



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF MANAGEMENT SCIENCES

COURSE CODE: MPA 855

**COURSE TITLE:DECENTRALISATION AND
INTERGOVERNMENTAL RELATIONS IN NIGERIA.**

COURSE GUIDE

MPA 855 DECENTRALISATION AND INTERGOVERNMENTAL RELATIONS IN NIGERIA.

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INTRODUCTION

Decentralization and Intergovernmental Relations is a one – Semester Course for students offering Master of Public Administration. It is a 2 credit units Course comprising 15 units.

It contains decentralization, deconcentration, devolution, privatization, local government system, and separation of powers and the three tiers of government, namely the federal, state and local governments.

The course consists of 5 modules and 15 units. Details of the units are contained in the next page. This course guide briefly tells you what the course material contains. It also explains the self Assessment Exercise and Tutor Marked Assignment. There are tutorials included in this course and your tutorial facilitator will enhance your understanding of this course.

WHAT YOU WILL LEARN IN THIS COURSE

The overall aim of this course on Decentralization and Intergovernmental Relations is to expose you to how decentralization contributes to efficiency in governance. It further discusses devolution and relationships among the three tiers of government. This is to enhance your understanding of how governmental organs operate independently but still co-operate together for the smooth running of the system.

You will therefore learn in this course the idea of what Inter-governmental Relations entails.

COURSE AIMS

The aim of this course is to expose the students of Public Administration to the concepts, features and functions of Decentralization and Intergovernmental Relations. This will be achieved by aiming thus:

- (i) Introduce you to the concepts of Decentralization, deconcentration, devolution and privatization.
- (ii) Understand the definition, features, evolution, sources of revenue and expenditure of local government.
- (iii) Explain the doctrine of Separation of powers – Executive, Legislative and Judiciary.
- (iv) Compare relationships among the three tiers of government – Federal, State and Local governments.

COURSE OBJECTIVES

To achieve the aims set out above, the course sets overall objectives. In addition, each unit also has specific objectives. The unit objectives are always included at the beginning of a unit. You can refer to them as you

study each unit both at the beginning and at the end to ensure that you check your progress and that you have done what is required of you by the unit.

However, the following are the main objectives of the course as a whole. By studying these objectives, you should achieve the aims of the course as a whole.

At the end of successful completion of the course, you should be able to:

1. Understand the concepts of decentralization, deconcentration, devolution and privatization.
2. Explain Intergovernmental Relations.
3. Appreciate the Philosophy of Local government.
4. Analyzed features and functions of local government.
5. Appraise Separation of powers.
6. Compare relationships among the three tiers of government – Federal, State and Local governments.

WORKING THROUGH THIS COURSE

To complete this course, you are required to read the study units and the recommended textbooks and explore more current materials on the Internet. To fully understand the course, you need to visit some ministries, National or State Assembly, local governments and observe court sessions to enable you have a clear picture of the relationship between the federal, state and local governments, and the role of the judiciary.

In this course, each unit has self-Assessment Exercise to test your understanding from time to time. However, at the end of the semester,

you are required to submit Tutor – Marked Assignment for assessment purposes by facilitators. You are also required to write final examination on the course. Below you will find listed all the components of the course and what you should do and how to allocate time to each unit in order to complete the course successfully on time.

COUSE MATERIALS

Major components of the course are:

1. Course Guide
2. Study Units.
3. Further Readings.
4. Exercises and Tutor-Marked Assignment.

Everything is contained in each unit except textbooks, which you may have to acquire. You are however advised to source current materials on Internet and avail yourselves of media publications to enrich your knowledge. You can contact your facilitator should in case you have any problem on how to get recommended textbooks.

STUDY UNITS

Unit 1 Decentralization

Unit 2 Deconcentralization

Unit 3 Devolution

Unit 4 Privatization

Unit 5 Definition, Features, and Functions of Local Government

Unit 6 The Evolutions and Law making processes of Local Government system in Nigeria.

Unit 7 The Revenue and Expenditure of Local Governments

Unit 8 The Concept of Intergovernmental Relations and
Composition of Federal Level of Government

Unit 9 The Composition of State Level of Government

Unit 10 Separation of Powers – Its origin, Definition and Meaning.

Unit 11 The Executive Arm of Government

Unit 12 The Legislative Arm of Government

Unit 13 The Judiciary

Unit 14 The Relationship among the three organs of Government –
Executive, Legislative and Judiciary.

Unit 15 The Relationship among the three tiers of government –
Federal, State and Local governments.

Each module consists of 3 units and each module discusses related issues.

Module one explains the concept of decentralization, deconcentration,
Devolution.

Module two is about privatization, definition, features, functions and
meaning of local governments. Other modules discuss separation of
powers and inter-governmental relations.

You must read every unit very carefully. The basic features of the topic
are discussed. However, you may consult reference materials to update
your knowledge. As you study each unit the main contents are discussed
at 3.0 levels. The conclusion (4.0) helps you to round up what and has
been analyzed and “summary” (5.0) summarizes the major issues
discussed. This is to assist you to remember the key issues and simplify
the discussion at the end.

Self-Assessment Exercise

(SAEs) are meant to provide simple questions to enable you understand and remind yourself of the things discussed before the Exercises. Answers are provided next after the questions. But do not consult the answers until you have attempted the questions.

BOOKS

There are no compulsory textbooks for this course. However, as you go through the course, you will observe that some textbooks are recommended often. This shows that it is crucial to a number of units. Please try and consult these. Moreover, each unit has its own assigned texts and document. You should also lay your hand on these for further understanding.

ASSIGNMENT FILE

The major assignment required of you is a tutor-marked assignment (TMA), which you are expected to complete at the end of each unit and mail to your tutor.

COURSE ASSESSMENT

Your assessment for this course is made up of two components:

TUTOR-MARKED ASSIGNMENT

Final examination

The practice exercises are not part of your formal assessment but it is important to complete all of them. If you do the practice exercise, it will facilitate your understanding of the subject matter or topic and your tutor-marked assignments. You can write the assignment by using materials from your study units and from textbooks or other sources. It is however

preferable that as a graduate student, you should demonstrate evidence of wide reading especially from texts and other sources, something to show that you have researched more widely.

But do remember that copying from any source without acknowledgement is plagiarism and is not acceptable. You make reference properly when you refer to other people's work

The assignments are in most cases essay questions. Examples from your own experience or environments are useful when you answer such questions. This allows you to apply theory to real life situation.

CONCLUSION

Decentralization and Intergovernmental Relations as a course is very educative and interesting. It contains decentralizations of authority through deconcentration and devolution. Privatization and its features are also discussed. The local government functions, evolution and sources of revenue and expenditure are analyzed.

The theory of Separation of Powers that encompasses the three arms of government and their functions, namely Legislature, Executive and the Judiciary are explained. The constitutional responsibilities of the three tiers of government – Federal, State and Local Governments – and the relationships among them are also emphasized.

By and large, the contents of the course are what you might have experienced in the office if you are a civil servant, at either federal or State

levels and as a local government employee. There is an element of power play among the three tiers of government even though the principle underlines cooperation. Enjoy the course as you study its contents.

MPA 855 DECENTRALIZATION AND INTER-GOVERNMENTAL RELATIONS

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UNIT I

DECENTRALIZATION

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1.0 INTRODUCTION

In this unit, an attempt is made to present the basic idea of the concept of decentralization. This comprises its definition, purpose, factors, advantages, and disadvantages. You need to understand these features of decentralization to appreciate its importance in administrative processes. For example, the concept of decentralization has several uses when employed in the context of a public administration system.

First, it can be used to refer to an administrative measure involving the transfer of responsibilities and resources to agents of the central government located outside the headquarters at one or more levels – states and local governments.

Secondly, decentralization is also used to refer to a political arrangement involving the distribution of specific powers, functions and resources by the central government to sub-national level government units.

2.0 OBJECTIVES

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

- i. Explain the concept of decentralization
- ii. Discuss the nature, purpose and factors of decentralization.
- iii. Analyse advantages of decentralization.
- iv. Understand disadvantages of decentralization.

3.0 MAIN CONTENT

3.1 The Definition and purpose of Decentralization.

Decentralization can be defined as giving some of the powers of a central government, organization, among others to smaller parts or organizations around the country.

Decentralization is used to refer to the delegation of authority and managerial responsibility of specific functions to organizations outside the central government structure. The organizations and agencies enjoy varying degrees of autonomy. Furthermore, decentralization is also used to refer specifically to the transfer of responsibility for budgets and financial decisions from higher to lower levels of government. This is called fiscal decentralization, which is at the heart of the relationship between the central government and the sub-national government units – commonly referred to as “Intergovernmental relations.” (Adamolekun: 2002:50).

Self Assignment Exercise 1

Define the concept of decentralization.

Answer:

Decentralisation can be defined as transfer of specific functions by a central government to lower levels of government for effective performance.

Decentralization is a twin process of deconcentration and devolution. In deconcentration, a superior officer, in order to make his department function effectively and efficiently, delegates to his subordinate field officials the power to act in his name without transferring to them the authority he enjoys. Devolution, which also implies dispersal of authority, is a process wherein power is transferred from one organ of government to another by means of a piece of legislation or constitution. A certain sphere or jurisdiction, either functional or territorial, is set apart from a legal constituted body which, while administering its authority, enjoys “some power of self-determination”. Thus, decentralization denotes dispersal of authority among a number of individuals or units.

The purpose of decentralization includes the demand for political participation, policies making and to achieve balance socio-economic development among different states. Other arguments for decentralization include the view that citizens within self-governing sub-national governments are likely to be more willing to contribute financially in support of development activities that are identified and implemented at the local level than they would contribute to central governments. This mobilization of local resources for development is further facilitated by the availability of relevant information to state governors, in contrast to

the inadequacy of the information that would normally be available to the distant central government. (Adamolekun: 2002:51)

3.1.1 Factors Affecting the Nature and Degree of **Decentralization**

The degree and the nature of decentralization in any organization will be greatly influenced by the following factors:

- i. Management Philosophy: The character of top executives and their philosophy have an important influence on the extent to which authority is decentralized. If the top executives like concentrate authority in their hand, it would result in centralization. On the other hand, some top executives think decentralization as a means to make a complex function efficiently, such a philosophy would encourage decentralization in the organization.
- ii. History of Organisation: If the organization has developed from the small structures to complex ones, it shows the sign of centralised features. On the other hand, organizations which are created due to amalgamation are bound to possess decentralization tendency. For example, World Health Organization (WHO) is a decentralised organization as it was born out of a number of regional organizations existing at that time.
- iii. Availability of competent subordinate managers: A real shortage of competent and qualified managers limits the extent of decentralization of authority since the transfer of decision-making requires the availability of trained managers at lower

levels. Therefore, there is a need to train the managers before introducing decentralization.

- iv. Costliness of Decision: Perhaps the most important factor determining the extent of decentralization is, in the aspect of policy – the criterion of costliness. Decentralised operation should not be costly.
- v. Stability of policies and methods: Stability of policies and methods is fundamental to decentralization. Thus, decentralization should take place only when the policies and methods: Stability of policies and methods is fundamental to decentralization. Thus, decentralization should take place only when the policies and methods have been stabilised at headquarters. (Ekhtor: 2002: 228 and 229)

Self – Assessment Exercise 2

Mention any three factors that influenced decentralization.

Answer

Any three of the following can be mentioned.

- (a) Management Philosophy
- (b) History of organization
- (c) Availability of competent subordinate managers.
- (d) Costliness of Decision
- (e) Stability of policies and methods.

3.2 ADVANTAGES OF DECENTRALIZATION

Decentralisation has both practical and theoretical advantages.

- i. It creates a corporate sense of responsibility.
- ii. It gives training in self-government.

- iii. It quickens the process of socio-political and economic development.
- iv. It ensures the complete utilisation of available resources so as to attain the set goals and objectives.

3.3 DISADVANTAGES OF DECENTRALISATION

Decentralization has its own demerits. The beliefs that complete decentralisation is a desirable state of affairs is fallacious as this would definitely lead to disintegration. Other crucial problems associated with decentralization are; how really efficient is decentralisation? How much of decentralization is likely to be useful? Etc. (Ekhafor 2002: 229).

4.0 CONCLUSION

This unit has analysed the concept of decentralisation and its relayed features. It explained the factors affecting the nature and degree of decentralization. However, in reality, every modern state combines features of both decentralization and centralization. What happens in practice is that each country seeks to maintain a balance, taking into account its historical, political, economic and cultural realities. Finally, states could be more or less decentralized or centralized at different periods, depending on the prevailing political and economic circumstances.

5.0 SUMMARY

Decentralization has been discussed in this unit. It is hoped that you now understood the concept, its factors, advantages and disadvantages. The various reasons for decentralization include political, economic, social and cultural factors.

6.0 TUTOR – MARKED ASSIGNMENT

Identify and analyse four factors that influenced decentralization.

7.0 REFEREES/FURTHER READINGS

Adamolekun, L(ed) (2002). Public administration in Africa. Main issues and selected country studies. Ibadan spectrum books limited.

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Prudihomme, R. (1995). “The dangers of decentralization” world bank research observer: Washington D.C: Economic Development of Institute

Ter – Minassian, T. (1997). Fiscal Federation in theory and practice. Washington, DC: international Monetary fund.

UNIT 2

DECONCENTRATION

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 - 3.1 Decentralization and field Administration
 - 3.1.1 The functional system
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 - 3.3.1 Regional and District Government.
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-marked Assignment
- 7.0 References

1.0 INTRODUCTION

Deconcentration is the redistribution of authority and responsibility among different level within the central government. It may take the form of shifting of workload from central government ministry headquarters to staff members outside of national or organizational capital.

In the other form, deconcentration is through field administration under which decision-taking is granted to field staff. Another form of deconcentration is “local administration” under which subordinate levels of government such as provincial and local government are agents of the central government. (Abdullahi 2005:08)

2.0 OBJECTIVES

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

- i. Understand the concept of deconcentration.
- ii. Discuss the basic features of deconcentration.
- iii. Explain the advantages and disadvantages of deconcentration

3.0 MAIN CONTENT

3.1 Decentralization and field administration

The critical issue in decentralization is the fact that the officials to whom responsibilities and resources are transferred operate under the superior authority of the central government. Unlike in the case of self-governing sub-national government, there is no formal transfer of authority. The actual organization and functioning of central government activities outside headquarters follow one of three broad systems: the functional system, the unintergrated prefectoral system. These are also referred to as field administration systems. (Adamolekun: 2002:52).

3.1.1 THE FUNCTIONAL SYSTEM

In this system specific functions at headquarters are carried out within clearly defined area units in the field by officials who see themselves primarily as the representatives of the headquarters organization. Usually the field officers are the hierarchical subordinates of the leadership of the headquarters staff. Two significant problems attend the functional system of the field administration. The first obtains when two or more distinct functional components are identifiable within the same headquarters ministry. For example, a ministry of agriculture and natural resources could have the forestry and livestock sections organized within different field units and yet remain responsible to the

same headquarters organization. This poses a serious problem of coordination for the administrative leadership at headquarters.

The second problem concerns the relationship between field officials and the officials of a regional government (in a federal or quasi-federal system) or those of a local government (in both unitary and federal systems). In theory, the field officials are functionally responsible to their superiors at headquarters (who supervise them and determine their promotion), but in practice they cannot avoid maintaining close relationship with the officials of the sub-national governments in the areas of their operations. The problem of functional field is further complicated by the fact that they have to deal with both appointed and elected officials who may sometimes collaborate to make the field officials' work difficult.

Having drawn attention to the problem of coordination and conflicting relationships as characteristic features of the functional system, it is important to mention that it offers advantages as well. The functional system helps to promote the maintenance of uniform national standards in specific areas, such as forest conservation. Secondly, the functional system maximizes the use of trained professional officers who are deployed to exercise their professions within defined areas and with a clear chain of command and lines of responsibility. (Ademolekun: 2002: 52)

Self Assessment Exercise 1

What is deconcentration?

Answer:

Deconcentration is the redistribution of authority and responsibility among different levels within the central authority.

3.2 THE INTEGRATED PREFECTORAL SYSTEM

The system of field administration for example in France until mid-1981 is usually considered the “model” for the integrated prefectoral system. Under this system the entire country is divided into ninety-five departments or administrative divisions, each of which is headed by an administrative officer called the prefect. Although the prefect is the hierarchical subordinate of the administrative leadership of the ministry of interior (at headquarters), he is also designated and accepted as the representative of all the ministries and of the entire central government within his division. He is also responsible for maintaining certain specified controls vis-à-vis the local government institutions within his division.

The integrated prefectoral system was transplanted into all French colonies in Africa and maintained by the successor independent governments. Although the district officers of the colonial era in Anglophone Africa performed functions similar to those of the French prefect, the successor independent Anglophone countries modified the system to accommodate the establishment of self-governing local governments, a development that did not begin in the francophone countries until the late 1980s and 1990s.

The good points of the integrated prefectural system are that it facilitates coordinate and ensures that the political control of the central government is maintained throughout the territorial area of the central government is maintained throughout the territorial area of the state. It can also be argued that it enables the central government to direct the attention of all parts of its territorial areas to whatever matters it regards as important at any time. On the negative side, the system is not responsive to the peculiar need of territorial units. Moreover, the determination of the appropriate area for the prefect (or the prefect's equivalent) is likely to conflict with the demand of macroeconomic and physical planning. Perhaps most important of all is that the system hinders the growth of robust local self-government. Usually the "pure" integrated prefectural systems coexists with appointed consultative bodies (not elected assemblies or councils), and prefectural control of local government dilutes their autonomy. With the establishment of elected regional councils in France in the 1980s and greater emphasis on the autonomy of local governments, that country ceased to be a good example of the "pure" integrated prefectural system. However, strong features of the system are still found in several francophone countries (for example, Cameroon, Cote d'Ivoire, Gabon, and Togo) Adamolekun:2002:53)

3.2.1 THE UNINTEGRATED PREFECTORAL SYSTEM

This is a modified form of the "pure" integrated prefectural system. Unlike under the pure model, the prefect under this system does not control the field officers of functional units representing headquarters ministries and departments. This is because the administrative division under the prefect is not necessarily an area within which field functional officers have to operate. The second distinguishing features of the unintegrated system are that the prefect's controls over the local

government institutions within his area of authority are not as detailed or systematic as the case with the prefect under the pure model. In other words, the local government institutions under this system enjoy a greater degree of autonomy. The Italian field administration system is commonly cited as a good illustration of the unintegrated system. For example, the district chief executive in Ghana exercises powers that are similar to those of a prefect in an unintegrated field administration system. A comparable situation exists in India, where the “district collector,” a central government appointee, exercises considerable powers. (Adamolekun: 2002: 54).

Self – Assessment Exercise 2

Describe the functional system of deconcentration.

Answer:

in this system, specific functions at headquarters are carried out within clearly defined area units in the field by officials who see themselves primarily as the representatives of the headquarters organization.

3.3 SELF-GOVERNING SUBNATIONAL GOVERNMENTS

As already mentioned, self-governing institutions can exist at various levels below the central or national government level: regional, provincial, state, district, municipal, or local. In general, subnational government are expected to help achieve the three broad objectives: political participation, resource mobilization, and efficient service delivery. To achieve its purposes a local government is normally expected to have clear geographical boundaries, a corporate (legal or constitutional) status, specified functions, fixed financial resources, and autonomous personnel. Above all, it is governed by a system of rules

sanctioned by electoral legitimacy. These features are considered essential for the achievement of the three broad objectives of sub-national governments. (Adamolekun: 2002:55).

3.31 REGIONAL AND DISTRICT GOVERNMENTS

With regard to resources allocation and mobilization and service delivery, there are two critical issues in respect of regional and district government. The first concerns the extent of the powers of the elected regional governments to formulate development policies and be accountable for them vis-à-vis the regional electorate. The second is the role and accountability of central government officials based in the regions. In countries where jurisdictional powers are spelled out in constitutions, as is normally the case in federal systems and in some quasi federal states, the emphasis is on granting autonomy to regional governments in order to promote economic and social development. The nature of party politics becomes an important factor in determining the extent of convergence between the development policies and programmes. There is greater harmony between central and regional governments controlled by the same party than in situations where different parties control the central and regional governments.

Where there are only central government officials deployed to work with the elected regional and district governments. The situation will be close to the functional system of field administration except that the officials would have dual allegiance. On the one hand they would perform certain functions on behalf of the headquarters organization, and on the other they would be the agents of regional political executives. Enforcement of accountability could prove problematic under this arrangement. In cases where regional governments have their own corps of officials who are

directly accountable to the regional political executives, relationships between political and administrative actors would have the characteristics of intergovernmental relations in federal systems. (Adamolekun:2002:55)

3.0 CONCLUSION

The definition, meaning and other related features of deconcentration have been discussed in this unit. You have been told that deconcentration is the redistribution of authority and responsibility among different levels within the central government. Decentralization is also described as a local administration under subordinate levels of government such as provincial and local government. You should by now be able to differentiate between deconcentration and deconcentration

4.0 SUMMARY

This critical issue in deconcentration as discussed in this unit is the fact that the officials to whom responsibilities and resources are transferred operate under the superior authority of the central government. However, unlike in the case of self-governing sub-national governments, there is no formal transfer of authority. In the next unit, you would be introduced to devolution which is one of the concepts in delegating autonomy and responsibilities.

5.0 TUTOR MARKED ASSIGNMENT

As a director, how do you delegate authority and responsibility to you subordinate, using the system of deconcentration?

6.0 REFERENCE/FURTHER READINGS

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UNIT 3

DEVOLUTION

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 3.1 The Concept of Devolution

 3.2 Devolution and Autonomous Government Agencies

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings.

1.0 INTRODUCTION

Devolution is a form of decentralization that requires the creation of independent sub national levels of government that are outside the control of the central government. Effective devolution implies the transfer of responsibilities for specified local services to autonomous units for example, local government units that are elected by the local population and are granted the power to raise their own revenues and to decide policy directions.

2.0 OBJECTIVES

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

- i. Discuss the concept of Devolution.
- ii. Devolution and Autonomous Governemnt Agencies

3.0 MAIN CONTENT

3.1 The Concept of Devolution

Devolution can be defined as the act of giving power from a central authority or government to an authority or a government in a local region. This involves granting autonomy to an unit. Autonomy means, on the one hand, “the first or self government”, and on the other hand, freedom of all kinds live:

- (a) Freedom to do what one think best;
- (b) Freedom to act without restraint;
- (c) Freedom without fearing anything; and
- (d) Freedom to receive full rights of self-government. (Oyewo: 2003: 54)

Self Assessment

Define the concept of devolution

Answer

Devolution is the act of giving power from a central authority or government to an authority or a government in a local region.

3.2 DEVOLUTION AND AUTONOMY GOVERNMENT

Autonomy can be defined as the first (and condition) of power of self-government. In most cases, autonomy is viewed as a sort of preservation of group or private interest.

Autonomous or independent governmental agencies are established by government but are independent of government in their mode of operation. A special group of independent agencies are known as regulatory commissions. These bodies are independent of the executive,

the legislature, and the courts in order that they might be able to carry out the task of regulating major economic activities in the face of the competing interests and claims of individuals, groups, and local, state and central governments.

Another distinct category of independent bodies are those enshrined in the constitution. Example include: commissions responsible for managing the civil service and the judicial service, electoral commissions, and ombudsman institution. Enshrining these institutions in the constitution is intended to underscore their independence. There are also some other bodies established by law at arm's length from governments and enjoying varying degrees of autonomy, but not at the same level as those enshrined in constitutions. (Adamolekun: 2002: 24 and 25).

Self Assessment Exercise 2

What is an Autonomy?

Answer

Autonomy can be defined as the right or condition of power of self-government.

Autonomous government agencies are established by government but are independent of government in their mode of operation. Example of autonomy agencies

- Federal Civil Service Commission
- Independent National Electoral Commission
- Federal Judicial Service Commission
- Public Complaints Commission and those of the states
- Local Government Service Commission

- Teaching Service Commission
- National Universities Commission
- Research Institutes, among other (Anthony and Obikeze: 2004: 48)

These independent bodies combine specific tasks with either a regulatory role and or an advisory role.

4.0 CONCLUSION

You have been told that evolution involves granting autonomy to an unit. Autonomy for governmental agencies are established by government but are independent of government in their mode of operation. You should have now known the differences and similarities among the three concepts of decentralization, deconcentration and devolution.

5.0 SUMMARY

The unit has discussed the concept of devolution and lifted some examples of autonomous government agencies in Nigeria. Those agencies came into being as a result of devolution of authority and responsibility. However, they are independent in their mode of operation.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the concept of devolution
2. Give example of 4 governmental agencies which were created as a result of devolution.

7.0 REFERENCES/FURTHER READINGS

Adamolekun L.(ed) (2002). Public Administration in Africa. Main Issues and Selected Country Studies. Ibadan: Spectrum Books Limited.

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UNIT 4

PRIVATIZATION

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- 7.0 References/further Readings

1.0 INTRODUCTION

Under privatization, permission is granted to community groups, cooperatives, voluntary associations, businesses and other non-governmental organizations to provide services either alone or in partnership with public agencies.

Privatization permits governments to concentrate resources on their core functions and responsibilities. while enforcing the “rules of the game” so that the market can work efficiently, with provision of adequate security and basic infrastructure, as well as ensuring access to key services like education, health and environmental protection. The objective is to assist in restructuring the public sector in a manner that will affect a new synergy between a leaner and more efficient government an a revitalized, efficient and service-oriented private sector.

2.0 OBJECTIVES

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

- (i) Understand the definition and meaning of privatization.
- (ii) Explain the rational for privatization.

3.0 MAIN CONTENT

3.1 Definition and meaning of Privatization.

Privatization according to Cap369, laws of Federal Republic of Nigeria (1990) is “the relinquishment of all or part of the equity and other interest held by the federal government or its agencies in enterprises whether wholly or partly owned by it”

Harvey & Henig (1997) see it:

To include any initiative that increases the role of the market in areas previously considered the province of the state (national or local). This includes not only the sale assets, but deregulation and contracting out of public services to private providers.

Privatization is premised on the fact that, businesses should be left for those who are better qualified to handle them, which is the private sector, while the government concentrates on its core duty of governance. Government in this sense entails law making, law implementation and adjudication. Governments involvement in business, takes the form of regulation. It does this through its agencies. In a contest where the referee is grossly incompetent, biased or both, certainly a fair result will not be expected. According to Anyanwu (1993), government regulates business in order to among other things “achieve public policy objectives of financial stability, high economic growth, stable prices, full employment, levels of output and equilibrium, balance of payments position”. It therefore becomes quite clear that these objectives may not be achieved unless the agencies involved are strengthened to be able to perform their roles very well. For now the governments interest is to auction off public

agencies, no much thought has been given to the vital question of regulation. Or better still can the government regulatory agencies cope with the increased burden that privatization will engender? This is because, privatization without adequate regulatory agencies and measures will mean allowing; laissez-faire' attitude pervade the economy and this may lead to economic disorder and chaos. Businessmen are driven by the passion of profit, in doing so; they employ both ethical and unethical means. It is only the strong arm of the law that acts as a restraint on their activities thereby protecting the people, business and society in general. Now that these agencies are still grossly incompetent in Nigeria privatization may not bear much dividend in the country for according to Prof. Olsen (1999) "societies cannot realize the potential of a market economy unless they have institutions that protect rights to private property and to contract enforcement. Without such institutions, the gains from privatization are uncertain".

However, one fear that has been recurring is the fact that privatization may turn a public monopoly like NEPA into a private monopoly. Though the government has kept reassuring the people that it will take adequate steps to avert such an occurrence the truth is that, nobody seem to trust them. Most things that government has done in this country ended up being badly done, so what is the guarantee that this will be different?

The level of official corruption in Nigeria raises the question of transparency in executing the programme in order to make sure that the same group will not hijack a particular sector through different companies and become a monopoly. In the event of government agencies discovering this phenomenon can they resist the lure of graft at least in the public interest? Will they not as usual cooperate with the 'evil men'?

and mortgage our future to a monopolistic cabal? This fear needs to be assuaged.

In the same vein can the Nigerian government fight cartels or trusts that may emerge in the after-math of privatization? Are there strong anti-trusts anybody in government in Nigeria anymore? Moreso, when most of the promises, made by this regime on inception in terms of fighting corruption, improving power supply, poverty alleviation etc, have not been fulfilled, how do we believe it when it promises transparency in the privatization exercise?

Privatization invariably leads to restructuring of the enterprises. This apparently leads to mass retrenchment of staff. Most of the privatized agencies in Nigeria embarked on this trend. It is quite appalling that the new management of these enterprises have not given much thought to the fate of those they are laying-off. In many cases the retrenched staff are not given anything, while in some cases, their severance pay is just a pittance. (Anthony and Obikege: 2004: 268)

Self-assessment Exercise 1

What is Privatization?

Answer:

Privatization is the relinquishment of all or part of the equity and other interest held by the Federal government or its agencies in enterprises whether wholly or partly owned by it.

3.2 RATIONAL FOR PRIVATIZATION

Privatization simply means the divestment of government shares in enterprises thereby allowing the ownership, management and control to be in private hands. Why then will the government want to divest from its companies? There are many varied reasons for this. They include;

- i. Inefficiency of Government Enterprises: Over the years government enterprises have become so inefficient, as epitomized by the epileptic services they render to the public. This is in spite of the fact that the government has and still continues to pump in a lot of money into them. Instead of improving, most of them seem to be retrogressing. Acting as drain pipes on the economy without making any meaningful contribution to our economic development via service delivery, the government decided to transfer them to private hands that have over the years proved to be better managers in order to reduce wastage.
- ii. Economic Recession: The Nigerian economy has been in a very poor state for quite sometime now. The level of unemployment is simply unacceptable, the excruciating foreign debt, food crises, poor infrastructure etc, are all evidences of the economic decay which the nation has found itself in. Apparently, the economy can no longer sustain the level of wastages associated with public enterprises. Also a step to get out of this malaise, a solution has to be found on how to reduce wastes. Privatization is one of such solutions.

iii. Structural Adjustment: Following the down turn in the Nigerian economy in the early eighties, the government of Alhaji Shehu Shagari started the Austerity Measures which were aimed at bringing about a reduction in government expenditure and imports. These measures did not achieve much before the government was booted out of office by the military which also continued the search for policy measures that will revive the economy. In 1986, the Babangida government introduced the World Bank/IMF sponsored Structural Adjustment Programme (SAP). Incidentally SAP had as one of its policy measures; rationalizing the extent of public sector participation in the economy through a programme of privatization and commercialization of those enterprises. (Osagie 1992).

iv. Development Fad: As stated much earlier in the study, the entire world is moving towards capitalism. Capitalism is a market society where the economic decisions of what, where and how to produce are left for the market forces. This system frowns at state ownership of the means of production. Nigeria is not left out of this global development fad, which seems to have chosen capitalism as the best and quick means to development. Therefore the present privatization programme can be situated within the ambit of international capitalist development.

v. Restructuring The Economy: Anyanwu (1993) argues that privatization will help restructure the Nigerian economy reallocate public funds to efficient users, create a self-

sustaining culture, attracts foreign investors, while goods and services will reflect real values.

Self Assessment Exercise 2

Mention any two (2) reasons for privatization.

Answer

1. Inefficiency of government enterprises.
2. Economic recession

4.0 CONCLUSION

In this unit, you have discovered that privatization is one of the models of decentralization. However, privatization invariably leads to restructuring of public enterprises and mass retrenchment of staff. Most of the privatized agencies in Nigeria embarked on this trend. Privatization may turn a public monopoly like PHCN into a private monopoly.

5.0 SUMMARY

This unit has discussed privatization its rationale and reasons. The reasons for privatization include inefficiency of government enterprises, economic recession, structural adjustment, development fad and restructuring the economy. You should have now understood the reasons why Nigerian government embarked on privatization programme since the 1980s. Whether privatization is justified in Nigeria or not depends on success or failures of privatized public enterprises in the long run.

6.0 TUTOR-MARKED ASSIGNMENT

Mention and analyze any four reasons for privatization.

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UNIT 5

DEFINITION, FEATURES AND FUNCTIONS OF LOCAL GOVERNMENTS.

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1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Definition and features of local government

3.2 Functions of Local Government.

4.0 Conclusion

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6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

Local Government is government at the grassroots. The officials are mostly indigenes of their respective local government areas and who should know better the needs of their people than a governor or president.

Local Government is also seen as rational from an administrative point of view as it allows for the efficient provision of public services at the point of service need under the direction of the centre. On this basis, local government is seen as the agent of central government.

2.0 OBJECTIVES

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

- vi. Understand the definition and features of Local government.
- vii. Explain the functions of Local Government.

3.0 MAIN CONTENT

3.1 The definition and features of local Government

There are many definitions of Local Government, depending on one's perspective. For example, what may constitute "local" in one probably differ in the other. But local government system has two basic objectives all over the world; to develop rural areas and bring government closer to the people. Nevertheless, here are some definitions of Local Government.

N.U Akpan (1967: 50) defined Local Government as follows:

By local government is meant the breaking down of a country into small units or localities for the purpose of administration in which the inhabitants of different units or localities for the purpose of administration in which the inhabitants of different units or localities concerned play a direct and full part through their elected representatives who exercise power or undertake functions under the general authority of the national government.

What is deduced from the above definition is that local government is determined by some basic features, which includes that, the unit of administration must be large enough to take in reasonable essential services, the unit must at the same time be small enough to be able to arouse and sustain the interest and civil pride of the local inhabitants; and it serves as a training ground for national responsibilities and leadership.

Montahu (1968:17) defined Local Government as

Government by Local bodies, freely elected which while subject to the supremacy of the national (or state) government are endowed in some respect with power, discretion and responsibility, which they can exercise without control over their decision by the higher authority.

Meanwhile, Whalen listed the following characteristics as the main features of Local Government: a given territory and population, an institutional structure of legislative, executive and administrative purposes, a separate legal identity, a range of powers and functions authorized by delegation from the appropriate central or intermediate legislature and within the ambit of such delegation, autonomy introducing fiscal autonomy (Yakubu 2003:31)

Furthermore, (Oyediran (1988:16) stressed that Local government is referred to as a government in which popular participation both in the choice of decision makers and in the decision-making process is conducted by local bodies, and recognize the supremacy of the central government but still able and willing to accept responsibility for its decisions.

Finally on definitions, Hickey, (1966:168) emphasizes local government as:

The management of services and regulatory functions by locally elected councils and officials responsible to them, under statutory and inspectorial supervision of central legislative and executive, but with enough financial and other independence to admit of a fair degree of local initiative and policy making

3.1.1 FEATURES OF LOCAL GOVERNMENT

In the guidelines for Local Government Reforms, 1976, Local Government was defined as: “Government at Local level exercised through representative council established by law to exercise specified powers within defined areas”:

These power should be given the control over local affairs as well as the staff and institutional and financial power to initiate and direct the provisions of services and to determine and implement projects so as to compliment the activities of the state and Federal Government in their areas and to ensure, through devolution of functions to their councils and through the active participation of the people and their traditional institutions that local initiatives and response to local needs and tradition are maximized.

Local Government must have certain features to qualify to be called one, other wise it becomes local administration. These features include size, election, local scale, and seal, a subordinate system, Legal foundation, community service, Name, Perpetual Succession and subject to the Doctrine of Ultra-Vires. Each of these characteristics is discussed below.

Law Creating Local Government

A Local Government must be created by law and operates within the provisions of that law. In legal term, a local government organization is a corporation, which means it has a corporate status as analysed below:

The principal feature of corporate status is that it vests the group of individuals acquiring it with a collective entity existing independently of the persons who comprise it. Upon incorporation the collection of individuals becomes a singly body, or legal personal, having rights and duties, capable to holding and disposing property, and of bringing and defending actions at law, quite independently of the rights and duties of any of its members.

Therefore, Local Government must have:

Name:

A corporation must have a name and enter into all transactions under that name.

Perpetual Succession

A corporation has perpetual succession and therefore continues to exist independently of its members. The mere fact that the membership of a local government council changes after an election has no legal effect on the position of the authority itself, and thus obligations entered into on behalf of the authority by past members continue to bind it.

Seal

Local Government as a corporation has seal and as a general rule its acts will be authenticated by the fixing of the seal.

The Doctrine of Ultra-Vires

The status of incorporation acquired by local governments is subject to the doctrine of ultra-vires. The doctrine of Ultra-Vires relates to limited legal powers.

Making Laws (Bye-Law)

Local government makes laws, which are called bye-laws. A bye-law is a;

Law made under the auspices of a statutory grant of enabling local authorities to make laws having force for area of their authority. Local government legislative power flows from statute, but when exercised validly the law created has the force of law made by local government. Laws derive their authority from statutes granted by parliament. Any exercise of power is not in accordance with the provisions of the statutes could be declared ultra vires or void. The process of nullifying or declaring laws or acts ultra vires are two. It could be done on either substantive or procedural way. If it is done on a substantive ground, it may be the local government did not have such powers at all. On the other hand, if it is on procedural ground,

it means procedure adopted was wrong. (1976 Local Government Reforms Guidelines).

Other characteristics of Local Government include:

Size

A local government should be small. It should not be as large as a state.

On the other hand it should not be too small. The 1979 local government reforms attempted to solve this problem by specifying population limits for an area of local government:

In order to achieve sufficiency large scale of operations to be able to perform all types of functions, reasonably economically, while remaining sufficiently local, local government should, as far as possible, serve local population of between 150,000 and 800,000 provided that these limits may not be varied in exceptional geographical circumstances and provided further that there should be no upper limit to the size of local government covering major towns so as to ensure that such town is within a single unit. (1976 Local Government Reform Guidelines: .3)

The essence of this provision is to balance the economy with locality. If a local government is too large, it will no longer be local. On the other hand, if it is too small, it may not be economically viable.

A Subordinate System

A Local Government is subordinate to the central government. But it should be stressed that this subordinate is not complete like the case of a ministry. It enjoys some relative autonomy in those areas of function, which are allocated to it. Also as a tier of government councillors are elected with specific mandates within the area of their local competence.

Local Scale

This involves the administration of functions on a local scale. The term local varies according to the philosophy of government in question.

Election

The ideal form of local government is the one that is managed by elected councillors and not appointed civil servants. Regular election are therefore a feature of a local government system.

Community Services

A good administrative system should be able to provide services to clientele. This is one feature of local government administration. Each community has its peculiar administrative problems which local government are meant to solve. (Abdullahi:2005:11).

Self Assessment Exercise 1

Define Local Government

Answer:

Local Government can be defined as a governing institution that has authority over a sub-national territorially.

Main Functions of a Local government Council

The fourth schedule to which section 7 makes reference contains the main functions of a local government council. The functions are:

- (a) The consideration and the making of recommendations to a state commission or economic body on:

- i. The economic development of the state, particularly in so far as the area of authority of the council and of the state are affected, and
 - ii. Proposal made by the said commission or body;
- (b) Collection of rates, radio and television licenses;
- (c) Establishment and maintenance of cemeteries, burial grounds and home for the destitute or infirm.
- (d) Licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
- (e) Establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public convenience.
- (f) Construction and Maintenance of roads, streets, street lighting, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a state;
- (g) Naming of roads and streets and numbering of houses;
- (h) Provision and maintenance of public conveniences, sewage and refuse disposal;
- (i) Registration of all birth, deaths and marriages;
- (j) Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a state; and
- (k) Control and regulation of
- (v) Out door advertising and hoarding,
- (vi) Movement and keeping of pets of all description
- (vii) Shops and kiosks,
- (viii) Restaurants, bakeries and other places for sale of food to the public,

(ix) Laundries, and

(x) Licensing, regulation and control of the sale of liquor.”

From the summary of the activities with which the Local Government areas are saddled, the existence of the Local government councils as a true representation of grassroots democracy or as a tier of government is assured beyond doubt. Achievement of autonomy at the Local Government level in a federal set up such as we have in Nigeria is not only a desideratum, it is also constitutional imperative. If democracy, in its classical though simple definitions is a government of the people by the people and for the people, the Local Government set up is a true representation of this definition, hence the need for a true and virile autonomy for the Local Government areas in the country within a constitutional context.

The Local Government structure as we have it now represents half one thing and half another. It is as Senior put it, “modified only by capricious selection of minor improvement and major impairment”. The Constitution should go the whole hog and provide a true and virile autonomy to the Local Government areas. That is what the grassroots democracy demands. (Yakubu:2003: 8x9).

Self Assessment Exercise 1

Mention two features of Local Government

Answer:

Name a corporation must have a name and must enter into all transactions under that name, Seal-Local Government as a corporation must have a

seal which a general rule its acts will be authenticated by the fixing of the seal.

4.0 CONCLUSION

Local Government is important because it is the basis upon which services could be provided according to local needs. Local Government is therefore a critical tier of government whether in a unity system or as a federal relation under these systems, local governments are always considered as the government closest to the people. In this classification, local government appeals to both government and the local society either as a policy transmitter of the higher tiers or as a feedback institution that relays the opinions and demands of the grassroots to superior governments.

5.0 SUMMARY

In this unit, you have been taught the definition, features and functions of Local Government. Local Government functions include service delivery, promotion of democratization at local level and mobilization of human resources for grassroots development. Local government is therefore in a strategic position for power sharing.

6.0 TUTOR – MARKED ASSIGNMENT

Identify and discuss 5 functions of Local government.

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UNIT 6

THE EVOLUTION AND LAW MAKING PROCESSES OF LOCAL GOVERNMENT SYSTEM IN NIGERIA

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7.0 References/further Readings

1.0 INTRODUCTION

The first governments on Nigeria soil were those of the states and kingdoms. There were also village or clan governments in some places.

When British took over Nigeria, there was the question of how best to govern the country. In organization of government, the first problem was to determine the number of administrative units in the country. The use of Nigerian rulers and institutions was introduced by colonial masters to govern at the local level which was called the Native Authority system. The situation remained the same up to the period of independence in 1960 and extended to 1966 when the military took over power.

The major reform of local government system came in 1976 which produced a national system of local government administration with

common structure sources of revenue and personal management system. A presidential system was introduced into the Local Government system in 1991.

2.0 OBJECTIVES

At the end of the lecture, you should be able to:

- i. Know the evolutionary processes of Local Government system in Nigeria;
- ii. Understand the law-making process in Local Government legislative system.

3.0 MAIN CONTENT

3.1 The Evolution of Local Government system in Nigeria

The Evolution of Local Government system in Nigeria in organization of government, the first problem was to determine the number of administrative units in the country. From the beginning in Nigeria, there were three political divisions.

- (a) The colony of Lagos;
- (b) The oil Rivers protectorate, and
- (c) The territories in the centre and along the Niger River administrated by the Royal Niger Company.

In 1900 the responsibility of running the administration of Northern Nigeria passed from the Royal Niger Company; the Southern most tip of the Northern territory was merged with the Niger coast protectorate to form the protectorate of Southern Nigeria. In the same year (1900), Lagard was appointed higher commissioner and in 1906 the colony of Lagos was joined with the protectorate of Southern Nigeria under a single

administrator. The new unit, with headquarters in Lagos, was called the colony and protectorate of Southern Nigeria, both North and South were administrated as separate political entities but each sector was divided into provinces for administrative convenience.

In the areas, later known as the Northern and Western Regions, provincial boundaries roughly followed those of the governing units established before the advent of the British, but in the east, where the indigenous social organization was fragmentary, artificial boundaries were created, each province was in charge of a British resident, whom were other administrative officials (district officers and as district officers) in charge of subdivisions of the province; all of them were responsible to the chief executive of the territory.

In 1910, there were thirteen provinces in the Northern protectorate namely: Sokoto, Kano, Katsina, Bornu, Bauchi, Zaria, Yola, Muri Kotangora, Ilorin, Nassarawa, and Munshi, the West was divided into five provinces: Abeokuta, Benin, Ondo, Oyo, and Warri. They were however, modification later made in the boundaries of such provinces (AWA: 1964:6).

At the local level, Lugard retained and strengthen the government organizations that had been built up in the North. While the British formulated policies and the empowered Northern emirs admired then and investing each ruler with enormous authority. The Nigerian rulers and institutions to govern at the local level was the native Authority system. The system functioned under limitations: (a) native rulers were not allowed to raise and armed forces, or to grant permission to carry arms; (b) the right taxes was made the prerogative of the British authorities; (c)

the right to legislate and to appropriate land for public and commercial purpose were vested in the British authorities; (d) the British had the right to confirm or reject the people's choice of a successor chieftaincy, and the right to depose a ruler for misconduct.

The native authority system was subsequently established in the East. After some initial difficulties, it worked well in the West. The East where British authorities, influenced by the social structure the North and the West, created automatic paramount chief with displacement of the natural rulers and the novelty reconcile the system with their own largely democratic institutions.

The natural rulers in the town were paid a stipend and were not assigned any political functions, a practice that negated the principles of governing through African rulers and or using indigenous social institutions.

Thus, Local government system is as old as the creation of Nigeria. With the amalgamation of the Northern and Southern protectorates in 1914 and the Native Authority Ordinance of 1916, Lugard was empowered to create a Native Authority. However, the Richards' constitutions of 1946 which restructured Nigeria into three regions transferred the Native authorities to their respective regions. Each region assumed the responsibility of the power to reform the Native Authority system. The situation remained the same up to the period of independence in 1960 and extended to 1966 when the military took over power. (Ibrahim: 2003: 400).

SelfAssessment Exercise 1

How did Local Government system start in Nigeria?

Answer

Through Indirect Rule and Native Authority system.

The coming of military in 1966 into governance of Nigeria brought more reforms into local government system, the major one being that of 1979 which produced a national system of Local Government Administration with common structure, sources of revenue and personnel management system. A presidential system was introduced into Local Government system in the 1991 Local Government reform by Babangida regime (Abdullahi;2005:2-4)

3.2 THE LAW MAKING PROCESS OF LOCAL GOVERNMENT SYSTEM IN NIGERIA

“Bye-Laws” according to the constitution of the Federal Republic of Nigeria “means, enactment of Local government council whose source is a State law”. Bye-laws is also defined by Lord Ruse; C.J. “as an ordinance affecting the public or some portion of the public, imposed by some authority clothed with statutory power ordering something to be done or not to be done”, and accompanied by sanctions or penalty for its non-observance.

The law makes it clear that a council makes bye-laws with respect to functions which have been specially conferred upon it. If it is beyond this, actions could be ultra-vires.

ORIGIN OF DRAFT BYE-LAWS

i. Executive Draft Bye-Law

This draft bye-law is proposed by the chairman of the government and forwarded to the Legislature Arm for processing when passed it becomes executive bye-law.

ii. Private Draft Bye-Law

Members' bye-law is a bye-law initiated by a member or group of members of the council as legislature proposals of the men sponsoring the motion.

iii. Private Draft Bye-Law

A private bye-law is bye-law other than ones mentioned above. It be sponsored by pressure group or individuals but introduced, by council, by a member or group of members.

Process of Making Bye-Law

The Legislative powers vested in any Local government is exercised by bye-laws passed by the Local government Council and assented by the Chairman of the Local Government or by whatever other title chief Executive of the Local government is addressed.

Presentation

1. All drafts bye-law emanating from the Chairman of the Local government shall be forwarded to the leader of the council under a covering letter personally signed by the chairman of the Local Government.
2. Draft bye-laws from members shall be forwarded to the leader of the council.

3. A copy of the draft bye-law shall, as soon as possible be sent to every member.

Every bye-law shall receive three readings prior to its passage.

First Reading

Upon the short title of the draft bye-law being read aloud by the clerk, the bye-law shall be deemed to have been read the first time,

Notice and Publicity Regarding Bye-Law

Any member who wishes to introduce a substantive motion on a bye-law shall give notice to such motion by sending a copy of the provisions proposed to be embodied in the bye-law to the clerk, in advance. The clerk shall cause them to be published for at least forty-five days calling or representations from the public. A copy of the draft bye-law shall be posted on the council's notice Board at the Local government headquarters and at the Local Government Area offices and District offices.

Second Reading

At the expiration of the period allows for representation, the clerk shall submit to council the draft bye-law for a full debate by the council.

Committee State

After the second reading, the motion shall be sent to a committee of the whole council and if need arises, to a special committee for detailed examination and consideration or proposed amendments.

Third Reading

The final stage of the motion is the third reading. The draft bye-law at this stage shall be reintroduced in the full council meeting for final actions, where members shall only look for minor amendments for correction and pass it into a bye-law through a resolution taken on the floor of the council. The bye-law shall then be forwarded to the chairman of the Local Government by the clerk for his assent.

Assent to Bye-Law

The chairman of Local government shall assent to the bye-law passed by the Local Government council by signing it within 30 days from the date it was submitted to him. If he withholds his assent, to the Local Government Council with approval of two-thirds majority of the full council meeting. The bye-law shall be deemed passed and shall become operative and the assent of the chairman shall no longer be necessary in respect of that particular bye-law.

Orders, Regulations and Rules

The Local government Council may empower the Local Government Chairman to make regulations, rules and orders not inconsistent with existing bye-laws in the local government nor with the existing laws of the state or the Federation.

Any bye-law passed by a local government shall be void to the extent of its inconsistency with any edit validly enacted by the state in which it is situated just any state edit shall be void to validity made by the government of the Federation. (Abdullahi: 2005'32-35).

Self Assessment Exercise 2

When the major reform of Local Government system did took place in Nigeria?

Answer: in 1976 when the Local Government system had common structure sources of revenue and personal management system.

4.0 CONCLUSION

Before the evolution of a Native Authority and Local Government system in Nigeria, the country was divided into provinces during colonial rule. Each province was under the control of a British Resident officer, below him were other administrative officials such as: District officer and Assistant District officer who were in charge of subdivisions of the province. All the officers were responsible to the chief executive of the territory – the governor of a region.

5.0 SUMMARY

In this unit you have learnt the evolutionary and law-making processes of Local Government system in Nigeria. The importance of local government system could be noticed even in the beginning of colonial administration when indirect rules was practiced, later transformed to Native Authority system in the North and its modified version in the West and East. Local Government system became unified in the 1976 Local Government Reform and the presidential system was introduced into Local Government administration during the 1991 reform. All the evolutions in the local government system were undertaken to make the rural dwellers feel the impact of governance and also perform their civic responsibilities to their country.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the uniformity features introduced into Local Government system in Nigeria in 1976.
2. Identify and analyse the 1991 major points of Local government Reform.

7.0 REFERENCES/FURTHER READINGS

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UNIT 7

THE REVENUE AND EXPENDITURE OF LOCAL GOVERNMENTS.

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1.0 INTRODUCTION

The main principle of local government is to bring, governance closer to the people especially the rural dwellers and development. No infrastructure development can be achieved without financial resources.

This unit discusses the sources of revenue for local governments and how they incur expenditure as they are mandated constitutionally.

The limitations on both revenue generation and expenditure are also analysed.

2.0 OBJECTIVES

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

- (a) Know the sources of revenue of local government.

- (b) Understand how local governments incur expenditure as well as the limitations,

3.0 MAIN CONTENT

3.1 Local Government finance

In addition to promulgating and enforcing by laws, local government also provides a wide range of services which involve expenditure, Local government therefore needs money and other resources. There are four major sources of local government finance.

These are:

- i. Local taxes
- ii. User fees
- iii. Intergovernmental grants, and
- iv. Loans

The four revenue sources can be grouped into two categories: internally generated or domestically-mobilised revenue and externally mobilised income. Internally generated revenues are collected from persons and enterprises within the jurisdictions of a local government council while subsidies and loans are mobilised outside its territory.

Local taxes: Local taxes have been variously defined however a local tax is generally seen as a tax

- (i) Whose base is determined by the local government
- (ii) A rate that is decided by the local government
- (iii) Its collection is undertaken by the local government and,
- (iv) The proceeds accrue to the local government. Example of local taxes includes property rates, business taxes, and community or poll tax.

User charges: A user charge is a fee paid in exchange for a service provided by a local government. Storage fees in markets built by local councils, fares in local government buses, fees for using local government car parks, etc, are examples of user charges.

Intergovernmental grants: These are funds which the higher levels of government allocate to local government. In Nigeria, for instance, the Federal Government is required to transfer 20% per cent of the Federation Account to local governments while each state is expected to disburse 10% per cent of its internally-derived income to local governments within its territory. Local government also get grants-in-aid and support funding as matching-grants from higher authorities under certain conditions.

Loans: Local governments are empowered to borrow, usually to finance major capitals projects. The loans can be raised either from private financial institutions or specified municipal credit agencies.

In practice, most local governments, particularly in the Third World, derive the bulk of their revenue from transfers from the higher levels of government. This situation, it must be added, compromises their autonomy as it makes them dependent on the central government. (Anifowose & Enemuo: 1999: 321).

Self Assessment Exercise 1

Mention 2 sources of revenue of local governments.

Answer:

1. Statutory Allocation from the federal Account.

2. Allocation from the internally generated revenue of state government, the percentage is determined by State House of Assembly.

3.2 EXPENDITURE PROCEDURES OF LOCAL GOVERNMENT

Local government provides a wide range of services which involves expenditure. Local governments therefore need money to pay for men, materials and machinery which they require to perform their functions and provide services to the people.

3.2.1 SPENDING LIMIT

It shall no longer be necessary to maintain spending limits for the Executive Committee of the local Government (Consisting of the Local Government Chairman, Vice-Chairman, Supervisors – and the Secretary to the Local Government, Treasurer in attendance) subject to the following conditions:

- (i) The provision of the Financial memoranda should be scrupulously adhered with particularly those relating to the control expenditure as well as contract, purchases, payments and personal advances procedures;
- (ii) The projects should be contained in the approved budget or approved supplementary estimates of the Local Government for the year and
- (iii) For the avoidances of doubt, it shall no longer be necessary to refer any contract, whatever its size, to any organ or Functionary of the state Government for approval provided the project had received the prior approval of the Legislative Arm

of the Local Government during the normal process of the annual budget exercise.

However, individual monthly spending limits will be maintained for local government functionaries as follows:

Functionary Annual Internally General revenue

Above n2m N1.n2m BelowN1m

Chairman 75,000	30,000 15,000
Leader 20,000	12,000 7,000
Vice-chairman 18,000	9,000 5,000
Secretary 15,000	8,000 4,000
Supervisor 15,000	8,000 4,000
Clerk 8,000	4,500 3,000
Head of Dept. 8,000	4,500 3,000

These amounts are however subject to change from time to time.

(Abdullahi: 2005:27)

The individual spending limits are subject to the following conditions:

- i. All expenditure approved by an individual officer shall be reported within a week to the next higher officer for information.
- ii. Each officer authorising expenditure; shall be held personally accountable, even after leaving office, for the expenditure approved by him.
- iii. The limit of authority to approve expenditure shall be subject, in the usual manner, to budgetary appropriation, availability of funds and financial memoranda;

- iv. All expenditures beyond the individual spending limit shall be referred, to the next higher officer or the Executive committee of the Local Government as the case be;
- v. The total monthly expenditure authorised by each officer shall be formally reported in the monthly statement of expenditure rendered to the Legislative Arm of each local government.
- vi. Until all Local governments can boast of qualified personnel in budget preparation, the inspectorate staff of Local Governments in the Deputy Governor's office shall continue to assist, needy local Governments in ensuring that the budgets are prepared in accordance with stipulated guidelines.
- vii. All contractual agreements, Local government purchase orders, job order forms or such other documents relating to contracts supplies, etc. shall be signed by the head, personnel Management Department only after the appropriate approving authority has given the necessary approval. If the head of personnel Management Department observes any irregularities he shall invite the attention of the approving authority to it. However, if that authority insists, he shall raise an audit alarm;
- viii. The Inspection staff of the office of the Deputy Governor shall continues to provide technical assistance, advice and guidance (not control) of Local governments as and when necessary;
- ix. All approval for expenditure shall be in writing. (Abdullahi, 2005: 27 and 28)

Self Assessment Exercise 2

Identify and discuss one major procedures of local government expenditure.

Answer:

The projects to be executed should be contained in the approved budget or approved supplementary estimates of the local government for the year.

4.0 CONCLUSION

The source of revenue and expenditure produced has been discussed. All chief accounts in all local governments shall ensure the collection of revenues and shall continue to account for them and render the returns thereof to the treasurer in accordance with the existing financial regulations.

In incurring expenditure, the provision of the financial memoranda should be scrupulously adhered with particularly those relating to the control expenditure as well as contract, purchases, payments, and personal advances procedures.

5.0 SUMMARY

Although, Local government is widely recognised as a tool for promoting development, its performance constrained by lack of adequate funding and excessive control by the state governments. Corruption among local government staff is also a barrier to development of local government areas.

Thus, revenue generated is often not accounted for properly while expenditures are incurred not in public interest but to maximize personal gains.

This unit had discussed the sources of revenue and expenditure produces in the local government system.

6.0 TUTOR MARKET ASSIGNMENT

Mention five source of revenue for local government

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UNIT 8
INTERGOVERNMENTAL RELATIONS:
THE COMPOSITION OF FEDERAL LEVEL OF GOVERNMENT

TABLE OF CONTENT

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 - 3.2 The composition of Federal level of Government
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1.0 INTRODUCTION

Intergovernmental relations refer to the interactions between the national government and the sub-national governments. There is the formal constitutional allocation of governmental functions between federal and state governments in a federal system but such functions are absent in a unitary system. In the unitary state it is the central government that determines what functions to allocate to the sub-national government. The central government can also decide to modify the functional allocations without consulting the lower unit. In the context of federation, the federal and state governments are said to be “co-ordinate” which is in contrast to the unitary system where the sub-national governments are “subordinate” to the central government.

2.0 OBJECTIVE

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

- (a) Understand the definition and meaning of intergovernmental relations.
- (b) Explain the composition of the federal level of government.

3.0 MAIN CONTENT

3.1 The definition and meaning of intergovernmental relations:

Intergovernmental relations is the term commonly used to describe the interactions between the different levels of government within a state.

Although the word “level” implies a contrast of higher and lower levels, there is strong support in the literature for emphasizing cooperation among the levels of government and deemphasizing the idea of a hierarchical relationship.

In a federal system like Nigeria, Intergovernmental relations are dominated by the relationship between the central and the major sub-national governments, with the main features spelled out in the constitution. In particular, the jurisdictional powers of each level of government are delineated in the constitution and any rearrangement must be through a constitutional amendment involving both levels of government.

A full analysis of intergovernmental relations within a federal administration system covers federal – state, federal - local, federal interstates, state – local and inter-local relations.

However, the central government in a unitary state can unilaterally determine both the substance and the style of intergovernmental

interactions. In hybrid situations where the features of a federal system are combined with some features of a unitary system, functional allocations are explicitly stated in the situations and there are limits to the central governments ability to determine the substance and type of intergovernmental interactions. Such countries are said to have a quasi – federal system and a good example is South Africa. For obvious reasons, the arrangements for managing intergovernmental relations in federal systems are more elaborate than in the quasi-federal and unitary systems. (Adamolekun: 2002: 60 and 61).

Self Assessment Exercise 1

What is Intergovernmental Relations?

Answer:

Intergovernmental relations are the interactions between different levels of government within a state.

3.2 THE COMPOSITION OF FEDERAL LEVEL OF GOVERNMENT

The term federation suggests that everybody can be satisfied (or nobody permanently dissatisfied) by nicely combining national and regional/territorial interests within a complete web of checks and balances between a central, or national, or federal government on the one hand, and a multiplicity of regional governments on the other. (Mclean: 1996:179).

A federal system of government incorporates the following six elements.

- **Separateness and independent existence of each unit of government;**

- **Mutual non-interference** between governments in exercising their powers on persons/property within the areas of their constitutional competence;
- **Relatively autonomous decision-making powers and possession of** own apparatus for conducting its affairs, i.e. legislature, executive, judiciary;
- **Legal equality among governments in status, though not in weight.**
However, inequality of resources and powers must not be so great to be preponderant or reduce one or the other to relative impotence;
- **Supremacy of the constitution over all governments and their** actions; and
- **Power to amend the constitution must not be lodged in either but to** both or to some external agent.

The characteristic of federalism mentioned above are not exhaustive, neither do they clarify all the polemics that surround the term federalism. Specific ambiguities have been discovered particularly in the objective of federalism, for example, its assignment as promoter of unity in diversity and the belief that federalism is either a structure or a process or both.

Intergovernmental Relations: The philological origin as well as the precise definition of intergovernmental relations (IGR) has remained quite elusive. However, the fullest characterization of intergovernmental relations as we have accepted them today is credited to William Anderson Deil Wright. The term IGR, which has become an essential vocabulary of scholars, public officials, and ordinary citizens, particularly in America, lay emphasis on interactions among human beings 'clothed with office'. While it is accepted that human beings are responsible and in fact they carry out the relations between governments, finance has emerged as the

most critical element of these interactions. This important feature of IGR, viz. fiscal relations, has assumed a very important position in the American as in most other federal systems.

Deil Wright identifies the five distinctive features of a federal system as follows:

IGR encompasses all the permutations and combinations of relations among the units of government in a federal system.

- IGR comprises the activities and attitudes of persons occupying positions in all the units of government under consideration federal, state, local, political, administrative and in the judicial, legislative or executive branches of government.
- IGR includes concerted and regularised actions of official as well as the one-time occasional occurrences such as new statutes and landmark court decisions etc;
- Politics, economics and administration combine to put finance at the policy centre of IGR; and
- Whereas some federal systems exclude references to local governments; IGR encompasses all relationship between governments including local governments. (Akindele and Elaigwu: 1996:309 and 310).

Self Assessment Exercise 2

Define federalism.

Answer:

Federalism is a system of government in which the individual states of a country have control over their own affairs, but are controlled by a central government for national decisions.

4.0 CONCLUSION

Federation is dialectical and is necessitated by simultaneous emotions of love and hate. The success of the federal experiment is a function of the equilibrium between both feelings.

Federation is therefore a delicate balance in which all concerned must keep their eyes on the scale so that it does not tilt against them.

5.0 SUMMARY

The analytical importance of inter-governmental relations necessitates an expansion of the intergovernmental scheme. This expansion is necessary because the nature and character of federalism is only decipherable from the totality; it is the dynamics rather than the static that give meaning to federation because federation hinges on the political process.

6.0 TUTOR-MARKED ASSIGNMENT

Mention 5 features of a federal system.

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UNIT 9

THE COMPOSITION OF STATE LEVEL OF GOVERNMENT

TABLE OF CONTENT

1.0 Introduction

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 3.1 State – Federal Relationship

 3.2 Intergovernmental Fiscal Relations

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

States are the second tier of government in Nigeria, that is, after the federal government. The powers of the states are subsumed in those of the centre. It is a serial subordinate, dependency relationship in which the state government is subordinate to the central government.

An ordinate – super ordinate relationship exists between the states and the central government. Even when the relationship is codified by the constitution, the political process tends to introduce a hierarchical order even when there is a stagiest confidence in the beneficence of powerful states. This is a function of the gap between the constitutional provisions and the daily operations of the constitution.

Another critical factor that determines the nature of a federation is its fiscal arrangement. Politics and administration are inextricably linked and financial resources are cause and effect of events in both spheres.

2.0 OBJECTIVES

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

- i. Explain the state – Federal Relations.
- ii. Understand intergovernmental Fiscal Relations.

3.0 MAIN CONTENT

3.1 The State – Federal Relations

The allocation of constitutional powers between the levels of government does not necessarily guarantee the autonomy of the states.

The state is subordinate to the centre in the exercise of concurrent powers. States are also subordinate in the exercise of the exclusive powers of the centre.

However, the practice in all federal constitutions is to provide a contingency clause often referred to as the elastic/coefficient clause. For example in the Exclusive Legislative List of the 1999 constitution, it is stated that the Central Government can legislate on any matter incidental or supplementary to any matter mentioned in the List.

The contractual co-equality of the centre and the states is affected by the power to create states especially by the military regime in Nigeria. The proliferation of states resulted in the reduction of the powers of the states, particularly because almost all the states fail the test of economic viability. The fiscal dependence of the states, therefore, blocks the chance

of their political independence from the Central Government that finances them.

Diversity is the most important underlying principle of federalism. Federation is limited government. The constitution is drafted to combine federal and state powers so that national unity and state diversity can co-exist. Strong state sovereignty enhances liberty, increases efficiency and promotes experimentation and innovation. These are the values of federalism. State and individual liberty must be exempted from majority control. The written constitution must remain a barrier between law and politics. It is only then that the constituent states of a federation can blossom in infinite diversity under the law. (Ayoade: 1996:62 – 62).

Self Assignment Exercise 1

State one reason of state – Federal Relations

Answer:

States fiscal dependence on centre is one of their relationships

3.2 INTERGOVERNMENTAL FISCAL RELATIONS

Finance is the most critical policy issues in intergovernmental relations. Basically, there are two issues on this aspect. First, there is the question of the relative powers of central and sub-national governments to raise revenues. The second issue is the relative importance of the proportion of total government revenues that is actually utilized by central and sub-national governments, regardless of how the revenues are raised in the first place.

The role of sub-national governments in raising revenues and their actual spending are regarded as good indicators of the degree of decentralization in a given state. The intergovernmental fiscal relationship between states and the centre are contained in section

162 (1) of 199 constitution which states that: The federation shall maintain a special account to be called “The Federation Account” into which shall be paid all revenue collected by the Government of the federation,.....

162 (2) Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the federation Account directly from any natural resources.

162(3) Any amount standing to the credit of the federation Account shall be distributed among the federal and state Governments and the local government councils in each state on such terms and in such manner as may be prescribed by the National Assembly. And

162(4) Any amount standing to the credit of the states in the federation Account shall be distributed among the states on such terms and in such manner as may prescribe by the National Assembly.

The central problem of intergovernmental fiscal relations in any federal system is the determination of an optimal structure for the public sector in terms of the assignment of decision-making responsibilities to the tiers of government.

However, the various federal constitutions which Nigeria has operated since independence in 1960 provide for the division of the governmental functions into the federal and regional/state spheres together with

concurrent areas. The functions and powers which can be exercised only by the federal government are specified on the exclusive legislative list while the concurrent list contains those functions and powers which overlap between the federal and regional state governments. Functions outside the concurrent list and over which the regional state governments have constitutional powers are contained in the residual list.

On the federal exclusive legislative list are functions over which authority has to be centralised because they have implication for the security, political stability, and macro economic performance of the country such functions include the provision of public goods which covers the entire country or have significant amount of externalities and effect that spill over the boundaries of regional states. (Fajana:1996:106)

Self Assessment Exercise 2

Mention 3 functions of federal Exclusive legislative list.

Answer

1. Import duties
2. Petroleum profit tax
3. Mining rents and royalties

4.0 CONCLUSION

The federal government of Nigeria has had throughout the post-independence period fiscal power over some source of revenue such as import duties, excise taxes, mining rents and royalties, petroleum profit tax, and company income tax. These are revenue which are best administered centrally.

The pursuit of microeconomic objectives such as equitable income redistribution and economic stabilization and the need to coordinate the promotion of economic growth at the national level have necessitated the allocation of the above revenue source to the federal government.

5.0 SUMMARY

This unit has discussed the intergovernmental fiscal relations. To ensure the efficiency and economy of tax administration and to sustain the economic integrity of the entire community, the federal government has had assigned to it those resources which have national or inter-state bases.

Although the fiscal powers of the states cover a wide range of tax, these revenue sources are mainly of a regional and local nature. The sources over which the states have jurisdiction include motor vehicle tax and driver's licence fees, land registration and survey fees, entertainment fees, sales and purchase taxes, stamp duties and betting taxes.

6.0 TUTOE-MARKED ASSIGNMENT

Identify and discuss five fiscal powers of the state

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UNIT 10

SEPARATION OF POWERS

TABLE OF CONTENT

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 3.1 Origin and Definition of Separation of Powers

 3.2 Meaning and features of Separation of Powers.

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

1.0 INTRODUCTION

Separation of power is the doctrine that political power should be divided among several bodies as a precaution against tyranny.

Separation of powers was a leading idea in medieval Europe. Most thinkers agreed that power should be shared between the state and the Church. The idea was revived in the seventeenth century in response to renewed claims of divine right and absolute sovereignty. Locke distinguished the executive, legislative and federative (relating to foreign affairs) power although he did intend them to be regarded separate. He had in mind the British arrangement where the executive (at least partly) drawn from the legislature and (at least in relation to finance) answerable to it. (McLean: 1996:449).

2.0 OBJECTIVES

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

- i. Understand the origin and definition of separation of powers;
and
- ii. Explain the meaning and features of separation of powers.

3.0 MAIN CONTENT

3.1 The origin and definition of Separation of Powers

The theory of separation of powers was developed fully by Montesquieu in “the spirit of Laws” (1748). It was passed into the United States constitution and its justification was in the federalist papers. The checks and balances of US government involve both the vertical separation of powers among the executive (the presidency), the legislature (the two houses of congress, themselves arranged to check and balance one another), and the judiciary (the federal courts) and a horizontal separation between federal government and the states.

Defenders of separation of powers insist that it is need against tyranny, including the tyranny of the majority. Its opponents argue that sovereignty must be somewhere, and that it is better, and arguable more democratic to ensure that it always lies with the same body such as parliament. (Mclean: 1999: 449)

In the book (The spirit of Laws), Montesquieu posited that if liberty and justice were to be secured in society, then the three main powers of government must be separated in such a way that no one become too powerful to absorb the functions of the other two. To the French philosopher who witnesses the 77 years of personal authorization rule of Louis XIV (1638 – 1715), his was the view that the three functions of

government be performed by separate institutions but also that the membership of these institutions be different.

These ideas were favourable by the 18th – century revolutionaries and were put into practice in some written constitutions, which, beginning with the American, have been incorporated into the constitutions of some developing countries of which Nigeria is a typical example. However, in the case of the United States of America, her constitutional father viewed separation of powers seriously. They set up a strict division or separation of powers, classifying governmental powers as Executive, Legislative, and Judicial branches, and entrusted the performance of each to separate agencies. This is strengthened by the erection of a system of check and balances to ensure that each separated power was a check on the other. (Ibezim: 1985:27).

Self Assessment Exercise 1

What is Separation of Powers?

Answer:

Separation of powers is the theory that the three functions of government be performed by separate institutions. It also emphasized that the membership of these institutions be different,

3.2 THE MEANING AND FEATURES OF SEPARATION OF POWERS

Government power expresses itself in three forms legislature, administration and judicial decision. It is of prime importance to the theory of the organisation of government to determine whether, and to

what extent, these powers, or should be entrusted to three separate agencies, coordinate and mutually independent.

Early in the modern period Bodin, the French writer, pointed out in the Republic “(1576) that some separation was essential. The Prince, he thought, ought not to administer justice in person, but should leave such matters to independent judges. To be at once legislator and judges is to mingle together justice and the prerogative of mercy, adherence to the law and arbitrary departure from it” (Appadorai. 1974:518). Therefore, if justice is not well administered, the litigating parties will not be free enough, they are crushed by the authority of the sovereign.

The theory of separation of powers, was however, clearly formulated for the first time by Montesquieu in “the spirit of law” (1748). He says that when the legislature and executive powers are united in the same person, or in the same body of magistrate, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Furthermore, there is no liberty, if the judiciary power is not separated from the legislature and the executive. Were it joined with the legislature, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power the judge might behave with violence and oppression. Consequently, there would be an end of everything, were the same man of the same body whether of the noble or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the courses of individuals.

Montesquie's idea of separation of power was included in the constitution of the United States of America, but the Americans went a step ahead by providing checks and balances.

The founding fathers of USA in the Federalist (1788) believed in limited government. That government should be designed so that it would not become a threat to liberty or property since the founding fathers believed that power was a corrupting influence and that the concentration of power was dangerous. They believe in dividing governmental power into separate bodies capable of checking each other in the event that any one branch should pose a threat to liberty or property. (Dye & Zeigler: 1972: 39).

The checks and balances in the American constitution were done in such a way that the states are balanced against national government, the House of the Representatives is balanced against senate, the executive is balanced against the legislature, the judiciary is balanced against the state, the senate is balanced against the president and the people are balanced against the government.

Meanwhile, there has been controversy among students of political science whether Montesquieu, the author of the theory (and other who followed him), contemplated on absolute or only a limited separation of the three powers. There is no doubt that the sound opinion, as "the Federalist" pointed out, is that he did not mean that the three departments ought to have no partial agency in or no control over the acts of each other, His meaning was that where the whole power of one department is exercised by the same hands which possess the whole power of another

department, the fundamental principles of a free constitution are subverted.

Rightly interpreted, therefore, the theory of separation of powers merely means that a different body of person is to administer each of the three departments of government; and that no one of them is to have a controlling power over either of the others. Such separation is necessary for the purpose of preserving the liberty of the individual and for avoiding tyranny.

Thus, to what extent was the theory of separation of power operated in the Nigeria's fourth republic analyses are contained in this paper. For example, the executive sometimes refuse to release budgeted funds to the legislature, the legislature plotted a "no confidence vote" on the president attempted probe of the executive arm of government, and removal of two senate presidents and the attempted effort to remove the speaker of the House of Representatives were the events in the political scenario of the period under discussion.

Self Assessment Exercise 2

Mention the three institutions of Separation of Powers.

Answer:

Executive, Legislature, and Judiciary.

3.2.1 SEPARATION OF POWERS IN NIGERIA.

In modern governments, complete separation of powers is not practicable. This is what complete separation of powers entails. It means a legislature elected directly by the people for a fixed term; an executive

elected by the people, or indirectly by an electoral college as in the United States of America, for a fixed term and independence of the Legislature in discharging its functions; and judges similarly elected; and independent of both the legislature and the Executive in respect of their term of office and their salary. The legislature will not have the power to choosing, controlling, or dismissing the Executive or the judiciary; the executive will not have the power of dissolving the legislature or vetoing laws or of appointing and dismissing judges; the judges will not have the power of declaring laws unconstitutional or of trying executive officers.

If one looks into the constitutions of several countries, there is not a single instance in which the three organs of government have been kept absolutely separate and distinct. Instead, there is some union and some separation. For example, this may be illustrated from United State of America from where Nigeria adopted the presidential system.

The framers of the constitution of the states in the United State of America consciously adopted the principle of the separation of powers. Yet there are many points of contact between the legislature the executive and the judiciary. The president sends messages to congress; he has a veto over the laws passed by it; and heads of department appear before the committees of congress. The senate's consent is necessary for the appointments made by the president, and the treaties negotiated by him. The house of representative may impeach the president before the senate, the president appoints the judges, and has the power of pardon except in case of impeachment. Judges may sit in judgment over the conduct of government officials, and they have the power to declare laws passed by congress unconstitutional. (Appadorai 1974: 520). Nigeria has

similar system. However, there are peculiarities in methodology and application of separation of power in Nigeria.

The fourth republic came into existence on May 29, 1999 after the exist of the military. The executive was headed by Olusegun Obasanjo having elected as presidential in the election conducted in February that year. He was the president candidate of people's Democratic Party (PDP). The legislature has bicameral chambers. Senate and House of representatives both dominated by the members of the people Democratic Party, the party which the president Obasanjo belongs. Taking this face into consideration, one expected the executive and legislature to have smooth relationship, unfortunately opposite was the case. Thus what went wrong and where and when? These are the questions the following analysis attempt to answer.

According to many public analysts, most of the problems between the executive and legislature between 1999, 2003 were engineered by former president Olusegun Obasanjo. He was not regarded as a democrat because of his political behaviours. More so, that he has military background.

3.2.1 CONCLUSION

Separation of power involves a legislature elected directly by the people for a fixed term, an Executive elected directly by the people, or indirectly by an electoral college as in the united states of America, for a fixed term and independent of the legislature in discharging its functions; and judges, although appointed by Executives, are independent of both the legislature and the Executive in respect of their term of office and their salary.

5.0 SUMMARY

The theory of separation of powers has been discussed in this unit. It is believed that you have understood the concept. Each institution of separation of powers (Executive, Legislature and Judiciary) will be discussed separately in a unit with relevant examples.

However, what we should bear in mind is the fact that there is not a single instance in which the three powers have been kept absolutely separate and distinct. Instead, we find some union and some separation.

6.0 TUTOR – MARKED ASSIGNMENT

Discuss the concept of separation of powers

7.0 REFERENCES/FURTHER READINGS

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UNIT 11

THE EXECUTIVE ARM OF GOVERNMENT

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3.2 Executive Arm of Government under the Parliamentary system

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7.0 References/Further Readings

1.0 INTRODUCTION

The executive arm of government is the branch of government concerned with the execution of policies. It is composed of minister and senior officials appointed by and headed by the president. The president has ultimate say on the policies advocated by the executive branch.

However, following the separation of powers principle, presidential authority is constrained by a separately elected congress and by an independent judiciary whose duty it is to see that executive action is not contrary to the articles of the constitution.

This unit will discuss the features of executive arm of government under the presidential and parliamentary systems of government.

2.0 OBJECTIVES

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

- i. Understand the Executive Arm of government under the Presidential system.
- ii. Analyse the Executive arm of government under the parliamentary system.

3.0 MAIN CONTENT

3.1 The Executive Arm of Government under the Presidential system

Executive is the term used to indicate the aggregate or totality of all the functionaries and agencies which are concerned with the execution of the will of the state because that will has been formulated and expressed in terms of law. It includes the president who exercises supreme control and the host of other subordinate officials like policemen and clerk who simply carry out orders.

The functions of the executive vary according to the type of executive presidential or parliamentary. However, either in a single or plural executive, the functions of the executives remain the same but the decision making body differs.

In a plural executive like in Switzerland, the final control rests with a Federal council but in a single executive like USA and Nigeria, the final control rests with one individual, the president.

Executive operates in the following:-

- i. Legislative;
- ii. Administrative; and
- iii. Judicial.

I. Legislative

The Executive has some share either directly or indirectly, in the process of legislation – recommending measures for its consideration, initiating a suppressive veto, etc. besides, it also has the power of delegated legislation, that is of issuing statutory orders and rules under the power vested in it by the legislature. The power of summoning, proroguing and dissolving the legislature (in countries where the constitution does not itself fix its tenure and date of meeting) is also invariably vested in the Executive.

II. Administrative

Three kinds of administration duties are distinguished. The first is the direction and supervision of the executive of laws. In order to enable the Executive perform his duty efficiently, it is vested with the power of appointing and removing the higher officials, directing their work and exercising disciplinary control over them. In some states like Nigeria and USA, the appointments are made by the president only with the consent of one chamber of the Legislature.

The second is the military power which includes the supreme command of the army, navy and air force and the power to declare war. The command and application of the public force to execute the laws, to maintain peace, and to resist foreign invasion, are power so obviously of an executive nature.

The third is the power to represent the government in its relations with other states, conduct negotiations with them and conclude treaties. In USA and Nigeria, for example, treaties require for their

validity the consent of the legislature or one of its chambers; the senate.

III. Judicial

This relates to the pardoning power vested in the Executive in almost every state, with or without limitations, but it also includes in some countries the quasi-judicial power of trying certain disputes between government officials and private citizens. (Appadorai: 1975: 557).

Self Assessment Exercise 1

Mention the three main functions of the Executive in a Presidential system.

Answer:

Legislative, Administrative, and Judicial

3.2 THE EXECUTIVE ARM OF GOVERNMENT UNDER PARLIAMENTARY SYSTEM.

The parliamentary executive, typified by the United Kingdom, is based upon the principle of cabinet government. Under this system, ministers are appointed and headed by a prime Minister but all executive discussions are collectively made and members of cabinet are collectively answerable to the legislature from which they are drawn and whose continued support they need to stay in office.

In the parliamentary system of government, there is harmony and cooperation between the Executive and Legislatures which makes for efficient legislation. The Executives experience of the administrative

process is useful in making the laws passed by the Legislature more realistic than they are otherwise likely to be. Parliamentary system also makes for responsibility to popular will. An Executive, liable to lose the confidence of parliament as the result of the exercise of arbitrary power, is careful not to be autocratic. By its very nature, it is always induced to adopt a policy which has the support of public opinion.

However, the tenure of the parliamentary Executive is uncertain because it is liable to be upset at any moment by a breeze of popular disfavour.

In practice, the focus of executive decision-making both within presidential and parliamentary systems is more diverse than this would suggest. Presidential government is marked by the decentralization of decision-making within the executive branch and by a reliance on congressional support. Parliamentary systems of government are also marked by a considerable range of executive decision-making process, even in the United Kingdom. Many decisions are indeed taken by the cabinet or cabinet committees in the name of the cabinet. (McLean: 1999: 171).

Self Assessment Exercise 2

Discuss 2 Administrative duties of Executive under the presidential system.

Answer:

- i. The direction and supervision of the execution of the laws.
- ii. Military power which include the supreme command of the army, navy and air force and the power to declare war.

4.0 CONCLUSION

This unit has discussed the executive arm of government under presidential and parliamentary systems. In a single executive under presidential system like in Nigeria and USA there is unity, singleness of purpose, energy and promptness of decision so necessary for the success of an Executive. In plural Executive on the other hand, it impairs unity of control by dividing responsibility. However, a plural Executive has a maxim of experience that in a multitude of councillors, there is wisdom.

In parliamentary executive, with the growth of government, considerable executive authority is exercised by individual ministers at department level or senior officials acting in their name.

5.0 SUMMARY

Executive is the branch of government which gives effect to the will of state by carrying out or executing the law of the land. A chief Executive is invested with the executive power and assisted by subordinate departments or ministries responsible to him that carry out specific areas of law and policy.

Executive functions under both presidential and parliamentary systems were discussed in this unit. The Legislative functions will be discussed in the next lecture.

6.0 TUTOR-MARKED ASSIGNMENT

Identified and discuss the three functions of the executive arm of government.

7.0 REFERENCES/FURTHER READINGS

Appadorai, A. (1975). The substance of politics New York: Oxford University Press.

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UNIT 12

THE LEGISLATIVE ARM OF GOVERNMENT

TABLE OF CONTENT

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
 - 3.1 The functions of Legislature
 - 3.2 Types of Legislature: Bicameralism and Unicameralism.
- 4.0 Conclusion
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- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Legislature is a law-making assembly of elected members in a formally equal relationship to one another. Legislatures evolved from medieval bodies periodically assemble by kings in order to agree to levies of taxation to bodies which sat more or less continuously or at least claimed the right to do so as did seventeenth century English parliaments.

The legislature therefore took its modern form in the work of John Locke and the parliaments he had in mind. Legislatures in modern states pass laws; determine the ways of raising and spending public revenue and discuss matters of public importance.

2.0 OBJECTIVES

- At the end of this unit, you should be able to
- i. Analyse the functions of legislature; and

- ii. Understand the types of legislature.

3.0 MAIN CONTENT

3.1 The functions of Legislature.

The functions of Legislature can be classified under four headings, namely:

- i. Legislation;
- ii. Administration;
- iii. Finance; and
- iv. The ventilation of grievances.

I. Legislation

The first important function of a Legislature is to enact laws. Section 4 (i) of the 1999 constitution of the Federal Republic of Nigeria states that “the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the federation which shall consist of a senate and a House of Representatives”

Section 4 (3) states the functions of the National Assembly as follows:

The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislature List shall, save as otherwise provided in this constitution, be to the exclusive of the House of Assembly of states.

II. Ad ministration

The administrative function of the Legislature is that of superintendence and check. It is to throw the light of publicity on

the government's acts; to censure them if found condemnable, and if the men who compose the Government abuse their trust or fulfil it in a manner which conflicts with the deliberate sense of the nation.

III. Finance

In matters of finance, it is a rule that public money cannot be raised or spent without parliament's approval, but proposals for raising and spending money must come from the Executive.

Section 80 (3) of 1999 constitution emphasizes that:

No moneys shall be withdrawn from any public fund of the federation, other than the consolidated Revenue fund of the federation, unless the issue of those moneys has been authorised by an Act of the National Assembly, while 80 (4) says "No moneys shall be withdrawn from the consolidated Revenue funds or any other public fund of the federation, except in the manner prescribed by the National Assembly.

Section 81 (1) of the same constitution states:

The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the federation for the next following financial year,

IV The ventilation of grievances

A Legislature is a useful organ of public opinion. It is a place where every interest and shade of opinion can have its cause presented. This is a most important function in a democracy, which has been well described as a government controlled by public opinion. (Appadorai: 1975: 550).

Self Assessment Exercise 1

Discuss any two functions of the followings of Legislature.

Answer

Any two of the following can be discussed:

- i. Legislation
- ii. Administration
- iii. Finance
- iv. The ventilation of grievances

3.2 TYPES OF LEGISLATURE

There are two types of legislature:

- i. Bicameralism – which comprises the upper (senate) and lower (House of Representatives) chambers.
- ii. Unicameralism – It is made up of only one chamber.

I. Bicameralism

Most modern constitutions provide for a two chambers, the upper and the lower – the senate and House of Representatives.

Bicameralism is the view that a legislative chamber should be properly composed of two houses. In federal systems, the upper house often represents the units of the federation, which may be given an equal number of seats regardless of their size as in Nigeria.

II. Unicameralism

Unicameralism is a legislature made up of one chamber. Unicameralism would be difficult to reconcile with a federal system as a second chamber is generally seen as necessary to protect the position of the constituted units of the federation against the central government. Second chambers are also seen as offering a protection against arbitrary decisions by a lower chamber which may be dominated by one party. However, this objective can be achieved of other means such as charters of rights enforced through the courts. (McLean: 1996: 506).

Self Assessment Exercise 2

Mention two types of Legislature.

Answer

Bicameralism and Unicameralism.

4.0 CONCLUSION

The major function of legislature is to make laws. However, it also has some other duties which include administration, finance and ventilation of grievances. All these functions make legislature the first among the arms of government.

5.0 SUMMARY

In this unit, you have been taught the functions of legislature which comprise legislature, control over revenue and expenditure, administration and setting of grievances.

The two types of legislative system are also discussed. Bicameralism has two chambers – the lower and the upper. Unicameralism has only one

chamber. The Judiciary which is the last arm of government will be discussed in the next unit.

6.0 TUTOR-MARKED ASSIGNMENT

Mention and discuss the four functions of Legislature.

7.0 REFERENCES/FURTHER READINGS

Appadorai, A (1975). The substance of politics. New York: Oxford University Press.

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UNIT 13

THE JUDICIARY

TABLE OF CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main contents
 - 3.1 Judicial independence
 - 3.2 Functions of Judiciary
 - 3.3 Judicial review of Legislation
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-marked Assignment
- 7.0 References/Further Readings.

1.0 INTRODUCTION

Judiciary is the third arm of government. The role of the Judiciary is very important, because the citizen can rely on the certain, prompt and impartial administration of justice. The primary duty of the judiciary is to interpret laws, to apply the existing law to individual cases and by so doing, to hold the states even both between one private citizen and another, and between private citizen and members of the government. The Judiciary, therefore, is the last hope of the common man in the administration of justice.

2.0 OBJECTIVES

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

- i. Understand the Judiciary Independence
- ii. Explain functions of the Judiciary; and
- iii. Explain judicial review of legislation.

3.0 MAIN CONTENT

The Judiciary

The judiciary constitutes the third arm of government. It entails law, judges and courts. The primary duty of the judiciary is the interpretation of law and application of existing laws to individual cases.

In any modern state, the liberty of individuals depends upon the fairness of courts in protecting them both from other individuals and from tyrannical or overzealous members of the government. To enable the judiciary to fulfil this important role, it is separated from the control of the other branches of government – the legislature and the executive. Also important to the preservation of individual liberty is that the judiciary should consist of judges who are men of honesty, impartiality, independence and sound legal knowledge.

3.1 THE JUDICIAL INDEPENDENCE

Independence of the judiciary refers to the absence of external control, impartiality and absence of bias in the administration of justice by the courts. The independence of the judiciary is essential to individual freedom.

Judges must as far as humanly possible, be made independent of the executive in the discharge of their duties. In order to ensure that the civil liberties and rights of individuals are protected against the encroachment of tyrannical executives, judges must be able to act independently without fear or favour. The administration of justice requires not only a thorough knowledge [of the law but also a developed judgment – the ability to be impartial and non-partisan as well as the highest personal integrity and honesty. To perform their role effectively, judges must be selected by a

method which emphasizes these qualities, and which lays less emphasis on political considerations and they must be guaranteed conditions of tenure and remunerations that assure their independence of political influence. The following are therefore the effective modes of securing judges of independence and high integrity. (Anifowese and Enema: 1999: 85).

However, the appointments of persons to the offices of chief Justice, a Justice of the Supreme Court, president of the court of appeal and Justices of the court of Appeal, chief judge of the federal high court and a Judge of the federal high court are made by the president on the recommendations of the National Judicial council. The appointments are subject to confirmation by the senate. (Sections 230 and 249 3 of the 1999 constitution)

Similarly, state courts Judges Appointments follow the same pattern as such appointments are confirmed by States houses of Assembly. The methods of appointing judges notwithstanding, it is generally thought important for the rule of law that judges should not be dismissible at the immediate wish of the executive or the legislature.

The more the judiciary is separated from party politics, the better. This means that the legislature must not have the power to elect judges and that no member of the legislature should be eligible for a judicial office. There must be a separation between the executive and the judiciary. While the executive has the power of appointing judges, it must not have the power of dismissing them. However, the judiciary may be vested with the power to review the acts of the executive. The government officer

must be answerable in a court of law for his action as a government servant. This is an important safeguard of liberty. (Appadorai, 1975:569)

3.2 FUNCTIONS OF THE JUDICIARY

The overall function of the judiciary is to interpret and apply the law with certainty and uniformity to specific cases as they arise. When a case comes before a court, its first duty is to find the facts and then to discover the law applicable to the case. The function of applying the law includes the following:

- The settlement of disputes;
- The prevention of wrongful acts;
- Issuance of declaratory judgements;
- Judicial review (in the United States and a few other countries),
and
- Protection of individual rights by constituting a check on the arbitrary use of power by government.

The settlement of disputes: The court deals with cases between private individuals and the government. Both civil and criminal cases are settled by the courts. A civil case is one brought in the name of the state against a person accused of a misdemeanour or felony. It is the duty of the court to determine whether a person is innocent or guilty and invoke the appropriate penalties.

Prevention of wrongful acts: By means of writs and restraining orders, court may act to prevent violations of the law. Failure to obey an injunction constitutes contempt of court, and may be punished by fine or imprisonment.

Judicial review: This refers to the process by which courts, especially in federal systems, are given the power to determine

whether the legislative and executive branches, especially the former; have exceeded their power. Where executive acts and legislative statutes are in conflict with the constitution, the courts will declare void on grounds of being unconstitutional. In the United States, both federal and state courts have held federal and state laws invalid under the federal constitution. The US Supreme Court has the last word on the constitutionality of a federal or state law. Judicial review is thus a valuable check upon headstrong executive or legislative action.

Preservation of civil liberties: The courts frequently play a leading role in the preservation of civil liberties. In most countries, the courts are effective in protecting civil rights. They make certain that the executive branch, in carrying out its functions, adheres to the rules of procedure laid down by law. For example, when a person is detained without trial, the court can compel the executive to bring the detained person to court and to show reason for his continued detention.

Declaratory judgements: Many countries provide by law that courts may, in actual controversies, render declaratory judgements – that is judicial determinations of the rights of parties existing under statutes, contracts, wills or other documents. Such judgements enable the parties to ascertain their respective rights without becoming involved in wasteful and unnecessary litigations. Declaratory judgements are binding on the parties.

Apart from the above, judges perform other miscellaneous functions including appointing guardians of minor and administrators, and performing marriages. (Anifowese and Enemuoh: 1999: 185: 186)

Self-test Exercise 1

What is the process of appointing a Justice of the Supreme Court?

Answer: A Justice of the Supreme Court is appointed by the president on the recommendations of the National Judicial Council and subject to confirmation by the senate.

3.2 THE JUDICIAL REVIEW OF LEGISLATION

Written constitutions give the power to review the constitutionality of laws to the regular courts and special courts. Judicial review refers to the power of the courts to declare “null and void” any act of the national government or the states which is contrary to the constitution or any executive acts which is contrary spirit or letter of the constitution. (Ibezim:1985:42). The courts in Nigeria are:

i. Federal: the supreme court of Nigeria

The court of Appeal

Sharia Court of Appeal.

The Federal High Court

Customary Court of Appeal

ii. State: High Court of a state

State Sharia Court of Appeal

Magistrate Court

Upper Area Court

Area Court

Self Assessment Exercise 2

Mention 3 federal Courts.

Answer:

The Supreme Court

The Court of Appeal

The Federal High Court.

4.0 CONCLUSION

The judiciary which is the third arm of government under separation of powers has been discussed the role of the judiciary is so important that it is very essential to choose men of honesty, impartiality, independence and legal knowledge to fill the places of judges. The duration of judges in office is subject to review from time to time but at Supreme Court, the retirement age in Nigeria currently is 70 years.

5.0 SUMMARY

There is no better test of the excellence of a government than the efficiency of its judicial system. There is nothing more nearly that touches the welfare and security of the citizen than his knowledge that he can rely on the certain, prompt and impartial administration in the community. The judge, therefore, fulfils an onerous function in the community.

The emphasis made above is on the vital role of the judiciary as an arm of government. In this unit, we have discussed the functions of judiciary and the types of federal and state courts. In the next unit, we shall discuss the relationship among the three organs, namely: the executive, Legislature and Judiciary.

6.0 TUTOR-MARKED ASSIGNMENT

Mention two major functions of the Judiciary

7.0 REFERENCES/FURTHER READINGS

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UNIT 14

THE RELATIONSHIP AMONG THE THREE ORGANS OF GOVERNMENT- EXECUTIVE, LEGISLATIVE AND JUDICIARY.

TABLE OF CONTENT

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- 3.0 The relationship among the three arms of government
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- 6.0 Tutor- marked Assignment
- 7.0 References/further Readings.

1.0 INTRODUCTION

As we have discussed in previous units, in all political systems of the world, there are three arms of government, the legislature, the executive and the judiciary. These are respectively the rule-making, Rule-application and rule-adjudication organs of government. Each of the organs has been discussed separately. The focus here is to analyse the relationship among the three organs since each of them cannot operate in isolation.

2.0 OBJECTIVES

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

- (i) Understand the relationship among the three organs of government.

3.0 MAIN CONTENT

3.1 Legislative- Executive Relations

In most nations, the legislature exercises some degree of control and influence over the executive. There are devices and checks on the dictatorial tendencies of the executives. The ways legislature does this include:

- (a) Legislatures in most countries authorize the raising and the spending of money by the executive. Financial control is a traditional weapon in the hands of the legislature in seeking to exercise some control and influence over governmental policies. If the legislature refuses to appropriate money, the executive cannot prosecute its programmes.
- (b) Legislatures can launch investigations into the conduct of administrative activities and into the personal conduct of lives of members of the executive. These investigations may be carried out by committees of the legislature. The abuse of executive powers can be checked by the investigatory power of the legislature.
- (c) In presidential systems, the legislature can delay or disapprove presidential nominations to high office. Thus, the powers of the legislature to approve certain presidential appointments and ratify treaties negotiated by the president provide an opportunity for the legislature to influence the policy of the executive.
- (d) Legislatures, especially in parliamentary regimes, influence the decision-making process of the executive during the “question period”. Law-makers are provided the opportunity to question members of the government on many point of policy administration. (Anifowose:1999:178)

Self Assessment Exercise 1

Mention one method legislatures use to control the executive.

Answer:

Legislatures in most countries authorise the raising and spending of money by the executive.

3.2 JUDICIARY AND OTHER ORGANS (LEGISLATURE-EXECUTIVE)

In any modern state, the liberty of individuals depends upon the fairness of courts in protecting them both from other individuals and from tyrannical or overzealous members of the government. To enable the judiciary to fulfil this important role, it is separated from the control of the other branches of government- the legislature and the executive. Also important to the preservation of individual liberty is that the judiciary should consist of judges who are men of honesty, impartiality, independence and sound legal knowledge.

Judges must therefore as far as humanly possible, be made independent of the executive in the discharge of their duties. In order to ensure that the civil liberties and right of individuals are protected against the encroachment of tyrannical executives, judges must be able to act independently without fear or favour.

The administration of justice requires not only a thorough knowledge of the law but also a developed judgment- the ability to be impartial and non-partisan as well as the highest personal integrity and honesty

The judiciary should be independent of the pressures of both the executive and the legislature. To this end, members of the judiciary

should not belong to either the executive or the legislature. The judiciary should be kept distinct and separate from the other organs of government so that the members of the bench are not unduly influenced in the discharge of their functions.

The independence of the judiciary is also to be secured by appointing as judges men of exemplary quality, impeccable character, high integrity and honesty, especially those who are not easily susceptible to financial, social and political influences and pressures.

However, the experience of some countries, especially in Africa, has demonstrated that many factors can limit judicial independence. These factors include the political control and manipulation of the likelihood of bias arising out of the personal interests of members of the judiciary themselves. (Anifowose: 1999: 189).

Self Assessment Exercise 2

How can the judiciary safeguard its independence?

Answer:

By Judges refusing to be unduly influenced in the discharge of their functions.

4.0 CONCLUSION

The relationships among the arms of government have been discussed.

The Legislature exercises some degree of control and influence over the Executive through budget approvals and oversight functions.

Judges are appointed by the executive and subject to confirmation by the legislature. However, they are not to be influenced in the discharge of their

functions. The judiciary is vested with the power to interpret laws and review the acts of the Executive furthermore; the government officer must be answerable in a court of law for his conduct as a government servant to safeguard liberty.

5.0 SUMMARY

The principle of separation of powers which makes the Arms of government independent also constitutionally allows some checks and balances among them. The legislature approves budgets and appointment of important personnel of the Executive such as ministers, Ambassadors, and also Judges. The judiciary interprets laws and anybody, including a Government servant is subject to law in order to safeguard liberty.

The Executive implements policies and executes programmes which may directly or indirectly affect the Legislature and the judiciary. It is therefore, very important for them to co-operate but not compromise their fundamental functions. This brings to an end the discussion on the three arms of Government. The next and last unit focuses on the relationships among the tiers of government, namely the federal, state and local Governments.

6.0 INTER-MARKED ASSIGNMENT

Identify and discuss two major devices and checks on the Executive by the legislature

7.0 REFERENCE AND FURTHER READINGS

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UNIT 15
THE RELATIONSHIP AMONG THE THREE TIERS OF
GOVERNMENT – FEDERAL, STATE AND LOCAL
GOVERNMENT.

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1.0 INTRODUCTION

All federal states have devised mechanism for coping with the problems generated by shared sovereignty, non – centralization and divided spheres of responsibilities which the federal system connotes. This unit examines the institutional mechanisms for promoting intergovernmental cooperation in Nigeria. However, the relationship between units within such a system takes place through process of cooperation, competition and conflict. Most of the specialized machineries established to promote cooperation, recognise the inevitability of and at times the necessity for conflict and, therefore, always carry out conflict management and resolution activities. This unit

therefore attempts to identify and assess the performance of three tiers of government and relationship among them.

2.0 OBJECTIVES

At the end of this unit, you should be able to understand the intergovernmental relationship at:

- i. The Federal Government
- ii. The State Government
- iii. The Local Government.

3.0 MAIN CONTENT

3.1 The Federal Government

An intergovernmental relation assumes that in any modern society, governmental systems are broken down into tiers, politics or constituent unit. This is why intergovernmental relations is commonly associated with federalism.

Federalism represents a principle for the organization of decision making in an association of groups of people within a nation-state. The peculiarity of this association is that such groups are endowed with a special function in central decision making. Furthermore, the groups possess a relative autonomy that is constitutionally recognized. Therefore, a federal system of government recognises and respects the co-existence of concurrent governments with well-defined autonomy. Thus, the central government does not play any dominating role in its relationship with the other units of government. Federalism, therefore, emphasizes the sharing of power in political systems with each level of government exercising its powers within constitutionally approved limits. (Frankel: 1968:51).

Intergovernmental relations lay emphasis on interactions among human beings “clothed with office” (Anderson: 1960:3) however, while human beings are responsible to carry out the relations between governments, finance is the most critical element of these interactions. The central government plays vital role in creative institutions for intergovernmental relationship and in articulating intergovernmental cooperation. The intervention by the central government is either direct or indirect and the effect of central government interference in the organization of intergovernmental interactions is felt by the three tiers of government. (Ayo and Olowu: 1996: 306).

Intergovernmental relations (IGR) agencies in Nigeria can be classified into three categories. These include constitutional bodies, statutory bodies, (that operates in executive capacity and ad hoc IGR bodies

A.

- i. Constitutional IGR bodies include The National Assembly, The Supreme Court, Council of states and other Federal Executive bodies. The National Assembly focuses on the management of the national financial resources and makes very significant inputs to the disbursement of federally generated revenues among the levels of government and monitors through committees how disbursed funds are spent to ensure proper accountability.
- ii. The Supreme Court is the court of final arbitration in civil and criminal suits in Nigeria. Moreover, it is also a Court of original jurisdiction for federal and state governments and among the state government.

iii. Council of states was created by the federal government through section 140 (i) of the 1979 constitution. It consists of:

- The President, who shall be the chairman;
- The Vice-President, who shall be the deputy chairman;
- All former presidents of the federation and all former heads of the Government of the Federations;
- All former chief Justices of Nigeria who are citizens of Nigeria;
- The President of senate;
- The speaker of the House of Representatives;
- All the Governors of the states of the federation;
- The Attorney – General of the Federation; and
- One person from each state, who shall represent that state to be appointed by the council of chiefs of the state from among themselves.

(The Constitutions of Federal Republic of Nigeria, 1999)

Self-Assessment Exercise 1

What is the mechanism for cooperation among the three tiers of governments?

Answer

Constitutional provision which divides functions into exclusive, concurrent and residual but seek cooperation among them to avoid conflict.

B. Statutory bodies are set up for promoting intergovernmental cooperation. Example include: National planning commission which was carved out of the former Federal Ministry of budget and planning and enjoys a ministerial status and headed by a Federal

Minister; the National Primary Health Care Development Authority (NPHCDA), among others.

C. Ad Hoc bodies are council meetings of diverse federal and state ministers on key subjects such as personnel, education, finance, etc. At these meetings, far-reaching decisions are usually taken by members which often metamorphose into federal policy decisions or even statutes. It also includes meetings of governors, senators, among other from the same region. None of these agencies are based on any constitutional or statutory provisions. (Ayo and Olowu: 1996: 316).

3.2 THE STATE GOVERNMENT

At the state level, there are some bodies which possess constitutional statues and some of which perform or are supposed to perform functions which are intergovernmental in nature. Such bodies include the state civil service commission, Local Government service commission, state council of chiefs; State Electoral Commission and State Judicial Service Commission. The state Electoral Commission is responsible for conducting election into Local Governments.

Self Assessment Exercise 2

Mention 3 bodies of the Constitutional Intergovernmental Relations.

Answer

- i. The National Assembly;
- ii. The Supreme Court; and
- iii. The Council of States.

3.3 THE LOCAL GOVERNMENT

Local Government is a critical tier whether in a unitary system or federal arrangement. Irrespective of the power relations under these systems, local governments are always considered as the government closest to the people.

The basic source of power sharing and power distribution in a federal system is the constitution. Three constitutions of Nigeria namely: 1979, 1989 and 1999 have recognized local government as a third tier of government and consequently made provisions for the establishment, function, funding, management and control of the institution. (Odoh: 2003: 411).

Although local government has long been in existence and recognised to be an important level of government in the federal structure, it was not until 1980 that this tier of government was constitutionally given a statutory share of federally the derived. Revenue rights are essentially the product of the stationary arrangements relating to the assignment of functions and allocation of tax powers.

One of the primary features of a federal system of government is the allocation or assignment of functions between the component units (tiers) of government. This also forms the basis for the determination of revenue rights, the basis for the determination of revenue rights and the delimitation of tax powers, which constitute the genesis of intergovernmental fiscal relations. Most constitutional arrangements in federal systems adopt the classification of powers and responsibilities into exclusive, concurrent and residual legislative lists, and that is the case in Nigeria.

The assignment of functions among federating units should be organized in such a way that:

- i. Functions whose benefits cover the entire country or which can be more efficiently performed by the federal Government than the lower level government be assigned to the former, that is be placed in the exclusive legislative list. These include national defence, external relations (including borrowing and external trade), banking, currency, nuclear energy, among others.
- ii. Functions whose benefits are more local than national but with possible of spill – over effects be placed in the concurrent list. Such functions include industrial, commercial or agricultural development, post primary institutions, health care and so on.
- iii. Functions which are purely local in character, in the sense that the benefits accrue, in the main, to limited geographic areas within the country are usually assigned to local authorities. Such functions would include the establishment and maintenance of markets, motor parks and public conveniences, refuse disposal, primary education, and the construction and maintenance of local roads and streets.(Adewale, 2003:12)

However, it could be difficult, if not impossible to put most of these functions into rigid compartments. The principle of cooperation within the federating units in the performance of a number of functions is therefore necessary.

4.0 CONCLUSION

Local Government Councils in Nigeria are charged with a number of responsibilities much of which touch on the welfare and living

standards of large segments of the country's population particularly those living in the rural areas.

Of the three tiers of government- federal, state and local-local government is the one that provides the greatest scope for grassroots development.

4.0 SUMMARY

Although local government have autonomy, the federal and state governments still exercise control over them. The reasons for the control include the rate of local authority expenditure to avoid overheating; control over local authority financial health and viability and control over the quality of local services provided such enforcing minimum standards, stimulating improvements or ensuring greater equality in localities.

6.0 TUTOR MARKED ASSIGNMENT

Identify the three classifications of legislative powers and responsibilities among the three tiers of government.

7.0 REFERENCES/FURTHER READINGS

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