamentary system after centuries of its operation has remained an admirable success story. Since we have discussed extensively the British system under Unit 4 of Module 3 of POL 111 it will be superfluous to dwell at length on the British model of the parliamentary system here. But it will not be out of place to take a

closer look at the institution of the British parliament, and whether it is possible to reconcile the idea of its much vaunted supremacy with the concept of rule of law.

Self-Assessment Exercise 3.3

Explain how citizens of a country could enjoy the benefits of the Rule of Law under a system of parliamentary supremacy

3.4 Merits and Demerits of the Parliamentary System of Government

3.4.1Merits of the Parliamentary System of Government

i) The parliamentary system of government curbs autocracy and dictatorship in government. It is very difficult for the system to breed or produce dictators since the government is always conscious of the fact that if it does, it will incur the wrath of members of parliament which may lead to the passing of a vote of no confidence on it. The notion of party discipline which requires that both the government in power and members of parliament follow the laid down policies and programmes of the party as contained in its manifestoes usually ensure that neither the government nor the parliament crosses the line.

ii) Parliamentary system promotes dedication and efficiency in government. The ministers at party caucus must have thoroughly discussed proposals/bills before bringing them to the parliament for consideration. This ensures quick approval of policies and enacted of laws since members of the cabinet also sit in parliament where they see to their passage. In addition, in order to avoid criticisms and the possibility of vote of no confidence on his government, the Prime Minister is always conscious of putting in the best. This is done through regular check on the activities of his ministers. The efficiency of ministers is further open to closer scrutiny during Question Time. This is the period when members of parliament from ministers what has been done or left undone in their ministries, and seek to know why. The legislators can also use this period to offer suggestions on how ministers can improve on their performance.

iii) There is a lot of merit in the concept of collective responsibility and ministerial responsibility which is built on the principle that the cabinet should be united in all its

decisions. This makes the cabinet as a body and the ministers as individuals to be careful about their conduct in office because it may have far reaching implications on the stability and survival of the government. The principle of ministerial responsibility also discourages passing of bulk or shifting of blame by individual ministers. The parliamentary system is equally more democratic responsive to public opinion. This is because the cabinet is not responsible to the Prime Minister who appoints them, but to the parliament.

iv) The presence of an officially recognized opposition party in a parliamentary system of government makes the ruling party or the governing coalition to be conscious of its responsibilities to the electorate. For this reason the government is always alert to alternative views that may be canvassed by the opposition so as to know where to improve its performance. The role of the opposition party therefore is not only to constructively criticize the government as an effective watchdog, but also to see itself as the government in waiting or as an alternative government, that is ready to take over the government should the situation arises.

v) The fusion of power which ensures that cabinet members are also parliamentarians promotes mutual understanding between the legislative and the executive branches of government. The fact that members of the executive also sit in the legislature as law-makers ensures that process of decision making is faster. It does not require further elaboration to know that consensus on major issues can be easily reached since the cabinet usually operates as a committee of the parliament.

vi) The parliamentary system is less expensive to run because ministers are chosen from elected members of parliament. This is not the case under the presidential system of government where ministers are chosen from outside the parliament. Indeed, in a presidential system a serving member of the legislature parliament must first resign and vacate his seat in the house before he can be qualified to be appointed as minister. Thus, the additional money that will be required to hire more hands outside the legislature is thereby saved in a parliamentary system of government.

vii) In spite of changes of government at regular intervals the non-partisan but largely ceremonial and symbolic role of the monarch or head of state in a parliamentary system contributes to continuity and sustenance of state institutions. For example, in Britain because the Queen has been in office since 1953, she has remained the anchor of stability of the British institutions and values, despite changes in governments in the country in the past 53 years now.

3.4.2 Demerits of the Parliamentary System of Government

i) The best people may not be in government since the Prime Minister is restricted to appoint ministers into his cabinet from members of his party. This is not the case under the presidential system of government the executive president is popularly elected, and enjoys a high degree of flexibility and freedom in the choice of those who will serve him in the cabinet. It is even possible for non- card carrying party member to be appointed to serve in the cabinet and other key positions in government.

ii) Parliamentary system violates the principle of separation of powers and the expectations that liberty of the citizens and rule of law will be guaranteed. A major disadvantage of fusion of powers is that it may lead to needless bottleneck in the relationships among the organs of government and complexity in administration of government.

iii) There is also the danger of personality clash or conflict of interest between the head of state and head of government in a parliamentary system of government. It has been further argued that a division of power between the head of state and government is alien to African societies where political leaders are used to wielding enormous power. This type of conflict of interest manifested between Dr. Azikiwe, then President and Alhaji Tafawa Balewa, then Nigeria' Prime Minister of Nigeria in the First Republic when the two of them disagreed over the conduct and outcome of the December 30, 1964 federal elections. One of the reasons that made Nigeria decided in favour of the presidential system of government in 1979 was the fear of a possible repeat of the constitutional crisis, which enveloped the country in the aftermath of this disagreement between the two leaders. In September 2010, the Somalia Prime Minister, Omar

Abdirashid Ali Sharmarke resigned from office due to personal disagreement between him and president Sheik Sharif Ahmed. While defending his resignation, Sharmarke explained: "After seeing that the political turmoil between me and the president has caused security vulnerability, I have decided to resign to save the nation…" (The Guardian, 22nd September, 2010).

iv) Another disadvantage of the parliamentary system of government is that it can also throw up a person who is not countrywide popular or known as a Prime Minister. Unlike the presidential system, which requires the leader of government (president) to have a countrywide appeal before he can be elected, the requirements for the office of a Prime Minister are less stringent. Any elected member of House of Commons from a single member constituency who is believed to have the majority support of other members can become the leader of government in Britain. This was exploited in Nigeria during the First Republic when the leaders of the Northern People's Congress did not bother to campaign in the other regions because they were confident that votes from the Northern region alone were sufficient to earn them the prestigious post of Prime Minister.

Self-Assessment Exercise 3.4

Critically assess the parliamentary system of government.

4.0 SUMMARY

In this Unit, we have discussed the parliamentary system of government and identified its basic features. We also noted that the Parliament is the hub of the parliamentary system while the cabinet is its caucus where the operators of the system regularly meet to shape public policies. We identified the merits and demerits of this system of government and cited the example of Britain, despite its unwritten constitutional structure, as one country in which the culture of Westminster parliamentary system is fully developed and thriving.

5.0 CONCLUSION

The Parliamentary system of government is widely acclaimed as Britain's invention meant for export to the rest of the world. Its practice in Britain has been so successful

that countries outside the Commonwealth of Nations are craving to adopt it. Indeed Canada, despite its proximity to the United States and its readiness to always collaborate with the latter in other areas continues to retain its parliamentary system while its leaders regard it as near sacrosanct. Although the parliamentary system is not without its drawbacks, but when compared with the presidential model, on balance, it is seen by some as a preferable system of government.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Identify basic features that accounts for the success of parliamentary system of government

2. Explain the extent to which it is true that the parliamentary system provides for a more accountable and responsive government.

3. Compare and contrast the roles of the Prime Minister and the President under in a parliamentary system of government.

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MODULE 4
UNIT 3: UNITARY ADMINISTRATIVE SYSTEM

1.0 INTRODUCTION

This unit discusses, first, the meaning and characteristics of a unitary system of administration of government. It also uses the examples of some countries in the world to illustrate the application of unitarism. Lastly, the unit examines the advantages and disadvantages of the unitary system.

3.0 OBJECTIVES

At the end of this unit, you should be able to

1. Define the unitary system of government, in addition to knowing its major features.

2 Use the examples of countries practicing unitary government to have a deeper understanding of this form of government.

3 Explain the benefits as well as the weaknesses that are inherent in the practice of unitary form of government.

3.0 MAIN CONTENT

3.1Meaning of a Unitary System of Government

A government is regarded as unitary when the national or central government is supreme over other levels of government that might exist in a given state. Other levels of government referred to in the above definition are the local governments or units. The central government has full legal right to over-rule such Local governments. They are not only created by the center, they owe their existence to the center and are subordinate to the national Government. The principle that governs a unitary constitution is Unitarianism. The word 'Unitarianism' means the concentration of political power in the hands of one visible sovereign power; be it that of a parliament or a legitimate dictator. In short, a unitary constitution means that sovereignty is exercised from one source rather than from many sources. It is a unit centre of power, meaning that power emanates from one source only.

According to Chief Obafemi Awolowo (1966:23), the only thing which distinguishes a unitary from a federal constitution (government) is where the supreme legislative authority in the state resides" . He expatiates further:

> Whereas in the case of a federal constitution the supreme legislative authority is shared between the general or central government and the regional, provincial, or state governments, all of which are co-ordinate with and independent of one another in regard to the powers and functions expressly or by necessary implication vested in them by the constitution

We must note that the terms unitarism and federalism are contradictory and mutually exclusive. To put it differently, while there are different types of unitary or federal constitution, we cannot, strictly speaking have a constitution which is, at the same time, unitary and federal, The phrase quasi federal or quasi unitary is a hybrid, which merely seeks to derive the best from both ends, and is therefore unrealistic. Though a full discussion of the federal form of government in the next unit, but it will be of benefit to you here if we enrich this discourse by introducing what the late Chief Awolowo once popularised and described as the linguistic

principles. Although the first and fourth of these four principles are particularly relevant to our discussion on the unitary form of government, it will be more illuminating if mention the other two, as follows:

(a) If a country is unilingual and uni-national, the constitution must be unitary.

(b) If a country is unilingual or bilingual or multilingual, and also consists of communities which, over a period of years, have developed divergent nationalities, the constitution must be federal, and the constituent states must be organized on the dual basis of language and nationality.

(c) If a country is bilingual or multilingual, the constitution must be federal and the constituent states must be organized on a linguistic basis.

(d) Any experiment with a unitary constitution in a bilingual or multilingual or multinational country is bound to fail, in the long run

Self-Assessment Exercise 3.1

Explain unitary system as a political concept**.**

3.2 Characteristics of a Unitary System of Government

The following are the major characteristics or features of a unitary system of government:

(a) There is only one center of power from which authority flows to subordinate levels that are created by the centre.

(b) The central government not only has the power to dissolve the subordinate levels it has created, it can equally modify or reduce the powers given to them.

(c) The subordinate levels are created as agents of the center to administer the local areas on behalf of the centre and to also convey the wishes of the people in the local areas to the center where real power lies.

(d) A unitary government may either operate a unicameral or bicameral legislature. For example Ghana and Britain are unitary states, with the former operating a unicameral while the latter a bicameral legislature.

Self-Assessment Exercise (SAE) 3.2

List the main features of a unitary system of government

3.3 Applications of Unitary System of Government

Britain operates a unitary system of government. Under this arrangement, all governmental powers are concentrated at the central level. Any local level of government that exists are created and allocated powers by the central government. This is unlike the United States where the states as federating units derive their powers from the constituents, and are equal, exercising co-ordinate authority with the federal government in those powers allotted to them**.**

According to Chief Awolowo (1966:34), there are many more countries in the world operating the unitary system of government. One obvious reason for this preference for this form of government is that many states in the world are smaller and less heterogeneous. Awolowo cited the example of unitary states like Costa Rica, Cuba, Dominican Republic, Haiti, Jamaica and Trinidad and Tobago which together had a combined population of 28 million, compared with 234 million people in three federal states: U.S.A., Canada and Mexico.

Self-Assessment Exercise (SAE) 3.3

Explain why unitary system of government is more desirable by smaller states and less heterogeneity

3.4 Merits and Demerits of Unitary System of Government

3.4.1 Merits of Unitary System of Government

i) Since the logic and mechanism of a unitary government avoids the division of a country into autonomous regions or states, it can help to preserve and promote national unity. Unlike a federal system that promotes regionalism and tribalism, which further engender dual citizenship and double allegiance, one supreme central government under a unitary framework will put an end to all these divisive and centrifugal forces.

ii) In the unitary system there is there is the absence of duplication of centres powers as it is in the federal states. Since decisions on all-important issues are made at the centre it makes the costs of running the administration or of the government less expensive.

iii) Concentration of power rather than its dispersion ensures a strong government. This is because there is minimal diversity in a unitary state. In a unitary system of government due to much identical culture, economic and social composition of the people in the state/country there is usually the absence of friction, tension or rancour, that often characterise the federal system in the struggle for "unity in diversity."

iv) The principle ensures that even development is realized in a state that operates a unitary system of government.

v) There is uniformity of laws and administration of the government of a unitary state. This ensures that there is no overlapping or conflict of jurisdiction throughout the state. This makes the allegiance of the citizens' allegiance to the state to remain undivided. Unlike in the federal system of government where citizens owe allegiance both to the centre and the region to which they belong, such a situation that can breed separatist tendencies is avoided in a unitary state. In short, the unitary system does not stand divided.

vi) The unitary system of government is also credited with the advantage of pursing vigorous foreign and domestic policies. Since all powers are concentrated with the centre, clear cut foreign and home policies can be laid down and boldly followed. This is because the federal tendencies that may affect a state's foreign policy negatively are not there nor are there much ethnic factions, religions and social heterogeneity found in federal states.

3.4.2 Demerits of a Unitary System of Government

- In a unitary system of government, power is highly centralized and concentrated in one sovereign. This can lead to totalitarianism, oligarchy or even autocracy in the running of the affairs of the state. The unitary system as

a result of the point mentioned above often makes it difficult for the masses to take active part in civic affairs of their country.

- There is also no local initiative in a unitary system of government. This is because the little or residual power delegated to the local authorities can be taken away from them at the whims and caprices of the centre. In France, for example, 'the Minister of Interior presses the button and the prefects, the sub-prefects, the Mayors and the Deputy Mayors do the rest.'
- The central government is not always aware of local problems; it leaves the distant authorities with the determination of policies and the regulation of affairs, which in fact, may be of no concern to any, except the people of the particular localities affected.
- The unitary system can also easily collapse. Single central authority may easily collapse under stress from within and without. Multiplication of centres of power serves as a safeguard against such a danger.

Self-Assessment Exercise (SAE) 3.3

Enumerate the demerits of unitary system of government

4.0 SUMMARY

In this unit we began with the examination of unitary form of administrative system, by giving its definition, meaning and characteristics. We also observed that a unitary system is most suitable for smaller states with less diversities of population, and for this reason, it enjoys wider acceptance in today's world of mini, or even in certain cases, miniature states. Lastly, we discussed the advantages and disadvantages of a unitary system of government.

5.0 CONCLUSION

Unitary system of administration, like federalism, which we will discuss in the next unit, is very popular among states. Its major attraction is the simplicity of its structure and organization. It is also not open to contestation that may arise due to disagreement over sharing of powers because it provides for one level of authority

thereby removing the danger of dual allegiance. Yet, inspite of the aforementioned a unitary system of government is not applicable to the circumstances of every state.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Explain the major distinction between unitary and federal system of government.

2. Analyse the major factors that encourage a country to adopt a unitary system of government.

3. Explain a scenario where the local authorities are always constitutionally at the mercy of the central government.

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MODULE 4

UNIT 4: FEDERAL ADMINISTRATIVE SYSTEM

1.0 INTRODUCTION

Federalism is a very complex political system that requires tolerance, compromise and accommodation from its operators before it can succeed. This unit takes a closer look at the federal system by first defining it and stating its features. The unit also examines the factors that can predispose a country in the direction of federalism as a system of government, as well the different types of federal systems that are being practiced across the world. The unit finally discusses the merits and demerits of the federal system of government.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

1. Know the meaning and features of Federalism
2. Understand conditions necessary for federal structure in a country.
3. Identify forms of federal systems and reasons for different variants suitable for different countries.

3.0 MAIN CONTENT

3.1 Meaning and Definitions of Federalism

Federalism is a type of political system in which the powers of government are divided between self-governing parts and the national or central government. Each of these parts operates within its own jurisdiction or sphere as defined or specified in the constitution. Put differently, in a federation the distribution of powers between the inclusive government and the federating units are guaranteed by the constitution of the country. In the view of Adele Jinadu (1979:15), "Federalism, is usually viewed as a form of governmental and institutional structure, deliberately designed by political "architects", to cope with th e twin but difficult task of maintaining unity while also preserving diversity."

A.V. Dicey, also defines a federal state as "a poli tical contrivance intended to reconcile national unity and power in the maintenance of state rights." Keneth Wheare (1963), a foremost authority on federalism defined it as a constitutional arrangement in which "neither the central nor regio nal governments are subordinate to each other, but rather the two levels of government are coordinate and equal." Wheare also set out conditions that can make a federal constitution/system succeed. According to him the component units must be fairly equal in size and population so as to prevent one unit from dominating the other or a combination of two or more units, from dominating the entire federation. This definition is what Lateef Adegbite (1979:44) elaborated on when he wrote:

> A federal state essentially has a divided government: the central or general government which exercises power throughout the political territory, and the several constituent ones, variously termed regional, state or provincial governments, which exercises their respective powers over specified geographical areas of the political territory. The constitution demarcates the functions of the Central government on the one hand and those of the constituent governments on the other, in such a way that each tier of government is autonomous in its own sphere.

According to Ball and Guy Peters, a federal form of government is one in which political power is divided between the central or federal government and the constituent states or provinces that compose the federal union (Quoted in Mbah, 2007). Furthermore, in a federal system the constituent units have some rights of existence which empower them to perform certain functions which are guaranteed by a constitution. This means in effect that the powers being exercised by these component states are distributed along what is known in America as reserved or shared powers, or in Nigeria as Exclusive, Concurrent and Residual powers. Indeed, in most federations the constituent units often predated the central government. The United States of America (the oldest federation), Canada, Russia, and the Peoples Republic of China, India, Pakistan and Nigeria are good examples of federations. From the above examples of federal states we must note that a federation is either a union of autonomous states that have come together to become a larger political entity as in USA (Aggregative federation) or a federation where a large country is broken into smaller units, as it is the case in Nigeria(Dis-aggregative federation) (Ayoade, 1980:5-8).

We should also note that in a federation, two governments control the same group of people but with each level handling different political matters. The allocation of responsibilities to the component parts by the constitution, and respect of their competence in those areas is vital to the survival of federations. The reason for this is that most federations are often the result of a political compromise by which reluctant member-states were induced to come together in a larger union with a promise that their desire for autonomy in certain areas will be respected. This was the case with the United States when the original 13 states, after the collapse of the Confederal structure saw in a federal arrangement a more realistic structure that could make them cooperate in a union, without the federating units loosing their autonomy to handle matters that were of local concern, or specific to them.

Federalism can also be viewed either as a process or condition and that is why federations operate in a variety of different political contexts and is associated with

a variety of different political outcomes. In other words there is no distinctively federal pattern of relations between the national and regional level of government. This further implies that no two federations are structured alike since the nature of communities that come together to form a nation differ. This is why federal theories appear not clearly cut out, or sometimes confusing. Federal theories have produced about three models: Dual, Cooperative and Organic. Dual Federalism held sway in the 19th Century, co-operative federalism in the 20th Century and organic federalism in the late 20th Century.

From the above, it seems K.C. Wheare's view of federalism seems to have placed more emphasis on the institutional criteria in his definition, a position which other scholars have criticised as being too legalistic because it has neglected other cultural factors that help define some federal states. It is this legalistic oversimplification of the federal idea by Wheare that scholars like Carl Frederick sought to correct when he stated that "federalism is a process and not a d esign…Any particular design or pattern of competencies or jurisdictions is merely a phase, a short-run view of a continually evolving political reality". In this de finition, Frederick thus introduced the sociological perspective to his conceptualisation of federalism. Therefore, we can have a better understanding of federalism as a distinct political system of government if we expand our focus beyond the formal constitutional or institutional matters.

Self-Assessment Exercise 3.1

Explain Kenneth Wheare's views on federal system of government

3.2 Features of Federalism

Mclean (1996: 176), agrees with Frederick when he incorporated other political phenomena such as political cultures, party systems, the influence of bureaucrats, and external pressure into these notions of the distinctiveness of federalism and its commitment to decentralization. If we can borrow Livingston's terminology as culled from Adele Jinadu (1979:17), "federal instru mentalities can be found in

several forms of political systems, ranging from centralised to decentralized and also to a loose structure of supranational cooperation". Indeed the idea of inter-governmental relations, though not in any way unique to federal systems, however seems to assume a special place and more relevant to federalism. This is why Thomas Graves in (Ayoade, 1980:5), expressed a somewhat sweeping statement when he stated that "intergovernmental relation is synonymous with federalism".

Self-Assessment Exercise 3.2

Identify and discuss the major features of any federal state

3.3 Factors enhancing the choice of Federalism as System of Government

1. Historical Factor

The most fundamental reason why states decide to federate is historical. This reflects the fact of common association and similarity of political institutions that had existed between the federating units that made formerly independent states to agree at a point in their history to form a common union. This was the case with the United States of America after its war of independence with Britain in 1776 and the failure of the Articles of Confederation. It is similar with the Nigerian Federation after the historical factor of the amalgamation of the Northern and Southern protectorates in 1914, British colonial rule as well as the adoption of common political institutions by the North and South during this period eventually led to the adoption of the federal system in 1954.

2. Geographical Contiguity

The nearness of states to one another in geographical term is usually a major factor that can induce them to form a federation. It is inconceivable to have states widely separated by land or sea forming a federation. It can be plausibly argued that one of the reasons why Nigeria adopted a federal structure is because the various ethnic

groups in the country are geographically contiguous. The fact of this proximity among the different nationalities in Nigeria, a similar feature of other federal states such as the United States, the old Soviet Union and the present Russian federation, makes communication easier a major step in deciding to form a federation. On the other hand, the absence of this factor largely accounted for the disintegration in 1971 of the union between West and East Pakistan to form Pakistan after the Partition of India by the British in 1947. Bangladesh came about due to the physical separation of West and East Pakistan by a distance of about one thousand miles.

3. Ethnic and Cultural Diversities

Some states may decide to federate in recognition of the fact that their peoples are so diverse in culture, language and interests and for this reason, the unitary option may provide a ready answer for such social heterogeneity. For example, the Nigerian and Indian Unions were recognition that federalism is the most effective way of allaying the fears of these groups against one another in order to forge unity in diversity. Unity in diversity is achieved in federations because peoples with different cultural backgrounds are allowed to develop along the lines that interest them.

4. Economic and Administrative Advantages

The need to create large internal market and to pool human and material resources together can lead to the formation of union of states. This factor, which is similar to what economists call the drive for large economic of scale, has made the United States of America today to become a continental size country. The present over 9 million sq kilometer territory of USA came about due to accretion in size, or what federalists call aggregation. Indeed Louisiana, now a state in USA was purchased from France in 1803 while President Andrew Jackson forcefully acquired East Florida from Spain. The notion ‘the bigger the better’ syndrome also fits into the

economic calculations of the former colonial masters in working out the amalgamation policy for the north and south of Nigeria, which assisted them to utilise the available few British administrators in the most economic and efficient manner. Nigeria with a territory of 923,766 square km. and a population (as at 2010) of about 150 million has huge economic potentials and offers tremendous opportunities, all consequent to its large market.

5. Fear of Domination

Insecurity and fear of domination by external power or possible rebellion by a disaffected element (s) within a country can also encourage the formation of a federation. According to Eme Awa, 1976) in the Nigerian case it was lack of trust among the ethnic groups that led to the forging of the Nigerian federation, a political arrangement they saw as a more effective device that can safeguard and guarantee their separate local autonomy and independence.

6. Political Leadership

One of the strongest factors that tend to promote the establishment of a federal union is the quality of leadership. Awa (1976), Agarwal etal (1994) and Mbah, (2001) have at separate points observed that it is the quality of leadership which combine with other factors into a meaningful whole and at the same time gives them weight and direction necessary for a federal union. They all contend that because federalism is a complex system of government its success depends on politically competent as well as enlightened people. A federal system requires statesmen who can provide leadership not only at the formative stage such as when George Washington was at the helm in the United States, at critical and divisive point of Abraham Lincoln tenure as well as the internationalist eras of Theodore Roosevelt and Woodrow Wilson. Earlier in the *Federalist Papers*, the trio of James Madison, Paul Hamilton and John Jay were instrumental in swinging the United States in the

direction of federalism both in their joint essays on federalism and at the Philadelphia Constitutional Conference. Similarly, Chief Obafemi Awolowo for example, wrote a book *Thoughts on Nigerian Constitution* where he, with convincing arguments, made a case for a federal system as the best constitutional option for Nigeria.

Self-Assessment Exercise 3.3

Enumerate factors that encourage a country to adopt the federal system of government.

3.4.1 Advantages a Federal System

i) A Federal system encourages unity in diversity and is a very potent instrument for national integration in plural societies. One major advantage of the federal arrangement is that it ensures unity under conditions of diversity. In a federation, diversity like ethnic differences, religion, language, economic structure, education, social welfare, etc. usually exists among the component units Federal arrangements therefore are attempts at bridging these gaps or divide in order to bring about political and social unity without destroying the identity of the federating units. Thus, the federating units are able to retain their separate peculiar identities and are not completely submerged in it.

ii) Federalism is an ideal system of government for countries like the United States, China, Russia, India and Nigeria with huge population and territorial size. It is not an accident that Russia, the largest country in the world with a territory of over 17 million square kilometer, covering eleven time zones and China with over 1.3 billion population, the highest in the world are federal states. According to Mbah (2007:195) as at 1995, out of about 190 countries in the world, only 18 of them practice federal systems. Yet these countries, which account for approximately 9.5% of the states in the world, contained a disproportionate 36 percent of the world's population and covered 41% of the world's land area.

iii) Another advantage of practicing a federal system of government is that it promotes economic advantages by facilitating greater economic of scale. This is because of a big home market for the purchase of raw materials and the sale of manufactured goods as well as in the easy mobility of labour. Federalism also encourages the possibility that what is available in one part can be of benefits to the other parts of the country. In Nigeria today the non-oil producing parts of the country can equally gain from the petroleum deposits that are in abundance in the Niger Delta area. The reverse was the case in Nigeria in the First Republic in Nigeria before the discovery of oil in commercial quantities. Similarly, the land-locked inter-land of the country can also benefits from access to the sea via the Lagos ports without the additional burden of paying custom duty. This is in addition to the benefit of sharing from the proceeds of the value added tax, the bulk of which accrues to Lagos State in view of its huge population and its position as the nation's commercial centre/capital. Furthermore, subjects of common interests are administered by the center with the result that the individual states do not have to border or burden themselves with the administrative structures to support such matters.

iv) Federalism prevents the danger that of a despotic central government that will erode into and absorb the power of the other units in the federation since the division of powers is constitutionally guaranteed. More so, in a federal system the powers of each level of government are clearly defined and delineated in a written constitution. This helps to curb the centre from exceeding its authority or become autocratic. This also facilitates the establishment of democratic institutions and wider political participation by the citizens. In other words, more people are able to take part in the government of the federation either at the state, region or at the local or grass root levels of governance. This encourages the development of local talents, which may not be the case under the unitary system. These local talents can also be nurtured to become national leaders in future.

v) A Federal system of government leads to efficient administration, because the allocation and dispersal of powers to the various tiers of government help to reduce the

work load at the disposal of the inclusive government, without at the same time over loading the federating units. By preventing administrative overstretch federalism is thus a deterrent against an unwieldy and complicated administrative structure which may lead to inertia and possible collapse of government apparatus. Federalists are of the opinion that multiplicity of centres of authority in a federation allows for flexibility while competitions among the different levels of government encourages complementarily of views, arising from forces, within and without. According to them, unlike the single government in a unitary system that acts like a leviathan that can overpower the subordinate units it has created, this is not possible in a federal system where there are many levels of governments and centers of authority covering a vast territorial.

vi) In a federal system local affairs are well looked after by the government. This is made possible by the fact that local matters are assigned to the government at the grass root. Within a federal arrangement local people are able attend to matters like chieftaincy and other traditional and customary issues which are peculiar to them. For example, Sec. 7 of the 1999 constitution of the Federal Republic of Nigeria assigned a wide range of local affairs to each local government council in the fourth schedule.

A federal system of government encourages healthy rivalry among the component units, which in turn breeds varied social and economic developments. The Nigerian federation of the first republic is a good example of this point, because during this period, with good and high level of leadership, the various regional government were competing among themselves in the provision of infrastructures and welfare facilities to their people. This brought about development of the regional level of governance.

vii) A federal system promotes international prestige for countries that practice it. The components parts of a federation or the smaller federating units if left to exist alone as autonomous states could hardly command international prestige. Though federating units looses their individual sovereignty by coming together under one central government, they nevertheless, stand to gain by becoming part of a larger federation. The strength of Nigeria in Africa today, and countries like India, Pakistan in Asia, and

perhaps in the world, lies partly in their huge sizes, which came about due to their federal structure. Indeed the United States, China and the former Soviet Union have been variously described as a continental size country, a colossus and, a behemoth in the world, respectively, as a result of huge accretion in their sizes, consequent to their federal structure. Federal government can also serve as a model for world federations as we have seen in various regional integration efforts such as the European Union (EU), African Union (AU) and North American Free Trade Area (NAFTA).

3.4.2 Disadvantages of a Federal System

i) The first disadvantage of a federal system is that it involves high cost in running the administrative structures (i.e. government ministries departments and agencies) that are duplicated or multiplied at all levels. This duplication is typical of countries like the United States with 50 states and Nigeria with 36 states presently. Indeed most of these structures are replicated in all the 774 local government areas in the country, with the consequent increase in recurrent spending to service these needs.

ii) The diversity of groups in a federation along ethnic, language and religious lines, if not well managed, may create problems for a federal system. While the United States has succeeded in forging one nation out of many, Nigeria is yet to come to term with her diversity. The salience of ethnic solidarity groups and militias such as the Odua Peoples' Congress (OPC), Arewa Peoples 'Congress (A PC) and Egbesu and Bakassi Boys in Nigeria are indicative that the country's federal system is still being threatened by these divisive and disruptive centrifugal forces.

iii) By the nature and dynamics of a federal system it is also slow blamed for not being able to take quick decisions. The need to strike a workable balance and compromise among the different groups that usually inhabit a federation may impair the capacity of the state to take quick decisions or respond promptly to issues that demand urgent attention of the government. This problem is further worsened by the bicameral structure of the legislature in most federal states where the concurrence of both chambers is normally the requirement before a major legislation can be passed. Added

to this is the often rigid nature of the constitution of most federal states in which the advantage of flexibility is lost.

iv) A federal system may also engender uneven development of its component parts. This may come about due to differences in resource endowments, or access to it; inequality in educational opportunities. Because of this, states have no alternative than to pursue different socio and economic policies and programmes which may further intensify the differences among them. The designation of certain states as viable or oil rich states, or educational advantaged and others as less endowed or disadvantaged in a federal setting like Nigeria is to underscore the unevenness in the development pattern among them. It is not even unusual to have indigenes of states with surplus skilled manpower to work in other states as contract staff, thereby exacerbating the problem of indigenes-settlers dichotomy.

v) Despite the provision for division of powers among the different levels of government, there are cases where conflict of jurisdiction may also hamper harmonious relationships, particularly between the central government and the state, on one hand, or between one state and the other, on the other hand. A case in point in Nigeria, in the first instance, was the conflict of jurisdiction between the federal government and Lagos State government over the creation of additional local government by the latter. The other instance was the strain in inter-government relations between the governments of Oyo and Osun states over the ownership of Ladoke Akintola University of Technology (LAUTECH).

vi) Federal states also face the possible danger of secessions because of some in-built mechanisms to guarantee the autonomy of the states. At times some of these provisions may be interpreted by overzealous leaders to pursue the agenda of self-determination. This was the experience of Nigeria during the civil war (1967-70) and presently in Sudan between the North and South. Due to the seeming irreconcilable difference between the Northern and Southern Sudan, a referendum is due in January 2011 to determine the future of the country.

In the final analysis federalism is a delicate arrangement that requires mutual tolerance. This is why the role of the judiciary or the court is vital in a federal system to ensure that no level encroaches on the other, and if it happens the judiciary comes in as an arbiter.

Self-Assessment Exercise 3. 4

Discuss some merits and demerits of federal system of government.

4.0 SUMMARY

In this unit we have examined federalism as an administrative system and observed that it is more suitable to govern large and heterogeneous societies. Citing relevant examples from different countries in the world we identified the factors that can make a state opt for the federal system of administration, and noted that there are different types of federal systems around the world. We also stated that the federal system offers many advantages, while at the same time possessing some inherent weaknesses, which can make its management both complex and challenging.

5.0 CONCLUSION

Federal solution to the problem of diversity has become a popular response among nations since 1787, when states with similar challenges like the United States followed the lead of the American founding fathers to surmount their own problems. It is not that a federal system offers a kill all panaceas for all the ills that normally face heterogeneous and complex societies, but from the experience of those countries that have adopted the model, it has proven to be a more successful system. Federalism is equally flexible in adapting to the specific needs of each society and more effective in managing the challenges thrown up by groups' diversity in a country.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Account for the contribution of the United States in the evolution of federal system of government

2. Give reasons why federalism become an attractive system of government in the world today

3. Discuss fully major differences between federal and unitary systems of government

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MODULE 4

UNIT 5: CONFEDERAL ADMINISTRATIVE SYSTEM

1.0 Introduction

Confederacy could simply be described as a mid-cause between federal and unitary systems. In this unit we will consider the meaning and characteristics of confederation as another form of political or administrative system. We will also discuss the factors that may encourage a country take the path of confederation, including its advantages and disadvantages. We will then wrap up the discussion with select case studies of some states that have either tried the con-federal option, or where the model has been suggested or contemplated, at one time or the other.

2.0 Objectives

At the end of this unit you will be able to:

1. Know the meaning of confederation as an administrative system
2. Explain its major features as well as the reasons why confederation is suitable for the administration of certain states.

3. Understand why the attempts by some countries to adopt confederation ended in failure.

3.0 MAIN CONTENT

3.1 Meaning and Definitions of Confederation

A confederation has been defined as an administrative cum constitutional arrangement in which two or more sovereign and independent states agree to come together to have a central but weak government. Put differently, the term confederation applies to union of states, which is less binding in its character than a federation. A confederation is a union of states with a common recognized authority in certain matters affecting the whole, and in respect of external relations. Confederation is a league or union of many sovereign states for a common purpose. In principle, the states in a confederal structure would not lose their separate identities but would retain the right of secession. In practice though this right might be difficult to exercise and the constituents units of a confederation might appear to be little different from those of any other federal states. But confederation differs essentially from a federation in that it is a league of sovereign states, unlike the latter (federation) where the component states give up their sovereignty in favour of the new state, or even where the centre can creates more states, as it has been from the example of the Nigerian federation.

In a confederation power resides more with the component states rather than the centre. In other words there is a weak center and strong component parts. The United States adopted a confederal structure in her early years of her independence. But the structure was later rejected by the conferees at the Philadelphia Constitutional Convention on the ground that it was the "weak at the centre and strong at the circumference". Other examples of con federal states apart from the failed United States' experience include the United Netherlands in 1579, the German constitutions of 1815 to 1867 and 1867 to 1871(before and after the unification of Prussia with other German states).

3.2 Features of Confederation

i) Right to Secede

In a confederation, the component units have the right to secede from the arrangement. This is not the case in a federation where any attempt by any or a combination of the federating states to secede is met with resistance. This was the case in the United States between 1861 and 1865 in the United States when the attempt by 13 southern states was militarily resisted by Abraham Lincoln. A similar case occurred in Nigeria when Yakubu Gowon, then Nigeria's military head of state forced the Eastern Region of the country back into the federation

ii) Autonomy of Federating States

Another feature of a confederation is that the states within the confederal structure would not lose their separate identities through the political arrangement but will still retain their distinct separate independence. In other words, the component units are autonomous in almost of spheres of influence except in Defence, External Relations, Currency and a few other subjects conceded to the central authority.

iii) Supremacy lies with the confederates

The supreme power belongs to the co-ordinate states. Therefore, the coordinate States dominate the central government as the constitution is usually not rigid since most confederations are run on the basis of agreements reached by the states.

iv) Weak Central Authority

The central authority is usually weak in a confederation while the units are stronger and more powerful. The experience of countries like the United States, Senegal and Gambia under confederation, and Nigeria where the model was also suggested, will be used to illustrate this point, and will form the subject matter the last section of this unit.

Self-Assessment Exercise (SAE) 3.1

Explain essential features of a confederal Constitution

3.3. Merits and Demerits of Confederation

3.3.1 Merits of Confederation

i) Confederation arrangement protects countries that shelter under the arrangement from foreign invasion. Weak States are able to enjoy better defence militarily against foreign powers or aggression from neighbouring States. This consideration was upper most in the mind of Dauda Jawara of the Gambia in the early 1980's when he forged a confederal arrangement with Senegal, then known as Sene-Gambia. But the confederation did not last long.

ii) Confederation has economic utility. The case of Hanseatic League which was established in Europe during the Middle Ages to promote greater commercial interactions among the states concerned is a good example.

iii) It saves minority nationalities from domination in large countries from the majority ethnic groups since each state in a confederation is sovereign. This was the major reason why the former Eastern region of Nigeria under the then Col. Emeka Odumegu Ojukwu spoke in favour of confederation at the Aburi meeting in Ghana. His preference was predicated on the belief that confederation would give the Ibos more freedom of maneuver in a country where they felt threatened.

2.3 Demerits of Confederation

i) Confederation is a very loose and fragile system of government. This is in a view of the fact that each state that makes up the confederation is autonomous with its own governmental machinery. This gives the liberty to any member state to pull out any time it so desires.

ii) Confederation has been attacked as a breeding ground of intrigues and centres of rivalry. This is because, as (Argawal, 1994:311) pointed out, a strong and powerful member state often establishes its hegemony over others and exploits them for furtherance of its own ends. This was true of Prussia before the unification of Germany. Prussia then, the biggest and most powerful of German states exploited the others that were weak and unviable.

iii) The relationship between the central and confederal government is not usually well defined. This has often led to disagreement between member states of the confederacy.

iv) Despite its theoretical attraction to leaders of a few states, in reality confederation has often proven a difficult and cumbersome political system to manage. This is why it has not endured for long in the few countries where it was practiced. Indeed, the experience has shown that confederation has either failed in the few states that have it while the authorities in other states like Nigeria, where suggestions were made in that direction spurned it. General Gowon flatly rejected confederation as an option for Nigeria in1967.

Self-Assessment Exercise (SAE) 3.2

Explain the main features distinguishing a federation from a confederation.

3.4 Selected case studies of attempts at Confederation

3.4.1United States' Articles of Confederation

After it had recorded victory in the War of Independence with Britain the United States began self government with the adoption of the Articles of Confederation by the Congress on 15th November 1777. The Articles were actually written between 1776 and 1777, and was not actually ratified by all the 13 states until 1781. The Articles of Confederation established the Congress as the only central political institution for what was then called 'Association of States', but the congress was limited in its power since it lacked any binding or enforcement powers in its relations with the states. The Articles did not even make any provision for the office

of the president or an executive organ of any hue. It would appear that Americans opted for a confederation because of the bitter experience they had with Britain. a country they believed was suffocating under the weight of an overbearing central government. In theory, the Articles of Confederation gave the Congress the powers to conduct foreign policy, appoint military officers and declare war, borrow money from the states, without the power to tax and regulate postal services. But in reality the Articles of Confederation did not give the Congress the power to enforce its requests to the states for money or troops. The first sign of trouble with the U.S. Confederal structure after the American War of Independence was that Congress could not pay back the states the debts it had accumulated to prosecute the war campaigns. Quite unfortunate for the new American nation the ineffectiveness of the congress continued in the face of growing assertions by the 13 that were insisting on their rights to take independent decisions and actions.

By the end of1786, the Articles of confederation in the United States eventually collapsed due to the failure and incapacity of the Congress to keep the states together. Despite its failure, the confederal framework gave the then newly independent American nation an unforgettable instructional experience in peaceful, self-government after the turbulence of the war period. The American experience with confederation and especially its operation in the country for about close to twelve years revealed major lessons about the inherent weaknesses in confederation. These were taken into account by the American founding fathers when they met at the Philadelphia Constitutional Convention in 1787 and decided in favour of federalism as the most suitable model of political administration for their country.

3.4.2. Suggestions of Confederation in Nigeria

The former British colonial power seemed to have settled the controversy over the appropriate constitutional structure for Nigeria when it introduced the federal system of government for the country in 1954. However when the collapse of parliamentary democracy in the First Republic was partly blamed on excessive

regionalism in the country, there was a renewed call that Nigerians should to take a second look at the issue of appropriate administrative structure for the country. This was the major reason why Maj. Gen J.T.U. Aguiyi Ironsi promulgated the unification decree in 1966 which abolished the then four regions in the country and replaced them with group of provinces. His action effectively transformed Nigeria from a federal to a unitary state. But what Ironsi thought would provide a solution to the developing constitutional crisis in the country further fuelled it, and degenerated into worse political stalemate, which later engulfed the whole nation in a civil war.

Before the outbreak of the war attempts were made from within and outside the country to find a more acceptable model of government for the country. The views among prominent leaders who spoke under the auspices of the 'leaders of thought' or consultative assemblies ranged from outright dissolution of the country, a strong federal structure to a confederation.

The main thrust of the disagreement between Gowon and Ojukwu on the correct interpretation of the Aburi Accord, the outcome of a meeting of the Nigeria's Supreme Military Council, called at the instance of General Ankara, the then Ghanaian head of state was also on whether the meeting agreed to a federal or a Confederal structure for Nigeria. Indeed, the Nigerian civil war which lasted for thirty months was fought largely to determine whether or not the country would remain a federation with a twelve-state structure as Col. Gowon wanted, or would be organised along the old regional, but under a new confederal arrangement, as advocated by Col Ojukwu, then military governor of Eastern State.

Since the end of the civil war in 1970, political leaders in Nigeria, military and civilian alike seem to be more favourably disposed to the country remaining a federal state. The only sticky point where opinions differ is on the nature and character of Nigerian federal system. The desire to return the country to what has been variously described as 'true federalism', 'fi scal federalism' or 'resource control' appears to be more popular than the isolated calls that Nigeria should try or experiment with the confederal idea, or the strident agitations for self-determination

by the various movements within the minority ethnic groups in the country . Understandably, the long decades of military rule in the country can easily be identified and blamed for the centralized character of Nigeria's federal structure. Yet, there is optimism that the democratic system which is now being consolidated in the country now offers the best opportunity for the political leadership in Nigeria to restructure the country's federal system to a more acceptable form.

3.4.3 Senegambia Confederation

Sir Dauda Jawara, then president of the Gambia was in Britain in late 1981 attending the wedding ceremony of Prince Charles, heir to the British throne to Diana, Princess of Wales, when the soldiers struck in Banjul, the country's seat of power in an attempt to topple his government. With the help of Senegalese troops, the military insurrection was put down. The urge for personal interest of self-preservation for himself, and his government, and the larger interest of defence for his country forced Jawara to forge a confederation tie between the smaller the Gambia and relatively bigger Senegal. Thus the agreement of what became known as Senegambia Confederation was reached in November 1981, and it came into force three months later in 1982.

Under the terms of the confederation agreement each country was to retain its independence, but they were required to take central steps towards a union with the objectives of integrating their military and security forces; form an economic and monetary bloc; co-ordinate their foreign policies and communications and establish Confederal institutions. Implementation of the confederal agreements began in July 1982 when a Senegambia executive and legislature were established. But before long Senegal began to dominate the major political institutions, since it controlled the confederal presidency, in addition to having two-thirds representation in the joint parliament. The growing concern in Gambia about is marginalization, coupled with the domineering position of Senegal in the confederation, led to cracks which eventually led to dissolution of the Senegambia confederation in 1989.

This form of disagreement is not uncommon in most attempts to form a union among former sovereign states, including those who styled their own as federation of states. Similar fate befell the Ghana-Guinea-Mali Union in the early sixties, the East African Federation that was formed between Tanzania, Uganda and Kenya in the seventies, as well as the United Arab Republic, a union of Egypt, Libya and Sudan. Other factors that usually work against former sovereign states coming together include the divisive impact of their colonial background, ideological differences among the leaders and states and neo-colonial intrigues.

4.0 SUMMARY

In this unit we have looked into the confederal form of political administration, its major features and the factors that can make a country adopt the confederal political structure. After examining its major advantages and disadvantages, we finally noted that history has painfully recorded that Confederation has not particularly been a popular or successful model of political administration in the few countries that we have selected in this unit as case studies.

5.0 CONCLUSION

In spite of many instances of its failure to become an enduring form of political administration in those states that have experimented with, the confederal form of government, still remain a staple in any discourse of models of government. It still hold attraction among leaders of states who are willing to come together but are still suspicious of the prospects of a stronger bond in future. In this type of situation confederation seems to have more appeal since its constitution usually gives room for peaceful break up or outright secession.

6.0 TUTOR-MARKED ASSIGNMENTS

1. Identify the major characteristics of a confederation

2. Examine the factors that can make a country prefer a confederation as a constitutional arrangement.

3. Explain what you think are the reasons responsible for the consistent failures of confederal states that you know.

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MODULE 5

UNIT 1: EVOLUTION OF POLITICAL PARTIES IN NIGERIA

1.0 INTRODUCTION

Political parties are indispensable ingredients of democracy because they give meaning to the democratic process. Political parties are important institutional component of liberal democracy and the electoral process. In democratic theory, political parties constitute the primary means by which citizens control their government through voting in free and fair elections. For any association to be called a political party, it must have a clearly stated ideology. This explains who some scholars view political parties as an association organized around some principle or policy. This unit examines the revolution and development of Political Parties in Nigeria. It traces the history of Political Parties from the colonial era through the First Republic, The Second and Third Republics as well as the Fourth Republic political dispensation.

2.0 OBJECTIVES

At the end of this unit, you should be able to

1. Know the history and evolution of Political Parties in Nigeria
2. Understand how Political Parties transformed both in structure and organization from one Republic to another.
3. Explain the state and operations of Political Parties in Nigeria today.

3.0 MAIN CONTENT

3.1 Origin and Development of Political Parties (the Colonial Era)

Okwudiaba Nnoli opines that ethnicity; more than other factors is at the root of the development of political parties before independence. According to him politics, during the era of the nationalist struggle for independence from colonialism, was dominated by the conflict arising from the assertion of interests other than national interest. The 1914 amalgamation of the Northern and Southern protectorates of Nigeria marked the beginning of a stupendous effort in socio-political engineering. That is a creation of a modern state out of a collection of a number of independent nation-states and nationalities. If this is added to the diversities in religion, culture, tradition, language and geography, one would have a better understanding of the character of political parties in the period preceding Nigeria's independence later assumed.

Political parties in the colonial era in Nigeria had its origin in the Clifford constitution of 1922, which introduced the elective principle. The constitution encouraged the creation of political parties in order that Nigerians would be able to secure the available seats in the Legislative Council. The elective principle therefore represents, the first step in Nigeria's electoral journey and Herbert Macaulay followed up with the Nigerian National Democratic Party (NNDP) which contested and won all three seats allocated to Lagos in the 1992 Legislative Councils elections, one could say that the experiment was off to a good and promising start.

The stated aims of the NNDP included: the attainment of municipal status and local self government for Lagos, the provision of facilities for higher education in Nigeria, the introduction of compulsory education at the primary school level, the encouragement of non- discriminatory, private economic enterprise, and the Africanisation of the civil service (Sklar, 1983: 46).

The Lagos Youth Movement was also formed in 1934. The movement was formed by graduates of Nigeria's premier institution, King's College, Lagos. The founding members were Ernest Ikoli, H. O. Davies and Samuel Akinsaya. The objectives of the LYM were limited and provincial in nature and included making demands about improving the living conditions under the colonial environment. In 1936 LYM transformed into the Nigerian Youth Movement (NYM) which was a bigger, pan Nigeria political organization. The membership of the NYM was strengthened in 1937 with the return of Dr. Nnamdi Azikiwe to Nigeria from Ghana. The movement immediately opened branches in several cities in the country, and followed up with the publication of its *Youth Charter and Constitution* in 1938.

However, ethnic parochialism was introduced into the movement during an election held to fill the seat vacated by Dr. Kofo Abayomi who was appointed into the Executive council. Ernest Ikoli who was then the President of NYM wanted to replace Kofo Abayomi in the legislative council, but he was opposed by Samuel Akinsanya who aspired to the same vacant seat. The party eventually selected Ikoli for the post and this led to the allegation by a group led by Dr. Azikiwe that Samuel Akinsanya was not favoured by the dominant Yoruba group within the party because he was from the minority Ijebu stock. The Nigerian Youth Movement was not able to manage this internal bickering and it eventual led to the break up of what could have been the first nation wide political party in Nigeria.

The National Council of Nigeria and Cameroon (NCNC) was the next national political party that emerged in 1944 on the ruins of the Nigerian Youth movement. The party was formed from a conglomeration of various groups and associations

among which was the Ibo State Union. It was led by Sir Herbert Macaulay while Dr. Nnamdi Azikiwe served as the national secretary. After the death of Herbert Macaulay in 1946, Dr. Nnamdi Azikiwe became the leader of the party. The party was very outspoken against the colonial authorities and was reputed to have sent a powerful delegation to London in 1946 to express the grievances of the nationalists against the Richard's constitution. The next party was the Action group of Nigeria A.G which was formed by Chief Obafemi Awolowo from a Yoruba socio-cultural group, the Egbe Omo Oduduwa. Awolowo in a book written in 1947, *Path to Nigerian Freedom* admitted that given the ethnic plurality it was only natural for political parties to start off from their ethnic base before aspiring to become an national platform. The Northern Peoples Congress (NPC), like the AG was also formed in 1951 from the Hausa cultural group, Jammiyyar Mutaine Arewa.

Therefore before the attainment of independence in 1960, Nigeria had three major political parties: the Northern People's Congress (NPC), the National Council of Nigeria Citizens (NCNC) formerly, the National Council for Nigeria and the Cameroon, and the Action Group of Nigeria (AG), with each of them dominant and exercised control over the regional governments in the North, East and West, respectively.

Self-Assessment Exercise (SAE) 3.1

Examine the ethnic factor in the formation of Political Parties in Nigeria during the colonial era.

3.2 Political Parties during the First Republic

Nigeria at independence also operated a multi-party system during which party leaders were the nationalists who fought for the nation's independence, and subsequently assumed the political leadership of the country. Since political parties are the backbone of any democratic system of government, these political parties

became the major vehicle through which Nigerian political leaders sought to achieve the goal of "life more abundant", for the people of Nigeria as articulated in the programme and manifestoes of the Action Group of Nigeria. These parties also became the necessary pre-requisite in the nation's journey from political into a matured and democratic independent state. These political parties have therefore helped to define the character and nature of the country's democratic journey towards democratic consolidation and entrenchment.

Edmund Burke once defines political party as "a bo dy of men united for promoting by their joint endeavours, the national interest, upon save particular principle in which they are all agreed". The activities associa ted with the political parties as will be revealed in subsequent paragraphs will confirm whether or not they were able to really meet to this goal of national interest or national development. Indeed, political parties in Nigeria's First Republic operated within the framework of the parliamentary system of government under which the Queen of England was the ceremonial head until 1963 when she became a republic. Nigeria also had three regions at independence – North, West and East, unt il 1963 when fourth, the mid – Western region was created. It is also very important to state that the environment within which these parties operated directly or indirectly influenced their structure and operations.

During the first republic in Nigeria, while the three major parties NPC, NCNC and AG controlled the affairs of the three regions, North, East and West respectively, the NCNC joined the NPC to form a coalition government at the very level since none of the party was strong to singularly form the federal government. This arrangement gave the post of the Prime Minister to Tafawa Balewa of NPC while Dr Nnamidi Azikiwe assumed the position of the Governor-General. Chief Oafemi Awolowo of the AG became the leader of the opposition.

It is instructive to note that the major political parties at Nigeria's independence were majorly ethnically based. While the NPC was seen as a party of the Hausa –

Fulani group, the NCNC was a party of the Igbos and the AG was considered as a party of the Yorubas. These parties therefore lacked nation wide appeal. Yet, there were other minority political parties such as the Northern Element Progressive Union (NEPU) led by Aminu Kano and the United Middle Belt Congress (UMBC) led by Joseph Tarka which were in opposition to the NPC in the North; the Mid-West Democratic Front (MDF) for the Mid-western region, the Nigeria National Democratic Party (NNDP) formed by Chief S.L. Akintola and was in opposition to the AG in the West. The party was formed by Chief Akintola after he was forced out of the mainstream party in the West, the AG sequel to a protracted crisis which rocked the party. Akintola was joined by the remnants of NCNC members of the NCNC, notably Fani Kayode to form the new, NNDP, which must be distinguished from the one formed by Hebert Macaulay in 1922.

Before the 1964 Federal Election political parties of the First Republic also teamed up to form grand coalitions to compete for seats. The NPC joined the NNDP to form the Nigeria National Alliance (NNA) while the AG teamed up with the NCNC to form the United Progressive Grand Alliance (UPGA). The outcome of the 1964 Federal Election was stalemated and led to a constitutional crisis when the then Nigeria's President, Dr. Nnamdi Azikwe refused to call on Tafawa Balewa, then Prime Minister, to form a new government. The eventual chain of events in the aftermath of the election disputes can be remotely linked to the collapse of the First Republic, and the intervention of the military, for the first time in Nigerian politics.

In the final analysis, it is safe to say that the defective nature of political parties in Nigeria during the First Republic, especially their primordial base contributed to the political and legitimacy crises in the First Republic, and the failure of Nigeria to sustain and consolidation her first attempt at democratic government within a federal framework.

Self-Assessment Exercise (SAE) 3.2

Examine the contribution of political parties' crises in the collapse of Nigeria's First Republic

3.3 Political Parties in the Second Republic

The form and character as well as the nature of the political parties of Nigeria's Second Republic did not change much compared to those of the First Republic. Five political Parties were registered by the Federal Electoral Commission to contest the 1979 general elections. The sixth National Advance Party was registered in 1983 and it contested that year's General Elections. Almost all the registered parties had roots in the First Republic. The Unity Party of Nigeria's (UPN), is to all intents and purposes, a re-incarnation of the AG, and was led by Chief Obafemi Awolowo, who was also the party's presidential candidate in both the 1979 and 1983 presidential elections. The National Party of Nigeria (NPN) was also an offshoot of the old, except that it had a slightly national outlook which made the party to adopt zoning policy for its appointive and elective offices. The party's membership was largely drawn from the old Northern aristocracy and the Southern bourgeoisie. Although the NPN was a conservative party compared to the more progressive UPN, and the more liberal or republican NCNC, its twin policy of zoning, which was anchored on the imperatives of national unity, assisted the party to have more electoral support than the other four parties.

The Nigeria Peoples' Party (NPP) was the NCNC re-incarnate with the Igbo heartland as its base, but it extended outside the Igbo enclave by capturing Plateau State. Nnamdi Azikwe who had led the NCNC, also led the NPP. The birth of the Great Nigeria Peoples' Party (GNPP) was the aftermath of the quarrel of the Kanuri born Alhaji Waziri who wanted to double as NPP chairman and presidential candidate. This party can also be said to be a carry over of the resentment of the pro-kanuri's Bornu Youth Movement (BYM) that, in the first republic resented the political hegemony of the Hausa-Fulani group. The Peoples Redemption Party (PRP) was a NEPU of sorts, and it carried on with the protestant philosophy of Malla Aminu Kano. But the party's influence was restricted to only Kano and Kaduna states.

One major feature of the political parties of the Second Republic is that most of them could be identified with specific programme of action, something close to an ideological orientation. For example the Unity Party of Nigeria was popular with its four cardinal programme. Free Education at all levels, Free Health Services, Full Employment and Integrated Rural Development. It was this welfarist programme of the UPN that attracted to the party support of students and progressive minded Nigerians, especially in the Northern part of the country. The National Party of Nigeria was also known for its agriculture and housing policy which later found expression in the Green Revolution Programme and the Popular Shagari Low Cost Housing Scheme of the NPN controlled federal government.

Self-Assessment Exercise (SAE) 3.2

Explain the role of ideology in distinguishing the major Political Parties in Nigeria during the Second Republic

3.3 Political Parties in the Third Republic

The military coup of December 31, 1983 ended the hope of the political parties that competed for power during the Second Republic. Of special interest to political scientist, has been how to break the tendency of the country's main political parties clinging to the tripodal division of East, West and North, or ethnic divide of Hausa-Fulani, Igbo and Yoruba. This was a major charge to the Political Bureau set up by military president Ibrahim Babangida who urged members of the Bureau to fashion out a new way forward for Nigeria. The report of the panel and government white paper provided the background for the emergence of the two party systems in the country during the aborted Third Republic.

On May 3, 1989 when the ban on political was lifted not less than 30 political associations surfaced. However, only 13 of them applied for registration because of the stringent guidelines issued by the defunct National Electoral Commission (NEC). The parties that emerged were centrist parties. After a scientific survey of their claims (membership spread and organization) and their ideologies, the following was discovered by the Independent National Electoral Commission:

The political parties	Claims	Ideologies
The Peoples Solidarity Party (PSP)	43.90%	The progressives
The Nigerian National Congress (NNC)	42.62%	The conservatives
The Peoples Front of Nigeria (PFN)	41.20%	
The Liberal Convention (LC)	34.08%	
The Nigerian Labour Party (NLP)	17.90%	
The Republican Party of Nigeria (RPN)	17.00%	

PSP, NNC, LC and PFN were the four main associations among those that sought for registration from the NEC but NEC recommended six of the thirteen associations that applied for registration for government recognition. These were PSP, NNC, PFN, LC, NLP and RPN. The military regime of General Ibrahim Babangida rejected all for failing to reach the pass mark of 50%. It went ahead and created two political parties: The Social Democratic Party (SDP) and the National Republican Convention (NRC) formulated on the assumption (ideology) of a little to the left and a little to the right.

The NEC chairman, Professor, Humphrey Nwosu, claimed and rightly too, that the manifestoes of all political associations studied clustered around the centre of ideological spectrum, “a little, to the left and a little to the right”. NEC was then mandated by the federal government to use the manifestoes already submitted by the associations to synthesize the manifestoes for the SDP and NRC. In retrospect one can say that this observation was a serious error of judgment on the part of the military. There were indeed political forces within the country that were neither progressive nor conservative, not to mention the fact that the government ought not to have created the parties by military fiat in the first place. An ideal two party system ought to have been allowed to evolve naturally. To make matters worse these two parties were treated as government parastatals. The Federal government not only funded the parties, allocated them secretariats at the federal state and local government levels, but also wrote their manifestoes and constitutions.

The rationale which Babangida said to Nigeria and the wider international community was that with only two parties to choose from, the ethnic majority groups would have no option other than to work together for better or for worse. It is now common knowledge that Babangida's political experiment, involving the imposition not just of political parties but of their manifestoes and ideologies as well turned out to be a farce and failed woefully. For the fact the parties emerged like government parastatals, while members were strange bed fellows too and worst still Babangida himself who superintended over the conduct of the elections eventually annulled the election results, at its climax with the June 12 1993 presidential election. The resignation of Ernest Shonekan led Interim National Government and the emergence of General Sanni Abacha as head of state marked the second led in the emergence of political parties in the Third Republic.

Five political parties were registered during the Gen. Sanni Abacha's transition programme were, the United Nigeria Congress Party(UNCP), National Congress Party of Nigeria, (NCPN), Congress of National Consensus, (CNC), Democratic Party of Nigeria (DPN) and Grassroots Democratic Movement (GDM). These parties like those under the Babangida's supervised transition progamme were not too distant from the government of the day. They were rightly described by the late Bola Ige as the "five fingers of a leprous hand". T he climax of their unorthodox character was demonstrated these five parties jointly nominated and adopted Gen Sanni Abacha, then a sitting head of state who was not a registered member of any of these parties as their consensus presidential candidate. However this contrived and staged managed transition programme collapsed like a pack of cards when Gen Abacha

dropped dead on 8th June 1998.

Self-Assessment Exercise (SAE) 3.4

Examine the role of the military government in the emergence of Two-Party System in Nigeria's ill-fated Third Republic

3.5 Political Parties in the Fourth Republic

On assumption of office as head of state, Gen. Abubakar dissolved all the political structures including the political parties that operated during the Abacha's era. His military administration also hurriedly put together three political parties: The People's Democratic Party (PDP), the All People's P arty (APP) and the Alliance for Democracy (AD) were registered under the newly reconstituted Independent Electoral Commission (INEC). These three parties contested the 1999 General Elections that ushered in the Fourth Republic. Before the 2003 General Elections the APP transformed to All Nigerian Peoples Party in order to make the party have a more national outlook. Similarly, before the 2007 General Elections majority of those elected on the platform of AD became members of the enlarged and newly formed Action Congress of Nigeria. This new party also involved those who were dissatisfied with the mainstream PDP, including one of the party's former National Chairman, Chief Audu Ogbe.

Consequent upon the success recorded in the suit instituted by the late legal luminary, Chief Gani Fawehimi, more political parties, including the National Conscience Party NCP, Labour Party, All Progressive Grand Alliance (APGA), the Peoples Redemption Party (PRP) among others were registered by the Independent National Electoral Commission (INEC). Presently there are 63 registered political parties in the country, but most of these parties have insignificant electoral presence. This has virtually turned Nigeria into a one party dominant state given the successive victory of the PDP in all the General elections in 1999, 20003, 2007 and 2011, at the federal level and most of the states in the federation, including having comfortable control in the two houses of the National Assembly.

Presently, there are suggestions that INEC should de-register those parties that are not truly political parties given their poor electoral performance. This view is supported by the argument that these parties only exist to collect subventions from

the Electoral Commission. One other distinguishing feature of most of the political parties in the fourth republic is that they do not have clear cut ideologies.

Self-Assessment Exercise (SAE) 3.5

Explain whether multi-party structure is appropriate for Nigeria in the Fourth Republic.

3.6 Character of Political Parties in the Fourth Republic

As rightly postulated by Omo Omoruyi, what Nigeria have had since 1999 are political parties that we can say have little or nothing in common with the political parties of the first, second and even third republics. The manner they emerged did not fit into what we know from extant literature of Nigerian party politics. The pertinent question here is: are these parties capable of providing alternative political order to the military in the minds of Nigerians? This is a legitimacy question, which is difficult to answer now since the fourth republic is as yet only about twelve years old. The other question is: is the character of these parties conducive to the Nigerian federal structure?

This is a political integration question. Scholars may also be interested in the extent to which the political parties that evolved in 1999 have been able to meet the need of those who want to participate in the political process. This is the crisis of participation question. The snag with these political parties is that they could no meet Joseph Lapalombara's test that a political party is so called, if there is an inter-generational transfer of political affiliation. This is because there are many studies that link stability of any democracy to inter-generational transfer of political parties is fluid and instable; they can be viewed as instrument of transition from military to civilian rule. A commentary on each of the three parties suffices to buttress these assertions.

Let is start with the Alliance for Democracy (AD). It is essentially a Yoruba outfit committed to producing a Yoruba president in 1999. It did not meet the federal character clause in the constitution for it to be registered as a political party. Many

believed that INEC merely bent the rule in order to accommodate the party. The military did this on national security grounds. It was a dilemma of denying a voice to the Yoruba people after what they went through as a result of the annulment of the June 12, 1993 presidential elections, believed to have been won by M.K.O. Abiola, their kinsmen. It might not be politically expedient to force the Yorubas to seek other avenues in other parties other than the AD. In the words of Omonuyi, the military decided to err on the side of national security and allowed the highly ethicized political association to continue as a political party. This deficiency in party registration was evident in the performance of AG throughout the elections in 1999.

The AD identified with and was later sub merged in the APP in the presidential elections on Feb 27, 1999 a situation which support the criticism that the political class is to blame for many of the electoral problems, the country has experienced. The party came to the field after jumping in and out of the PDP and the APP. By the time the party went to the market, it was too late to make an impact in any other part of the country outside Yoruba land. The Yoruba who gave it support from the late period did so because the leaders of the party appealed to be Awolowo's base – a Yoruba socio-cultural and political group. In a federal arrangement like Nigeria, an ethnic party does more harm to national integration bid than good. By 2003, the party could no more found its feet when it lost five, out of the six states it controlled from 1999 to the ruling PDP.

The APP arose from the self-succession outfit of Sani Abacha. Its founders had served as ministers or as arides in different parts of the country. This was why APP was fondly referred to as Abacha People's Party, the same Yoruba group that initially went to the APP still in search of commitment that the party would nominate a Yoruba as its presidential candidate. On the day of the formal inauguration of the party, the Yoruba leaders found the same instrument used by the military to annual the June 12, presidential election result, Arthur Nzeribe, in the platform of the new party. This was why they quickly left the venue of the meeting,

with no time as its disposal, the Yoruba leaders with some who believed in the June 12 cause quickly regrouped to found Alliance for Democracy (AD). This process of party formation was far from the ideal.

The People's Democratic Party (PDP) arose from four sources. The first was the so-called politicians who were denied registration by Sani Abacha during his self-succession bid. This group called itself the G.34 committee from the fact that the petition signed by 34 men and delivered to Abacha by Chief Solomon D. Lar. Included in this group was Alex Ekwueme who sought the presidency. Second were those politicians who were former followers of the National Party of Nigeria (NPN) who were not opposed to the self-succession of the military strongman but were not part of his machine. Nevertheless, this group called itself the All Nigeria Congress (ANC) and was led by S. B. Awoniyi. The third group composed of those who were the followers of the sheltie Musa Yar'adua as the Peoples Democratic Movement (PDM). This group had Tony Aneniti and Abubakar Atiku. Four were those who called themselves social Democrats with the name, Social Progressive Party (SPP). There was a collection of politicians from different parts of Nigeria that failed to make their positions felt in the party.

From the above picture, the PDP is a mixed bag of persons with diverse political backgrounds, this extent, the foundation groups covered all and sundry political persuasion, conceptual framework of analysis, this mode of party evolution devoid of people of like minds is not congruent to democratic virtues. This is why the assertion of Sir Abubakar Abdulsalam is pertinent when he stated that: "while recrimination and buck-passing would be unhealthy, we must admit that mistakes have been made particularly as our most recent attempt at democratization was marred by maneuvering and manipulations of structures and action. At the end, we have only succeeded in creating a system that can neither be constructed nor sustained" (Abubakar, 1998:15).

Self-Assessment Exercise (SAE) 3.6

Comment on the claim that Nigeria operates a one-party dominant system

4.0 SUMMARY

In this unit, we have discussed the history and evolution of political parties in Nigeria. The unit began with the history of emergence of political parties in Nigeria and the introduction of the elective principle in 1922. It continued with the development of political parties along regional and ethnic lines during the pre-independence and post independence eras. The unit also examined the role of the military in Nigeria in bringing about political parties with nation-wide appeal in Second Republic. It ended with a discussion of the state and operations of the existing political parties in the country in the present Fourth Republic.

5.0 CONCLUSION

The nature and character of political parties in any country is largely a reflection of the level of political development in that country. Nigeria can therefore not be an exception. It is therefore not surprising that the influence of the defunct three regions as well as the three dominant ethnic groups were largely reflected in the history and evolution of political parties in Nigeria. It is only now that efforts are now being made through constitutional engineering to ensure that the parties in the country reflect national character. The extent to which this effort will succeed will depend on how leaders and managers of these parties see them as a veritable vehicle for the sustenance and consolidation of democracy in the country.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Discuss fully the role of political parties in any democratic system.

2. Examine the different types of party system that you know and suggest the most appropriate for your country.

3. Argue the contention that two-party system is more conducive to political stability while multi-party system is more democratic.

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MODULE 5

UNIT 2: ROLE OF PRESSURE GROUPS IN GOVERNMENT

1.0 INTRODUCTION

In unit 3 of Module 3 of POL 111, you already know the definition, functions and types of pressure groups as well as the techniques they employ to influence public polices, among others. What remain in this unit is to expand on this by taking a closer look at the role of pressure groups in a democracy as well as the obstacles that confront them in fulfilling this role.

2.0 OBJECTIVES

At the end of this unit you are expected to:

1. Know the origin and evolution of pressure groups in Nigeria
2. Understand the political role they play in government
3. Appreciate that pressure groups face a lot of obstacles in the course of fulfilling their engaging activities with the government.

3.0 MAIN CONTENT

3.1 Origin and Development of Pressure Groups in Nigeria

It may not be easy to date precisely the origin of pressure groups in the world. But one can certainly say that the idea of group response to express their grievances can be dated to the French Political philosopher, J.J. Rousseau and other idealist thinkers who suggested that the citizen should suppress his desires and develop a common consciousness of common good. This was why before the age of representative government groups such as the Abolition Society Foundation and The Society for Women's Rights flourished in Britain and France, respectively. During the colonial era in Africa the Aborigine Rights Society canvassed for the restoration of the rights of the indigenes while in the West African sub-region, members of the National Council for British West Africa were early agitators for better conditions for their countrymen, before the arrival of political parties.

The formation of pressure groups in Nigeria can also be traced to the colonial era. The West African Students Union (WASU) was a major platform used by Nigerians studying abroad to agitate for constitutional reforms. Reverend I. O. Ransome Kuti was instrumental to the formation of the Nigerian Union of Students in 1940, which was inaugurated by students of Abeokuta Grammar School as well as the Nigerian Union of Teachers. The primary objective of the students' union was to oppose tribal separatism among students. The union in addition set up committees to look into general problems facing Nigeria at the time in order to find solutions to them. In March 1944 students of Kings College, including Emeka Odumegwu Ojukwu (later a Military Governor of Eastern Region) and Ola Oni (later an academic and a socialist comrade) protested against poor accommodation when they were displaced from their original hostels to provide accommodation for soldiers. Seventy-five of the students were later apprehended, tried for disorderly behaviour and expelled by the school authorities.

The Railways Workers Union led by Micheal Imoudu was a major vanguard of the agitations against colonial rule in Nigeria. As its president, Imoudu led a successful campaign of the railways workers for increases in the cost of living allowances, which were granted in 1942. Subsequently, the government invoked the Emergency Defence Regulations against Imoudu, and he was deported from Lagos to Auchi, in the then Benin province on the ground that he was a potential threat to public safety. Unrepentant after his release Imoudu later played a major role in the 1945 general strike, which almost paralysed the economic activities of the colonial power in Nigeria. The militant leadership provided by the late Imoudu in successfully coordinating the strike action earned him the name Nigeria Labour leader No. 1.

After the granting of independence to Nigeria in 1960, the pressure groups did not relent in their activities. During the First Republic pressure groups also allied themselves with the socialist movements in the country to help diversify the ideological straitjacket of the Balewa's era from its conservative to a more progressive posture. Apart from their notable involvement in the opposition against the Anglo Nigerian Defence Pact pressure groups in the country, especially the labour segment organised a general strike in 1964 to protest the manipulation of the Federal Elections of that year. Their action forced the government to bring in the military to maintain the essential services in the country that were disrupted as a result of the strike. There are those who hold the view that the decisions of the Balewa government to involve the military in purely civil works during the strike, in addition to the use of soldiers to suppress the Tiv riots were some of the remote causes of the belief held by the military that it had a guardian role to play in the country.

Self-Assessment Exercise (SAE) 3.1

Explain the effectiveness of the pressure groups in Nigeria during the colonial period.

3.2 Pressure Groups under Military Administrations in Nigeria

Many pressure groups (professional associations and trade unions) operated in Nigeria under the different military administrations in the country. But as it is generally known it is in the character of a military government to abridge the space of engagement for other groups that may be competing for influence in the country. This is why in the early years of military regime in Nigeria when the major preoccupation of government was the preservation of the unity of the country, little or no opportunity was given for any that could claim competing allegiance of the citizens with the government, or distract its leaders from the pursuit of the national interest. This was why apart from many professional groups that were mainly concerned with the immediate business and pecuniary interests of their members there was no central labour union with the bark and bite that could make it confront the military on political issues, such as the character and timing of the transition to civil rule programme. However, in the spirit of the plan to return power to the civilians the Obasanjo military administration lifted the ban placed on labour unions and their leaders in the country, and centralized their organisation under one umbrella body, the Nigeria Labour Congress (NLC).

During the Buhari's regime the Nigeria Bar Association (NBA), the Nigeria Medical Association (NMA) and the Nigerian Union of Journalists (NUJ) found their voices against the collapse of public services, neglect of due process and repression and violation of human rights committed by agents of the regime. The Nigeria Bar Association barred its members from appearing before the Military Tribunals for the Recovery of Public Assets set up by the government to try public officials who ran the affairs of the country during the Second Republic. NBA's position was that it was impossible to obtain justice in tribunals headed by military officers. However, the late Gani Fawehimi dissented from the mainstream position of the lawyers when he argued that the primary duty of a legal practitioner was to defend his client, no matter the circumstances.

The late Dr. Beko Ransome Kuti also gave bite to the Nigeria NMA when the association organized a strike action to press their demands, which included implementation of various agreements reached with the government on conditions of service and the reconstitution of the Nigerian Medical Council, among others. The government tried to break the strike action through propaganda but NMA's leaders defied all threats by the government to ban it, or blandishments to divide its rank. The government responded to this defiance by proscribing the association, sacked the resident doctors from their jobs and detained its leaders, notably Thompson Akpabio, the President and Beko Ransome Kuti, its General Secretary. Buhari's Employment, Labour and Productivity Minister, Solomon Omojokun accused the NMA of disruptive tendencies, and added that its leadership has been hijacked by the 'younger radicals' while the olders ones are on the sidelines. Indeed we should add that Beko Ransome Kuti cut his teeth as a social crusader and human rights activist during this period, an engagement which he later pursued for the rest of his life, during which he engaged and confronted virtually all the subsequent governments in Nigeria, since 1985.

The NUJ was equally vociferous in its condemnation of the government over the conviction of two Guardian journalists under Decree No. 4 of 1984. Alhaji Bola Adedoja who was NUJ president during travails of Tunde Thompson and Nduka Iraboh articulated the role of the press as the guardian of the society's conscience thus:

> The press is not an enforcer of the law, but a monitor of the performance of public officials. It is left for the enforcers to do their job… The enforcers may refuse to do their job, but the press has to do its own job.

The military administration of Ibrahim Babangida was also not comfortable with the idea of a militant pressure groups or trade unionisms. For this reason journalists were cowed and newspapers and broadcasting houses were shut down to stifle the

voices through which pressure groups ventilated their grievances against the policies of the administration, especially the Structural Adjustment Programme (SAP).

Until the NLC, NUPENG and PENGASSAN were banned by the Abacha military administration the three bodies along with other pro-democracy and civil society groups constituted themselves as the major opposition to the then military regime. Their leaders organized the various protests, civil disobedience public and demonstrations and mobilized the Nigerian peoples against the Abacha' government. While the labour union pivoted the struggle at the home front the National Democratic Coalition led the agitations for the actualization of the June 12 mandate abroad. For their effrontery in challenging the Abacha's government Comrade Frank Kokori of NUPENG and Milton Dabibi of PENGASSAN spent four and two years in detention respectively The NLC remained banned for over four years and was able to find its voice after the election in February 1999 of Comrade Adams Oshiomhole.

Self-Assessment Exercise (SAE) 3.2

Evaluate the role of pressure groups in Nigeria during the period of military rule in the country.

3.3 Pressure Groups under Democratic Governments in Nigeria

The leadership of Comrade Hassan Sumonu was also significant in the chronicle of the political activities of the Labour Union in the country, especially during the Second Republic. To press its demand for a minimum wage for workers in the country, the NLC organized a national strike. It was a successful outing for the Nigerian workers because the action forced the hands of the Shagari's government to approve a minimum wage of ₦125 for workers in the country, the first of such concession to workers in the history of the country. In line with the practice in most

countries the government also proclaimed 1st of May every year as Workers Day or May Day in the country. Comrade Hassan Sumonu's achievements as NLC

president were so outstanding such that after hid tenure in office he was later elected to the continental labour union, the Organisation of African Trade Union (OATU). The tenure of Adam Oshiomole as NLC president also coincided with the period when a former military head of state, Olusegun Obasanjo presided over the affairs of Nigeria as a democratically elected president. It is not an overstatement to describe the period as one of epic confrontation between the NLC and the Nigerian government for the soul of Nigeria. The Union had earlier successfully negotiated an enhanced minimum wage with the Abdulsalam administration, but the burden of implementation fell on the lap of the Obasanjo's government. The first point of disagreements between the government and the NLC was the former reluctance to honour the implementation of the minimum wage, the NLC had agreed with the former administration, citing limited budgetary capacity. The other issue of disagreement was the hike in the prices of petroleum products, consequent to government's decision to withdraw subsidies. For almost half a dozen times the NLC in an attempt to force the government to change its policy called the Nigerian workers on strike against their employers, which in several cases led to office and factory closures, and near paralysis of the nation's economy.

But unlike the previous military setting in Nigeria where the head of state was a dictator, under a civilian dispensation there are other stake-holders such as the National Assembly in the resolution of industrial disputes, when they arose. There were public hearings at the National Assembly which gave the leadership of the NLC the opportunity to bring the issues in dispute into the public domain. Since National Assembly members are conscious of the fact that they have a date to keep with the electorate to account for their stewardships at the end of their tenure, they are seen to be more likely, than the previous military leaders who have no electoral constituencies, to align themselves to the popular aspirations of their constituents. This factor makes a democratic environment more amenable to the interests of pressure groups, in addition to providing more space for them to operate. Similarly

unlike under the military regimes that were in the habit of using ouster clauses inserted in decrees to deny the judiciary of a say in industrial disputes, the industrial arbitration tribunals and courts are usually being put into maximum use, as it has been in Nigeria since the restoration of democratic government in 1999.

Self-Assessment Exercise (SAE) 3.3

Assess the effectiveness of Pressure Groups in Nigeria during the Fourth Republic.

3.4 The Nigeria Labour Congress and its Political Activities

The first attempt by the various trade unions to form a central organization was in 1975 when Comrade Wahab Goodluck was elected its first and as it turned out, its last president. The attempt was ill fated as the congress broke up as soon as it was formed. Later in 1976, the late General Murtala Muhammed, then Nigeria's head of state set up the Justice Duro Adebiyi tribunal to probe all the existing trade unions and their leaders. The tribunal's report led to the promulgation of Decree No. 15 of 1977 which banned eleven veteran trade unionists, including Michael Imoudu and Wahab Goodluck. The ban remained in force for ten years until the then President

Babangida lifted the ban on 1st May 1987.

In 1977, the Obasanjo military administration also dissolved all the labour movements in the country. The government in their place appointed a Sole Administrator to oversee their assets, re-organise the about 1,100 unions into a manageable number and work for the formation of a new central labour organization. This was the background to the formation of the Nigeria Labour Congress on February 28, 1978. Decree No. 22, which established the congress provided for 42 industrial unions to be affiliated to it. The government also gave a take-off grant of N1 million to enable it kick-start its activities.

The Babangida regime encouraged and promoted divisions within the NLC leadership to provide a pretext for it to intervene in the congress. The Congress played into the hands of the government when the 'social democrats group led by Takai Shamang and the 'marxists'or progressives fac tion led by Ali Ciroma could

not reconcile their ideologically based differences. In the exercise of power conferred on him by the National Economic Powers Decree No. 22 of 1985, President Babangida reacted by dissolving the leadership of the Nigerian Labour Congress. The government needed to take this drastic step to disable a body that was perceived by it to have the organization and mass appeal that could likely stoke the fire of opposition to its planned Structural Adjustment Programme (SAP) and other anti-peoples' policies of the administration.

The government appointed Mr. Michael Ogunkoya as Sole Administrator of the central labour body. The Sole Administrator piloted the affairs of the NLC for about ten months during which the labour body was treated as a parastatal of the federal government and thus converted into a willing apologist of its policies. An election was later held and government's vested interest led to the emergence of Comrade Pascal Bafyau as the new president of the NLC. Bafyau was at the head of the NLC until the end of Babangida's administration, especially during the critical stage of Babangida's transition programme, at a period when a pliant and supportive labour union was considered strategically necessary and politically expedient by the government. But the national uproar generated by the annulment of June 12 1993 presidential election and the struggle against the action as well as the clamour for its validation forced the NLC to parted ways with the government and to switch its support for the Nigerians masses who saw the June 12 1993 presidential election as a watershed in the country's electoral and political history.

Self-Assessment Exercise (SAE) 3.4

Evaluate the contributions of the Nigerian Labour Congress towards the formation of the Labour Party of Nigeria (LP)

4.0 SUMMARY

In summary, our discussion in this unit centered on the political role of pressure groups in Nigeria and their relevance as linkage devise between the masses and the government. It was revealed in this unit that the organized labour, a major pressure

group in Nigeria was a platform used by the nationalists to engage and confront the colonial regime. After independence they continued with this political role by agitating against a plethora of issues such as electoral malpractices, unpopular public policies and misrule by different governments in Nigeria.

5.0 CONCLUSION

The role of pressure groups in the promotion of good governance and sustenance of democracy cannot be over emphasized. The history of Nigeria from colonial era till date is replete with the political and engaging activities of pressure group, along with other civil society organizations which perform related functions. It is not an overstatement to say that the history of Nigeria will be incomplete until a deserving place is allotted to pressure groups and their activities. If different governments in the country had been pre-occupied with destabilising pressure groups, or suppressing their activities it is only because they are yet to appreciate the complementary role these groups play in shaping people's oriented public policies.

6.0 TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Assess the methods by which pressure groups could successfully play the role of the opposition movements under a military regime

2. Mention the measures available to the Pressure Groups in influencing public policies that is considered most impressive

4. Examine the relationship between the Nigerian Labour Congress (NLC) and the Nigeria Labour Party (NLP)

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MODULE 5
UNIT 3: ELECTORAL PROCESS AND PRACTICE IN NIGERIA

1.0 INTRODUCTION

All modern democratic nations in the world have evolved a system by which their citizens participate in the process of electing their leaders. Perhaps, nothing is more important in a democratic system than its electoral process. This unit examines the history of electoral administration in Nigeria, from the colonial era till date. It also examines current challenges facing the country in the task of conducting free, transparent, credible and generally acceptable elections.

2.0 OBJECTIVES

At the end of this unit you should be able to

1. Appraise the history of electoral administration in Nigeria and its impacts on electoral behavior in the country

2. Know the impediments facing the electoral process in Nigeria
3. Suggest what can be done to promote the correct electoral attitudes and values that can help bring about constitutional and democratic stability in Nigeria.

3.1 Major Pre-requisites of an Electoral System

The electoral system is a process or the machinery through which citizens in any given democratic state elect their representative in competitive elections that are held at periodic intervals. While the casting of vote is the highest point of an electoral process, other activities include the division of a country into electoral units known as constituencies, existence of political parties, registration and periodic revision of the list of registered voters, or revalidation of voters register, nomination of candidates for the election , political neutrality on the part of the electoral commission , opportunities for parties and candidates to campaign; equal access to government media; avenue for legal redress for defeated, but dissatisfied candidates and power of recall, if the electorates are dissatisfied with the performance of their representatives before the expiration of the stipulated tenure. An elaborate discussion on the electoral system and electoral reforms in Nigeria has been done elsewhere in

Elements of Political Science (POL 111) Self-Assessment Exercise (SAE) 3.1

Try a checklist of the criteria for free and fair elections

3.2 Colonial Period

The electoral system was first introduced in Nigeria in 1923, with the provision under the Clifford constitution for the election of three unofficial members from Lagos and Calabar into the Legislative Council with a minimum income requirement of 50 pounds per annum (Sklar, 1963:28). The introduction of the elective principle brought about unprecedented political awakenings, and the emergence of political parties, notably the Nigerian National Democratic Party (NNDP), led by Herbert Macaulay in Lagos, and Calabar National League, in the

South Eastern Calabar Municipality (Okoye, 1964:71). The first sign of electoral bickering in Nigerian politics occurred in 1941 over the nomination of a candidate that was to represent Lagos municipality in the legislative council between Samuel Akinsanya, an Ijebu Yoruba, and Ernest Ikoli, an Ijaw. The controversy subsequently assumed ethnic colouration and eventually led to the split of the Lagos Youth Movement, (Sklar, 1963:54).

Under the 1946 Richard's constitution, no extension of elective principle to other parts of the country was allowed, other than the reduction of income requirements to 50 pounds per annum. With the creation of regional assemblies in the North, East and West, however, a system of Electoral College was introduced to elect indirectly members into regional legislative assemblies. Since the hallmark of colonial administration was", the elective principle was gru dgingly conceded by the colonial powers, while franchise requirements differed from one region to another, in the line with the British policy of 'Divide and Rule'. For e xample, universal adult suffrage was introduced in the eastern region in 1954, but in the north, adult male suffrage was allowed for both the regional, and the 1959 federal elections.(1963:30-31).

Self-Assessment Exercise (SAE) 3.2

Enumerate the limitations of the electoral system handed over to Nigeria at independence in 1960.

3.3 First Republic (Parliamentary Democracy)

The first republic was ushered in with a federal government and three regional governments formed on the basis of elections held under the colonial period. At the 1959 Constitutional Conference Nigerian political leaders resolved that post-independent Nigeria's Federal House of Representative would be composed of 312 members, elected from a single member constituency, of approximately 100,000 people per constituency. The ratio of regional representatives clearly shows the lopsided nature, and far reaching and decisive electoral implications of the constituency delimitation exercise, which clearly favoured the old northern region.

Out of the 312 seats, the north was allocated 167 seats, Western 57, Mid Western 14, Eastern 70, and federal territory of Lagos, 4 seats.

With the clear majority of the seats allocated to the North, and considering the regional character of the major political parties: Northern People's Congress (NPC), National Convention of Nigeria and Cameroon (later National Convention of Nigerian Citizens) (NCNC) and Action Group (AG), it was obvious that the North would always have the majority of votes in any election. In the 1959 election, for instance, the NPC won 77% of the seats in the North, the NCNC/Northern Element Progressive Union (NEPU) won 79% in the East, While the A.G won 53 percent of the seats in the West (Kriele, 1979:355). An analysis of the 1959 federal elections shows that 16 out of an aggregate total of 321 successful candidates were independent, or members of minority parties. Their total electoral poll was a marginal 578, 893 votes or 8.1 percent of an aggregate total of 7,185,555 votes (Awolowo, 1966:88). In the end, in order to become relevant, most successful independent candidates crossed carpets to the major parties, and this largely account for why the provision for independent candidate was expunged from the electoral laws of the subsequent republics in Nigeria.

The victory by the northern region based NPC was repeated in 1964 when the Nigerian National Alliance (NNA) alliance, with NPC as the senior partner, won 198 seats in the federal elections, the bulk of the votes coming from the North. The defeat of the All Progressive Grand Alliance (APGA) an alliance of the major political parties in the south created a feeling of hopelessness among Yoruba and Igbo that the majority lead of the Hausa-Fulani led NPC may be perpetual, and would never be changed through a parliamentary electoral process (Kriele 1979:356). Indeed, the failure of party politics in the First Republic can be remotely traced to the controversial 1964 Federal Elections.

Perhaps the most contentious issue in the 1964 elections and the controversial October 1965 regional election in the West was the alleged partisan disposition of the Electoral Commission of Nigeria (ECN). The commission was reported to have

returned candidates of the favoured party (notably NPC and NNDP) unopposed, even where others parties (notably AG and NCNC) fielded candidates for the election. Curiously, the commission did neither recognised the partial boycott in the West, or total boycott in the East of the 1964 elections, nor acknowledged or reflected this in its returns of the elections. In spite of the desperate action to form a broad based national government after the disputed 1964 elections, the chain of crises which the two elections generated remained unresolved and generated into in civil disorder in

the West, and the subsequent coup d'état of 15th Jan.1966 (Luckham, 1975:230-40).

Self-Assessment Exercise (SAE) 3.3

Evaluate the role of the 1964 federal elections and 1965 west regional elections in the electoral crises that faced Nigeria in the First Republic.

3.4 Second Republic (Presidential Democracy)

In devising the electoral system for the Second Republic, the military, which organized the first transition to civil rule programme in Nigeria between 1975 and 1979, learnt from the experience of the failure of the First Republic. First, the electoral laws required political associations, to reflect federal character in membership, executive and territorial spread before they could be qualified for registration. Only five political association scaled these hurdles, and were registered as Unity Party of Nigeria (UPN), National Party of Nigeria (NPN), People's Redemption Party (PRP) and Great Nigeria's People's Party (GNPP) to contest the 1979 General Elections, with the sixth-Nigeria Advance Party (NAP) joining others to contest the 1983 general elections.

The 1979 elections were however marred by constitutional controversies over the legal propriety of declaring Alhaji Shehu Shagari, winner of the presidential election, without a second ballot in an electoral college. The legal dispute on the constitutional interpretation of 2/3 of 19 states in the federation was finally resolved at the Supreme Court in favour of the NPN'S flag bearer, Alhaji Shehu Shagari, who though, scored the highest number of votes, but according to the petitioner,

Chief Obafemi Awolowo, of the U.P.N. failed to meet the second element of the mandatory constitutional requirement, of geographical spread.

Commenting on this legal controversy in his memoirs, justice Kayoed Eso, who delivered the minority judgment in the landmark case averred, "the electoral decrees used both the words" 'votes' and 'states' in a mann er that they would not be synonymous but contra-distinctive'' (Eso 2000:296). In other words, the requirement of 2/3 of the states in the federation was cumulative to that of simple majority. The intention was to ensure that an elected president does not merely enjoy a narrow support base, but a countrywide electoral appeal. This, no doubt, was a significant electoral innovation in a plural society like Nigeria. The fact that the 1979 presidential Election result had to be resolved in a court of law impose a legitimacy crisis on Shagari's government, from its inception and this crisis of governance dogged his administration until the 1983 General election, which was also alleged to have been brazenly rigged. One of the presidential election contestants Tunji Braithwaite of NAP described the 1983 elections as an 'electoral coup'. (Babarinsa, 203:263).

Self-Assessment Exercise (SAE) 3.4

Assess the implications of the controversy over the interpretation of two-thirds of the states in Nigeria during the 1979 presidential elections on country's electoral system.

3.5Third Republic under Babangida Regime

The main plank of the electoral system, which ushered in the Third Republic in Nigeria, was predicated on a gradual process, re-orientation of political culture, and institutional adjustment which characterised the Babangida transition programme. In line with the recommendations of the Political Bureau, two political parties-Social Democratic Party (SDP) and National Republican Convention (NRC) were registered by the National Electoral Commission, (NEC), initially headed by Professor Eme Awa, before he was replaced by Professor Humphrey Nwosu. Apart from promoting the concept of 'new breed politics' for the first time in Nigerian

electoral history, grass root oriented politics was also encouraged by Professor Nwosu INEC because it gave prime recognition to the ward, as the primary, but the most significant unit or level of representation.

Indeed, the novel idea of option 'A4' method of ele ction was the most politically decisive stage for the nomination of candidates for elections, rather than the state or national convention of a party. In spite of the introduction of this apparently new electoral arrangement such as staggered elections; government's involvement in the registration of political parties, along not so clear ideological poles and the open ballot system, which denied voters' confidently in the polls, the transition programme, eventually collapsed due to manifest, but often denied, insincerity and inconsistency on the part of the government. It is worthy of note that the electoral arrangement under Babangida, in addition to its prolonged duration is, arguably, the most convulsive and chaotic in Nigerian electoral history.

Under Babangida, and in the name of political re-engineering Nigeria was converted into a laboratory for experimentation. Two government-sponsored political parties were established by fiat (SDP and NRC); the government wrote their manifestoes and constitution; a novel open or modified open ballot system was introduced; nomination of party's candidates was done through option A4, while the whole electoral process was completely monetised. However, because Nigerians were no longer willing to tolerate a military dictatorship the June 12 1993 presidential election, which was the climax of the staggered elections turned out to be free and fair. To the astonishment of every one, General Babangida annulled the election on 23 June 1993 for reasons, which up till today, remain unconvincing.

The annulment of the 1993 presidential election and its aftermath forced Babangida to step aside. But in order not to allow a power vacuum a contraption unknown to Nigerian law, christened the Interim National Government (ING) was contrived by Babangida until November 17, 1993 when Abacha forcefully set aside the Chief Earnest Shonekan led ING and dismantled all democratic structures that were already put in place. Under Abacha's transition programme only political

associations promoted by military protégés were registered; a candidate already on a party's ticket could be disqualified on security grounds even on the eve, or Election Day. The climax was reached when the five registered political parties viz UNCP, NCPN, CNC, DPN, and GDM adopted Gen Abacha, then a serving military head of state, as their consensus candidate (Babatope 2000; 62).

Self-Assessment Exercise (SAE) 3.5

Discuss whether 'hidden agenda' was the bane of Nig eria's electoral system during the Third Republic.

3.6 Fourth Republic

The transition programme for the Fourth Republic commenced following the death of Gen Abacha. Several political associations were allowed to contest the 1999 General Elections with the proviso that only those associations who were able to satisfy electoral requirements of geographical spread, would be qualified for registration by the Independent National Electoral Commission (INEC). Eventually, three political parties: People Democratic Party (PDP), APP (later renamed ANPP) and Alliance for Democracy (AD) were registered, with the latter allowed due to a concession given by INEC. President Olusegun Obasanjo of the P.D.P. won the presidential election and assumed office on 29th May 1999 with a lot of goodwill, given his background as a former military ruler who voluntarily handed over power to a democratic government in 1979.

However, after some years in office, particularly during his second term, the former military ruler lost this goodwill including international acclaim when he dissipated his energy to promote undemocratic policies. The first major electoral debacle of his administration was when he covertly inserted some provisions into the Electoral Act without the approval of the National Assembly. Added to this was the legislative indiscretion by members of the National Assembly who acted under President Obasanjo's surreptitious prompting to extend the tenure of elected local government councils, by one year, with retroactive effect. But the Supreme Court later annulled

the Electoral Act, with the effect that local councils were dissolved after the expiration of their statutory three year tenure, as contained in the electoral Decree promulgated by the military, under which councils elections were conducted in 1999.

Another major political development, which largely influenced the electoral process, was the expansion of the political space after a Supreme Court judgment, which liberalised the process of party registration and led to the participation of thirty political parties in the 2003 General elections. But due to a number of factors, only one of the then newly registered parties, the All Progressive Grand Alliance (APGA) could make some marginal impacts during the elections. Others, like the National Democratic Party (NDP) and United Nigeria Democratic Party (UNDP) that showed some promise, given the political antecedents of some their leaders and candidates, could not rise to the occasion. The General Elections in 2007 also brought in new parties like the Labour Party and the All Progressive Peoples Alliance (APPA) into offices in Ondo and Anambra states, respectively.

In spite of this, the Peoples Democratic Party (PDP) retained its dominance of the country's electoral space both at the centre and at the state levels. Indeed, the governors elected on the tickets of the Progressive Peoples Parties (PPA), in Abia and Imo States including that of Ekiti state were former members of the PDP, who only defected from the party on the ground that the party lacked internal democracy in the manner it conducted its gubernatorial primary elections. The infamous third term agenda of former president Olusegun Obasanjo not only divided the ruling party, but also the presidency during which the president and his vice, Atiku Abubakar took opposing positions. Most of the woes and crises that bedeviled the country's electoral system during the 2007 general elections- manipulated party primaries, cross carpeting among party members, endless litigations and judicial reversal of results-were all linked, one way or the other, to the distrust and acrimony generated among politicians when the third term bid was finally defeated.

Not surprisingly, the dismal electoral performance of the newly registered political parties in 2003 and 2007 led to clamour by many for the reduction in the number of political parties in the country. The proponents of this view argue that these parties lack physical electoral presence in the country and that they merely exist to collect subventions from the electoral commission. Their continued existence, it is argued, will also contribute to the continued dominance of the PDP and the potential danger of turning Nigeria into a one party state. Presently, there are 62 political parties in the country, with only a few of them electorally potent or relevant, and others barely visible on the pages of newspapers. However, the other side of the coin however is that, inspite of the foregoing argument; a multi-party system seems to be the most compatible with Nigeria's ethnic and linguistic mix.

The appointment of Professor Attahiru Jega in 2010 as the new Chairman of INEC seems to have signaled a wave of optimism in the country. This is largely due to the widely acclaimed radical antecedents and personal integrity of the political science scholar and the fact that he was a member of retired Justice Uwais led Electoral Reforms Panel. INEC under Attahiru Jega recognized the huge expectations of Nigerians from him to deliver credible elections in 2011. To realize this and work around the limited timelines, INEC in late September 2010 finally admitted that time constraints would make it impossible for it to deliver credible elections, and it therefore suggested a postponement of the elections it had already slated for January, to April 2011. This new position of INEC seems to be popular with most political parties and some of their leaders who previously had been warning INEC against shoddy preparation for the crucial 2011 polls.

But there are others like Reuben Abati of the *Guardian* newspaper (24th September, 2010 pg 51) who suspect a possible hidden agenda or sleight of hand manipulation by politicians following what he called 'posteriori realizations' in order to deliver pre-determined outcomes. In loudly expressing his apprehension about 2011elections, Abati stated that the challenge facing the electoral body is not time: "It is the quality of the Nigerian process and its leadership". He further states:

> Jega inherited from Maurice Iwu an existing institution, but he met so much mis-alignment between mandates, objective and operational capabilities… In Nigeria there is very little insti tutional memory and our various institutions are driven not by tradition but by circumstances and individual whims…

The manner the 2011 general elections will be conducted and its outcome will determine who is right.

Self-Assessment Exercise (SAE) 3.6

Assess the role of incumbency power in the determination of election results in the Fourth Republic**.**

4.0 SUMMARY

In this unit we have looked into the history of the electoral process in Nigeria dating from the colonial era. We observed that the colonial period was a form of tutelage that was meant to prepare Nigerians for a representative democracy under a parliamentary system of government. We also noted that after the failure of the First Republic the military organised its first transition programme with the hope that the loopholes of the past would have been plugged. However, we observed that the return of the military into politics in 1983 after a short period of civilian rule shows that politicians in the country have learned no lesson. The current attempts at electoral reforms and the present uncertainties surrounding the 2011general elections underscored the fact many problems and challenges still confront the electoral system in Nigeria.

5.0 CONCLUSION

We indicated in this unit that the problems confronting administration of elections in Nigeria include lack of capacity and shoddy preparation by the electoral commission, inadequate logistics, government's interference in the electoral process and the monetisation of the political space. The way out of Nigeria's electoral debacle, therefore, is for the government and other relevant stake-holders to partner with a view to proffering appropriate remedies that can help to address these

obstacles. This is the only recipe to free and fair elections and an enduring political stability in the country.

6.0TUTOR-MARKED ASSIGNMENTS (TMAs)

1. Examine fully the major impediments to free and fair elections in Nigeria.

2. Evaluate the role of the Judiciary in the sustenance and consolidation of democracy in Nigeria.

3. Explain the role of an Independent Electoral Commission in conduct of credible elections in Nigeria.

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