Thesis By

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LEGISLATIVE CONTROL OF THE EXECTIVE IN NIGERIA UNDER THE SECOND REPUBLIC 1979-1983

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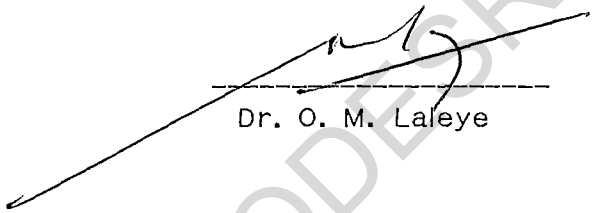
CERTIFICATION

I hereby certify that this thesis was prepared by AWOTOKUN, ADEKUNLE MESHACK under my supervision.



Dr. O. M. Laleye

1/7/92

Date

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LIST OF ABBREVIATIONS

ABUSU	–	Ahmadu Bello University Student Union
A.G.	–	Action Group
AFRC	–	Armed Forces Ruling Council
APSR	–	American Political Science Review
CA	–	Constituent Assembly
CDC	–	Constitution Drafting Committee
FEC	–	Federal Executive Council
FEDECO	–	Federal Electoral Commission
GNPP	–	Great Nigerian People's Party
NAKSABUB	–	National Association of Kaduna State Students Ahmadu Bello University Branch
NANS	–	National Association of Nigerian Students
NAP	–	Nigeria Advance Party
NBA	–	Nigerian Bar Association
N.C.N.C.	–	National Council of Nigerian and Cameroon and later known as National Council of Nigerian Citizens.
NCS	–	National Council of States
NEPU	–	Northern Element Progressive Union
NLC	–	Nigerian Labour Congress
NNA	–	Nigerian National Alliance
N.P.C.	–	Northern Peoples Congress
NPP	–	Nigerian People's Party
NPN	–	National Party of Nigeria
NPN	–	National Population Commission
NUJ	–	Nigerian Union of Journalists
PAC	–	Public Account Committee
PLO	–	Presidential Liaison Officer
POSSAN	–	Political Science Students Association of NigeriA
PPA	–	Progressive People's Alliance
PPP	–	Progressive People's Party
PRP	–	People's Redemption Party
QJA	–	Quarterly Journal of Administration
SAN	–	Senior Advocate of Nigeria
SMC	–	Supreme Military Council
UMBC	–	United Middle Belt Convention
UPGA	–	United Progressive Grand Alliance
UPN	–	Unity Party of Nigeria
VCO	–	Variation Control Officer.

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ABSTRACT

This thesis examined the nature of legislative control of the Executive arm of the government during the Second Republic (1979–1983). This was in the light of the failure of Nigeria's second attempt at constitutional democracy. The fall of the Second republic raised some questions as to how and why the Presidential model which was considered a better alternative to the parliamentary system also failed. Attempts at explaining the demise of the Republic tend to suggest that the executive arm was largely responsible.

It is against this background that this study was undertaken to determine the extent to which the Executive arm was committed to upholding the ideals of public accountability and administrative responsiveness during the period examined. the study also attempted to determine the extent to which the Legislature succeeded or failed in performing its constitutional responsibility of controlling the Executive as prescribed.

The methodology utilized was theoretical, analytic and descriptive. primary data were collected from Hansard, Reports of the various legislative Houses, and interviews. Secondary data were collected from Government documents, Reports, Manuscripts, Pamphlets, reference materials as well as Newspaper reports. In addition, the study made use of Bibliographic studies for theoretical and comparative information.

In essence, the study examined the history of legislative control of the Executive in Nigeria. It also analysed the theory and practice of the 1979 Constitution against the background of legislative control of the executive. Special reference was made to the efficacy of specific control mechanisms like impeachment, ratification of specific executive appointments, financial control, investigatory powers use of special adjournment motions etc.

The study discovered that the Legislative control of the Executive was

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weak during the second Republic. this weakness was traced to the colonial legacy of executive Supremacy, contradictions in the constitution and its operation, inexperience of legislators, misuse of the impeachment mechanism, the power of political parties over the legislators and corruption amongst others.

Finally, the study made some policy recommendations which could help in strengthening legislative control of the Executive during the Third Republic. To this end, the study proposed that there should be a review of the 1989 Constitution with the aim of reverting the legislature to a full-time one as opposed to its part-time nature as defined in the 1989 Constitution. The study also recommended that elections into the Legislature be conducted every six years in contrast with the Executive term of four years. This will enable the legislators develop a stable system within which to perform their functions. It will also help them to acquire some degree of expertise in areas of public policy. Accountability and Responsibility as concepts should be included in the curricula of our educational institutions. This will help the present and future political actors to internalise the ideals of accountability, responsibility and responsiveness which in the final analysis determine the legitimacy and stability of regime types. In conclusion, a number of modern facilities such as well-equipped libraries, computers, attractive salaries and allowances should be placed at the disposal of law makers.

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CHAPTER ONE: INTRODUCTION

The issue of how best to ensure that both elected and appointed government officials are held accountable for their actions is a major concern of modern governmental systems. This is largely borne out by the dominance of the Executive and its administrative agencies in virtually all facets of governmental activities.

Modern society depends largely on the Executive and its agencies for the implementation of all policy decisions emanating from the Legislature. In addition, the Executive is expected to perform various regulatory functions. The performance of these functions indicates that the Executive and its administrative agencies wield considerable powers. This is what is usually referred to as the exercise of administrative powers.[1]

In the exercise of this power, however, administrative officials of government come into regular contact with the citizens. This makes the functions of the officials a delicate matter indeed for in the course of this interaction, they take decisions that affect the life of the people generally. There is considerable pressure by the Legislature to ensure that citizens are well treated by the Executive and its agencies but these officials hardly satisfy the demands of these citizens.

The issue involved here is that of public accountability which constitutes an integral element of modern democracy. To the extent that democracy refers to political rule by and for the people, there must be measures for ensuring that the Executive and its agencies are effectively held accountable to the citizens. It is, however, difficult in modern society for citizens themselves to enforce

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[1] For a detailed discussion see L. Adamolekun, 'On Administrative Power', Inaugural Lecture Series (University of Ife, Ile-Ife, 1981).

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accountability of the Executive directly. This is because they are not equipped, compared with the legislators, who by virtue of their positions as law-makers, know the constitutional limitations of the Executive.

Similarly, owing to the complexity of modern administration, it is impossible for the people to directly run the affairs of the state as was the case in the early Greek city-states. It is this situation which underscores the central role of the Legislature as a key representative institution. Indeed, it is correct to say that the Legislature is the pivot of modern democratic systems. As G. Gertzel has aptly said: "the elective Legislature is the essence of representative government or democracy'[2]. As a matter of fact, the institution serves as a mechanism through which the population, its special interests and diverse territory are represented and guaranteed a say in the scheme of things. It is this representative role of the Legislature that makes its position vital in the control of the Executive and its agencies.

This role is underscored by the fact that democratic theory conceives of the Executive and its administrative agencies as instrument to serve the people. However, as we have observed, they are more than mere instrument. They wield tremendous power and authority. This is the more reason why the Legislature as an instrument of enforcing accountability has to conceive of various expedient measures in order to make the Executive accountable. How has the Legislature been able to respond to this situation and perform its role in a typical third world society? This is the central problem which this study attempts to address. The study focuses on the role of the Legislature in controlling the Executive in Nigeria's Second Republic.

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[2] See G. Gertzel 'Parliament in Independent Kenya' Parliamentary Affairs, Vol. XIX, 4, 1966 p. 437.

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Definition of concepts

The term 'Legislature' can be defined as that branch of government made up of elected representatives or a constitutionally constituted assembly of people whose duties among other things are to make laws, control executive activities and safeguard the interests of the people. In other words, Legislature 'is an assembly of ambassadors' who serve their constituencies in various ways as ombudsmen or intermediaries between the citizens and government officials'[3].

'Executive' can be taken to mean the branch of government which executes the will of the people as enacted in the laws.[4] In a general sense, it will encompass all those officials who are engaged in carrying out functions of government with the exception of the Legislature and the Judiciary[5]. It embraces all officials in the public bureaucracy or administration. In this study 'Executive' and 'administration' will be used interchangeably to connote the same meaning. Hence, the term Executive is used in this study to comprise the Executive branch of government as defined above and all its bureaucratic agencies such as Ministries, government departments, corporations and other government agencies.

According to Y. B. Ahmed, 'Accountability' is answering for the action, behaviour or conduct of someone to some superior authority, the giving of a reckoning of what has been entrusted on one to the party to whom one is

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3 F Oyeleye Oyediran 'Legislators in the 1989 Constitution' The Guardian (Lagos) July 28, 1990 p.9.

4 See J. D. Ojo, The Development of the Executive under the Nigerian Constitutions 1960-1981 (Ibadan University Press Ltd., 1985) p.1.

5. *Ibid* p. 1.

responsible[6]. Accountability aims at curbing the misuse of power by the person to whom such power is delegated. In other words, accountability can be conceived as the ability to make an individual answerable or accountable for the part played in the governance of the people. In a sense, it depicts formal and informal ways of making an individual or a group of people answerable for his or their action in the exercise of power as the case may be[7]. For this study, we shall adopt the last two definitions of 'Accountability' for they relate more to what is perceived as the real definition of the concept, in terms of Executive responsiveness to the public. The definition of Y. B. Ahmed relates more to the hierarchical relationship between the superior and the subordinate within the organization.

'Control' refers to the measures aimed at restraining or curbing the administrative behaviour of public officials with a view to preventing abuse of administrative or political power. It often denotes the capabilities of one party to influence another. Its purpose is to ensure performance according to the laid down rules or standards[8].

Having discussed the major concepts in the study, efforts we now be directed towards a review of the relevant literature,

Review of Literature on legislative control of Executive in Nigeria

Existing literature on Legislatures is substantial but only a few of them

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6. Y. B. Ahmed 'Public Accountability: The Role of the Accountant in the Public Sector of the Nigerian Economy' The Nigerian Accountant, Vol. X, No. 1, January-March 1977, p. 8.

7. For detailed discussion on the concept 'Accountability' see Herbert J. Spiro, Responsibility in Government Theory and Practice; (New York, Van Nostrad Reinhold Company 1969).

8. For details see John Storey The Challenge of Management Control (London, Business Books Ltd. 1981) pp. 55- 74.

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address the issue of legislative control of the Executive. Most of these works which analyse legislative control of executive show to some extent the role which opposition, parliamentary committees[9] *etc.*have played in checking the excesses and increasing the efficiency of administrative system. Such studies have largely been conducted in the first world countries, which imply that contextual factors such as political culture, the established administrative system and practices have been instrumental to effective Legislative control of the Executive. However, one useful thing which they all point to, is the sustained determination of the legislators in these countries to defend and guide jealously their constitutional powers over the executives. A few studies also exist on legislative control in less developed countries such as Nigeria, Ghana and India[10].

These studies point to the difference between the developing and developed countries with respect to legislative control over the Executive and its administrative agencies. They show clearly the limitations of legislature vis-a-vis administration[11]. Arising from this observation, the least that can be said is that it may not be judicious for a variety of reasons to transplant issues and solutions from other contexts. While there is no doubt that the conclusions drawn

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9. See *inter alia*: R. Baker (eds.) Studies in Opposition (London, The Macmillan Press) 1971, D. Judge 'Representative Theories and Parliamentary Specialisation' Parliamentary Affairs, vol. XXVII, 1, Winter 1980, pp. 40-53, p. Morton 'Importance of MP-to-Minister Correspondence' Parliamentary Affairs,, vol. XXXV, 1 Winter 1982 pp. 59-72 M. Wright 'Ministers and Civil Servants: Relations and Responsibilities' Parliamentary Affairs, vol. XXX, 3 Summer 1977, pp. 293-313, A. Robinson, Parliament and Public Spending of the House of Commons 1970-1976 (London, Heinemann 1980), S. S. Smith and C. J. Deering The Roles of Congressional Committees in Control of Administration in United States (Washington D.C Congressional Press, 1984), J. R. Van Der Slik 'Committee in Congress' American Political Science Review, vol. 79, March 1985, p. 228, J. Bendor et. al 'Bureaucratic Expertise versus Legislative Authority: A model of Deception and Monitoring in Budgeting' American Political Science Review vol. 79, 4, December, 1985, pp. 1041-1060, G. J. Miller & T. M. Moe 'Bureaucratic Legislators and the Size of government' American Political Science Review, vol. 77, 1983, pp. 297-322 etc.

10. See D. Austin, 'Opposition in Ghana 1947-1967' in Barker (ed.) *op. cit.* M. P. Sharma, 'Parliamentary Control over Delegated Legislation in India' Indian Journal of Public Administration, vol. II, Jan.-March, 1956 pp. 208-217 S. L. Shakdher, 'Administrative Accountability to Parliament' Indian Journal of Public Administration vol. XII, 1966, pp. 356-377, V. N. Shukla 'Parliamentary Control of Public Administration in Indian 1952- 1966' India Journal of Public Administration, vol. XXV, 2, April 1979 pp. 291-324, N. M. Stults, 'Parliament in a Tutelary Democracy: A recent case of Kenya' The Journal of Politics, vol. 31. 1, Feb. 1969, pp. 95-118, etc.

11. See B. Munslow, Why Has The Westminster Model Failed in Africa? Parliamentary Affairs, vol. 36, 2, Spring 1983, pp. 218-229.

from the first world countries may be useful for analysis, the total relevance of these conclusions have serious limitations. It is for this reason that this study will give prominence to Nigerian literature on the subject matter notwithstanding its scantiness.

There are two scholars, who, apart from providing background information to the study of legislature, also situated the legislature within the larger society. Such scholars are T. N. Tamuno[12] and S. O. Okafor[13]. The essential thing relevant to us here is that they serve as the basis of studying legislative institutions in Nigeria. They both agree that the colonial government did not encourage the emergence of strong and virile Legislatures that could play a surveillance role over the Executive which was preserved exclusively for the British. This conclusion is important as our study is set out largely to determine the extent to which this anomaly was rectified in independent Nigeria especially during the Second Republic from 1979 to 1983.

However, the studies which focus on Legislative control of administration in Nigeria can be categorised into two and possibly a third group can be added. The first group consists of studies that were done during the First Republic or immediately after. The second set are the ones written during the Second Republic. The third set are works in which passing remarks are made on the issue of legislative control of the Executive.

Amongst the works devoted to the First Republic are those of J. P. Mackintosh's symposium[14], D. G. Kermode[15], Tansey and Kermode[16], L.

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12. See T. N. Tamuno, Nigeria and Elective Representation 1923-1947 (London & Ibadan Heinemann 1966

13. See S. O. Okafor Indirect Rule: The Development of Central Legislature in Nigeria (Lagos, Thomas Nelson and Sons. Ltd.)

14. See J. P. MacKintosh, Nigerian Government and Politics (London, George Allen & Unwin Co.) 1966 pp. 87-137.

15. See D. G. Kermode 'Parliamentary Control of the Executive in Nigeria' The Nigerian Journal of Economic and Soc. Studies vol. 10, 2, 1968.

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Adamolekun[17] and K. Abayomi[18]. The analysis of Mackintosh, Tansey and Kermode are quite similar except that the latter appears more detailed than the former. It is fair to say that Mackintosh's work still falls short of the details one would have expected. However, the book is considerably advanced in its analysis of the structure of the legislature, the age, status and occupation of its members. There is also a brief discussion of legislative control of administration in Nigeria's First Republic. These aspects of MacKintosh's study provide a link between it and the works of L. Adamolekun, D. G. Kermode and K. Abayomi. What is common to these scholars is that they all address their minds to reviewing aspects of the legislative function with particular reference to its relations with the Executive branch. L. Adamolekun's study is the most extensive of all as it covers the colonial period (1952) when quasi- parliamentary system of government was first introduced, his main focus being 1952 to 1965. The others merely span 1960-1965. D. G. Kermode's work is general and does not look at any specific sphere of legislative control. This is the same position he adopts in his joint work with Tansey. His information is also largely derived from comments of legislators at this period, in contrast to the considerable archival and background details provided by Adamolekun.

All said, both Kermode and Adamolekun agreed that legislative control has on the whole been ineffective in Nigeria. Both seem to agree that legislators instead of addressing their minds to issues of control, were pre-occupied with the idea of securing social amenities for their constituencies. They also

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16. See S. O. Tansey & D. G. Kermode: 'The Westminster Model in Nigeria' Parliamentary Affairs vol. XXI, 1967/1968 pp. 131-148.

17. See L. Adamolekun, Parliament and Executive in Nigeria: The Federal Government Experience 1952- 1965' in C. Baker and M. J. Balogun (eds.) Ife Essays in Administration (Ile-Ife, University of Ife Press) 1975, pp. 65- 87.

18. See K. Abayomi 'Parliamentary Democracy and Control of Administration in Nigeria - 1960-1966', unpublished Ph.D. Thesis (Law) Clare College, University of Cambridge, London, April, 1970.

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discovered that members did not utilise the opportunity provided by question time in the parliament to ask genuine questions that could make ministers responsible. As L. Adamolekun said:

> the majority of questions were related to the distribution of amenities - postal services, electricity, roads, water and so on - and each questioner was primarily interested in securing one or more of these amenities for his constituency which was almost every case his home town, district or division[19].

D. G. Kermode on the other hand also observed that legislation were usually passed with such haste that little or no time is left for research and debate.

This is the position that is articulated in the study of K. Abayomi. No doubt Abayomi's work is stimulating. For it stands out for its legalistic dimension which is mostly absent in the other studies on the Nigerian legislative institution. However, it is this advantage that turns out too to be its main source of weakness. By being legalistic, Abayomi failed to address himself to some of the basic theoretical issues that could help bring out the real dynamics of the institutions.

Some efforts have also been made to document the works of the legislative institution in the Second Republic. The notable one include Oyediran's symposium[20], G. O. Nwankwo[21], D. Olowu[22] and a few Bachelor and Master's degree theses. Oyediran's symposium is written to cover the first six months of the presidential experiment hence very limited information is provided. In fairness, Oyediran himself warns the reader about this when he observed that

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19. See L. Adamolekun op. cit. p. 73.

20. See O. Oyediran (ed.) Nigerian Legislative House Which Way? (Ibadan, Ibadan Consultancy Unit) 1980.

21. See G. O. Nwankwo, 'Legislative Supervision of Administration: The Nigerian Experience in a Presidential System of Government' op. cit.

22. Olowu Dele Olowu, Constitution and Development in Nigeria Lagos State, Governance, Society & Economy (Lagos) Malthouse Press, 1990).

the authors did not 'set out to write a strictly academic book[23]. The authors, contrary to the mass media assessment of the legislators found out that the legislators did not only concern themselves with their personal comforts at the expense of other important issues[24]. They also agreed that most of the legislative institutions in the Second Republic were 'rubber stamp' institutions[25].

For Nwankwo, his study is an overview of legislative control of administration. He raises two major issues. The first is on how to reconcile legislative supervisory roles with the executive's need for reasonable discretion in programme administration. The second problem relates to how to improve the legislator's ability to carry out oversight functions without necessarily relying on the public bureaucracy which of course is an integral part of the Executive. This is perhaps the main thrust of his work.

O. Adegboro's[26] and A. O. Ikelegbe's[27] study on the legislature in both Ondo and Bendel States respectively attempt a detailed discussions of legislative control in these places. They both agree that in spite of the presidential system political parties played influential roles in determining the performance of legislators. This position stands out also in the works of M. N. Ladan[28], A. A.

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23. See O. Oyediran op. cit. p. V.

24. Ibid. p. 11.

25. Ibid. p. 115.

26. See O. Adegboro: 'The Legislative and Administration Relationship in Ondo State under the Nigerian Presidential Constitution October 1979-October 1981' MPA Field Work, University of Ife, Ile-Ife, February 1982.

27. See A. O. Ikelegbe: 'Assembly Control of Administration in Bendel State of Nigeria 1979-1983' M.Sc. Political Science Project, University of Ibadan, Ibadan. December, 1983.

28. See M. N. Ladan: 'Factors which explain Legislative Failure to Control the Executive: A Case study of Niger State between 1979-1983.' A Project for the award of Advanced Diploma in Public Administration (DPA) of Ahmadu Bello University (ABU), Zaria, 1985.

Kagara[29], M. Mabudi[30], M. E. Obianyo[31], A. E. Oji[32]. This conclusion is quite apt. It underscores the basic position that the operation of Nigeria's legislative institution cannot be meaningfully determined in isolation from its ecological environment. This realisation is not obvious in other aspects of the literature.

The third category of the series include works by L. Adamolekun[33] on politics and administration in Nigeria, and N. U. Akpan's[34]. These authors make passing references to the issue of legislative control of administration. One limitation resulting from these studies is that they do not provide any concrete situation of control of administration.

Like Adamolekun, N. U. Akpan devotes about two chapters (8 and 9) of his work to reviewing the duties of ministers vis-a-vis administrators during colonial and independent Nigeria. Unlike Adamolekun, he is generally descriptive in his account. Indeed it is a reminiscence of a veteran public administrator.

All said, much of the literature on legislative control of administration in Nigeria have tended to assert that legislative control was generally defective. However, there are vacuum created in this area of academic study by all scholars that have been analysed above. One of these gaps created in the literature is

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29. See A. A. Kagara, 'Legislative oversight in the Presidential System: Powers of the Niger State Legislature to control Public Expenditure' A Project for the award of postgraduate Diploma in Public Administration, Zaria, Department of Public Administration, Ahmadu Bello University, Zaria, 1983.

30. See M. Mabudi: 'Power of the Legislature under the Presidential System: The Case of Bauchi House of Assembly 1979- 1983' B.Sc. Political Science Project, Ahmadu Bello University, Zaria, 1984.

31. See N. E. Obianyo: 'Executive/Legislative Relationship in Presidential System of Government: A Case Study of Anambra State of Nigeria,' B.Sc. Political Science, University of Nigeria, Nsukka 1983.

32. See A. E. Oji: 'Legislative Behaviour in Law-making in Presidential System of Government: A Case Study of Imo State House of Assembly.' B.Sc. Political Science, U.N.N. Nsukka 1983.

33. See L. Adamolekun: Politics and Administration in Nigeria, (London, Hutchinson, 1986).

34. See N. U. Akpan Public Administration in Nigeria (London, Longman 1982).

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that there has not been any particularly detailed work in this area. Most of the authors tended to limit themselves to one or two aspects of legislative control. There is also the general tendency on the part of these scholars to use very limited data to analyse the issue. in addition, most of them tended to use specific case studies to narrate the subject matter. in other words, there has not been any attempt at studying legislative control of the Executive on a comprehensive perspective and in a wide time frame.

It is against this obvious general neglect in the literature that the study attempts a general overview of legislative control of the Executive using the different legislative mechanisms provided in the 1979 Constitution to analyse the subject. Even though the work has specifically set out to consider the Second Republic, allusions are made as much as possible to the past with the view to seeing what lesson can be learnt.

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The Rationale of the Study

The 1979 Constitution of Nigeria granted the Legislature substantial powers with regards to the control of the Executive branch. With these enormous powers, the expectation was that the Legislature would experience no difficulty in the exercise of its functions over the Executive. However, from all indications it did not seem that the Legislature exercised the expected and adequate control over the administration. For instance, if it had done so, the Second Republic would not have come to an abrupt end as it did on the 31st December 1983. It is public knowledge that it was the mass discontentment over the management of public affairs which could have been

controlled that informed the military *coup de'tat* of General Muhammadu Buhari.

What lessons are we expected to draw from this demise? The assumption is that the Legislature could not exercise much control over the Executive during the Second Republic in spite of the constitutional provisions granting this power. What effects did this inability of the Legislature to control the Executive and its administrative agencies have on the overall performance of the administration within the period? How can we really strengthen the supervisory role of the Legislature in respect of the control of the Executive in a third world country such as Nigeria? This is the general background and questions upon which the study is anchored.

The Legislature as a custodian of public conscience is expected to expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence. Given the general belief mass corruption that pervaded the political life of the Second Republic, to what extent then, did the Legislature fare in its effort to expose and curb official corruption? These questions, searching as they are, are expected to provide the basis for undertaking a study such as this.

For the purpose of any investigation, the Legislature could summon any person in Nigeria to give evidence in his possession or under his control[35]. It also had power to compel the attendance of such person. This study would want to find out the extent to which the public bureaucracy respected such summons or subjected itself to investigatory powers of the Legislature. If they complied, did they as a matter of necessity produce the relevant documents required?

Similarly, in terms of revenue sources, apart from the consolidated revenue fund, did the Executive branch normally make available the actual revenue

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35. See Federal Republic of Nigeria, The Constitution of Federal Republic of Nigeria, A Daily Times Publication, Section 117(3) & (4).

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accruing to the public purse? This issue which borders on financial accountability will also move further to investigate whether the Executive normally expended the funds approved for it in the manner prescribed by the Legislature.

These questions as posed above are meant to determine the extent of Legislative control of the Executive. In addition, we shall examine the external factors that often influence the Legislature in controlling administration. Finally, the ways and means of improving the quality of Legislative control of the Executive shall come under the preview of this investigation.

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The Objectives of the Research:

In order to address the issues raised above, this study proposes to:

(a) determine the different legislative approaches adopted under the presidential system of government for the control of the Executive and its administrative agencies in Nigeria;

(b) examine the legislature of Nigeria's Second Republic as an instrument for enforcing administrative accountability and responsiveness; and

(c) make proposals for strengthening Legislative control of the Executive in Nigeria's Third Republic.

In order to realise the above objectives the study will address itself to such issues as the nature of the Legislative institution in Nigeria, its constitutional powers and duties *vis-a-vis* the Executive branch. We shall also identify the instruments of control employed by the Legislature in the Second

Republic and it is along these lines that our chapters are drawn.

Propositions of the study:

The study will advance the following propositions that:

1. The ineffective Control of Executive by the Legislature was as a result of the political culture under which the Second Republic operated.

   The political culture here refers to 'the way the members of a political community behave in government and politics and the traditions, conventions, habits, outlook and attitudes which condition such behaviour, including the set of ideas and ideals by which the community is characterised[36]' The political culture of the Second Republic did not allow for the right type of political behaviour as official corruption pervaded the whole political system. As a result of this there was low commitment to public accountability. It was a situation in which the Executive refused to be accountable to the public at large.

2. The Political Operators of the Second Republic tended to confuse the basic tenets of the presidential system with those of the parliamentary system of government. The 'ruling party coalition' in the Second Republic stifled and marginalised other parties in the Legislature to the extent that they could not initiate and pursue an effective strategy of control over administration.

   By 'political operators' we mean all the people

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36. See B. O. Nwabueze 'Our March to Constitutional Democracy': The Guardian Lecture Series (Lagos, Guardian Newspapers Ltd. 1989), p. 22.

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(politicians) entrusted with the governance of the country including the Executive and the Legislators. We also take it to mean other actors in the background such as political party leaders, chairmen, secretaries and other officials of political parties. 'Basic tenets' refers to principles or elements guiding the presidential system in the conduct of legislation and which distinguish it from the parliamentary system. For instance, issues like 'Party loyalty' and 'Party discipline' are relevant in the parliamentary system whereas in the presidential system 'individual conviction' and 'constituency interests' are more significant. In the Second Republic it was common to see political parties invoking concepts like 'party discipline', 'party loyalty' against their 'erring' legislators to demand compliance.

The term 'ruling party coalition' is antipodal to the presidential system of government. It is often used under the Westminster model. Hence, the National Party of Nigeria (NPN) and Nigerian People's Party (NPP) accord was a Parliamentary idea brought to bear on the presidential system. 'Stifling and marginalising' other parties' in this context will imply intimidating them through the use of State machineries like the Police and other security agencies. It may also involve alienation or estrangement of these parties in the Legislature.

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Research Methods:

This study adopted different research methods to elicit information for the thesis. Our sources of information can be grouped into two. namely, primary and secondary sources. For primary data, Hansard and Reports of some Legislative Houses in Nigeria were consulted. The research concentrated more on the hansard and Reports of the National Assembly. This is because it was easier to obtain information from this source than most States of the Federation, as the National Assembly normally sent its proceedings to all public libraries in Nigeria. However, the same could not be said to be true of most State Houses of Assembly. What the researcher has done in this direction was to conduct specific investigation into the activities of some States' Houses of Assembly to examine which of them will be relevant to the objectives and propositions of this study. As a result of this, we were able to obtain information from Kaduna, Kano, Kwara, Gongola, Niger, Ondo, Oyo, Bendel, Anambra, Ogun and Lagos States. Allusions were also made to other States as far as practicable.

The research also adopted archival study approach to obtain historical information. Hence, we visited the National Archives at Ibadan, Enugu and Kaduna to obtain documents (published and unpublished) that are considered germane to the study.

We also went through the National and International Newspaper reports of the period and analysed the contents of these reports therein.

The study also made use of existing studies for theoretical as well as for comparative utility. We also utilised the facilities available at the United States Information Service Libraries at ibadan and Kaduna. Moreover, we consulted higher educational and a few personal libraries for books and periodicals.

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The Conceptual Framework

This study shall adopt a combination of system analysis and historical approach as it's tools of analysis. The system approach is primarily concerned with the analysis of a system in its entirety. A system here implies:

> Something consisting of a set (finite or infinite) of entities among which a set of relations is specified, so that deductions are possible from relations to others or from the relations among the entities to the behaviour or the history of the system[37].

From the above, a system can be seen as a set of interdependent parts or components of a given entity. As a process, it involves relating with one another in interdependent manner. It also entails interaction with the environment. As G. O. Nwakwo states:

> The system approach to the study of organisations focuses on the system as a whole, the environment of the system, and the tendency for the system to strive for survival by negotiating with its environment[38],

The systems approach was originally conceived in the biological and engineering sciences before it was adapted to social sciences. In Social Sciences David Easton[39] has used this approach to analyse Political life. According to him, the political system interacts with the environment in terms of process that involves input and output mechanisms. The input involves demands, materials request, information, that are being made and these are normally transmitted into

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37. See Talcott Parsons 'System Analysis' in David L. Sills (ed.) International Encyclopaedia of the Social Sciences. (The Macmillan Company and the Free Press, 1968) p. 453.

38. See G. O. Nwankwo, Education and Training for Public Management in Nigeria, (Onitsha, University Publishing Company, 1988) p. 27.

39. David Easton, A Systems Analysis of Political Life (New York: John Wiley and Sons, Inc. 1965).

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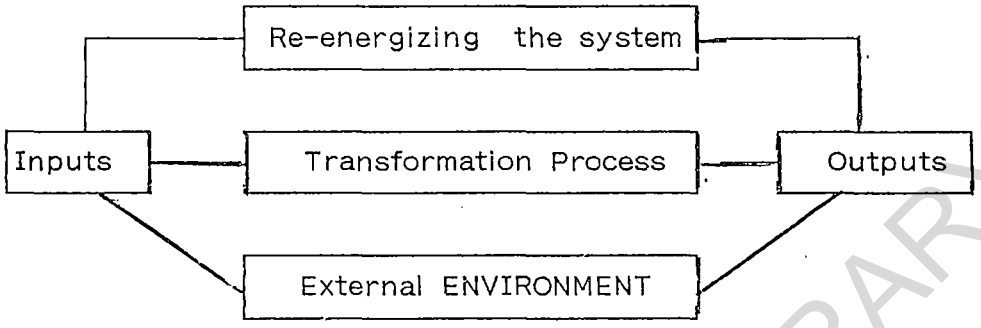
the political system through policy making and implementation. This again can be modified through the process of information feedback from the environment.

Fig. 1: Input Output Model



Source: Harold Koontz *et. al.* Management (London New Delhi, Tokyo, McGraw-Hill International Book Company 1980) P. 24.

From the systems perspective, the Legislature, Executive and Judiciary can be seen as relatively persistent entities functioning within larger environments. These entities (i.e. the Legislature, the Executive and Judiciary) qualify as systems because they could be considered as sets of independent elements and variables which can be identified and evaluated. As a sub- system within the system each of the three arms of government has distinguishable boundaries setting them off from the environment. At the same time each also has a tendency toward a state of equilibrium.

In other words, the theory of 'separation of Powers' and 'checks and balances' are closely intertwined. This is because no system of government which adopts separation of powers attempts to establish an absolute and total separation. This doctrine is always modified by introduction of checks and balances. Hence the introduction of checks and balances provides a kind of

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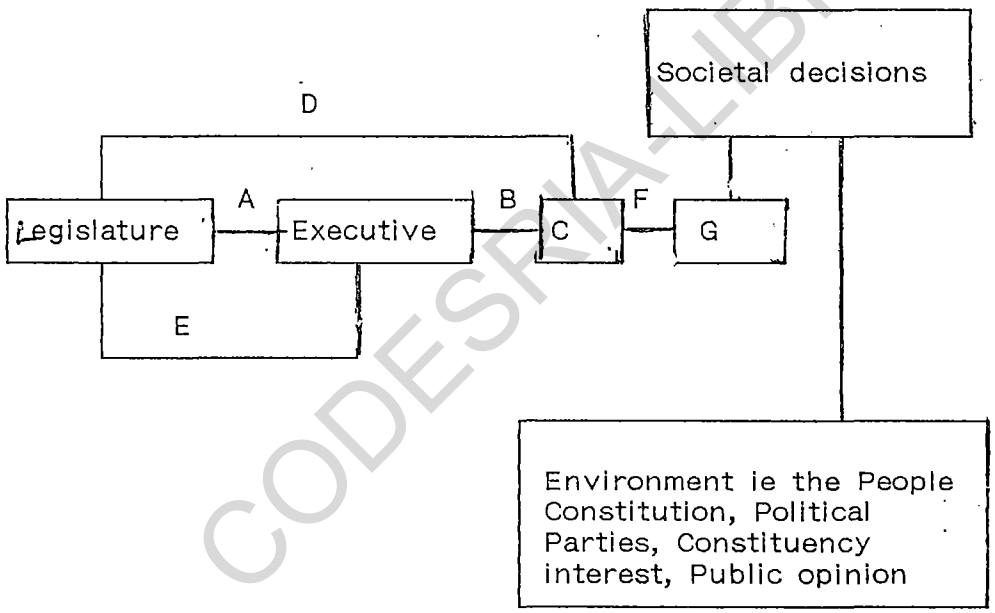
equilibrium in the systems. The three arms complement the work of one another in order to make for an effective democracy.

The Legislative control of the Executive can also be perceived in terms of systems analysis. The mechanism of Legislative control is derived from the people, the constitution, political parties, constituency interest, public opinion etc. All these variables emanating from the environment help in the determination of societal goals. These demands are fed into the Legislature and the law makers in turn direct the Executive to mobilise the societal resources for their decisions. This can be diagrammatically represented as shown below.

Fig. 2: System Analysis of Legislative Control of the Executive



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In the above Diagram, 'A' represents the process of transmitting information to the Executive branch, while 'B' is the Executive action. 'C' is the result of the Executive action on the Legislative control, in relation to the target or societal decisions. 'D' represents the feedback on the result of the Executive

action. 'E' is the Legislative veto or counter action if any, especially if the result in 'C' is adjudged unsatisfactory. 'F' is an intermittent Executive action, 'G' is a further Executive action. The result of further executive action is expected to be in conformity with the societal decisions. The environment which represents the people's will, constitution, political parties, constituency interest, public opinion are also expected to influence the societal decisions.

One advantage of using system analysis is that it forces us to be aware that we can not single out one phenomenon for treatment without due consideration of its interacting variables. This also enables us to see the critical variables, constraints and their interaction with one another [40], as the above diagram has shown. It is for these advantages in the use of system approach to analysing social phenomena that scholars like David Easton[41], Harold Koontz[42], G. O. Nwankwo[43] and others have utilised in their studies.

Limitations of the Systems approach

Systems analysis, like any other approaches, has its own inherent weaknesses. For instance, it can be the totality of the political system may not be adequately covered our study using the systems approach. this because societies consist of far more elements or sub-systems than systems analysis can adequately handled. In other words, not all variables in the supposed system are affected on the long run by the disturbance in one element. The extent of

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40. Harold Koontz *et. al.* Management (London, New Delhi, Tokyo, Mc Graw-Hill International Book Company 1980) p. 23.

41. See David Easton op. cit.

42. Harold Koontz op. cit.

43. G. O. Nwankwo, Education and Training for Public Management in Nigeria *op. cit.*

inter-dependency of elements within a polity can be questioned as opposed to axiomatic treatment that is often given to it. There is also the argument that the concept of equilibrium in systems approach cannot be operationally defined, except perhaps in the context of economic behaviour, this stems from the fact that the variables which determine the political system are not linear and as such cannot be subjected to quantitative analysis.

Finally, another problem with the systems analysis has to do with boundary exchanges or the various sets of inputs and outputs between a system and its environment. Most of the presumed exchanges in a polity are not readily susceptible to empirical testing as often the case in physical and natural sciences.

However, despite these criticisms, this study has adopted the systems analysis approach. This is because investigation of a national dimension such as the focus of the study will require systems approach.

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Significance and Limitations of Study:

The significance of this study lies principally in its effort to contribute to our knowledge on different legislative approaches both formal and informal, that were used under the presidential system of government to control the Executive. It will also help in appreciating the intricacies of the Legislative process.

The research is intended to fill the important vacuum created in Nigerian politics and public administration literature on the extent of the effectiveness of Legislative control of the Executive. It will certainly enlighten citizens, policy-makers and institution builders concerning the issue of administrative control.

By attempting to make proposals for effective Legislative control of the Executive, it is hoped that the findings will contribute in the final analysis to a better understanding of Nigeria's political and administrative development. This becomes particularly relevant at this time of transition from military rule to the Third Republic.

However, it is appreciated that this study has some limitations. The research concentrated more on the Federal level than on the State level. This stems from our inability to procure Hansard of some States in the Federation. However, allusions where necessary were made to the states.

Summary of the Thesis

The second chapter of this work is a historical study of the development of Legislative and Executive relations in Nigeria. The justification for a chapter such as this is that there is need to have some knowledge of the past, as the past not only influences the present but also has some effects on the future. The development of this relationship is traced to 1861 when Lagos was annexed as a British Colony. In colonial times, Legislatures existed as extensions of the Executive. In other words, their roles were to further the interest of the colonial government and provide legitimacy for the regime. unfortunately these roles had a spill-over effect on the post-independence Legislatures in Nigeria. The import of this chapter is that Nigeria's independent Legislatures, (1960-1966) and (1979-1983) were haunted by their past.

The basis for studying Legislative control of the Executive as provided for in the 1979 Constitution is analysed in the third chapter. The chapter analyses the theory and practice of the 1979 Constitution against the background of

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Legislative control of the Executive and discovered a lot of contradictions in the operations of the Constitution. What this portends is the ultimate failure of the second experiment in constitutional democracy. We discovered in the chapter that owing to the newness of the presidential system, the Legislature and the Executive experienced a lot of constraints. In most cases there were out- right confusion of parliamentary democracy with the presidential system. This chapter clearly validates one of the propositions
of the study.

The fourth chapter analyses the Legislature and the impeachment process. The chapter specifically focuses on the impeachment exercises in Kaduna and Kano states. The successful impeachment of the Kaduna state governor sent a wave of impeachment all over the country with the result that nine out of nineteen states' governors of the Federation witnessed actual or threatened impeachment. As it turned out most of these cases escaped the sanction of impeachment either because the Legislators could not muster the necessary two-thirds majority or the members were lobbied by the Executive and the party to abandon it. This, again, to a significant extent shows the weakness of the Legislature *vis- a-vis* the Executive and the party machinery. It is for this reason that we are tempted to conclude that the successful impeachment of Balarabe Musa, the PRP Governor of Kaduna state, was not so much that the Legislature was being accountable to the people but because Balarabe Musa represented an ideological out-look which was a threat to the NPN Legislators. The inability of the governor to compromise was the source of his problems.

The next chapter, which centres on Legislative control over Executive appointments, reveals that the Legislature actually scrutinised the Executive nominees especially at the Federal level and in Bendel State. This is to be

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expected given the competitive politics and heterogeneity of these areas. However in other states where the party of the Executive also controlled the Legislature there were no rigorous scrutiny of the Executive nominees. The scrutiny and consideration of most Executive nominees were usually carried out by the party caucus. The Legislature often approved them because of the tremendous power and influence which the party wielded over them. Hence it could be said that the net-work of socio-political relationship between the Legislators and the party hierarchy had a propensity of weakening their influence over the Executive.

Chapter six considers the Legislative control over the finance appropriated to the Executive. Various mechanisms of internal control over governmental finance such as book-keeping, financial instructions, Audit, Public Account Committee (PAC) *etc.* were considered. It was discovered that during the period, most of these instruments of control were not used to bring the desired results. For instance, for most of the time audit reports were not available in the States and at the Federal levels in the period under consideration. Consequently, the PAC could not function as it is expected to work on audit reports. The inability of the Legislature to enforce the production of audit reports as required by the constitution shows that the Legislative control over finance was weak. This can also be explained against the background of the mass corruption which pervaded the political life of the Second Republic as the Military Tribunals which probed the political operators unmistakenly revealed.

Chapter seven which deals with Miscellaneous control examines other Legislative control instruments (which we have not discussed previously). These include the investigative powers of the Legislature, Adjournment Motions, the use of Questions, Observation, Committee System *etc.* Our findings on the use of these control instruments by the Legislature revealed that they were not properly

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employed to make the Executive accountable.

Chapter eight highlights the problems facing the legislature in its bid to control the Executive.

Finally, chapter nine discusses the findings of the research. It is against the background of these findings and other inadequacies spotted in the study that the proposals for strengthening the Legislative control of the Executive are made. In addition, we also attempt an appraisal of the 1989 constitution as it relates to the issue of Legislative control of the Executive. The chapter also considers what in the opinion of the author may constitute new areas for future research.

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CHAPTER TWO : THE DEVELOPMENT OF LEGISLATIVE AND EXECUTIVE RELATIONS IN NIGERIA

Introduction

Modern administration in Nigeria began as an imperfect administration of colonial heritage. It follows therefore that there is no way Legislative control of the Executive can be studied without reference to the colonial experience. It is for this reason that this chapter decided to trace the history of Legislative/ Executive relations in Nigeria.

The Development of Legislative/Executive Relations

The development of central Legislature and the Executive in Nigeria can be traced to the annexation of Lagos as a colony in 1861. Following the annexation of Lagos, a governor was appointed to oversee the affairs of this newly acquired territory. In the same year, the British government appointed the Executive and the Legislative Councils in accordance with the crown colony system of administration. The Legislative Council was charged with policy-making and law-making while the Executive Council was concerned with the implementation of policies and execution of law made by the Legislative Council.

In 1874, Lagos and the Gold Coast settlements were merged and reconstituted as Government of the Gold Coast Colony[1]. However, in 1886, Lagos Colony was excised from the Gold Coast, and reverted to its original status with its own Executive and Legislative Councils. The Legislatures so created in 1862 and 1886 were charged with the responsibilities of making laws and ordinances to set up institutions for peace, order and "good government" in the Colony[2].

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[1] See S. O. Okafor, Indirect Rule: The Development of Central Legislature in Nigeria (Lagos, Thomas Nelson 1981) p. 19.

[2] Ibid p. 19.

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1 See S. O. Okafor, Indirect Rule: The Development of Central Legislature in Nigeria (Lagos, Thomas Nelson 1981) p. 19.

2 Ibid p. 19.

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It is instructive to state here that the power of the Legislative Councils was not absolute. The British government could enact laws when such were considered necessary for the peace, order and good government of the Colony. The British government could also abrogate any law passed by the Colony's Legislature which appeared to her not to be in the interest of the Colony.

Members of the Executive Council were drawn from British senior government officials. No single African member was included on the list. The Legislative Council on the other hand was composed of official and non-official members who were drawn from outside the government departments. Between 1862 and 1874, membership varied from three to five and between five and seven from 1886 to 1900.

There was an attempt to change the structure and pattern of the Central Legislature under the administration of Sir Walter Egerton[3]. In 1904, Sir Walter Egerton proposed that the official membership of the Central Legislature should consist of the Governor, the Colonial Secretary and Secretary to Southern Nigeria (both offices to be held by one person), the Attorney-General, the Treasurer of the combined administrations, the Provincial Secretary, the Director of Public Works, the General Manager of the Railways and one Public Official. He fought to remove the Chief Justice in the Council on the basis of the principle of Separation of Powers but the latter was not removed by the government. With respect to non-official members, Egerton complained of the difficulty in finding suitable candidates to fill the existing seats.

In January 1906, the Imperial Government proposed a unification scheme stronger than what Sir Walter Egerton had earlier proposed. Under this scheme,

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[3]. Sir Walter Egerton was Governor of Lagos Colony and High Commissioner for the Southern Protectorate 1904-1908.

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the Lagos Colony and the Protectorate of Southern Nigeria would be united and called Southern Nigeria. Under the 1906 proposal, the Legislative Council was composed of the Governor, Lieutenant-Governors, the Chief Justice, the Attorney-General, the Treasurer of the Colony, the Provincial Commissioners, the Principal Medical Officer and non-official members. The non-official members were to hold their seats for five years. They could also be re-nominated for another term of five years. In the Executive Council, members were permanent as long as the offices of members were retained.

The proposed unification of Lagos Colony and the Southern Protectorate led to a demand for greater representation in the Legislative Council by the non-official members. It is interesting to note that for a long time non-official African members were limited to Lagos. There was no representation from the Eastern and Central provinces. In response to the agitation from Lagos for more un-official representation, Sir Egerton appointed one un-official member (a European representing commercial interests). The British government also informed the agitators that she had approved an increase in the Legislative Council by two. With regards to the Executive Council both Egerton and the British government were of the view (though without an explanation) that the 'condition of West Africa made it undesirable to nominate un-official members to the council[4].

In 1912, Sir Frederick Lugard was appointed the Governor of Northern and Southern Nigeria. Lord Lugard on assuming office rejected the idea of a Legislative Council for Nigeria. He advanced two reasons for this. In the first instance, he felt that such a Council would be incapable of communicating effectively with the "uneducated" majority. Secondly, democracy assumes that the

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4. F. D. Lugard, Representatives Forms of Government and Indirect Rule in British African (London, William Blackword and Sons, 1928) pp. 13-17.

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people's representatives are in touch with their constituents and represent their opinions and interests in the Legislature, therefore it was unjustified for a few minority elites to constitute themselves as representing the interests of the majority.

Certainly, Lord Lugard's argument seemed plausible when one considers the heterogeneity of Nigerian society and the classical principle underlying representative democracy. The problem that arose was that of how to protect the interest of the "uneducated" majority. A possible solution to this problem was decided in Lord Lugard's unification plan for Nigeria[5]. In place of a Legislative Council that could speak with the force of law, Lugard established in 1914 an advisory and a deliberative assembly. The ordinance establishing the assembly provided that the council should meet at least once a year. The Governor-General was to preside at its meetings. Issues at the Council were to be resolved by a majority vote. The ordinance gave the President of the Council a casting as well as an original vote. Any member could move a resolution, provided the Governor-General was notified at least ten days before such a resolution was moved. The Governor-General had "absolute" powers to halt the Council on a resolution that could jeopardise the interest of Nigeria. The official members of this Council included the Governor- General, who was the President of the Council, the Administrator of the Colony, the Legal Adviser, the Municipal Engineer, the Senior Municipal Sanitary Officer, the Assistant Treasurer, the Harbour Master, the Commissioner for Lands, the Commercial Intelligence Officer, and any other official of the British Government deemed necessary.

The un-official members were drawn from outside the government departments and they were to hold their seats for three years in the first

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5. Ibid p.48.

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instance. They could be re-appointed for another term subject to satisfactory performance and approval of the British government.

It is important to note that official members of this Council were restricted to the Southern provinces and un-official members were drawn from Lagos Municipal Council. It is no wonder that the power and functions of this body were restricted to the Lagos environment from where members were drawn.

The 1914 Nigerian Council was at best a mere symbolic gesture. It was more of a retrogressive Legislative body than the previous Legislative Council of the Colony of Southern Nigeria.

When Clifford succeeded Lugard as Governor-General, he put up a proposal for a more functional and effective Legislative Council in Southern Nigeria. In this respect, he proposed a new Legislative Council that would hold its sessions regularly in Lagos. However, this Council would not legislate for the Muslim Emirates for religious and cultural reasons. Thus the government would continue to legislate for Northern Nigeria and the Legislative power of the proposed Council would be limited to Southern Nigeria. However, the Legislative Council was christened Legislative Council of the Colony and Protectorate of Nigeria.

Clifford also proposed the official membership to include, the Governor as President, ten Senior Residents, Deputy Chief Secretary to the Government, the Secretaries of the Northern and Southern Provinces, the General Manager of the Railway, the Director of Public Works and Post-Master-General. Three elected members were proposed to represent the Colony, one elected member to represent each of the Chambers of Commerce of Lagos, Old Calabar and Kano; one nominated member to represent local Chamber of Mines, six members to represent Oyo, Abeokuta, Ondo, Benin, the Niger Delta and the Ibo areas, the Governor was to nominate three members to represent the Commercial Banking and Shipping

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interests and one member nominated by the Governor to represent the Colony outside Lagos Municipal boundaries. In all, eighteen members were proposed for the Council[6].

The Clifford proposal did not go well with some officials of the Colonial Office in London, who at that time were satisfied with the structure, scope and functions of the Nigerian Council. They felt that there were no adequate infrastructure to warrant the enlargement of the then Legislative Council. Besides, the people did not demand for such an elaborate structure[7].

One of those who gave stiff opposition to the Legislative Council was A. J. Harding (a first class clerk in the office, London, and a graduate of Cambridge University). He considered it as an unprofitable venture and was of the view that the Colony was not yet prepared and ripe for such a Legislative Council. By January, 1922, in spite of A. J. Harding's opposition and skepticism on Clifford's proposal, the British Government approved (though with some reservations) the establishment of the Council. In 1923, a central Legislature was formally inaugurated. The Legislative Council consisted of the Governor (as the President), all members of the Executive Council, the ten Senior Residents in Nigeria, the Deputy Chief Secretary to the Government, the Secretaries to the Northern and Southern Provinces and the General Manager of the Railways. Others were the Director of Public Works, the Post-Master-General, three of the un-official members were to be elected from Lagos, one from Calabar while the Governor could nominate any other person but subject to the approval of the British government.

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6. S. O. Okafor op. cit. p. 92.

7. See Draft Confidential Letter dated 16th January, 1927 from Winston S. Churchill to Sir Hugh Clifford's C. O. 583, Vol. 106. (Public Record Office, London) in S. O. Okafor op. cit p. 96.

The six members that were proposed by Clifford to represent Oyo, Abeokuta, Ondo, Benin, the Niger Delta and the Ibo areas in the Council were dropped, for reasons best known to the British government. Similarly, three members nominated to represent the Chambers of Commerce of Lagos, Old Calabar and Kano were rejected. The refusal of Kano's representative was due to the fact that the Council was not to legislate for any of the Northern Provinces.

In spite of the existence of a Legislative Council, the power to make laws was vested in the Executive as represented by the Governor. He was empowered to make laws for peace, order and good government. More important, the Legislative Council had no power over the revenue and expenditure as the Colonial Secretary had to give his approval before they could deliberate on it. Any member of the Council could initiate a motion, and if seconded by any other Legislator, it could be debated and disposed of 'in accordance with the Standing Rules and Orders of the Legislative Council.'[8] However, any member wishing to introduce a motion had to notify the Governor at least ten days before the scheduled meeting of the Council. This function given to the Governor in actual fact is actually performed by the Speaker of the House of Representatives in a democratic setting. The Executive position was being strengthened in this arrangement while the power of the Legislature was being weakened.

The Ordinance establishing the Legislative Council allowed elected members to retain their membership for five years in the first instance. They were also eligible for re-election for another five years provided they were not disqualified under the provision of the Constitution. It behoved the Governor to establish conduct for registration of candidates through proclamation regulation. They could be 'altered or repealed by an Ordinance enacted by the Governor with the

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[8]. O. I. Odumosu, The Nigerian Constitution: History and Development (London, Sweet & Maxwell, 1963) p. 144

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advice and consent of the Council'[9].

The Clifford Constitution, despite criticism[10], lasted from 1923 to 1946. But during the second World War (1939- 1945), there emerged budding nationalists, demanding for reforms in the political system. By 1943 when Sir Arthur Richards took over the governorship of Nigeria, it had become apparent that 'the Constitutional Order introduced in 1923 by Sir Hugh Clifford had outlived its usefulness[11]'. Hence the need for a change. One of the advocates for a change was Mr. E. O. Akerele, an elected member for Lagos. To him, the change was necessary so as to ensure the loyalty of the people to the British Government. According to him, African participation in the running of their affairs was long over due[12]. Governor Richards though sympathetic to the cause being championed by Mr. E. O. Akerele indicated that emphasis could only be laid on the development of municipalities and regional Legislatures. He saw regional Legislative institutions as training grounds for the central Legislature and he believed that not until Regional Legislatures were developed, the central Legislature might not be minimally developed[13]. Richards introduced certain measures to ensure a fairer African participation in the British Colonial administration in Nigeria. For example in 1944 he recommended the enlargement of the scope and membership of the Legislative Council. He also recommended the establishment of Regional Legislative Councils for the East, North and West. In addition, a Regional House of Assembly for the North and a House of Chiefs were

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9. Ibid p. 99.

10. Ibid

11. Ibid p. 99

12. Ibid p. 146.

13. See Nigerian Legislative Council Debates 13th March 1944. pp. 25-26.

proposed. There were to be three un-official seats allocated for traditional rulers in the Western House of Assembly. A new central Legislative Council would be established, which would legislate for the whole country.

The Regional Houses of Assembly were to have un-official majority. Richards also recommended nine years probationary period for the constitution when it came to force 'but in the intervening years there should be a review of the system of direct nomination by the Governor at the end of the third year, and if necessary in the sixth year, with a view to substituting an elective form of representation wherever this might be found to be practicable'[14] There were mixed reactions to these proposals. Those aspects of the recommendation which generated criticism were:

1. The limited participation which Nigerians were allowed in the management of their own affairs;
2. The position of the traditional rulers. Some members argued that if a House of Chiefs was to be established in the North, they should be established in the West and East as well. Others held that as traditional rulers had been an integral part of the administration, it would not be right to appoint them as un-official members;
3. The principle of elective representation being still confined to Lagos and Calabar;
4. The numerical strength of the un-official members, most members argued, was inadequate;
5. The use of Native Authorities as electoral colleges; and

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[14]. S. O. Okafor op. cit p. 152.

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6. The continuation of the principle of nomination[15].

However, in spite of these criticisms, the British Government, after some amendments, approved the proposals. The proposals were enacted as Nigeria (Legislative Council) Order in Council in 1946, but came into operation on 1st January 1947. The British Government then approved of a Central Legislature having the Governor as its President. There were to be thirteen ex-officio members, and these consisted of the Chief Secretary, the three Regional Commissioners, the Attorney-General, the Financial Secretary, the Director of Medical Services, the Development Secretary, the Director of Education, the Director of Agriculture, the Director of Public Works, the Commissioner of Labour, and the Commissioner of the Colony. The three nominated official members would be made up of three Residents, one from each region appointed by the Governor for each meeting of the Legislative Council[16].

The nominated un-official members would consist of four members of the Northern House of Assembly, five un-official members from the Northern House of Assembly appointed from their members, two traditional rulers from the Western House of Assembly, appointed by the Governor, four un-official members from the Western House of Assembly appointed by their members, five un-official members from the Eastern House of Assembly appointed by un-official members of the House, a member for the Colony appointed by the Governor, three members appointed by the Governor to represent interests or communities which in the opinion of the Governor were not adequately represented, three elected members from Lagos and one for Calabar[17]. Both nominated and un- official and elected

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15. Ibid p. 153.

16. Ibid p. 153.

17. Ibid p. 153.

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members were given three years in the House in the first instance and if qualified again were eligible for re-nomination or re-election.

The Legislative Council of 1946 remained significantly unrepresentative as un-official members were largely nominated by the Governor. The Governor was also the principal instrument in policy making. He was also the architect of the bills introduced in the Legislature. There were only four elected members in the Legislative Council as it was the case in the 1922 Constitution.

Owing to these objectionable features, the Richard's Constitution of 1946 was severely criticised by the nationalists such as leaders of the NCNC and AG[18]. Most of them called for its immediate abrogation. This was effected with the inauguration of the Macpherson Constitution in 1951. It laid more emphasis on African participation in the administration of Nigeria. For example one hundred and thirty six (136) members of the Central Legislature were elected from the Regional Houses of Assembly excluding members for the Cameroons. Out of this number, thirty four (34) each came from the Eastern and Western Houses of Assembly and sixty eight (68) from the Northern Joint Council i.e. the House of Chiefs and Assembly. In addition, three chiefs were appointed in the West to make up their thirty four seats. The Governor under this Constitution was empowered to appoint six candidates to represent interests or communities which the Governor considered as being not adequately represented.

The Macpherson Constitution introduced the system of election in the Nigerian political system as a whole. It was no longer limited to Lagos and Calabar. It also represented an improvement on the roles of the Central Legislature over the previous constitutions. The autocracy of the Governor was substituted, for the rule of majority decision in the Legislative Council. The

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18. O. Awolowo, Path to Nigerian Freedom (London, Faber and Faber 1947) p. 125.

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Governor was to make laws for the peace, order and good government of Nigeria with the advice and consent of the House of Representatives. The majority of the members of the Executive Council were drawn from the Legislative Houses. The Constitution also gave the Legislature the power to control the Executive as any of its members could be dismissed upon request by the Legislature after the resolution to that effect had been supported by two-thirds of its members. This is very close to the Presidential Constitution which Nigeria was to adopt several decades later. The application of this Presidential constitutional is studied in detail in subsequent chapters of this thesis.

The Council of Ministers which ostensibly was meant to form part of the Governor's office in Lagos functioned more as a political association. Everything before the Council was turned into a political issue. This further heightened the differences among members of the Council of Ministers. There was also the question of educational imbalance between the North and the South. The North at this time was not only educationally backward but stood far behind the other two Southern regions in terms of physical development. Amidst these problems, on the March 31,

1953, Anthony Enahoro an Action Group member in the House of Representatives moved a motion requesting the House to endorse the country's independence by 1956[19].

This motion, generated reactions and counter-reactions from the Southern and Northern representatives, with Sir Ahmadu Bello, a legislator and the leader of majority in Northern region, substituting the phrase in May 2, 1956 with 'as soon as practicable' of his motion[20], in his own counter motion. The AG and NCNC

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19. See Nigeria House of Representatives Debates 31 March, 1953.

20. For details see Ahmadu Bello, My Life (London, Cambridge University Press, 1962) pp. 118-120.

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formed an alliance to strengthen their position on their proposition. When it became clear that the NPC would use its numerical strength to defeat the motion, the four AG Ministers namely: Sir Adesoji Aderemi - the late Ooni of Ife (Minister without Portfolio), Bode Thomas - Minister of Transport, S. L. Akintola - Minister of Labour and Arthur Prest - Minister of Communications resigned their appointments as they could no longer abide by the decision of the Council. With their resignations, the Central Executive Council became *null and void* and of no effect constitutionally. The Constitutional Order of 1951 thus came to an abrupt end.

Between 30 July and August 22 1953, the Nigerian Leaders met in London for a Constitutional Conference at the invitation of the British Government. The principal aims of the conference were to discuss the defects of the 1951 constitution and the ways of correcting them in future constitutions. The conference eventually agree on the following issues:

1. Greater autonomy for the Regions and separate elections for the Federal Legislature. This meant that members for the Federal Legislature would no longer be recruited from the Regional Legislature;
2. There should be no need for uniformity in the electoral procedure between the regions;
3. The Federal Legislature should consist of a uni-cameral Legislature with a total membership of 184. Of this total membership, 92 would come from the North, 42 each from the East and West respectively, two from Lagos and six from Southern Cameroons;
4. The official membership should be reduced to three and

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should consist of the Chief Secretary, the Financial Secretary, and the Attorney-General;

5. No member of a Regional Legislature would be allowed to be a member of the Federal Legislature. But a member could stand for election to the Federal Legislature, and if elected, should not be required to resign his seat in the Regional Legislature unless and until he had taken his seat in the Federal Legislature[21].

On the 19th January, 1954 another Constitutional Conference was held to consider issues on which agreement had not been reached at the London Constitutional Conference of 1953. With regard to the Central Legislature, it was agreed that the House of Representatives should consist of:

1. A speaker appointed from outside the House by the Governor-General;
2. A Deputy-Speaker appointed by the Governor-General from the members of the Houses;
3. Three ex-officio members;
4. 184 representative members. Of this total, 92 would be recruited from the North, 42 from the East and West respectively, six from Cameroons and two from Lagos.
5. Such special members as might be determined[22].

The above provisions among others were contained in the Nigeria (constitution) Order in Council of 1954 otherwise known as the Lyttleton Constitution of 1954. The Lyttleton Constitution saw a dramatic reduction of

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21. Ibid p. 120.

22. See S. O. Okafor op. cit. p. 172.

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official members of the Legislative Council at Regional and at the Central levels. In 1954, all official members of the Eastern House of Assembly were withdrawn, the West followed suit in 1958 and the North in 1959. At the central level special members were dispensed with in the House of Representatives in 1959.

The most remarkable feature of the 1954 Constitution was the division of powers between the Federal and Regional Legislatures. This was done to avoid unnecessary conflicts between the two levels of government. This was particularly crucial as Nigeria was marching towards independence. Exclusive and Concurrent Legislative lists of functions were carved out for the Central and Regional governments. A foundation for a Federal system of government was laid in 1959 and on 1st October 1960 Nigeria obtained her independence, with a new constitution, as the 1954 Constitution was revoked.

Under the new dispensation the Central Legislature acquired additional powers which were previously the prerogatives of the crown. For example the Central Legislature could legislate on matters relating to External Affairs, Defence, Deportation, Extradition, Police, Exchange Control, Passport and Visas, Railway, Currency, Coinage and Legal tenders as well as supplementary and incidental matters.

In 1963, Nigeria adopted a Republican Constitution. It was the first indigenous constitution to be enacted by the Nigerian Federal Government. This constitution provided for a bi-cameral Legislature comprising of a House of Representatives and the Senate. The House of Representatives was the Lower House while the Senate represented the Upper House. The House of Representatives consisted of three hundred and twelve (312) members. This showed an increase of one hundred and twenty eight (128) members over the previous constitution. The Senate on the other hand was made up of twelve

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showed an increase of one hundred and twenty eight (128) members over the previous constitution. The Senate on the other hand was made up of twelve representatives of each Region. They were selected at a joint sitting of the Legislative Houses of each Region from among the nominees of the Regional Governor. There were four members representing the Federal Territory and four other Senators selected by the President acting in accordance with the advice of the Prime-Minister[23].

The two chambers became Nigeria's Legislative Assembly. A bill has to be passed through the House in which it originated and sent to the other House before it could be considered by both Houses. The 1963 Constitution gave the House of Representatives some prerogatives over the Senate. For instance, as a rule, money bills must first be introduced in the House of Representatives. The Senate, again was prevented by the Constitution from considering bills on matters relating to the following:

i. the imposition, repeal or alteration of taxation;

ii. the imposition of any charge upon the consolidated revenue fund or any other public fund of the Federation;

iii. the payment, issue or withdrawal from the consolidated revenue fund or any other public fund of the Federation of any money not charged there on or any alteration in the amount of such a payment issue or withdrawal; or

iv. the composition or remission of any debt due to the

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23. Federal Republic of Nigeria, The Constitution of the Federal Republic of Nigeria 1963, (Lagos, Federal Ministry of Information, 1963) p. 7.

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Federation[24].

In addition, the Senate could not and should not delay money bills sent to it by the House of Representatives for more than one month. Similarly, the Senate could not delay ordinary bills emanating from the House of Representatives for more than six months.

The post of Governor-General was replaced with that of President, who became the Head of State and Commander-in-Chief of the Armed Forces. Under the 1963 Constitution, the President was not to exercise executive power, rather he was a constitutional or ceremonial President[25]. It was the Prime-Minister and the Council of Ministers who exercised executive or governmental powers.

This was the situation until 15th January, 1966, when the Army took over from the NPC/NCNC coalition government controlled by Late Sir Abubakar Tafawa Balewa. The period between 1966-1979 represented the epoch of military interregnum in Nigerian politics. The Federal Military Government on assumption of power promulgated a decree to suspend the provisions of the 1963 Constitution relating to the Office of the President, establishment of Parliament and the Office of the Prime-Minister. The offices of the Regional Governors, Regional Premiers, Executive Councils and Legislatures were also abrogated. By this decree, absolute Legislative powers were vested in the Federal Military Government. The Legislative power of the Military was such that it could make laws by decrees with respect to any matters. Once a decree is made, no provision in the constitution could render it ineffective. The Supreme Military Council (SMC) or the Armed Forces Ruling Council (AFRC) as it is designated under the Military regime of General Ibrahim Badamosi Babangida is normally headed by the Head

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24. F. Adigwe, Essentials of Government for West Africa (Ibadan, Oxford University Press, 1974) p. 235.

25. See Sec. 63 of the 1963 Constitution op. cit.

The functions of the AFRC include *inter alia* promulgation of decrees that would help the Military in the governance of the country, determination from time to time of national policy on major issues affecting the country and determination of national security matters. The Council also determines the appointment of persons to fill high administrative and judicial posts. It also appoints members of the National Council of States (NCS) and Federal Executive Council (FEC). The AFRC also carries out the general supervision of the work of the two Councils (NCS and FEC)[26].

The NCS is responsible for the determination of policy guidelines as they affect the financial, economic and social affairs of the States. It also has the power to formulate and implement national development plans. The FEC on the other hand determines and executes the policy of the Federal Military Government (FMG) as determined by the AFRC.

It is important to stress that the Military ruled this country for upward of thirteen years (1966-1979) with the above named bodies viz the SMC, NCS and FEC until it finally handed over power to a democratically elected government of Alhaji Shehu Shagari on 1st October, 1979.

Conclusion

It is our view from the foregoing analysis that the chapter has provided background information to a general understanding of the dynamics of Legislative/Executive relations in the Second Republic. It must be noted that throughout our discussion in the chapter there was no time in which the Legislature had effective control of the Executive. In other words, the Legislature lacked policy-making power, for instance, the Nigerian Council between 1914 and

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[26]. For details, see E. O. Olowu 'The Legislative Process in a Military Regime: The Nigerian Experience' Quarterly Journal of Administration, Vol. XI, 1 & 2 January 1977 p. 10.

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Legislature had effective control of the Executive. In other words, the Legislature lacked policy-making power, for instance, the Nigerian Council between 1914 and 1922 had no legislative or Executive authority, because any resolution passed by it was not binding on the Governor. The power of the Legislative Council of 1923 was also limited to the Southern protectorate. With the constituted Legislatures of 1951-54 and 1954-59 there came the opportunity for gradual integration of Nigerian political elites into the Westminster system of government. At independence in 1960, there was socialisation of Nigerian political elites into British parliamentary democracy.

However, one thing which must be borne in mind is that throughout this period, the Executive was stronger than the Legislature. It is for this that the Daily Express referred to the House of Representatives in 1963 as 'an expensive and irrelevant talking shop'[27]. One pertinent question which must be asked at this stage is: "will the situation in the Second Republic be different from the above especially with the adoption of Executive Presidential System?" This is the essence of this study. The subsequent chapters will attempt to provide answers to this question.

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[27]. See Oyeleye Oyediran 'Legislators in the 1989 Constitution' The Guardian (Lagos) July 27, 1990 p. 11.

CHAPTER THREE
THE 1979 CONSTITUTION THE LEGISLATURE AND THE EXECUTIVE: THEORY AND PRACTICE

Background to the 1979 Presidential Constitution

The 1979 Constitution was the second experiment by Nigeria in representative or constitutional democracy. As already stated, the country, on attainment of independence adopted a Westminster democracy which lasted between 1960–1966. No sooner had the country emerged from colonial rule than the 1960 and 1963 Constitutions proved unworkable. The problem arose largely from the constitutional provision of plural executive at both levels of government i.e. the Regional and Federal levels. At the Regional level, the Constitution provided for the positions of Premiership and Governorship. In the same vein, there was the provision of Prime-Minister who was the Head of Government and the President who was the Head of State. The occupants of these offices both at regional (especially in Western Nigeria) and Federal levels rivalled each other for political ascendancy.

For instance following the Action Group crisis of 1962, the then Regional Premier Chief S. L. Akintola was alleged to have breached public faith and confidence in him. As a result he no longer enjoyed the support of the majority of the party members both within and outside the Legislature. The Governor (Sir Adesoji Aderemi) therefore called on him to resign as required by the Constitution[1]. The Premier in response, challenged the constitutional and

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[1]. The 1960 Constitution of Western Nigeria, Section 33 (10) States: 'The Governor shall not remove the Premier from office unless it appears to him that the Premier no longer commands the support of the majority of the members of the House of Assembly.'

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procedural manner of the order as there was no adverse vote in the Legislature to confirm the Governor's verdict. He therefore refused to step down pending the outcome of the court's decision. The refusal of the Premier to abide by this removal order led to an unprecedented crisis in Western Nigeria. The Federal Government clamped-down on the parliament and the Regional Government as both were suspended. A state of emergency was declared upon the region and a Sole-Administrator (Dr. M. A. Majekodunmi) was appointed to oversee the general administration of the Region.

However, it is important to stress that the 1962 crisis in Western Nigeria could not be solely attributed to the issue of dual or plural executive, as there were political forces which transcended constitutional technicality. These include the political schism between Chief O. Awolowo and Chief S. L. Akintola and the support received from the Federal Government by the latter in the course of struggle. Nevertheless, it can be argued that it was the constitutional problem that set the stage for the political crisis.

Similarly at the Federal level there were questions of conflict of authority between the Head of State (President) and the Head of Government (Prime-Minister). The Head of State symbolised the formal power while the Head of Government represented the real authority. Owing to the role conflict between the President (Dr. Nnamdi Azikiwe) and the Prime-Minister (Sir Abubakar Tafawa Balewa), the Prime-Minister never subordinated himself to the titular President. Consequent upon this, the 'Minister never regarded themselves as the President's

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ministers or the government as his own[2]'. If anything the Prime-Minister regarded himself as constitutionally superior to the President and often manifested this in matters of official protocol. As B. O. Nwabueze described the relationship:

> There was hardly any attitude of personal allegiance, of reverence or of courtesy towards him, he lacked the attribute of kingly majesty in the eyes of the people, much less so in the eyes of the Ministers. They had been either colleagues or opponents in partisan politics, and the difference in tribal sentiment and loyalty intruded to make the cultivation of the right attitudes that should inform the relationship still more difficult[3].

This issue of mutual distrust between the President and the Council of Ministers headed by the Prime-Minister became more accentuated following the 1964/65 General Elections which has been aptly referred to by B. O. Nwabueze as a complete 'travesty of constitutional democracy'[4]. Following the widespread intimidation and violence, refusal by electoral officers to accept nomination papers from members of opposition parties, denial of freedom of campaign, use of illegal ballot papers, the President refused to call the leader of the winning party (Sir Abubakar Tafawa Balewa) to form the Government. In spite of the fact that the President's reluctance was based on these well-attested irregularities the NPC/NNDP coalition accused him of partiality and political partisanship in favour of 'his tribe and for the political party of which he was formerly the leader'[5]. The NPC/NNDP's sentiment was premised on the general political atmosphere of the period in question. As Tansey and Kermode state:

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2. See B. O. Nwabueze, Presidentialism in Commonwealth Africa, (London, C. Hurst & Company 1977) pp. 72-73.

3. Ibid p. 73.

4. Ibid p. 80.

5. Ibid p. 73.

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> the main difficulty was the mutual distrust between the main ethnic groupings in the country was and still is so great that few are willing to credit impartiality to a non-member of their own group[6].

However, it must be noted that so serious was the crisis between the Prime-Minister and the President that they both solicited the loyalty and support of the Armed Forces. In the event, the President soon discovered that despite the fact that he was the Commander in Chief of the Armed Forces, the operational use of the Armed Forces was vested in the Council of Ministers of which the Prime-Minister was the Head. Besides, the Armed Forces Act never made reference to a Commander-in-Chief[7]. All these put together produced conflicts of authority regarding the plural executive as provided for in the 1963 Republic Constitution. It is instructive to note that the President was forced later to call on the incumbent Prime-Minister to form a Government amidst protests, blackmail and frustrations arising from the limitations of his power under the Constitution. Finally, what broke the camel's back was the crisis resulting from dual executive-ship which shook the fabric of Nigerian Government, Politics and indeed, the society. So great was its effects on Nigerian body politic that the country never recovered from the wounds so inflicted until the Military intervention of January 15, 1966. It is against this general background that the 1979 Presidential Constitution was fashioned as a panacea for the first constitutional democracy that failed.

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6. S. O. Tansey and D. G. Kermode 'The Westminster Model in Nigeria' Parliamentary Affairs Vol. XXI, 1967/68 p. 24.

7. B. O. Nwabueze op. cit. p. 83.

The 1979 Constitution

The 1979 Constitution was essentially a presidential one. It is important to note that it was the first time the country would experiment with this type of constitution. The new experiment was a direct consequence of the experiences of the Westminster model which the country adopted on attainment of independence in 1960. The Westminster experience failed as the Constitution, according to B. J. Dudley:

> Was not suited to the needs of the society because Nigeria did not have homogenous political culture and a people prepared to obey not only the rules of the game but also the rules about the game[8].

In view of this, perhaps, the country adopted the presidential system as a 'prophylactic measure' to prevent the frightful events of yesteryears[9]. In the same vein, Victor Ayeni observes that 'the new Constitution of 1979 is an acknowledgement of the ineffectiveness of previous solutions[10]. It was therefore not surprising that the late Head of State, General Murtala Mohammed at the inauguration of the Constitution Drafting Committee (CDC) on October 18, 1975 recommended for the consideration of the CDC a system that will:

i. eliminate cut-throat political competition based on a system or rules of winner-takes all. As corollary, it

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8. See Billy Dudley: West Africa 15th October 1979 and ^SNew Nigerian^S Friday 19th October 1979, p. 5. The same argument was advanced by him in his works 'Instability and Political Order: Politics and Crisis in Nigeria (Ibadan, University Press) 1973 and An Introduction to Nigerian Government and Politics (London & Basingstoke, The Macmillan Press Ltd.) 1982.

9. Bunmi Ayoade New Nigerian (Kaduna) Monday 1st October 1979, p. iv.

10. See Victor Ayeni, 'Of Presidentialism and Third World Political Process' in Victor Ayeni and Kayode Soremekun, Nigeria's Second Republic: Presidentialism Politics and Administration in a Developing State (Lagos, Daily Times Publications, 1988), p. 3.

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should discourage electoral malpractices;

ii. discourage institutionalised opposition to the government in power and, instead, develop consensus politics and government, based on a community of all interests rather than the interest of sections of the country;

iii. firmly establish the principle of public accountability for all holders of public office. All public office holders must be seen to account openly for their conduct of affairs;

iv. eliminate over-concentration of power in a few hands, and as a matter of *principle*, decentralise power whenever possible, as a means of diffusing tension. The powers and duties of leading functionaries of government should be carefully defined[11].

What really informed General Murtala Mohammed's statement was the fact that the First Republic witness very stiff political competition among the political parties of the period. These political parties were regionally sourced. Invariably, they promoted nothing but ethnic hegemony. This situation created uncharitable relations among the regions. By 1960, when the country attained its independence from Britain, there was no national political party that could serve as a

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11. Federal Republic of Nigeria: Report of Constitution Drafting Committee (containing the Draft Constitution) CDC (Lagos, Federal Ministry of Information, Printing Division) vol. I, p. xliii.

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rally-point. Hence the country was ruled by a coalition government of Northern Peoples Congress (NPC) and National Convention of Nigerian Citizens (NCNC). The Action Group was the leading opposition party. There was a lot of political discontentment resulting from this arrangement.

This dissatisfaction was particularly dangerous as each of the regions where these political parties were based had large population sufficient to form a country. As a result each was so powerful that it could hold the rest of the Federation to ransom in event of disagreement.

With this experience, the Military Government did not only create twelve and later nineteen states from the former four regional structure in order to break the barrier of these ethnic groups, it also encouraged the political parties to be national in outlook. The implication is that the would-be-President would be nationally accepted and his political alignment would cut across several ethnic and linguistic groups. It is also for this reason that Ayoade noted that:

> the executive presidential system was also meant to neutralise the petrification of these intra-national boundaries. Thus the President is expected to provide a national focus and a national rallying point that would transcend the parochialism of the sub units of the nation. In essence therefore, it was hoped that a President elected by the whole nation as one constituency can crystallise and catalyse the much needed national awareness of the country[12].

An executive President, both in theory and practice, is expected to serve as a focal point of unity in the country. The method of his election is designed to serve the cause of national unity. The President is expected not only to have a simple majority of the total votes cast but at least one quarter of the votes in

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12. See Bunmi Ayoade op. cit. p. iv.

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each of at least two-thirds of all the States in the country[13]. This is quite unlike the Westminster model where the Prime- Minister is only expected to win in his own constituency in addition to having his party nomination for leadership at the centre[14].

The Constitution enjoined the President to have the whole country as his constituency, identify and familiarize himself with them. Thus this system, no doubt, enables the President to have a global (wider) perception of the country. In terms of political appointments, the President would have to select his team across the country in such a manner as would reflect the national character. Apart from the fact that he will leads a team of nationalists, this opportunity would enable him tap the best talents and competent people.

An executive Presidency would also serve as a safeguard against personality clashes in authority relations, leading to gradual erosion of the State, as witnessed in the parliamentary system between the Prime-Minister and the President on the one hand[15], and Premier and Governor of Western Nigeria on the other[16]. The Nigerian experience has indicated clearly that a plural executive system was inappropriate enough for an emerging nation such as Nigeria[17]. The

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13. Federal Republic of Nigeria: The Constitution of the Federal Republic of Nigeria (Lagos, Daily Times Publication, 1979) S. 126 (b).

14. For a similar argument, see inter alia A. Oyewole, 'Objectives of the Presidential System of Government in Nigeria' Ife Social Science Review vol. xvii, 1980, p. 3-11. Amechi Okolo <197> Nigeria: Contending issues in Political Economy (Lagos, Heartland Publishing House Ltd. 1988).

15. There was rivalry between the Prime-Minister and the president of Nigeria in the First Republic. This was particularly more glaring after the Federal elections in 1964. For details see N. Azikiwe, Essential for Nigeria Survival.

16. See J. A. Ayoade: 'Western Nigerian Elections Crisis' an unpublished Ph.D. Thesis, University of Ibadan, 1971.

17. The totality of Nigeria experience in Westminster model had culminated in the January 15th 1966 'coup de tat'.

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> appoint anybody who he thinks can help him, who is competent provided of course he gets the support of the Senate ... I think that is the beauty of presidential system. There is also this distinction of separation of powers which I think is a good thing provided there is harmony between the executive and the legislature[20].

The essential element that distinguishes the executive presidential system of government from the parliamentary system is the adherence to the principles of separation of powers and the demarcation of responsibilities guaranteed in the former. In the case of the parliamentary system, the Executive and the Legislative membership are fused.

Furthermore, under the Westminster system, the party that has a majority in the parliament is expected to form the government. Hence forming a government is a function of ability of a party to have a convenient majority in the legislature. This may not necessarily go for the presidential system as more often the government party may be a minority in the National Assembly. The American experience in recent time has vividly demonstrated this.

Similarly in the parliamentary system ministerial appointments are more often than not drawn from the legislature. When these appointments are made, the ministers so appointed are supposed to retain both legislative and executive positions. Whereas in the Presidential systems as soon as a legislator is appointed a minister, he is expected to resign from the legislature.

Again, in the parliamentary system, theoretically the Prime- Minister is *primus inter pares* (first among equals), he and other ministers are individually and collectively accountable to the legislature. He could not easily hire and fire his ministers as is the case under the Presidential system, because the ministers are not supposed to be directly accountable to him. In contrast to the above, recent experience in Britain has witnessed the emergence of a powerful executive

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20. See Interview with Shehu Shagari New Nigerian (Kaduna) Thursday 29th May, 1980, p. ii.

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otherwise known as 'imperial' Prime Minister although this might be an exception rather than the rule.

Finally, whereas in the parliamentary system, the system places emphasis on the supremacy of the sovereign will, i.e. parliament, the presidential system believes in the supremacy of the Constitution. In other words in the event of conflict between the two branches of government i.e. the executive and the legislature, the constitutional interpretation by the judiciary is seen as final.

Although the authors of the 1979 Constitution cherished the idea of a national leader or President, who will symbolise national unity, coherence, honour and prestige, they nevertheless detested the emergence of a dictator or what A. Gboyega described as 'a constitutional Frankenstein's monster'[21]. This fear was amply demonstrated in the reports of the Constitutional Drafting Committee:

> What is uppermost in our minds is how to provide for an effective leadership that expresses our aspiration for national unity without at the same time building up a Leviathan whose power may be difficult to curb[22]. Hence, in order to guard against the possible emergence of a dictator in the political scene of the country, there was the conception of a powerful legislature embedded in the constitution to serve as a countervailing power against the influence and authority of the executive. With the emergence of an executive President in the Constitution there is need for the legislature to be vigilant so as to be able to serve as the protector and watchdog of the people's rights against any infringement from the executive and its administrative agencies.

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21. See. E. A. Gboyega: 'The Making of Nigerian Constitution' in O. Oyediran (ed.) Nigerian Government and Politics Under Military Rule 1966- 1979 (London and Basingstoke, Macmillan Press Ltd. 1979) pp. 235- 258.

22. See the Report of the Sub- Committee on the Executive and Legislature, CDC op. cit. vol. 11, p. 67.

The Power of the Legislature under the 1979 Constitution

Be that as it may, the role of the legislature under the constitution should be seen to include checking, supervising and controlling the administration. It should also serve as a mechanism for educating the public with regard to rights and privileges under the constitution.

It is for this reason, that the 1979 Constitution granted the legislature enormous powers to control the executive. For instance the constitution empowered the legislature to ratify certain categories of presidential appointments such as Federal Ministers[23], Special Advisers, Chief Justice of the Federation, Ambassadors, High Commissioners or other principal representatives of the country abroad, etc.

Although the President could appoint the chairmen and members of the some statutory commissions, some of them as soon as their membership are constituted are immediately insulated from executive control and influence by the Constitution. These commissions include the Federal Civil Service Commission[24], the National Population Commission (NPC), the Federal Electoral Commission, the Federal Judicial Service Commission and the Nigerian Police Commission. It was only the National Assembly that was empowered by the Constitution to remove any member of the above-mentioned Commissions by resolution. This is done in order to guard against arbitrary removal of public functionaries for personal, sectional or partisan reasons.

With respect to the Nigerian Armed Forces[25], the Constitution recognised

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23. See Billy Dudley, op. cit.

24. See the 1979 Constitution of Nigeria, op cit. SS. 135, 139 and 211.

25. See Ibid. SS. 156 and 157.

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the President as Commander- in-Chief but at the same time, insulated it from operational manipulation by the executive as it was only the National Assembly that could determine when it can go into war, make laws for the regulation of appointments, promotion and disciplinary control of the Armed Forces of the Federation[26]. Ordinarily, this duty would seem an executive in responsibility in nature, but by involving the legislature, it is expected that the action will check and moderate the preponderance of the executive over instruments of coercion. It is also to ensure that the country is not dragged to war unnecessarily on the whims and caprices of a reckless and misguided executive.

Similarly, the Constitution granted the President the power to proclaim state of emergency in or any part of the country, but such proclamation lapses after ten days, except the National Assembly approves by resolution supported by two-thirds of all its members[27].

The President also has power to appoint the nine members of the Code of Conduct Bureau and Tribunal subject to approval by the legislature. Again, these bodies are only responsible to the National Assembly.

The power of the legislature is also conceived from the point of view that no bill (including executive bills) can become law except by legislative assent by at least a simple majority of the members of legislature. The implication of this clause is that no matter how powerful or influential the executive is, it has to take cognisance of the legislature in all important issues of decision-making.

Its power of control over the executive is further underscored, when the legislature has the power under the Constitution to inform itself directly or through its committee how its laws are being administered by the executive. It

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26. See Ibid. Billy Dudley, op. cit.

27. See S. 265(6) of 1979 Nigeria's Constitution.

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can inquire into the defects that show up in the course of administration of such laws.

It is instructive to note also that a certain degree of opposition is expected from the two organs i.e. the executive and the legislature such that each would be anxious to guide and assert its autonomy This quest for autonomy may even be more prevalent when the legislature and the executive are under the control of different and opposing political parties[28]. It is common to see a legislature controlled by an opposing party to that of the President in the presidential system as noted earlier. For instance it is 'on rare occasions in recent American history that Republican Presidents have mustered a majority in Congress[29].

The Composition and Politics of the Nigerian Legislature and Executive <197> 1979-1983

The 1979 Constitution provided for a bi-cameral legislature in the centre. These two Houses at the federal level were the Senate and the House of Representatives. At the state level the legislature was uni-cameral comprising of only a House of Assembly. At the executive level it was a single-man Executive with the President and Governor at Federal and State levels respectively. Although they were expected to form their respective cabinets, they were supposed to be the sole accounting officers as they were held accountable by the Constitution for what is done and not done by the administration. It is for this

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28. The intense struggle between the executive as represented by Governor Balarabe Musa and the Legislature as dominated by the NPN in Kaduna State was a good example.

29. See the keynote address by Dr. Alex I. Ekwueme, Vice-President of the Federal Republic of Nigeria (1979-1983) at the National Conference on 'Return to Civil Rule. Problems and Prospects' Ahmadu Bello University, Zaria. May 26, 1980, p. 1.

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reason that the Constitution granted them the power to hire and fire their supporting staff.

Be that as it may, the elections to various Legislative Houses in the second Republic were conducted under the banner of five and later six political parties in 1979 and 1983 elections respectively. For the 1979 elections the political parties that contested were the Great Nigerian People's Party (GNPP), the National Party of Nigerian (NPN), the Nigerian People's Party (NPP), the People's Redemption Party (PRP) and the Unity Party of Nigeria (UPN). In the 1983 elections the FEDECO registered an additional political party named Nigerian Advance Party (NAP) making a total of six parties that contested the 1983 elections.

By 1979, there were about fifty-one political parties that were formed but most of them could not meet the requirements laid down by the FEDECO in accordance with the provisions of the constitution. For instance the constitution demanded of would be political associations to establish their presence in at least two- thirds of the States in the country. It was soon discovered that only five organisations that satisfied the conditions were registered. It was soon discovered that majority of them were parties of old and experienced politicians.

With the constitutional and electoral requirements that all political parties should have offices in at least two-thirds of the state of the Federation, the expectation was that all would be national in outlook. But it soon dawned on everybody that almost all without exception represented the ethnic and regional base of their presidential candidates. For instance, it has been said that the real hard-core or nucleus of the National Party of Nigeria (NPN) comprised of 'a tiny oligarchy drawn from particular parts of the Northern States'[30]. They were made

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30. See Balarabe Musa, The Defence of Balarabe Musa, the day before he was impeached (West Africa) 6th July, 1981, p. 15-20 and in Appendix 2.

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up of a number of families with their circles of clients, dependants and agents. Most of them rose to their exalted positions through the defunct Northern Peoples Congress (NPC), the Native Authorities, the hierarchies of the regional, Federal and State Civil Services and Parastatals; the Police and Armed Forces. In the words of Balarabe Musa, most of them were there not so much 'because of their ability but because of their birth, background, privileged connection and patronage[31].

The above observation regarding the NPN was true of other political parties. For example the UPN was founded and inspired by Chief Obafemi Awolowo and his erstwhile political associates in the Action Group, hence it was quickly identified with the Yoruba. The NPP was easily associated with the Igbo, GNPP with the Kanuri and PRP with the Hausa radicals[32]. It must be noted that it was with this background information in the minds of the electorates that the 1979 elections were contested. The first election in the series was the elections to the Senate held on the 7th July, 1979. As the record of FEDECO revealed, a total number of 12,532,195 voters exercised their civic duties to elect members of the Senate. In this election, the National Party of Nigeria (NPN) led the other parties in terms of total number of votes cast and Senators that were elected. It scored 34.1 per cent of the total senate vote throughout the country thus winning 36 of the 95 seats in this House. It won all the five seats allocated to the following States, Bauchi, Benue, Niger and Sokoto. It also won three seats each in Cross River, Kaduna, Kwara and Rivers States and one seat each in Bendel, Borno, Gongola and Plateau States. Thus the NPN had secured Senate seats in twelve

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31. Ibid.

32. For a more detailed account, see Toyin Falola and Julius Ihonvbere: The Rise and Fall of Nigeria's Second Republic 1979-1984 (London, Zed Books Ltd. 1985), p. 66.

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(12) states of the Federation. By this singular act, the NPN had demonstrated its ability to attract votes outside its geographical base which is Northern Nigeria.

By contrast, its foremost rival, the Unity Party of Nigeria (UPN) was not as successful in its effort to appeal to the entire nation. By overall assessment the UPN came second by winning 24.3% of the total votes cast and securing 28 Senate seats throughout the country. It scored overwhelming victory in its presidential candidate's geographical base i.e. Bendel, Lagos, Ogun, Ondo and Oyo States by winning all the five seats allocated to each of them. It also managed to secure four other Senate seats, two each in Gongola and Kwara States.

The NPP, which came third in the competition, won 17 per cent of the votes and 16 seats all together. The party won five seats each in Anambra and Imo State, thus capturing all seats in its areas. It won additional four seats in Plateau State and two in Rivers State. The GNPP received 14.7 per cent of the total votes cast and won eight Senate seats of which four came from Borno, the home state of its presidential candidate and two each in Cross-River and Gongola States. The last of them, the PRP received 9.9 per cent of the total votes and won 7 seats. Its electoral strength was confined only to Kano where it won five seats and two seats in Kaduna State (Table 1).

These voting patterns did not change appreciably in the subsequent elections. For instance, of the total number of 449 seats in the House of Representatives, the NPN again led the other parties by winning 168 of them. It is interesting to note that the NPN had seats in 16 out of the 19 states of the federation in elections to the Federal House of Representatives. The only exceptions were Lagos, Ogun and Ondo. It won 31 seats in Sokoto and 21 out of 27 seats in Cross River State – a State considered too distant from the political base of its Presidential candidate.

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TABLE 1

Senatorial Election Results, 1979

STATE	NPN	UPN	NPP	GNPP	PRP
ANAMBRA	–	–	5	–	–
BAUCHI	5	–	–	–	–
BENDEL	1	4	–	–	–
BENUE	5	–	–	–	–
BORNO	1	–	–	4	–
CROSS RIVER	3	–	–	2	–
GONGOLA	1	2	–	2	–
KADUNA	3	–	–	–	2
IMO	–	–	5	–	–
KWARA	3	2	–	–	–
SOKOTO	5	–	–	–	–
NIGER	5	–	–	–	–
LAGOS	–	5	–	–	–
OGUN	–	5	–	–	–
ONDO	–	5	–	–	–
RIVERS	3	–	2	–	–
KANO	–	–	–	–	5
OYO	–	5	–	–	–
PLATEAU	1	–	4	–	–
TOTAL	36	28	16	8	7
	37.89%	29.47%	16.84%	8.42%	7.26%

Source: Chuba Okadigbo The Mission of the NPN (Enugu, Ejike R. Nwankwo Associates, 1981) p. 129.

TABLE 2

HOUSE OF REPRESENTATIVES ELECTION 1979

STATE	SEATS	NPN	UPN	NPP	GNPP	PRP
ANAMBRA	29	3	–	26	–	–
BAUCHI	20	18	–	1	1	–
BENDEL	20	6	12	2	–	–
BORNO	24	2	–	–	22	–
BENUE	19	18	1	–	–	–
CROSS RIVER	28	22	2	–	4	–
GONGOLA	21	6	7	1	8	–
IMO	30	2	–	28	–	–
KADUNA	33	19	1	2	1	10
KANO	46	7	–	–	–	39
KWARA	14	8	5	–	1	–
LAGOS	12	–	12	–	–	–
NIGER	10	10	–	–	–	–
OGUN	12	–	12	–	–	–
ONDO	22	–	22	–	–	–
OYO	42	4	38	–	–	–
PLATEAU	16	3	–	13	–	–
RIVERS	14	10	–	4	–	–
SOKOTO	37	31	–	–	6	–
TOTAL	449	168	111	78	43	49
PERCENTAGE		37.41%	24.72%	17.37%	9.57%	10.91%

Source: Chuba Okadigbo, The Mission of the NPN op. cit. p. 131.

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The UPN which came second won a total number of 111 seats. The bulk of these seats were from the traditional area of the party namely Bendel, Lagos, Ogun, Ondo and Oyo. It also won thirteen other seats in the rest of the country. In the case of NPP, 65 of the total 78 seats won by the party came from Anambra, Imo and Plateau States.

As for the two other parties, i.e. PRP and GNPP they were unable to capture any vote beyond those they had demonstrated earlier in the Senate elections. In all PRP won 49 seats in the House of Representatives out of which 39 was derived from Kano and 10 from Kaduna State. Of the GNPP's 43 seats 22 were obtained from Borno the home State of its presidential candidate. (For details see Table 2).

The next elections after that of House of Representatives were the elections into State Houses of Assembly. A total of 1,347 House of Assembly seats were at stake. The number of seats allocated to each State depended on their population as projected from the 1963 census, and this ranged from 30 seats which were allocated to Niger State to 138 seats for Kano State. In all, there were 3,301 candidates vying for the seats. In these elections, political parties did not field candidates for all the House of Assembly contests but tended to limit their efforts to those areas in which their chances or prospects of success were brightest. The NPN, unlike the other parties fielded candidates in nearly all the constituencies. It had a total of 1,334 candidates. The UPN its closest rival entered 1,005 for the contest, while the NPP contested only 588 seats and the GNPP and PRP vied for 998 and 405 seats respectively.

In the elections, the NPN came first with 35.4 per cent of the votes cast and won 481 Assembly seats. With this figure the NPN controlled eight Houses of Assembly namely Bauchi, Benue, Cross River, Kaduna, Kwara, Niger, Rivers and

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Sokoto States. Like the previous elections, the NPN thus had its candidates spread all over the federation. The UPN won Assembly seats and 25.5 per cent of the total votes seats throughout the federation. This enabled the UPN to gain control of five Houses of Assembly namely Bendel, Lagos, Ogun, Ondo and Oyo States. It is significant to note that these States have been areas where the UPN was strongest in all the elections.

The NPP scored 15.8 per cent to secure 223 seats. It also won the elections of Houses of Assembly in three States, namely Anambra, Imo and Plateau States. The GNPP had 14.6 per cent and succeeded in winning 163 seats, but it only controlled a majority in Borno State. The PRP came last in the elections with 8.7 per cent and won 136 seats. It also controlled a majority only in the Kano State House of Assembly where it secured 123 seats. Gongola State produced a somewhat different situation as no political party had a convenient majority. Table 3 shows the result of the State Houses of Assembly Elections.

In the gubernatorial elections, the NPN scored 34.7 per cent of all votes cast and seven of its 19 candidates won the election. The UPN had 25.6 per cent with five governors, the NPP scored 16.4 per cent with three governors, the GNPP and the PRP scored 11.8 and 11.5 per cent respectively with two governors each. Table 4 shows the States, parties and names of the governors that won the election.

It is instructive to note that the PRP which won the Kaduna State Gubernatorial Election was a minority party at the State House of Assembly. This was a clear indication of danger ahead. This would be discussed later in the study.

The Presidential election came last, and clearly it was considered as the most important of all the elections. This might be due to newspapers' coverage

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TABLE 3

STATE HOUSES OF ASSEMBLY ELECTIONS

STATES	NUMBERS OF SEATS	NPN	UPN	NPP	GNPP	PRP
ANAMBRA	87	13	–	73	1	–
BAUCHI	60	45	–	4	9	2
BENDEL	60	22	34	4	–	–
BENUE	57	48	–	3	6	–
BORNO	72	11	–	–	59	2
CROSS RIVERS	84	58	7	3	16	–
GONGOLA	63	15	18	4	25	1
IMO	90	9	–	79	2	–
KADUNA	99	64	3	6	10	16
KANO	138	11	1	–	3	123
KWARA	42	25	15	–	2	–
LAGOS	36	–	36	–	–	–
NIGER	30	28	–	–	2	–
OGUN	36	–	–	–	–	–
ONDO	66	1	65	–	–	–
OYO	126	9	117	–	–	–
PLATEAU	48	10	–	35	3	–
RIVERS	42	26	1	15	–	–
SOKOTO	111	92	–	–	19	–
TOTAL	1.347	487	333	226	157	144
PERCENTAGE		36.15%	24.72%	16.77%	11.65%	10.69%

Source: Chuba Okadigbo, The Mission of the NPN op. cit. p. 132.

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TABLE 4

Elected Governors

State	*Party*	*% Votes*	*Governor*
Anambra	NPP	80	Jim Nwobodo
Bauchi	NPN	55	Tatari Ali
Bendel	UPN	53	Prof. Ambrose Alli
Borno	GNPP	55	Mohammed Goni
Benue	NPN	60	Aper Aku
Cross River	NPN	60	Dr. Clement Isong
Gongola	GNPP	56	Abubakar Barde
Imo	NPP	80	Sam Mbakwe
Kaduna	PRP	45	Balarabe Musa
Kano	PRP	79	Abubakar Rimi
Kwara	NPN	51	Adamu Atta
Lagos	UPN	80	Lateef Jakande
Niger	NPN	60	Awwal Ibrahim
Ogun	UPN	93	Bisi Onabanjo
Ondo	UPN	94	Michael Ajasin
Oyo	UPN	85	Bola Ige
Plateau	NPP	60	Solomon Lar
Rivers	NPN	65	Melford Okilo
Sokoto	NPN	75	Muhammed Kangiwa

and the glamour that surrounded the office of Executive Presidency. The most important reason perhaps is the place and position of the president in the system. Other factors that could be deduced for this include:

1. It was the first time in the political history of the country that all its citizens would collectively take part in a single national election for one and the same office;
2. In contrast to other elections which have been discussed above, the presidential election involved personalities whose involvement in national affairs are known beyond the national frontier. Hence it attracted international attention and was perceived in the international community as signalling Nigeria's return to constitutional and democratic government after thirteen years of military interregnum;
3. It also raised people's curiosity as to whether the question of colourful and prominent political personality would change the already set geographical patterns of voting. It is to be noted that in the proceeding elections, the NPN had clearly led the other parties.

As the event turned out to be, owing to the fact that it was the last election in the series and because of the political appeal of the candidates, it attracted the largest percentage turn-out of votes of any of the five elections. The issue of personality and colourful political career did not really matter to Nigeria's electorates in the presidential election as Dr. Nnamdi Azikiwe and Chief Obafemi Awolowo, who seemed to have an edge on this over the other contestants, did not win the presidential election.

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In all, five candidates representing the five political parties contested the election. The GNPP fielded Alhaji Ibrahim Waziri and had Chief Nzeribe as his running mate; the NPN put up Alhaji Shehu A. Shagari with Dr. Alex Ekwueme as his running mate; the NPP fielded Dr. Nnamdi Azikiwe as its presidential candidate and Professor Ishaya Audu as the running mate, the PRP chose Mallam Aminu Kano as the presidential candidate and Mr. Sam. Grace Ikoku as running mate and for the UPN, it was Chief Obafemi Awolowo with Chief Philip Umeadi as vice-presidential candidate. See the table 5 for the summary of the Presidential and Vice- Presidential candidates showing their socio-cultural background and State of origin.

At the end of the Presidential election, Alhaji Shehu Shagari was declared as the President elect. Judging from the results of the presidential election as shown in Table 6.

Alhaji Shehu Shagari satisfied the first requirement in that he had the majority of lawful votes at the election but the second condition that the President must win in at least two-thirds of the states in country became a subject of legal tussle. After the election, there was a controversy of what really constitute two- thirds of 19 States. Amidst this confusion and controversy, Chief R. O. Akinjide, the NPN's defeated gubernatorial candidate for Oyo State and the party's legal adviser dropped the hint that two-thirds of 19 is 12 2/3. This was thought to be an arithmetical solution of the issue at stake. This statement was contrary to FEDECO's earlier treatment of the provision by regarding 13 as 2/3 of 19 states. For instance, in its requirement for the registration of political parties, it stated that for a political party to be eligible for registration, it must have offices in at least 13 states of the federation (which was assumed to be 2/3 of 19 States). But to the surprise of the generality of the populace, FEDECO

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TABLE 5

Presidential and Vice-Presidential Candidates:

Ethnic and State of Origin

Party	Presidential Candidates			Vice-Presidential Candidates		
	Name	State of Origin	Ethnic Group	Name	State of Origin	Ethnic Group
1. GNPP	I. Waziri	Borno	Kanuri	Nzeribe	Imo	Igbo
2. NPN	S. Shagari	Sokoto	Fulani	Ekwueme	Anambra	Igbo
3. NPP	N. Azikiwe	Anambra	Igbo	I. Audu	Kaduna	Hausa
4. PRP	Aminu Kano	Kano	Hausa	Ikoku	Imo	Igbo
5. UPN	O. Awolowo	Ogun	Yoruba	Umeadi	Anambra	Igbo

Source: Okion Ojigbo, Nigeria Returns to Civil Rule, Lagos, Tokion (Nigeria) Company, 1980, p. 94.

TABLE 6

Results of the Presidential Election

States	Total votes cast	W. Ibrahim GNPP votes	%	O.Awolowo UPN votes	%	S. Shagari NPN votes	%	A. Kano PRP votes	%	N. Azikiwe NPP votes	%
Anambra	1,209,039	20,228	1.67	9,063	0.73	163,164	13.50	14,560	1.20	100,083	82.83
Bauchi	998,683	154,215	15.44	29,960	3.00	623.989	62.45	143,202	14 34	47,314	4.72
Bendel	669,511	8,242	1.23	356,381	53.23	242,320	36.19	4,939	0.73	57,629	5.60
Benue	538,879	42,993	7.89	13,864	2.57	411,648	76.37	7,277	1.35	63,077	11.71
Cross River	661,103	100,105	15.14	77,775	11.76	425,815	64.40	6,737	1.01	50,671	7.66
Gongola	639,138	217,914	34.09	138,561	21.67	227,057	35.52	27,750	4.31	27,556	4.35
Borno	710,968	384,278	54.04	23,885	3.35	246,778	34.71	46,385	6.52	9,842	1.35
Imo	1,153,355	34,616	3.00	7,335	0.64	101,516	8.80	10,252	0.89	999,636	86.69
Kaduna	1,382,712	190,936	13.80	93,382	6.68	592,302	43.12	437,771	31.66	65,321	4.71
Kano	1,220,763	18,482	1.54	14,973	1.23	242,423	19.94	932,803	76.41	11,082	0.91
Kwara	354,605	20,251	5.71	140,006	39.48	190,142	53.62	2,376	0.67	1,830	0.52
Lagos	828,414	3,943	0.48	781,762	82.30	59,515	7.18	3,874	0.47	79,320	9.57
Niger	383,347	63,278	11.50	14,155	3.69	287,072	72.88	4,555	3.79	4,282	1.11
Ogun	744,668	3,974	0.53	689,655	92.61	46,358	6.23	2,338	0.31	21,343	0.32
Ondo	1,369,849	3,561	0.26	1,294,666	94.50	57,361	4.19	2,509	0.5	11,752	0.86
Oyo	1,396,547	8,029	0.57	1,197,983	85.78	177,999	12.75	4,804	0.32	7,732	0.55
Plateau	548,405	37,400	6.82	29,029	5.29	190,458	34.73	21,852	3.98	269,666	49.17
Rivers	687,951	15,025	2.18	71,114	10.33	499,846	72.65	3,212	0.46	89,754	2.35
Sokoto	1,348,697	359,021	26.61	34,102	2.52	98,094	66.58	44,977	3.33	12,503	0.92
Total	16,846,633	1,686,489	10.0	4,916,651	29.2	5,688,587	33.8	1,732,113	10.3	2.822,523	16.7

Source: Okion Ojigbo Nigeria Returns to Civil Rule op. cit. p. 95.

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announced that:

> The Federal Electoral Commission considers that in the absence of any legal explanation or guidance in the electoral decree, it has no alternative than to give the phrase 'at least two-thirds of all the States in the Federation' in Section 34A subsection 1(c)(iii) of the electoral decree the ordinary meaning which applies to it. In the circumstances, the candidate who scores at least one-quarter of the votes cast in 12 states and one-quarter of two-thirds that is, at least one sixth of the votes cast in the 13th State satisfies the requirement of the sub-section accordingly, Alhaji Shehu Shagari is hereby declared President of the Federal Republic of Nigeria[33].

The other four parties and their supporters did not believe that FEDECO was right in declaring Alhaji Shehu Shagari as winner of the presidential election. He clearly obtained a quarter of votes in 12 states and was clearly well ahead of his nearest rival Chief Obafemi Awolowo in the presidential election. However, he only won about 20 percent of the votes in Kano State which was his only hope for the thirteenth State. As the court litigation against Shagari by Awolowo has shown, the other political parties other than NPN expected a run-off election which shall be determined by electoral college of the legislatures as provided by the constitution. The argument that winning in 12 2/3 of 19 States amounted to overall success in the election appeared controversial, hence the litigation.

All the political parties with the exception of the NPN, expressed dismay over the results of the elections, but, the most bitterly contested was the Presidential election. Of the other four presidential aspirants that lost the election to Alhaji Shehu Shagari, Chief O. Awolowo[34] was most bitter. He took the former to the Electoral Tribunal over the issue. Awolowo's contentions were:

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33. (Daily Times) 18th August, 1979.

34. See (West Africa) 20th August 1979, p. 1491.

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1. that Alhaji Shehu Shagari was at the time of the election not duly elected by a majority of lawful votes at the election as he has not satisfied Section 34a, sub-section 1 (c) (iii) of the Electoral Decree 1977;
2. that although Alhaji Shehu Shagari received 5,688,857 votes at the election he had less than one quarter of the votes cast at the election in each of at least two-thirds of all the States of the Federation; and
3. that the election of Alhaji Shehu Shagari was invalid by reason of non-compliance with the provision of Part II of the Electoral Decree, 1977, which include the provision of Section 34A (i) (c) (ii) of the said decree.

Chief Obafemi Awolowo therefore prayed:

1. that the Tribunal should determine that Alhaji Shagari was not elected or returned and that his election or return was void; and
2. that Alhaji Ahmadu Kurfi, the Chief Electoral Officer of the Federation (second respondent) and Mr. F. L. O. Menkiti, the Returning Officer at the Presidential election (third respondent) be ordered to arrange for an election to be held in accordance with the provisions of Section 34A(3) of the Electoral (Amendment) Decree No. 32 of 1979.

What Chief Awolowo was saying in essence was that since no candidate had

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emerged through the ballot box, the two of them should face Electoral College[35]. Chief Obafemi Awolowo himself being a lawyer, member of the Bar and a Senior Advocate of Nigeria (SAN) represented himself and gave evidence before the Tribunal. He testified that:

> I as a lawyer and a politician, I am conversant with the provisions of the Electoral Decree. There are two requirements before one can be declared a winner at the Presidential Election; namely, where there are more than two candidates, the first requirement, the winning candidate must score the highest number of votes and in addition he must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation. There are nineteen States in the federation as at now. Each of at least two-thirds of all the States in the Federation is thirteen...[36]

Chief Obafemi Awolowo's main argument was that thirteen States was the constitutional and FEDECO's interpretation of two-thirds of 19 States. He therefore wanted the Presidential election to be nullified. He also wanted the court to declare the purported election of Alhaji Shehu Shagari as null and void. Hence, he wanted FEDECO to hold another election. However, he lost the cast at the Tribunal as the earlier declaration of Mr. F. L. O. Menkiti - the Returning Officer was said to be in order. Chief Obafemi Awolowo dissatisfied with the decision of the Tribunal appealed to the Supreme Court. The judgement of the Supreme Court did not favour him either as he lost by a split of five to two in

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35. Section 126 of 1979, provides in default of a candidate duly elected in accordance with sub- section 34A (1) (c) (i) and 34A (1) (c) (ii) of the electoral decree, there shall be a second election at which the only candidates shall be: (a) the candidate who secured the highest number of votes at any election held in accordance with said sub- section (2) of this section; and (b) one among the remaining candidates who has a majority of votes in the highest number of States. Chief O. Awolowo had majority of votes cast in Bendel, Lagos, Ogun, Ondo, Oyo, Kwara and Rivers i.e. seven States as against that of Alhaji Waziri Ibrahim who had majority of votes cast in Borno, Bauchi, Anambra, Benue Cross-River, Gongola, Imo, Kaduna, Kano, Niger, Plateau and Sokoto States. Going by this records, Waziri Ibrahim would have been the second candidate for the Presidential race at the Electoral College.

36. See inter alia Ahmadu Kurfi, The Nigerian General Elections 1959 and 1979 and the Aftermath (Lagos, Macmillan 1983) p. 186, O. Oyediran 'Presidential election result Controversy' in Oyeleye Oyediran (ed.) The Nigerian 1979 Elections (Lagos, Macmillan Press 1981), pp. 139-152; E. Michael Toye and Kingsley Igweike: Introduction to the 1979 Nigerian Constitution (London & Basingstoke, Macmillan Press 1982), pp. 200-207; Labanji Bolaji, Shagari: President by Mathematics (Ibadan Automatic Printing Press Ltd., 1980)

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the judgement presided over by the then Chief Justice of the Federation, Chief Justice Fatai Williams.

This celebrated legal battle created the problem of legitimacy for the new administration as the UPN and the GNPP from the onset refused to have anything to do with the NPN. As for the PRP, its leadership was rather ambivalent; it favoured the formation of a national government based on compromise manifesto of all political parties[37]. Hence, it was the desire to ensure a majority in the Federal legislature which among other considerations pushed the NPN into an accord with the NPP[38]. As Alex I. Ekwueme confessed:

> ... because of our previous background in the parliamentary systems where the government would fall on a vote of no confidence, in the Nigerian context an experienced politician would prefer to command a majority in the legislature whereas one no so experienced would tend to ignore the danger signals in trying to work with an unsympathetic legislature. This is perhaps the genesis of the so-called working accord which even though originating from a need for cooperation at the legislature is necessarily translated into an arrangement at the executive level[39].

With the confirmation of the 'accord' between NPN and NPP, the battle line between these parties and the rest had thus been drawn as the trend of argument in the initial period of the life of National Assembly portrayed. We must add also that this accord only worked for a short time as the two parties later

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37. See Toyin Falola, op. cit., p. 75.

38. For details, see inter alia, G. Onyekwere Nwankwo, 'Legislative Supervision of the Administration: The Nigerian Experience in a Presidential System of Government' Journal of Constitutional and Parliamentary Studies 17 (January-June, 1983) p. 55 and Rufai Ibrahim 'The Constitution and the Challenges in The Presidential System: One Year After (Lagos: A Daily Times Publication n.d.).

39. See A. Ekwueme op. cit., p. 5.

disagreed. 'It was an unholy alliance which inevitably broke down'[40].

> The accord could be said to have denied the system some vital period of practice. Its existence forced MPs to behave like opposition members. Some like overheated backbenchers in the House of Commons. And this was oblivious of the truth that the new system does not breed that kind of opposition[41].

By 1981 when the NPN/NPP accord finally broke down, there were other series of tensions cutting across the political parties. By the time the NPP severed its relationship with the NPN in 1981 it immediately switched over to the opposition coalition otherwise known as the 'progressives'. These political parties encouraged their governors to meet periodically to exchange notes and they were soon known as 'Twelve Progressive governors' as if to suggest that the NPN Governors were 'retrogressive' elements. In the desperate bid to counter their aggression and what the NPN party hierarchy considered as a gang up, they were styled as 'the twelve subversive governors'.

It was amidst this political tension that the FEDECO invited political parties and associations to come forward and register for the 1983 elections. Apart from the original five political parties, many political associations sprang up, the two most prominent among them were the Progressive Peoples' Party (PPP) a break-away faction of PRP, GNPP and NPP and Nigerian Advance Party (NAP) led by Mr. Tunji Braithwaite - a Lagos lawyer. At the end of the exercise, it was only NAP that got registered in addition to the other five, making a total of six political parties. These political parties were GNPP, NAP, PRP, NPN, NPP and UPN.

Prior to 1983 elections, other political parties expressed fear in the ability

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40. See Kunle Awotokun 'Legislative- Executive Relations: Case Studies' in Victor Ayeni and Kayode Soremekun (eds.) op. cit. p. 103.

41. See (Sunday Concord) Lagos September 6, 1981, p. 5.

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of FEDECO to handle the elections with impartiality. This was borne out of the fact that members of the Commission were appointed by the President. Their fear was further underscored by the shoddy work done by the Commission with respect to voters' list, where political parties complained that their areas of strength were not supplied with adequate materials. With this background, the FEDECO would need to be extra-careful to satisfy the electorates who had been disillusioned.

The Presidential election was first in the series of 1983 elections, unlike in 1979. Other parties even read meanings to this arrangement as they complained that it was ostensibly done to bring Shagari to power so as to ensure the NPN success in other elections as only few people would want to be in 'opposition'. The NPN had consistently hammered that the Presidential system does not breed opposition.

At the end of the exercise, the incumbent President Alhaji Shehu Shagari was declared winner against protests that the election was not free and fair. All the other five political parties rejected the result of the election. The masses of the people felt downcast as their hope of effecting a change in the leadership of the country was dashed by the FEDECO verdict. Alhaji Waziri Ibrahim the presidential candidate of GNPP challenged the result of the election in court. Chief Obafemi Awolowo based on his experience considered such litigation against Shagari and FEDECO as a waste of time. On the other hand he did not wish the NPN 'to get away with it for if they do, he felt that would be the end of democracy in Nigeria[42].

In the gubernatorial elections, NPN won twelve States, the UPN won four States namely Lagos, Kwara, Ogun and Ondo States, the NPP won Imo and Plateau

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42. See Daily Sketch (Ibadan) 18th August, 1983.

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States and PRP had only Kano State. The GNPP had been practically extinguished as Gongola and Borno which used to be its traditional areas had been taken away by the NPN. The NPN success at Oyo also sounded incredible, this was known to be a UPN enclave. There were wild protests all over the Federation over the result of the elections especially in Ondo, Oyo and Anambra states. These protests left several people dead and many wounded. In Ondo state, the court was particularly sensitive to people's demand as the incumbent governor Chief Michael Adekunle Ajasin was restored. In Oyo and Anambra states, the judiciary disappointed the people as it was insentive to the popular demand. The court declaration of Dr Victor Olunloyo and Chief C. C. Onoh in Oyoand Anambra states dashed the hope of the citizens and portrayed the courts in bad light.

By the time elections were held into the legislature, electorates were getting disenchanted as they felt that elections were being rigged. Owing to mass protests only 84 Senate seats were first contested and the NPN was said to have own 55 seats. Similarly, in the House of Representatives, the NPN won 264 seats as against 33, 48, 41 for the UPN, NPP and PRP respectively[43].

Hence from every indication, it has been proved that the controversial elections of 1983 had further worsened the position of the NPN controlled Federal Government. There was general dissension in the country as the people could no longer change the government through the ballot box. It was this situation that largely informed the Army *coup de tat* of 31st December, 1983.

Finally, having enumerated the 1979 Constitution and its provision for Legislative control of the Executive. What was practised was more or less a departure from the constitutional expectations. The operation of executive

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[43]. For details, see inter alia L. Diamond 'The 1983 General Elections' O.B.C. Nwolise, Political Parties and The Electoral Process, D. Kolawole 'Political Violence - A Case Study of Ondo State' in Victor Ayeni and Kayode Soremekun (eds.) Nigeria's Second Republic op. cit.

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presidency in Nigeria's Second Republic as practised by Alhaji Shehu Shagari was devoid of all powers that was granted it by the Constitution. The Constitution had expected a militant President[44] to emerge in the political scene, but on the contrary, President Shehu Shagari was meek and honest to a fault. In spite of his tremendous experience[45] in public life before he became the number one citizen, the President did not seem to bring this to bear on the performance of his office. Alhaji Shehu Shagari's general attitude to government was liberal. According to General Yakubu Gowon 'he had the enviable record of harbouring the freest press of all administration that ever governed this country'[46].

The other political parties took advantage of this liberal policy to criticise and provoke him. In spite of such provocation, he did not take advantage of his power to detain his political opponents. What is more, Shagari invited the other four political parties (as of 1979) to join hands with him to form a broad based national government. This call was not heeded for the ostensible reason that such an arrangement may endanger democracy. While this argument may sound plausible, it can also be contended that such gesture if accepted would have checked the unsavoury conflicts between the other political parties and the government. This type of political arrangement had been operated by the British government in Nigeria between 1952 and 1959 under quasi- parliamentary system. L. Adamolekun in his work has argued in favour of such a political model as a

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44. See Jinmi Adisa 'The Executive Presidency' Quarterly Journal of Administration vol. xxiv, 3 April 1990, pp. 107-119.

45. For details of Alhaji Shehu Shagari's political and administrative experience see K. Soremekun et. al 'Which Way Nigeria?' in V. Ayeni and K. Soremekun (eds.) Nigeria's Second Republic op. cit. pp. 288-289.

46. See The Guardian (Lagos) 4th June, 1990, p. 8.

possible solution to the problem of political instability[47]. This might probably be a way of evolving Nigerian democracy.

The problem of the Second Republic is the idea of a political party in a multi-ethnic society as Nigeria forming a government at the displeasure of other five. The Shagari administration no doubt contended with the problem of legitimacy as stated earlier. There were two main reasons for this. First the elections that ushered in the administration were alleged to have been massively rigged leading to their rejection by all and sundry except NPN supporters. Secondly, the main base of the NPN was Northern Nigeria and even then the party did not have a full grip of all the Northern States as the PRP controlled Kano and a substantial part of Kaduna States, the GNPP controlled Gongola and Borno. It became increasingly difficult for the NPN alone to contend with various 'centrifugal' forces of these areas, combined with the West who were predominantly UPN and the Igbo in the East who were NPP. This situation was reminiscent of the First Republic under the NPC government. The NPN victory at the polls could at best be described as pyrrhic.

What is more, the antagonism of these sub-national units was really to have a spill over effect on the workings of the various Legislative Houses in the Federation. Hence other political parties' legislators assumed combatant posture in the National Assembly. This attitude had the propensity of undermining the State.

As stated earlier, the protracted legal battle that greeted the presidential election between Shagari's NPN and Chief Obafemi Awolowo in 1979 considerably undermined the President. Other political parties who pitched their tents with Chief O. Awolowo believed that Alhaji Shehu Shagari stole the presidency. The

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47. See L. Adamolekun, The Fall of the Second Republic (Ibadan, Spectrum Books Ltd., 1985).

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President was called all sorts of names such as 'President by Mathematics', FEDECO's President 'twelve two-thirds etc'(meaning he won by twelve two-thirds majority as disputed). Some State Executives went to the ridiculous extent of refusing to hang the picture of the President in their offices[48].

In the midst of this situation, the NPN was determined more than ever to have the two-thirds required by the Constitution in the National Assembly for passage of its bills. This led to wide spread rigging that was witnessed during the 1983 elections and the attendant mass protests which culminated the military *coup de tat* of 31st December, 1983.

With the demise of the Second Republic can we blame the Executive Presidential system as being responsible for its failure? The answer to this question is probably not in the affirmative. This is the more reason why the Executive Presidential system will be adopted in Nigeria's Third Republic[49]. The contradiction in the 1979 Constitution was that it envisaged a national leader to emerge when it approved of multi-party system as an ideal way of ensuring the survival of democracy[50]. Given the multi-ethnic background of Nigeria, competitive politics such as the nation experienced between 1979-83, the emergence of a true national executive leadership is likely to be difficult. It is common knowledge that in Nigeria, political elites have always been known to whip-up ethnic sentiments in the course of their political campaigns. The

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48. For instance, Ondo and Bendel State governments did not display President Shagari's picture for a considerable length of time. See also Labanji Bolaji Shagari: President by Mathematics, op. cit.

49. For various arguments in support of retention of Executive Presidential System see inter alia Federal Republic of Nigeria, Government's views and Comments on the Findings and Recommendations of the Political Bureau, (Lagos, Federal Government Printer, 1987); Report of the Constitution Review Committee containing the Reviewed Constitution, vol. 1 (Lagos, Federal Government Printer, 1988).

50. The definition of 'democracy' here is based on Western standard such as competitive politics based on multi-party system out of which the electorates will determine their leaders, presence of opposing parties to present alternative to government policies, etc.

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situation compelled Alhaji Shehu Shagari to adopt a competitive approach to the governance of the nation, whereas as Executive President once elected, was expected to put off the toga of politics for administration of the country. In other words, he was expected to act as an administrator rather than a politician. We must, of course, add that this is the norm rather than the rule[51]. The justification, as noted earlier, for the adoption of an executive presidential system was the concern for national unity and effective leadership as opposed to unconstitutional rivalries for supremacy by the leadership of various political parties. It can be argued, therefore, that the Executive Presidential system did not result in effective and popular government as expected by the authors of the 1979 Constitution. Instead and contrary to the expectations of the Murtala/Obasanjo regime, there was a 'cut- throat political competition based on a system or rules of winner-takes-all'.

This cut-throat competition or competitive nature of politics has validated one of our earlier propositions that the leadership of the Second Republic tended to confuse the basic tenets of the presidential system with parliamentary system. It is common knowledge that other political parties saw themselves as 'opposition' parties to the NPN controlled-government and oblivious of the fact that the system does not encourage organised or institutionalised opposition. Their parties' apparatus was organised and encouraged towards this end. In states controlled by them, the government were overtly opposed to the centre. As a Minister said:

> The 'opposition' state governments are doing their best to frustrate the implementation of Federal Government policies and programmes... Moreover, the non-NPN governors have been attempting to exert their influence on the members of the National Assembly. The 'opposition' governments have constituted themselves into a baneful

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51. This is general practice in the United States where Nigeria had borrowed significant portion of its constitution.

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and stridently noisy menace to the political system[52].
Such was the problem faced by the NPN-controlled government in the

Second Republic. However, it is important to note also that the President of the Federal Republic often manifested this confusion in his day-to-day administration of the country. For instance meetings of leaders of political parties were often called to resolve issues that were purely constitutional such as fixing of the salaries for public officers, modalities for electioneering campaigns, state security, etc. The implicit implication of such meetings was that the President had given official recognition to the opposition political parties. Ibrahim Tahir in apparent disapproval of this development said:

> Where you have the governors and the party leaders coming to meet the President to discuss national legislative matters, you wonder where the Federation begins and where it ends...[53]

President Shehu Shagari operated his administration amidst this confusion of what his role should be as the Chief executive of the nation. This confusion was even more profound when one looked at the organisation and operation of the Civil Service of the period. The Civil Service here refers to service of government which is divided into departments to cater for one particular subject or programme through which the government implements its policies. The executive adopted an amalgam of presidential and parliamentary styles of

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52. See Alhaji Adamu Ciroma, 'The First Year of the Presidential System of Government in Nigeria: An Assessment of Problems and Prospects in the Implementation of Policies and Programmes' in M. A. Soneye and M. J. Balogun (eds.), A Report on the Relationship Between Policy-makers and the Higher Civil Service. (Topo-Badagry, ASCON Press n.d.) p. 104.

53. Dr. Ibrahim Tahir formerly of Department of Sociology, Ahmadu Bello University (ABU) Zaria, was one of the foundation members of NPN and the Chairman NET in the Second Republic.

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bureaucracy. In spite of the fact that the country operated a presidential system the constitution still recognised the position of permanent secretaries. In fact the constitution referred to them as Chief Executives[54] in the Ministry. This situation led to confusion and uncertainty as to the roles of Ministers/Commissioners vis-a-vis the permanent secretaries. This again led to role conflict between these political executives and permanent officials.

Some political executives approached their work under the assumption that they were the Chief Executives of their Ministries, the country having adopted presidential system. This assumption was soon met with resistance by Permanent Secretaries who confronted them with laid down rules and regulations. It will be recalled that the Civil Service Commission Regulations of the period delegated to Permanent Secretaries powers of appointment, promotion and discipline up to certain level in the service. Similarly the Financial Instructions makes the Permanent Secretary the Accounting Officer of his Ministry. In addition, the General Orders conceded to the Permanent Secretary responsibility over a great number of personnel matters such as approval of vacation leave, discipline, promotion and deployment of staff. The Permanent Secretaries therefore held tenaciously to these responsibilities.

The Ministers/Commissioners on the other hand, felt the Permanent Secretaries were not co-operating with the presidential dispensation as they were not politically committed enough to the programmes of government. The career civil servants, while they sympathised with the aims and aspirations of the politicians, were nevertheless not oblivious of the ethics and norms guiding their profession. This situation forced Alhaji A. L. Ciroma the then Head of Service to

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54. See the 1979 Constitution, Section 157 (1) (d), Section 277 (1).

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new ones appointed on the ground that the post was political. For instance if the civil service had been run along the presidential system, Permanent Secretaries and other top civil servants in the service would know what they were in for, once the government that appointed them failed in the election. The civil servants, therefore, had justifiable grounds to expect at election time, treatment along the norms and practices of the British System.<$F See A. Adebayo, ^SPower in Politics^S (Ibadan, Spectrum Books, 1986), p. 99.> Most of them who were suspected to have sympathy for the previous regime were subjected to harassment, ill-treatment, intimidation and in extreme cases summary retirement.

Another noticeable practice of the Second Republic which is parliamentary in origin is the issue of weekly meetings of the Executive Councils, where memoranda were brought on all major policy issues requiring the attention of the executive. In an ideal presidential system, all executive acts are the sole responsibility of the Chief Executive. He is not bound by the views and opinions of his Ministers/Commissioners. The situation in the Second Republic was that meetings were called too frequently and in a manner that did not leave any discretion to the Chief executive. This is because they often subjected themselves to the opinions of these meetings. In this way, the noble spirit of presidential system was negated.

Similarly, the Chief executives were noted for arbitrary cabinet reshuffling. For instance, Alhaji Shehu Shagari reshuffled his cabinet in January 1981, barely a year in office[57]. In Niger State, a major cabinet reshuffle carried out by Governor Awwal Ibrahim led to widespread protest by the State legislators and

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57. About six Ministers were relieved of their posts including Paul Unongo, S. Mufayai, Isaac Shaahu, Iya Abubakar and Emma Aguma.

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civil servants[58]. However, it must be noted that cabinet reshuffles of ministers/commissioners are not normal features under presidential system. The system is expected to function on the premise that the Chief Executive selects his team based on the expertise of individuals with respect to their assigned ministries. It is in the parliamentary tradition where the system does not believe that a political head necessarily needs expertise knowledge of his ministry before he acts that cabinet reshuffles are common.

In statutory corporations, Chief executives hand-picked board members on the basis of their loyalty and commitment to the party. Majority of members had not the slightest idea about the workings of the Corporations over which they were expected to provide policy guidelines. This is the more the reason why most Corporations in Nigeria did not function properly during the period in question.

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58. See Daily Times (Lagos) 12th January, 1981.

CHAPTER FOUR
THE LEGISLATURE AND IMPEACHMENT

Introduction

The term impeachment refers to proceedings in which accusations are brought by a Legislature or Executive branch of a government against civil officials or in some cases private citizens[1]. Although popularly used to embrace the proceedings in its entirety, the term does not include the verdict or the imposition of sentence[2].

As said above, the term impeachment refers to the indictment and removal of the Executive branch by either the Legislature or the Judiciary. However, after the second world war the concept got broadened by many countries, as the executive arm could initiate impeachment process. For instance, in Cuba the power to impeach is held by a body which exercises both the executive and legislative functions otherwise known as Council of Ministers. It has the power to indict any one from the President of the Republic to its members for crimes against the state. In China, *Yuan* – a group that supervises public functions has the sole power to impeach.

More often than not, the term is used to include the trial of the accused, conducted by either the Legislature or the Judiciary or by a combination of the two branches of government. In some countries the trial of the accused is dealt with by parliament as a whole without the help of any other body. This is found in Brazil, India, Italy, Mexico, Philippines and the United States.[3] In Argentina,

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1. See The Encyclopedia American Vol.14 copyright by Encyclopedia Americana Corporation (1979) p. 817.

2. Encyclopedia of the Social Sciences Vol. vii-viii p. 600.

3. See Parliaments of the World: A comparative Reference Compendium Vol. II (England Gower Publishing Company Limited, 1989) P. 1353.

the chamber of Deputies can accuse a minister of improperdischarge of his department, misconduct or offences against common law. It is within the right of the Senate to try the accused and if found guilty, he is disqualified from holding public office for five years. In addition, he is liable to prosecution under the normal judicial procedures. In the United States, the House of Representatives can initiate impeachment proceedings against the President, the Vice-President and all other Federal office holders[4]. Once the investigating Committee is established, the House can decide by majority vote to bring an action before the Senate. The Senate constitutes itself into a court, presided over by the Chief Justice. If the Chief Executive is found guilty by two-thirds of the Senators, he is thus dismissed from office.

In some countries, on the other hand, parliament establishes a special court composed entirely of its own members to carry out the impeachment process. In France, for instance, the High Court of Justice, which is elected by and composed of members of both Houses has the right to try the President of the Republic for high treason. It can also try ministers and their accomplices for plotting against the State[5]. In Jordan, a High Court with nine members namely the President of Senate, three elected by Senate from among its members and five Judges of the Highest Civil Court, is usually established to try ministers[6].

It is, instructive to note that impeachment is not reserved for political executives alone and of course this depends on the law of the country concerned. For instance in Britain, it can be extended to private citizens, commoners, for treasonable offences or other high crimes and misdemeanors. However, the general

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4. Ibid.

5. Ibid.

6. Ibid

tendency in many Western Countries is to limit impeachment to the political executives especially officers of ministerial rank.

In Nigeria, the 1979 Constitution provided for impeachment of the executives namely the President of the Federal Republic, the Vice-President, Governors and Deputy Governors[7]. In addition, members of certain established Federal and State executive bodies could also be impeached.

Having established the fact that impeachment is provided for in the 1979 Constitution, what really constitutes grounds for impeachment as defined by this constitution? It is important to note that an impeachable offence is what amounts to gross misconduct. Gross misconduct here means a grave violation or breach of the provisions of this constitution or a misconduct of such nature as amounts to gross misconduct in the opinion of the National Assembly[8]. The determination of what amounts to misconduct is by no means a simple thing as it is fraught with varying interpretations. Misconduct in a legal sense according to B.O. Nwabueze connotes an unlawful behaviour by a public officer in relation to the duties of his office, wilful in character[9]. These include acts which he/she has no right to perform, acts performed improperly and negligence on the part of public officer in the face of an affirmative duty to act. Another problem that is posed by this provision is that assuming a ground of misconduct is established by the impeachment committee, can the committee try the case without stepping into the shoes of the Code of Conduct Tribunal? Even granted the fact that the power to investigate what amounts to misconduct lies within the province Of the

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7. See Sections 132 and 170 of the 1979 Constitution.

8. See S. 132 (ii) of the 1979 Constitution. Ibid.

9. See B.O. Nwabueze, Nigeria's Presidential Constitution 1979-1983. The Second Experiment in Constitutional Democracy. (London, Longman 1985).

Legislature, in practical terms, there are bound to be minor acts of misconduct and violations of the constitution in the discharge of executive and legislative duties from time to time. It is partly for this reason that the third arm of government exists i.e. the judiciary.

The crucial factor in the provision of impeachment in the constitution is not that whether an act committed by the Executive is a misconduct or a violation of the constitution but whether the alleged act or omission is a grave violation or gross misconduct. As long as this issue remains unresolved, the impeachment process will often be viewed with misgivings.

This is not to suggest that the clause is undesirable in the constitution. In any democratic setting there should be provision to check public office holders from abusing the powers entrusted to them by the people. Indeed, the trial of such officers is supposed to indicate that they no longer enjoy public confidence. Hence the need to surrender to the wishes of the people by abdicating the office held in trust for them. Justifying the need to have impeachment clause in the constitution, Balarabe Musa said:

> It is correct, proper and necessary that Constitutional provisions are made to remove every public officer, particularly the President and Governors in whose offices so much power is concentrated. Unless there are such provisions people holding these offices will easily develop divine or semidivine hallucinations about their positions, as several leaders have done in this country with disastrous consequences to the nation.
>
> What is more I believe that these provisions for removal of all public officers, if they fail to carry out their responsibilities should not just be mere decorations. They should be brought into use and applied whenever a public officer commits acts of gross misconduct, otherwise they cannot serve as a check. It would be unfortunate if heaven falls, or an earthquake occurs because of these measures, for

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they are necessary in any democracy[10].

Hence impeachment, though highly controversial as a concept is a necessary mechanism in any democratic process as illustrated above. The whole essence is to make public officers accountable in order to underscore democracy and rule of law in any given political system. As observed in Chapter one since modern democratic theory expects public office holders to be accountable to the public, in the discharge of their official duties, a process of terminating their tenure abruptly needs be entrenched in the constitution should they breach the faith and confidence reposed in them.

Similarly, the inclusion of an impeachment clause in the 1979 Nigerian Constitution was meant to make the Executive responsible for its official conduct. It was neither meant to intimidate or to give the legislature unnecessary control over the tenure of the government. It is not a political process for turning out a President with whom a majority of the House and two-thirds of the Senate cannot simply abide. An impeachment clause is not also intended to be an ordinary device for registering a vote of no confidence[11]. It was in realisation of this that the procedure for the removal of the executive through impeachment was made cumbersome. It was meant to discourage disaffected legislators from embarking upon it for frivolous reasons. The interposition of a seven man committee appointed from outside the legislature was meant to ensure fair play and justice between the executive and the legislature.

The inclusion of impeachment clause in the constitution was also meant to

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10. See Balarabe Musa,'Why The Fear our Forces of Democracy and Social Progress', The Punch (Lagos), Wednesday July 1,1981 p.5.

11. See Clinton Rossiter, The American Presidency (Heven, London. Yale University Press 1960) pp.52-53.

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preclude or prevent the exercise of arbitrary power and to serve as a check on official tyranny, since it is often said that "power corrupts and absolute power corrupts absolutely! It is for the fear that the periodic elections may not be enough check against absolute tyranny that impeachment is considered expedient in the constitution.

As Kent said:

> If...neither the sense of duty, the force of public opinion, nor the transitory nature of the seat, are sufficient to secure a faithful discharge of the executive trust, but the president will use the authority of his station to violate the constitution or law of the land, the House of Representatives can arrest him in his career, resorting to the power of impeachment[12].

From what has been discussed above, it could be inferred that impeachment of the executive while in office as opposed to natural impeachment by loss or failure in subsequent elections is aimed at securing public safety. This is the primary objective of every democratic government.

It is against this need for impeachment clause in the constitution that we shall analyse impeachment as one of the main tools of legislative control of the Executive in Nigeria's Second Republic. The first in the series being Kaduna State, later allusion shall be made to other States.

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The Impeachment of the Governor of Kaduna State in 1981

In order to fully understand the impeachment of Governor Balarabe Musa of Kaduna State, there is need to analyse the political background to the success of the PRP in the gubernatorial elections. It is only within this context that his problems and the antagonism of the state Legislature against the Executive could

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12. James Kents, Commentaries on American Law (6th ed.) 1848 p.289.

be better appreciated.

Political Background to PRP Success at Gubernatorial Elections in Kaduna State.

As it has been clearly indicated in Chapter Three, the Peoples' Redemption Party (PRP), which won the Governorship elections in Kaduna State in 1979 has lost three successive elections namely Senatorial, House of Representatives' and State House of Assembly elections to the National Party of Nigeria. For instance out of 99 legislators in Kaduna State House of Assembly, the NPN won 68, the PRP its next rival won 12, the NPP had 6, the GNPP 10 and the UPN 3. Given the voting pattern of Nigerians in 1979 it would be logical or appropriate to regard Kaduna State as a stronghold of the National Party of Nigeria . In the 1979 general elections, the electorate voted generally for the party and not individuals; that was the general pattern in all the elections. It was thus expected that the NPN would win the governorship elections. But it lost. The NPN as a result of its failure in the gubernatorial elections became bitter and challenged the election result at the Election Tribunal. It also lost the case. With a clear-cut majority of NPN members in the Legislature, it became clear from the onset that Balarabe Musa's task was herculean[13].

Hence the Kaduna experience presented an interesting case study of Legislative control of the Executive. As has already been noted, the NPN which lost the gubernatorial elections had full control of the House of Assembly. It was the only state where two different parties controlled the Executive and Legislative arms of government respectively. It was expected therefore that

13. Daily Times (Lagos) The Constitution on Trial: Balarabe Musa Versus The Assembly (Lagos) A Daily Times Publication 1982 pp. 1-2.

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legislative control of the Executive would be more rigorous than in any other state in the Federation. Again, immediately after the gubernatorial elections, the NPN regained its lost glory in Kaduna State in the Presidential election. What then were the factors responsible for this state of affairs? This question is fundamental in order to appreciate the issues involved in the Kaduna State crisis.

In the first instance, the resounding victories recorded by the NPN in the first three successive elections of Senate, House of Representatives and States' House of Assemblies (See table) especially in Sokoto, Kwara, Benue, Rivers and Cross-River States had practically dumbfounded the other four rival political parties. It became most surprising when one considers these victories against the background that some of these states had been regarded as traditional 'strongholds' of some of the political leaders who eventually lost in the States mentioned above. For instance, Cross River State until the 1979 elections had been regarded as the stronghold of the UPN because of Chief Awolowo's agitation for the people of this area for a Calabar Ogoja Rivers (COR) State during the First Republic[14]. As A.E. Gboyega observed:

> In the Cross River State, which was carved out of the old Eastern Region, in 1967, the situation was very different. In the premilitary period the A.G had tremendous goodwill and support in the area largely because of the party's support for the agitation for a separate region embracing the area. When the state was first created as the South Eastern State, many thought the goodwill and support which the A.G. had given the State-creation movement will be reciprocated politically, by support for Chief Awolowo's party whenever party politics was restored. The NPN won the State House of Assembly elections handsomely with 58 seats. The GNPP rather than either NPP or the UPN won the next highest number of seats-16. The NPP had 3 seats and the UPN-7. Also, Dr. Clement

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14. For a detailed account of Chief Awolowo's political role in this area see among others J. P. Mackintosh, Nigerian Government and Politics (London, Allen & Union Ltd. 1960) R.L. Sklar, Nigerian Political Parties: Power in An Emergent African Nation (New Jersey, Princeton University Press 1963) A Kurfi, The Nigerian General Elections 1959 - 1979 and the Aftermath Op.cit., O. Awolowo, Awo the Autobiography of Chief Obafemi Awolowo (Cambridge, Cambride University Press 1960 etc.

Isong of the NPN won the gubernatorial elections[15].

In addition, to the above expectation, political analysts also felt that the UPN would capture Kwara and Benue due to substantial support which the A.G. had engendered in these areas in the past. The same thing could be true of Rivers State with public expectations that the NPP with its close connection and identification with the NCNC of the First Republic, would sweep the polls in that state. GNPP was also expected to win Sokoto State. With their defeats in the first three elections, the four political parties teamed up to prevent the NPN from having a repeat performance in the gubernatorial and presidential elections. An alliance was hurriedly formed among these four parties for this purpose.

By this arrangement, the gubernatorial candidates of the UPN, GNPP and the NPP would withdraw or step-down to give way for the PRP candidate in Kaduna state as the PRP was considered stronger than any of the other three in kaduna State. In Borno and Gongola States, only GNPP candidates were expected to vie for gubernatorial elections. In Kwara State, only UPN candidates would contest against the NPN, while in Benue, Plateau and Niger States only NPP candidates were expected to stand for the elections. They had accordingly instructed their supporters all over these areas to vote for the candidates produced as a result of the PPA 'accord'. This political strategy worked out well except in Kwara, Benue and Niger States where the NPN still won the gubernatorial elections.

The arrangement to a significant extent worked out for PRP gubernatorial candidate Alhaji Abdulkadir Balarabe Musa. Indeed, in appreciation of the other four political parties' gesture, Alhaji Balarabe Musa openly expressed his

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15. See A.E. Gboyega, Bendel, 'Cross River and Imo States' in O. Oyediran (ed.) Nigerian Legislative House which way? Op.cit. p.41.

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gratitude to them for the support they extended to him. He, in fact, went as far as sharing the executive positions such as commisionership, chairmanship of corporations and Directorship of government agencies with these parties. This gesture the other parties reciprocated by giving him legal and political support as well as adequate press coverage in their states newspapers.

In fact, this co-operation continued to grow from strength to strength even after the elections were over. It was transferred into a formal meeting otherwise known as 'Progressive Governors meetings'. They were initially nine but later became twelve when the NPN/NPP accord broke down and the other three NPP Governors joined their rank. At the party level it was known as 'Progressive Peoples Alliance'.

While the influence of the Progressive Peoples Alliance could not be dismissed in the politics of Kaduna State, could it be said that Balarabe Musa owed his success in the gubernatorial election to this alliance considering the other antecedent issues in Kaduna Politics?

For instance, prior to the era of the second republic, Zaria and Katsina provinces which comprised Kaduna State were known to be historic enemies. It is interesting to note all other political parties except PRP had their gubernatorial candidates from Katsina area, because the Katsinawa (Katsina people) were numerically more than the Zaria people, the population being 4 million and 2 million respectively. Again, since the inception of the State in 1967 no person from Zaria had been governor until the era of Balarabe Musa. The Zaria people may therefore have decided collectively to vote for Balarabe Musa for provincial reasons. They quickly sent emissaries to all nooks and crannies of the old Zaria province to canvass for the cause of *ZAZZAU* (Zaria) solidarity. All of a sudden the political barometer switched from NPN versus PRP to Katsina

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versus Zaria. The breakdown of the gubernatorial and presidential results as shown below in this area amply demonstrated the effects of this solidarity.

Table 7

Results of the Gubernatorial and Presidential Elections in Local Governments of Old Zaria Province

Local Governement	Gubernatorial Election		Presidential Election	
	PRP	NPN	PRP	NPN
Zaria	93,896	62,976	73,433	85,858
Kaduna	45,294	40,110	45,519	26,073
Birnin/Kwari	5,294	2,607	3,843	3,061
Kachia	40,159	24,994	9,482	12,796
Saminakaa	32,979	15,736	14,114	19,347
Jema's	37,734	20,189	19,595	5,832
Ikara	42,197	16,441	16,844	42,939
Total	297,727	183,053	182,830	195,906

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Source: Buchi Ibrahim, 'The issues of conflict between the Executive and the Legislature in Kaduna State' A project for the Award of Advanced Diploma in Public Administration (Zaria, A.B.U 1982) p. 29.

From the above table, we can see that the PRP had led the NPN consistently in the gubernatorial elections in all local governments. But the PRP

could not repeat this performance at the Presidential elections a week later. It was only in Kaduna Local Government that the PRP defeated the NPN. This is understandable as Kaduna is cosmopolitan in nature and the PRP gubernatorial candidate hailed from that area. It also marginally defeated the NPN in Birni/Gwari Local Government with 3,843 votes to 3,061 votes for the NPN.

There were a lot of striking differences between the votes of the PRP in the gubernatorial and the Presidential elections. In Zaria, it decreased from 93,896 to 73,433, in Kaduna from 45,000 to 26,000, in Kachia from 40,159 to 9,482, Saminaka 32,979 to 14,114 and in Jema's 37,734 to 19,595, in Ikara from 42,197 to 16,844 and Birni/Gwari Local Government from 5,294 to 3,061.

A more critical examination of the whole issue would show that the Zaria Solidarity factor would not sufficiently explain the defeat of the NPN gubernatorial candidate, Alhaji Lawal Kaita. If it was a factor in the gubernatorial elections, one would have expected this to strengthen the chances of his victory, after all *Katsinawa* population was estimated to be 4 million in contrast to 2 million for Zaria. Since this cannot convincingly explain the defeat of Alhaji Lawal Kaita, the analysis will in no doubt lead us to the issue of intra-party wranglings within the NPN hierarchy in *Katsinawa* area.

In Katsina area, five candidates contested the primary election, namely Alhaji Lawal Kaita from Kankia Local Government;Alhaji Garba Abdulkadir from Funtua Local Government; Alhaji Halliru Abdullahi from Malumfashi Local Government; Alhaji Hassan Gafai from Katsina Local Government and Alhaji Sani Zangon Daura from Daura Local Government. At the end of the election exercise, Alhaji Lawal Kaita was declared winner but the other four contestants rejected the results of the election. Similarly the NPN community in Zaria province

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protested on the grounds that they had no input in the election process. The zoning system of the NPN conceded the governorship to Katsina area. With the co-operation of these two major groups they were able to force the party to conduct another election. But this election never took place as there were a lot of manoeuvres and intrigues. Ultimately, Alhaji Lawal Kaita was declared the gubernatorial candidate. The other contestants were not only dejected but they did not work to ensure the victory of Alhaji Lawal Kaita at the poll.

A cursory look at the patterns of the seven local governments of the former Katsina province would shed more light on this issue.

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Table 8:

Results of the Gubernatorial and Presidential Elections in Local Governments of Old Katsina Province

Local Government	Gubernatorial Election		Presidential Election	
	PRP	NPN	PRP	NPN
Daura	17,840	58,673	47,137	21,381
Mani	19,403	61,905	61,720	24,518
Kankia	32,574	56,864	56,121	31,333
Katsina	32,851	73,000	77,859	24,693
Dutsinma	40,825	60,026	56,211	28,560
Malumfashi	45,688	27,364	24,654	44,992

Funtua	72,697	38,371	70,522	65,717
Total	262,878	376,203	383,254	241,083

Source: Bauchi Ibrahim 'The issues of Conflict between the Executive and the Legislature in Kaduna State' op.cit. p.34.

From the above table, it is clear that the PRP scored more votes in gubernatorial elections than in the Presidential elections i.e. 262,878 and 241,083 respectively. The PRP had equally defeated the NPN with a wide margin at Malumfashi and Funtua Local Governments the supposedly strongholds of the NPN. These figures support the intra-party wrangling thesis earlier postulated in our discussion.

Having discussed the political background to the PRP's success at the gubernatorial elections of 1979, we can now turn our attention to the rationale behind the political crisis which ultimately led to the impeachment of Alhaji Balarabe Musa.

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The Background of the Political Crisis

The impasse between the executive as represented by PRP and the legislature represented by the NPN was more rooted in the history of class struggle between the defunct Northern Peoples' Congress (NPC) and the Northern Element Progressive Union (NEPU). The two parties i.e. NPN and PRP

This hostility was renewed and intensified in the Second Republic as each of them based their policy issues and pronouncements along the old ideas which had polarised them for long. As Balarabe Musa said:

> The relationship was not friendly, they (NPN) represented forces of feudalism, capitalism and general backwardness and obviously we represented forces of patriotism, democracy and socialism. These two forces have always struggled against one another, this has been so far a long time and therefore what happened in Kaduna was not peculiar in the history of political development in Nigeria[19].

This antagonism was really heightened by Balarabe Musa in his policy statement at the inception of his administration. In his speech, the governor said the policies and programmes of his government were of two main types namely those policies which were intended to correct directly and effectively obvious and unjust practices and those of more long-term nature intended to build the foundations of a new social order. For instance, he vowed on the issue of human rights to check those powerful and rich individuals who manipulate and corrupt the very agencies which have been created to protect those rights[20]. Alhaji Balarabe Musa thus ordered the suspension, processing and issuance of certificates of occupancy on lands by both the state and local governments. He said his government would not allow anybody, no matter how powerful to turn any family of peasant farmers into *Lumpen Proletariat* i.e. landless labourers.

Thus the outright condemnation of the existing social order and the much ochestrated exploitation and oppression of the masses annoyed the NPN seriously.

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19. See Balarabe Musa The Struggle for a New Social order in Kaduna State: The Policies and Programme of PRP Government 1979-1981 (Kaduna, Government Printer 1981).

20. Ibid.

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The NPN who thought that the governor's address was directed against them drew a battle line between it and the Executive. As the speaker of the House Alhaji Dan Musa said:

> The misunderstanding arose from the maiden speech made by the Governor to the effect that he was not ready to work with the NPN which had a majority in the House of Assembly.
>
> What really bothered us was the policy statement made by the Governor, which to our minds was very sweeping. I have to admit, we expected the Governor to have us consulted before measures were taken[21].

It must be noted that one of the first policy statement of the PRP which brought it under antagonism was its decision to cancel community tax otherwise known as *Haraji* and cattle tax (Jangali). In actual fact, the idea to cancel these sources of taxation was not Balarabe Musa's conception. It was in fact contained in PRP campaign promises. As his counterpart and political associate Alhaji

Mohammed A. Rimi commented on the issue of taxation;

> We have undertaken a serious and very careful study of Community tax otherwise known as '*Haraji*' and cattle tax popularly called *Jangali* and have come to the logical conclusion that these taxes are completely unnecessary. In the first place, they have been a major pillar of feudal and colonial oppression and exploitation, while as source of local revenue they are in actual fact insignificant. It is clear also that while the poor rural masses continue to pay these taxes annually and are severely punished for failure to do so, the privileged urban dwellers have always evaded taxation. Moreover the taxes collected from improverished masses are partly swindled by local officials while the greater part of it is used in developing urban areas at the expense of the country side.

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21. Interview with Alhaji Mamman Dan Musa speaker of the Kaduna House of Assembly.

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> Equally it is evident that *Haraji* (community tax) has been used over the years as a weapon for political oppression by local officials. For instance under-aged children of citizens opposed to the party in power are forced to pay these taxes when they are neither adults nor do they have any visible means of living of their own. In addition, an illegal increase of the fixed amount to be paid is often made by the local officials thereby using *Haraji* to perpetuate corruption and extortion[22].

As expected, such a measure as taken above by Kano State would be introduced in Kaduna State. When Kaduna State eventually abolished community and cattle taxes the legislature headed by Alhaji Dan Musa did not like the idea. He blamed the governor over the abolition of these taxes which normally fetched 80% of the revenue of the state without taking the Legislature into confidence[23]. As if this was not enough Balarabe Musa mounted a virulent and strong opposition propaganda against traditional rulers especially the famous '*dogari*' poster (Emir local police) which was meant to undermine their power and influence. In the said poster, the *dogari* was seen with a whip in his hand lashing a commoner on the pretext that he had not paid his tax. This poster was seen as a direct challenge to the power and authority of the Emir, the interest of which the NPN legislators in the Kaduna House of Assembly had represented adequately. As Balarabe Musa himself admitted:

> The abolishing of the payment of *haraji* and *Jangali* in Kano and Kaduna states eliminated straight away a major pillar of semi-feudal oppression and exploitation in the society. The collection of haraji has for over seven hundred years been the basis on which the feudal aristocracy built their state and dominance...[24]

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22. See 'Kano Government Assures sense of Responsibility' full text of the Broadcast to the People of Kano State by Governor of the State Alhaji Mohammed Abubakar Rimi on Tuesday 2nd October,1979. It also appeared on New Nigerian Monday 8th October, 1979 pp.3.

23. See The Punch (Lagos) Wednesday January 9,1980 p.7.

24. See Balarabe Musa op.cit p.7.

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The immediate effect of this abolition was that PRP became more popular especially in Northern Nigeria where the issue of *jangali* had been deep rooted in the custom of the people. The PRP had scored political point against its northern rivals notably the NPN and GNPP. Apparently conscious of the popularity of the PRP over the abolition of community and cattle taxes, the NPN later introduced the same measure in the states controlled by them in order to forestall PRP popularity over this issue. President Shehu Shagari later submitted a bill later to the National

Assembly to abolish these taxes throughout the country. What a belated measure! As Balarabe Musa appropriately commented:

> If you understand why NPN has made the three hundred and sixty degree turn over poll-tax and it is now seemingly spearheading its abolition, you will understand the real charges of NPN against us, and the depth of their present unrelenting hostility was borne out of fear.[25]

Even in UPN controlled states where poll-tax was not officially abrogated caution was taken in the administration of its collection in order not to incur tax riots [26], as this 'area' had suffered this political crisis in the past.

Another issue which put Balarabe Musa in bad light with the Legislature was his desire to abolish the Emirate Council. For him, the continued existence of this Council was an anachronistic (misnomer) in the context of modern democratic local government. In a bid to effect this change, the governor was to create a village council which will replace District Heads in the State. The grand

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25. See Ibid.

26. For a detailed account on Tax riot in Western Nigeri see C.E.F. Beer, The politics of peasant Groups in Western Nigeria (Ibadan, University Press,1976).

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design was that as soon as this experiment took off successfully, all the Emirs and Chiefs in the State would be rendered irrelevant. Later, the Governor realised that to effect such a sweeping change, he would need the co-operation of the Legislature which was not there. This great design to abolish the Emirate Council was part of the PRP programmes. As B.Musa said:

> Our policies of insisting that the Local Government system must be made genuinely democratic, without any semi-feudal *remnant*, weakened their connections and control. The abolishing of all emirate and traditional Councils immediately we took office because their membership is based on a combination of heredity and patronage, freed the Local Government system up of village and ward councils to act as the organs of popular democratic control at the grass-roots level,together with Police Liaison Committee to assist the police and to also watch over them. All these they naturally and correctly, saw as a threat to their oppression of the common people[27].

From the analysis so far, it thus seems clear that the Executive and the Legislature were not operating on the same frequency. While Balarabe Musa was committed to radical transformation of the Hausa/Fulani society of Kaduna State, the Legislature saw this design as an abomination to the culture and custom of the people. For instance the speaker of the House would not understand in the first instance the need to abrogate a system which 'had stood the test of time'[28]. However, it was soon discovered that the abolition of Emirate or Traditional Councils ran foul of the law as B.O. Nwabueze observed that such abolition 'was not authorised to him under any existing law'[29].

As part of the programme of PRP, Balarabe Musa soon went ahead to create agencies,boards and parastatals without legislative approval or law

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27. See Balarabe Musa op.cit p.7.

28. See Interview with Alhaji Abubakar Dan Musa, the former speaker of Kaduna State House of Assembly 1979-83. op.cit.

29. See B.O.Nwabueze op.cit p. 93.

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establishing such agencies and allowances for the Board members and staff of such companies without the concurrence of the Legislature. These boards include the Kaduna State Integrated Rural Development Board, Rehabilitation Board, Pilgrims Welfare Board and Scholarship Board. Other Boards which had the blessing of the Legislature such as Hotels Boards, Transport Authority and Distribution Agency had their part-time members converted to a full time Board membership without legislative clearance. The defence of Balarabe Musa on this count looked untenable. He said:

> Our policy of bringing a broad section of the Society to serve on the Boards of our Parastatals, with a significant proportion of ordinary peasant farmers, petty traders, and workers also aroused NPN's hostility. Board Membership in their view is a privilege and sinecure for the son of this and that; or the father-in-law or brother of this and that[30].

While Balarabe Musa might have been correct in his perception of what NPN conceived as the right calibre of people to occupy the position of board membership, his defence on this score of establishing Boards without Legislative approval did not really address the issue. This defence to all intents and purposes looked an after thought.

Balarabe Musa was said to have offended the Legislature on the score of N28 million approved for the industrialisation of the 14 Local Government Areas of the State. Part of this money according to the Legislature was either diverted to other projects entirely or kept in a private bank account in the name of some private citizens.

The Legislature which wanted to ascertain the authenticity of the allegation

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30. See Balarabe Musa op.cit. p.7.

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directed the State Director of Audit to carry out the investigation. The Governor instructed the Director of Audit not to investigate the matter but when the Director of Audit insisted, the Governor removed him by transferring him elsewhere. This issue was contested in the law court by the Director of Audit as unconstitutional and he won against the Executive. The Constitution states:

> A person holding the office of the Director of Audit shall be removed from office by the Governor of the State acting on an address supported by two-thirds majority of the House of Assembly praying that he be so removed for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct.
>
> The Director of Audit shall not be removed from office before such retiring age as may be prescribed by law, save in accordance with the provisions of this section[31].

Hence the purported removal of the Director of Audit was not in accordance with the constitution in the sense that the Governor erred in law by not acting on the address of the Legislature before effecting such an action. Secondly, the Governor had not established any ground for his removal, and finally the Director of Audit had not attained the retiring age as prescribed by law.

Furthermore, Governor Balarabe Musa's contemptuous attitude towards the law-makers was said to have been one of the contributory factors to the political impasse between the Executive and the Legislature. No sooner had Governor Balarabe Musa emerged from the Election Tribunal as the winner of the gubernatorial election of 1979, than he announced to the utmost consternation of many people that he would not have anything to do with the NPN in Kaduna State. This statement was rather undiplomatic, because as an elected Governor one would have expected the governor to have appraised himself of the

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[31]. Sec. 119 of the Nigerian Constitution of 1979 op.cit.

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constitutional provisions. It was constitutionally impossible for the Governor to keep to himself. This statement is inconsistent with the spirit and letters of the 1979 Constitution as analysed in Chapter Three. A delicate political situation of the Kaduna State where the Executive and Legislature were controlled by different political parties called for caution and compromise.

Another issue worth considering in the Kaduna political crisis is the personality of Balarabe Musa. Alhaji Balarabe Musa had a good record of transparent honesty, devotion to work and an almost impeccable character. In the few places where he worked before he became the Governor of Kaduna State, he actually stood for fairness. He had worked as an account clerk in the Northern Nigeria Ministry of Finance, as a teacher at the Clerical Training School, Commercial Officer in the Industrial Promotion Division of the Ministry of Trade, Industry and Cooperatives. He also had a short stint as an Accountant in the Defence Industries Corporation (DIC) of Nigeria. He was later made a Chief Accountant of Kaduna Co-operative Bank Limited.

At the time Balarabe Musa left the services of the Co-operative Bank, he was said to have opposed the granting of 'unsecured Loan' from which some Board Members including the Chairman benefited. He was also said to have obstructed the General Manager from opening an agency for foreign exchange. He was also said to have prevented the General Manager from transferring the sum of N250,000.00 overseas without the knowledge of the Board of Directors. All these resulted in the termination of his appointment. In fairness Balarabe Musa is a personality that is given to public probity.

However Balarabe Musa, as a politician lacked tact and compromise which are essential ingredients of politics. A tactical and less rigid politician would have sailed through the storm. When asked to adopt some compromising stance,

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he said:

> Whatever the reason this malaise has coincided with an excessive amount of pressure for compromise on fundamental issues, so much that compromise is becoming fast enshrined as a principle and issues of principles are compromised out of existence, but the fact is that it is not possible to build firm and stable foundations for a genuinely democratic system on a series of compromises on matters of principle. This only builds the illusion of a consensus where none exists and when the whole ramshackle structure to others and collapses everybody, even the people are blamed. In the end nobody is actually held responsible for, by throwing about blame, an effective smokescreen provides a cover for the real culprits[32].

Again on a different occasion, he had maintained, in a manner reminiscent of his rigidity, that:

> We shall not be made to seek compromise with NPN, for to do this would amount to compromising our principle. All we ask NPN to do is to recognise the realities on the ground. These realities are simply that as far as the political map of our country is concerned, the popular interest which we represent and vanguard organisation for the promotion and defence of these interests has come to stay and there isnothing anybody can do about it. In this respect, therefore, all that we seek from the NPN, like any other political organisation in the country, is to respect us and co-exist with us. But this co-existence can only be meaningful if both sides abide strictly by the provisions of the constitution and resist the temptation to rig, intimidate and blackmail[33].

Apart from this uncompromising attitude of Balarabe Musa, he also had the tendency of being confrontational. For instance at a press Conference on 17th July,1980, after the NPN- dominated House of Assembly rejected the third list of his nominees for commissionership, he announced his unshakeable resolve to govern without commissioners. He said the NPN numerical strength did not bother

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32. See Balarabe Musa 'The Operation of the Constitution,its Strength and Weaknesses' a paper presented ar Ahmadu Bello University in A.B. Ibrahim op cit. p. 38.

33. See Balarabe Musa. Our Stand in the face of NPN campaign of Blackmail' New Nigeria (Kaduna) Monday December 1980. p.3.

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him. He said it would be tantamount to 'self-deceit for it to think that it was going to win in the crisis simply because of its numerical strength in the Assembly[34]. He assured the legislators that the NPN's defeat in the gubernatorial elections, which resulted from the party's wrong assessment of him would be repeated again. In his words;

> It must be emphatically stated that the NPN legislators are only deceiving themselves if they think that they can control the Executive because of their two-thirds majority in the House of Assembly. *They cannot.* They have no chance whatsoever of getting by force, threats, and other unbecoming acts what the democratic process denied them. The only course open to them is to co-operate and work harmoniously with the Executive[35].

It is only natural for NPN legislators to view this statement as a challenge to its power. Hence they continued to look for an opportuned time to deal with him. In addition to Balarabe Musa's uncompromising stance, he was contemptuous of the Kaduna state legislators. When it was alleged that Awolowo was the person precipitating the political crisis in the State, a shrewd politician would have denied the allegation without recourse to obscene language. He said:

> I think ordinary commonsense will tell everybody that this could not have happened and I think most people know that this is an irresponsible statement by the House and what evidence is there that anybody other than me will decide issues. Is there any evidence that anybody outside Kaduna state will give me instructions knowing it could be against the interest of Kaduna state. I think it is very naive, very irresponsible and I think the public has also shown they believe so[36].

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34. See Balarabe Musa Struggle for Social and Economic change (Kaduna, Government Printer 1982) p. 107.

35. Ibid pp. 108-115.

36. See Interview with Balarabe Musa in Kaduna by the Author.

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This type of statement rather aggravated the already soured relationship between the Executive and the legislators to the extent that none of Balarabe's proposals to the House was ever accepted until he was forced out of office by impeachment process. The Awolowo factor was another element in the crisis. In the course of the Kaduna crisis the relationship between Alhaji Balarabe Musa and Chief Obafemi Awolowo became so cordial that he was being suspected as the brain behind the flagrant defiance by Governor Balarabe Musa in all the peace moves between the two sides. When the matter came to a head, Chief Awolowo was openly accused of supporting the Governor in his 'recalcitrant' tendencies with the assurance of financial and legal help in the confrontation with the NPN legislators. They also alleged that the UPN leader had been training vigilante group in Kaduna state and elsewhere to counter Federal forces in an anticipated clash following the impeachment. Official statement in the UPN hierarchy stating that there would be an unprecedent trouble on a national scale should the impasse eventually lead to impeachment did not help the situation. If for anything, it merely aggravated the already worsened situation as the NPN legislators were more resolved in their bid to carry out their threat. They assured their supporters that no adverse effects would attend such removal.

Official pronouncements of some NPN legislators were also in bad taste as Hon. Bitrus Bajimi called on the Federal Government 'in the interest of peace and stability to take back the UPN leader to where he was rescued by General Yakubu Gowon. Hon. Abdu Mashi had alleged that the Kaduna State Permanent Secretary Ministry of Justice, Mr. Emiolu Longe was being used by the UPN leader to collect money for government activities'[37].

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[37]. See New Nigerian (Kaduna) Wednesday 6th Dec. 1980.

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Another rationale for the imbroglio between the Executive and the Legislature was the refusal of the Executive to take an agricultural loan of N100 million from the World Bank. This was rejected according to Balarabe Musa because of the insistence of the World Bank that it would recruit its own experts whose projected remuneration totalled N12 million per month. He thus felt that this would not be in the overall interest of the Government and people of Kaduna state. But unfortunately the House of Assembly did not see it from this perspective. It was seen as a deliberate attempt on the part of the Governor to frustrate the Agricultural programme otherwise known as 'Green Revolution' of the NPN- controlled federal or state governments. The House felt embittered and roundly condemned the Governor for his 'act of sabotage'. Having discussed the rationale to the stalement, we shall now turn our attention to the predicament of the PRP executive in Kaduna State.

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The Predicament of the Governor

The first experience in the series of predicaments which the PRP suffered under the NPN community in Kaduna State was the election petition of Alhaji Lawal Kaita, the NPN gubernatorial candidate who contested against Alhaji Balarabe Musa. The petitioner had sought the injunction of the tribunal to declare him as the winner of the 1979 gubernatorial elections in Kaduna state. The ground for this, of course, was that 10,000 votes of his had wrongfully been counted in favour of his rival Alhaji Balarabe Musa. This claim having been dismissed by a special election tribunal of three judges headed by the Chief Judge of Lagos State, Justice Adefarasin [38] aggravated the already worsened

38. Lawal Kaita V Balarabe Musa KDH/EP/SG/39179 of 13/8/79.

relationship between the two parties. As B.O. Nwabueze observed:

> The feeling of disappointed expectations,aggravated presumably by the dismissal of the petition, might conceivably have generated among the parties in the House a certain sense of frustration and a predisposition for a show-down with the PRP 'usurper'[39].

Arising from the disappointment and discontentment with the result of the governorship elections in Kaduna State, there was, of course, tremendous vigour and seriousness, keen political competition and antagonism in the proceeding of the House of Assembly. The NPN legislators carried to the House the painful disappointment of its inability to control the Executive branch of the government.

The matter was even made worse considering the provocative statements emanating from the Governor. He continued to fly PRP flag on his official car instead of the Nigerian National Flag and acknowledged cheers from members of the public by raising up two fingers which was a sign of PRP victory[40]. This further angered the NPN legislators, who were looking for an opportune time to deal constitutionally with the Governor. Again the NPN legislators also developed a more hostile attitude towards the person of the Chief executive. The immediate sign of this hostility was perceived when the administration presented its first budget proposal to the State Assembly. Being the first budget in a new administration the public expectations was that the Legislature would treat the matter with utmost dispatch as was the case in the Federal and other states of the Federation, but the Kaduna Legislature kept the budget proposal in the cooler for two months. When it eventually decided to act on it owing to public

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39. See B.O. Nwabueze Nigeria's Presidential Constitution 1979-83 op. cit. p. 90 and Kaita V Musa, KDH/EP/SG/38/79 of 13/8/79.

40. Official protocol demands that the Governor should fly the National flag and not that of the PRP.

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outcry and blackmail from the Executive, almost all the principal organs connected with budget administration, namely, Director of Budget, permanent secretaries and all Heads of Departments were summoned by the House of Assembly in a ridiculous manner to show their incompetence in budget preparation. The budget was so restructured in a way to show the Executive that anything relating to public funds is the exclusive responsibility of the Legislature. In fact the Legislature was so engulfed in the restructuring of the appropriation bill of 1980 that they committed illegal acts in the process. For instance the Legislature during its scrutiny deleted completely the votes meant for the Ministry of Social Development, by implication it had abolished this department and had purported to transfer some Executive agencies from one department to another through the transfer of votes meant for them. In addition , the Legislature added new expenditure subheads totalling altogether N34.6 million, which were not included in the bill as submitted by the Governor[41].

In apparent frustration over the unsurpation of its function by the Legislature, the Executive took the Legislature to court. The Kaduna state High Court affirmed that the purported transfer by the Legislature of the Executive agencies from one Ministry to another through transfer of their votes was tantamount to a usurpation of the Governor's executive powers. It states that:

> Since it is the Governor who can rightly establish Ministries, the (House of Assembly) cannot transfer.....duties and responsibilities to any Ministry either directly or indirectly or impliedly[42].

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41. B.O. Nwabueze op.cit. p.99.

42. See Maigida (Solicitor-General & Permanent Secretary, Ministry of Justice, Kaduna State) V. House of Assembly, Kaduna state & Another, Suit No KFH/21M181.

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The learned judge of the Kaduna High Court of Justice must have been informed by section 113 of the 1979 Constitution of Nigeria which states that:

> The Governor shall cause to be prepared and laid before the House of Assembly at any time before the commencement of each financial year estimates of the revenues and expenditure of the state for the next following financial year.
>
> The heads of expenditure contained in the estimates,other than expenditure charged upon the consolidated Revenue Fund of the state by this constitution, shall be included in a bill to be known as an Appropriation Bill, providing for the issue from the consolidated Revenue Fund of the state of the sums necessary to meet that expenditure and the appropriation of the sums for the purposes specified therein[43].

From this provision, it seems crystal clear that the power of the Legislature in respect of appropriation bill was limited as it cannot delete or transfer heads or subheads. What the Legislature could do at best is to reduce or increase the expenditure of each head or sub-heads. As Justice Aroyewum said:

> What should be the Heads of expenditure and estimates for those heads are the exclusive preserve of the Governor ...There is no where in the whole of Sec. 113 where directly or impliedly the House of Assembly has power to transfer funds from one head to another[44].

Though the NPN legislators lost this legal battle to the Executive, they never relented in their efforts to use their numerical strength to deal with the Executive. Going by the numerical strength of these Legislators, they grew so

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43. See sections 113 (1) & (2) 173 & 174 of 1979 Constitutions

44. See Maigida op.cit.

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powerful to the extent that they could turn the table anytime against the Governor who was a lone ranger. It is an axiom of politics that, if any one branch of government grows too powerful at the expense of the other branches, the political system will not operate in the way it should[45]. The Legislature in Kaduna through the power to make law further renewed their efforts in the struggle against the Executive. A good example of this situation was the Legislative take-over of the award of tenders where the amount involved exceeded a hundred Thousand Naira (N100,000.00). The House of Assembly legislated that all such tenders must be submitted to the Assembly's Public Account Committee (PAC) and shall be awarded in accordance with the Assembly's recommendations. This is a calculated attempt on the part of the Legislature to prevent the Executive from implementing its party programmes which were at variance with those of the NPN legislators.

Similarly, the power vested in the Executive, by special warrant, to issue money, not exceeding N500,000.00 from consolidated Revenue Fund in case of urgent and unforseen expenditure which can crop up in the course of its executive function was abolished by the Legislature[46]. With this measure against the Governor, he was further castrated financially, as this will, no doubt, affect his routine administration.

On the other hand, the Executive's bills were passed to law without major amendments. Examples of such bills includes the Local Government (Amendment) Bill of 1979 and public officers (purge and abnormal dismissal prohibition) Bill. In the case of Local Government Amendment Bill the Legislature cleverly usurped

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45. See O.P. Aro 'Checks and Balances in the second Republic: A critical Look at the Impeachment of Alhaji Abdulkadir Balarabe Musa' Dept. of Political Science, (Ibadan University of Ibadan, June 1986) p.61.

46. Kayode Awosanya 'Report of Confrontation in Kaduna' New Nation vol.2, 10, Dec.1979/January 1980 p.21..

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the power of the Executive to establish Local Government, determination of its headquarters and creation of Emirate and Traditional Councils. The public officers (purge and abnormal dismissal prohibition) Bill also sought to abolish the right of the Governor to exercise control over the civil service. As the Executive was quick to infer that the bill was:

> a valid attempt by the Legislature to usurp and interfere with the independence of the state Civil Service Commission under section 183 of the constitution and also the powers of the Governor to make certain appointments and exercise disciplinary control over all government staff[47].

The executive refused to give assent to the bill, but the Legislature used its two-third majority weapon to pass the bill into law. The Legislature also paid back Balarabe Musa in his own coin by refusing to pass into law two bills passed to it by the Executive. These two bills were on Perogative of Mercy and the Establishment of the Council of Chiefs. For instance the 1979 constitution grants the Governor the power to:

> Suspend, remit, or pardon anybody convicted of any offence created by any law of state provided such powers are exercised after consultation with an advisory council of the state on perogative of Mercy as may be established by the law of the state[48].

The most interesting aspect of this episode is that the Legislature refused to either pass or reject the bill. Other bills rejected by the Legislature included, the contigency Fund Bill, the Kaduna State Urban Development Board Bill, the

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47. See 'Factor Responsible For The Conflict Between The Executive And The Legislature in Kaduna State' Memorandum submitted to the peace Mission Plateau State House of Assembly by the Kaduna State Governor Alhaji Balarabe Musa 10th November, 1980 p.17.

48. See Section 192 of the Constitution.

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Kaduna State Library Board Bill, the Kaduna State Pilgrims Welfare Board Bill, the Kaduna State Industrialization Board Bill, the Kaduna State Scholarship Board Bill, The Kaduna State Rehabilitation Board Bill and the Anti-Food Hoarding Bill.

Even when the Executive sought to court the Legislature by sending an official to the House asking for the authenticated copy of the Bills on creation of emirate and Traditional Councils and establishment of Local Governments, earlier approved by the Legislature so that it could assent to it, the Legislature would not burge. In an apparent reaction to this request, the chairman of the House of Committee on Land and Surveys, Hon. Ilu Barde said:

> the Kaduna state House of Assembly would not send the Bill passed of Lands Compensation to the Governor unless the Governor releases the white paper on the Lands Investigation Committee which he appointed last year[49].

Hence the situation in Kaduna State was that of a display of Power between the Legislature and the Executive. While the Governor vetoed the bills sent to him, the House of Assembly on the other hand employed its two-thirds majority to pass the Bills into laws. The most devastating blow on the Executive, perhaps, was the rejection by the Legislature of the Governor's four successive lists of nominees for appointment to the cabinet of the state. It must be made clear right from the onset that this power is unquestionable under the law in the sense that the 1979 Constitution conferred on the Legislature the power to approve the Chief executive's nominees for the post of Commissioner. By implication therefore the power to approve also presupposes the power to refuse to approve hence the

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49. See 'Factors Responsible for the conflict Between the Executive and the Legislature in Kaduna State' op.cit. Vol.II p.7.

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justification of legislators' rejection.

But even then this power may be abused under the law for rejection may be in good faith or bad faith depending on the political circumstances prevailing at a place. However we shall concern ourselves with the ostensible grounds for rejection of these candidates so as to ascertain whether such grounds were genuine or were designed to frustrate the Executive.

The first list, which was rejected on 17th October, 1979, had thirteen names on it[50]. They were all rejected one after the other on the basis of education, age, and local government origin. One of the candidates was rejected because he was only a Grade III Teacher[51]. Hence, he was considered not educationally equipped for such an exalted office of commissioner. Considering the demands and expectations of Presidential system, the Assembly's ground for rejection of this candidate may have been well founded, but it certainly had no grounds for rejecting graduate nominee who was already 35 years old[52] on the ground of age since the minimum qualification to the state Legislature is 21 years. The Constitution states *inter alia* that 'No person shall be appointed as a Commissioner of the Government of a state unless he is qualified for election as a member of the House of Assembly of the state[53]. On the score of age, the Kaduna State House of Assembly had acted unconstitutionally. One candidate was also rejected on the ground that two commissioners had come from his area in the previous regime. A retired Lieutenant-Colonel was rejected because there were other retired Senior Military Officers in his Local Government of origin. In this

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50. See Kaduna State House of Assembly Debated, Official Report, 2, October - 19 December 1979 pp.41-48.

51. Ibid. p. 43.

52. Ibid. p. 41

53. See 173 (4) of the 1979 Constitution op.cit.

manner, all the thirteen nominees were rejected. In apparent frustration the non-NPN legislators asked whether the Governor was expected to have only angels as his commissioners' to which several NPN replied in unison 'let him bring the angels'[54]. The rejection of two candidates on the ground that they campaigned for the PRP in the 1979 elections looked most ridiculous as the post of a commissioner was not expected to be non-partisan.

On the 23rd October, 1979, the list of the thirteen rejected nominees was re-submitted to the House for re-consideration. In addition the governor requested that these people be interviewed but the legislators turned down his request as 'an insult on the intelligence of the members to ask them to reverse the earlier decision, and thereby make a fool of themselves'[55] In contrast, at the Federal level the NPN - controlled Executive manipulated its way through the Senate the second time to have Chief Richard Akinjide and Mr. Paul Unongo appointed as Federal ministers[56]. The same NPN government which blackmailed some members of the Senate for their refusal to reconsider its nominees now turned round at the state level to contradict itself. What an irony!

The third and the fourth lists were also rejected by the Legislature. After the fourth list had been rejected on the 29th August 1980, the Governor in apparent frustration took the House of Assembly to court on the ground that the Legislature had abdicated its duty by the non-confirmation of his nominees. He lost the case on the point of constitution as the power of the Legislature to

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54. See B.O. Nwabueze op.cit p.104

55. Ibid p. 105.

56. See for details, Kunle Awotokun, Legislative-Executive Relations: case Studies in Victor Ayani and Kayode Soremekun, Nigeria's Second Republic: Presidentialism, Politics and Administration in a Developing State op.cit..

The Executive realising the need to receive co-operation of the Legislature if it had to provide services to the people, initiated peace meeting with the Legislature. The Executive team was led by the Secretary to the Government, Dr Bala Usman while the Legislators' team was led by the Deputy Speaker of the House, Mallam Machido Mohammed. Each of the two arms of government listed its grievances. On the part of the Executive there were three main complaints against the Legislature namely:

i) The outright rejection of the governor's policy statements made in his inaugural address to the people of the state on 22nd October 1979, without examining it seriously and without even making clear which policy the legislators were rejecting.

ii) The attempts, in various ways, by the legislature to usurp the executive powers of the Governor clearly vested on him by section 5(2) of the 1979 Constitution.

iii) The outright rejection of the lists of commissioners submitted by the Governor to the House of Assembly for confirmation, without examining the qualifications of the nominees with sec.173(4),100 and 101 of the 1979constitution[58].

The above three points have been exhaustively analysed earlier, it was not surprising to see the Executive listing them as its main grievances.

The NPN legislators on the other hand identified seven problems militating

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58. Factors Responsible for the conflict Between the Executive and Legislature op.cit p.8.

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against peaceful co-existence between the Legislature and the Executive. They were:

i) That the Governor had rejected the NPN in the State, in a statement he made before he was sworn-in.

ii) That there was an absence of public/human relationship and consultation between the governor and the legislators.

iii) That the Governor had abolished the payment of community tax without getting the approval of the House of Assembly and without setting out the alternative sources of revenue for local governments.

iv) That the Governor had not been guided by the constitution in his actions.

v) That the Governor had special advisers who had not been brought before the House for approval and who, without being sworn-in, had access to state security items.

vi) That there is a lack of separation between the party of the Governor and the government of Kaduna State, as for example, illustrated by fixing a PRP flag on the Governor's official car.

vii) That future meetings of the negotiation team be conducted on party

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basis[59].

It must be noted that the two principal actors in the stalemate i.e. Alhaji Balarabe Musa and Alhaji Abubakar Mamman Dan Musa were not present at the peace meeting. The absence of these two men appeared like paying lip service to the whole exercise. It was not surprising that there was deadlock at the meeting.

After the failure of the first attempt at finding a solution to the issue, there was an announcement to the effect that the PRP and NPN at National level would meet over the political impasse between the NPN legislators and the Executive in Kaduna State. The PRP team to the meeting was led by Chief S.G. Ikoku, others were Alhaji Musa Musawa - National Treasurer, Alhaji Shuaibu Bakori - Chairman of the Caretaker committee of the Kaduna state Directorate, Alhaji Adamu Daura, Assistant Secretary to the Kaduna state government and Dr. M.T. Liman - Principal Secretary to the National Chairman of PRP, Mallam Aminu Kano. The NPN team on the other hand was led by Dr. Chuba Okadigbo -political adviser to the President, Alhaji Mohammadu King, Alhaji Abubakar Dan Musa - Speaker of the House, Alhaji M Machido Mohammed - The deputy speaker and Alhaji Dauda Mani the majority leader. The outcome of the meeting was known as the Okadigbo/Ikoku Accord.

The Okadigbo/Ikoku accord agreed *inter alia* to set-up an inter-party committee to harmonise their programmes with the view of implementing all at the state. This committee was to be headed by the governor himself. It was also agreed that the two parties would cooperate to see that those who were nominated for commissionership scaled through. The two parties would also have

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59. Ibid. p 9.

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their members in all the state corporations, boards, companies, parastatals and local governments. It was also agreed that in the event of problems over the 'accord' a joint national intervention would step in.

The governor however rejected the Okadigbo/Ikoku Agreement on the ground that it was a pact to sell the PRP to the NPN. He also said he was not informed before the pact was agreed upon and only heard of it on the Television. He therefore vowed never to implement any NPN programme as long as he was the governor of the state.

There was also the delegation of Plateau State House of Assembly led by Hon. Dakun Shown who was the Speaker. But this mission did not achieve much as there was no co-operation from either side. Other state legislature such as Bendel, Lagos, Ondo, Oyo and Ogun came in too, but all to no avail. The emirs and chiefs in Kaduna state also met at Funtua on April, 17 1981 to resolve the issue, but the meeting proved abortive.

Other notable organisations such as the Nigerian Labour Congress (NLC), the Nigerian Union of Journalists (NUJ), the National Association of Nigerian Students (NANS), the Nigerian Bar Association (NBA), the Political Science Students Association of Nigeria (POSSAN), the Ahmadu Bello University Students' Union (ABUSU), the National Association of Kaduna State Students Ahmadu Bello University Branch (NAKSABUB) *etc.* all intervened but the legislators rejected their appeals on the ground that the Executive was unamendable to corrections.

All these peace meetings did not achieve success, if for anything they merely aggravated the problem as Alhaji Dan Musa, Speaker of the House of Assembly had insisted that the legislators had nothing to do with him. He absolved the governor from blame but rather attributed his predicament to 'ill-advice from intellectuals who rarely visit their villages and did not know that

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common man was suffering'[60]. (Sic)

Again, the President of the Federal Republic of Nigeria, Alhaji Shehu Shagari, was pressurised by some groups to intervene in the stalemate[61]. This he responded to through presidential emissaries comprising of the then NPN Secretary General, Alhaji Suleiman Takuma and the NPN National Executive Committee (NEC) member Mr. Lulu Briggs. The Kaduna State Legislature never received them, let alone getting the presidential message.

With all these catalogues of failures in the attempt to restore sanity between the Assembly and the Executive, it was logical to think that the Legislature would exercise its constitutional power of impeachment over the Executive.

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The Impeachment Process and Removal of Governor Abubakar Balarabe Musa

On Friday, May 8, 1981, the NPN members in Kaduna state House of Assembly formally indicted Alhaji A. Balarabe Musa, and in a motion urged the Speaker to set up a panel to investigate charges of misconduct and breach of the constitution against the Governor (See Appendix 1, for details of the Allegations).

The Speaker swiftly responded to this call by instituting a seven-member Panel of Inquiry comprising Reverend Canon H.O. Mohammed, a religious leader as its chairman; Mr. J.T. Boyo, former Bendel State Head of Service; Alhaji Ahmadu Coomasie, a one time Chairman of the First Bank, Alhaji Muhammed Jibo former Bursar, Ahmadu Bello University, Zaria; Mallam Auta Hamza, a former Health

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60. See The punch (Lagos) Wednesday Jan. 9, 1980 p.7

61. Different organisations such as Market Women Association, Nigeria Bar Association, National Association of Nigeria Students (NANS) etc. met the President over the impending impeachment of Governor Balarabe Musa.

official in Kaduna State; Alhaji Jubril Abdullahi, a former member of the Kaduna State Civil Service Commission; and Alhaji Galadima Zazzau.

He empowered the Panel to examine all matters arising from the allegations and against the governor and determine whether they have been proved or otherwise; to turn their searchlight on the charges against the governor and determine whether the Assembly men's move to impeach him were justifiable'[62]. The instrument for the appointment of the Panel empowered it to call for memoranda, receive oral and written evidence as well as summon witnesses to appear before it in the discharge of its assignment.

While the NPN legislators greeted the announcement of the names of members of the Panel with jubilation and excitement, it was met with sharp protests and condemnation from other members of the State Assembly. For instance the Kaduna State minority leader, Hon. Bitrus Daniya had roundly condemned all the nominees as most unqualified to handle the task assigned to them. He also said that they were all staunch supporters of a particular political party and could not claim neutrality. The legislature preferred eight charges against the governor some of which were that, he removed the Director of Audit without express permission of the Legislature, and that he appointed an individual to two offices of Secretary to the Government and Head of Civil Service contrary to the spirit and intention of the constitution. He was also said to have created two executive agencies and appointed their members who were being paid without clearance from the House. The governor was also accused of investing N13.9 million in industrial enterprises which had not been incorporated contrary to government financial instructions. It was also alleged that Alhaji Balarabe Musa altered the 1980 Appropriation Law, resulting in the inflation of

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62. The Punch (Lagos) Wednesday 27th May,1981 p.1.

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expenditure by N2.56 million. He was also accused of altering the remunerations of political office holders as prescribed by law and imposing restrictions on certain Heads of Expenditure as authorised by law, thereby preventing the implementation of the projects for which the funds were intended.

The impeachment committee called on the governor to defend himself against the above charges but he refused to make himself available. He also did not send any lawyer to defend him. According to him, it would amount to a waste of time as the defence would make no difference to the outcome which had already been pre-determined[63]. However, he maintained publicly that the allegations were false to the knowledge of all concerned, and that replying them would have meant defending himself against stupidity and giving encouragement to the the people who had no respect for law, moral standards and who did not care about what happened to morality and justice[64].

The impeachment panel's report found Balarabe Musa guilty on each of the eight counts and was adopted by the House of Assembly on the 23rd June, 1981 by 68 votes to nil. It must be noted, however, that the minority members (PRP, UPN and NPP) refused to take part in the decision in protest against what they termed as illegality in the composition of the committee on impeachment. They accused the committee of illegality sitting with less than its constitutionally prescribed membership, the superficial manner with which the committee conducted its investigation, the refusal to suspend the investigation to await the ruling of the court in the pending suits and the politicization of the entire impeachment process. The Court later declared that it had no jurisdiction to

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63. For this position see also B.O. Nwabueze op.cit p.118.

64. Ibid. p. 118

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entertain the request of the governor.

Balarabe Musa had to succumb to the provision of the constitution after his 20 months (almost 2 years) of protracted battle with the NPN-controlled House of Assembly. In this battle, the position of Balarabe Musa was weak in the sense that apart from the government apparatus (machinery) which was employed to mobilise support for him, he had no support of his party-the PRP which had expelled him prior to this time. Whereas the NPN-legislators at Kaduna enjoyed the support of the leadership of their party and other governmental facilities especially security forces. The Kaduna State students and Zaria Students' Association at Ahmadu Bello University called on the Assembly to suspend impeachment, all to no avail. The PRP leader Mallam Aminu Kano gloated over the impeachment of Balarabe Musa saying "he was the architect of his own doom"[65].

It should be noted, however, that throughout the political crisis between the Legislature and Executive, the President of the Federal Republic of Nigeria kept silent over the issue until he was provoked by Chief Obafemi Awolowo. In a letter to the President of the Federal Republic of Nigeria, Chief Obafemi Awolowo urged him as a matter of urgency to step firmly and positively into the Kaduna impasse with a view of annulling the purported removal from office of Alhaji Balarabe Musa and affirming his un-interrupted incumbency of the governorship of the State[66] He argued that the political operators in and around the Kaduna State Legislature have exhibited an unparalled brigandage in their reckless violation of the relevant provision of our Constitution[67].

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65. The Punch (Lagos) 23 June, 1981.

66. See The Nigerian Tribune (Ibadan) 2nd July, 1981.

67. Ibid. He concluded that the Speaker and the affected members of the Kaduna State house of Assembly should submit to judgement in one or all of the sections instituted in the courts by Alhaji Balarabe Musa claiming the nullity and voidness of his impeachment and removal from office.

In respect to Chief Obafemi Awolowo's letter President Shehu Shagari declared:

> You seem to have a great deal of interest in Alhaji Balarabe Musa. If you were truly interested in his welfare and political survival you ought to have advised him at the right time to avoid the uncompromising collision course you encouraged him to take, accompanied by your personal applause and the applause of your newspapers.
>
> Now it is too late. The Kaduna State assembly had the constitutional power to act. It had acted and the court had confirmed the constitutionality of its actions. You therefore must be joking in asking me to annul what has legally and constitutionally taken place. It is all over.
>
> I cannot understand why you were so much against Alhaji Abba Rimi who takes over as Governor of Kaduna state in place of Alhaji Balarabe Musa. Incidentally why should the fate of the Governor of Kaduna state claim your attention to the exclusion of Ondo State? No one has suggested the annulment of the impeachment in Ondo State of the Speaker and Deputy Speaker[68].

The NPN which had remained in the background came out officially in support of the impeachment of Governor Balarabe Musa. In a communique issued at the end of its two-day meeting at Argungu, Sokoto State, the National Executive Council (NEC) of the party endorsed the actions of the NPN legislators in Kaduna State House of Assembly by impeaching the Governor.

The presidential candidate of Nigerian Peoples' Party (NPP), Dr. Nnamdi Azikiwe believed that the legislators nursed malice against the governor. He contended that in his opinion the impeachment of the governor was calculated "to impugn the integrity of our highly respected judiciary and our cherished belief in the rule of law thus debaunched"[69]. Dr. Nnamdi Azikiwe went further to

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68. See New Nigerian (Kaduna) Thursday 9th July, 1981 p.8

69. New Nigerian (Kaduna) Saturday 27th June, 1981 p.4.

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congratulate Governor Balarabe Musa who he described as 'Mumuye', on his spunk and courage in the face of almost insurmountable odds, to administer Kaduna State, the nerve centre of the Northern States, for over one year and 8 months with efficient and of dedicated and devoted civil service[70].

The national leader and the Presidential candidate of the Great Nigeria People's Party (GNPP) Alhaji Ibrahim Waziri also condemned the impeachment exercise. He described the impeachment of the governor as "a continuation of the class struggle between the progressive and the reactionary elements in the country"[71]. He further argued that the action of the legislators was 'not only improper and unfair, but also a gross violation of legislative privilege[72].

The eight Governors of the UPN, GNPP and PRP had jointly protested to the President against the impeachment of Alhaji Balarabe Musa. They urged the President to avert the impeachment by calling the NPN legislators to order. They were said to have taken such a decision in order to provide 'adequate protection to the institution of governorship and the rule of law'[73].

The Niger State Governor, Alhaji Awwal Ibrahim was rather sympathetic of Balarabe Musa's predicament as he said that what happened to him could happen to any other governor. Chief Jim Nwobodo, the governor of Anambra State described the situation as an ill wind that would blow nobody any good. He saw the exercise as injustice to Balarabe Musa and called for resistance.

The Oyo State branch of UPN also argued that the impeachment lacked

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70. Ibid. p. 6.

71. Sunday Tribune (Ibadan) 28th June,1981. p.1.

72. Ibid.

73. See 'The constitution on Trial' op.cit p. 30.

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thoroughness and therefore remained unconstitutional. Conversely the Oyo State chapter of the NPN saw the impeachment as an "exercise pregnant with lessons of life and an acid test to the workability of the constitution and public faith in it"[74]. It also commended the legislators for sincerity of purpose and steadfastness in the face of intimidation by political adversaries. This same position was adopted by the National Chairman of NPN Chief A.M.A. Akinloye. He roundly condemned the governor and praised the NPN legislators in the House for upholding the principle of democracy. Similarly, Hon. Olusola Afolabi, the NPN leader in the House of Representatives, commended the NPN legislators in the Kaduna House of Assembly. He remarked:

> Let me assure all of us that what happened in Kaduna State is a testimony of the democratic process that is going on in this country. It shows that no matter how highly placed an office an individual may hold, the will of the people must prevail. It prevailed in Ondo State when the will of the people removed the Speaker, the Deputy speaker and the Majority leader...what has happened in Kaduna State is a test that democracy will continue to prevail in this country, and that no matter what position we hold, we must be guided by the fact that we hold this position in trust for our people. The Kaduna people, has demonstrated by the wishes of their accredited representatives, have removed the Governor of Kaduna State for abuse and gross violation of the Constitution. I am sure the Governor had ample opportunities to defend himself, but did not do so.
>
> The Tribunal was validly set up and the process of law was complied with, Mr. Speaker, I think this honourable House must send a congratulatory message to the Kaduna State House of Assembly for keeping to the will and letter of the constitution. I am sure they are great Nigerians and History will record them for brave and gallant act[75].

Conversely, Tom Egbuwuku a UPN legislator did not see any heroic act on

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74. New Nigeria (Kaduna) Saturday 27th June,1981 p. 10.

75. See National Assembly Debates (Representatives) 24th June,1981 Col 5803 - 5804.

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the part of these legislators. He saw them as a pack of villains,illiterates and condemnable lots, who did not know the process of law. He said:

> Firstly of recent, there has been quite a consistent call for a type of minimum educational qualification for legislators right from state to Federal level. I think from what has happened in Kaduna State, it is becoming increasingly significant that we need educated people in our Legislatures. It is extremely dangerous, and I am talking very seriously to hand over the affairs of this great nation to the hands of illiterate is most unfortunate. More importantly I think that the office of the Speaker and his Deputy as well as the office of Chairman of committees, I think these vital offices, if we are going to reflect the calibre and quality of legislation must attract a minimum educational qualification.
>
> I am saying, so because when you put a stark illiterate in such positions, he is not sensitive to law and order. His rule is that of brutality, come what may, even if it means civil war, and I am really sorry that the Kaduna legislature controlled by the NPN is studded with stark illiterates. ... I am therefore appealing to NPN, the few of them who are enlightened in the NPN, and in the National Assembly, and all others in the other parties who are very enlightened, and who are in the National Assembly to please join hands with the forces of progress and honour in condemning the action of the Kaduna Legislature as backed up by the NPN[76].

The fact that some NPN legislators in Kaduna State were stack illiterates was incontrovertible. Of the 69 NPN legislators in Kaduna state 39 of them had no Western education[77]. The House of Assembly in the bid to rush the impeachment through did not comply with the Section 2 of the illiterates Protection Law of 1963 which provides:

> Whenever an illiterate signs a document (unless it is

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76. See National Assembly Debates (Representative) 24th June, 1981 Cols 5803-5804.

77. See West Africa Ibid p. 1521.

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> complied by a solicitor whose full particulars shall of course be appended) the person who read it to that illiterate should sign and give his name and address alongside whatever mark that illiterate person makes[78].

This section of the law was disregarded by the NPN legislators in Kaduna State. It becomes more grievous as we know that the Speaker of the House is a lawyer by profession. Given the fact that 39 of them were illiterates, it was not unlikely that the signatures that appeared against their names were signed for them.

However, it must be noted that while these conflicting reactions were going on among the politicians, as to whether or not the governor deserved what really happened to him, the Deputy Governor Alhaji Abba Musa Rimi went to court to clear whether he could in fact assume the leadership of the state in view of pending legal suit instituted against the Assembly by Governor Balarabe Musa. This was because four days to the impeachment of Alhaji Balarabe Musa (19th June 1981), he had handed to his deputy an instrument under his power as the Chief executive of the state. In other words, he assigned to him the responsibility for all business of government pertaining to the governance of the State[79]. Alhaji Balarabe Musa himself left for Lagos to address the world press conference on his impeachment but was barred by the Nigerian Police from going back to Kaduna for 'security reasons'.

The Kaduna High Court declared that the state Deputy Governor was constitutionally qualified to assume the mantle of leadership. Hence on the 5th July, 1981 Alhaji Abba Musa Rimi was sworn-in as the Governor of the state. He nominated Alhaji Mu'azu Aliyu Ahmed as the Deputy-Governor, which was

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78. See Sec. 2 of the Illiterate Protection Law (1963).

79. See New Nigerian (Kaduna) Tuesday 30th June, 1981 p.1.

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approved by the Legislature. By this act, Alhaji A. Balarabe Musa ceased to be the Governor of Kaduna State.

Having analysed the concept impeachment and the role of the legislature as applied in Kaduna State we shall attempt to discuss the observations therefrom.

Some Observations on Balarabe Musa's Impeachment

From what has been discussed so far, there was glaring hostility and antagonism between the Legislature and the Executive in Kaduna state. This antagonism, no doubt, affected the delivery of services to the people of the state as not much can be expected under the tensed atmosphere which the Legislature and the Executive found themselves. While it would be difficult, if not impossible to apportion blame, there is no doubt that the two arms of government did not live up to the expectations and the spirit of the Constitution as analysed in Chapter Three. There was the issue of separation of powers, but the constitution expected co-operation which was lacking between the two arms of government. The Executive was the vanquished in the protracted conflict between them because of the power accorded the House by the constitution to determine constitutionality of executive actions with regards to impeachable offences. In other words, it was only the Legislature that could determine what constitutes 'gross misconduct' and impeachable actions of the Executive.

Hence, the observable flaw in the constitutional engineering is that, the Legislature was granted unlimited power in such a delicate political decision as impeachment. It allowed the House of Assembly to be the accuser, the prosecutor

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and the judge. This negates the whole essence of separation of powers among the Executive, Legislature and the Judiciary which the Presidential system is noted for.

There was again the problem of caution and sacrifice on the part of the Legislature and the Executive. The Executive, no doubt, as evidenced from the above analysis, was confrontational, uncompromising and outrightly rigid. The Legislature also was too insistent and unrealistic in most of its demands. In a delicate political situation such as that of Kaduna state where the Executive and the Legislature were controlled by different political parties, there was need for caution and sacrifice. As the governor of Plateau State, Solomon D. Lar once noted:

> If all parties operate within the spirit of the constitutionalism, there is no reason why a President or a Governor cannot get his request approved even in a legislature dominated by an opposing party. The impasse in Kaduna State, therefore, is the result of bitter political rivalry between the parties and a winner-takes-all disposition for political life. The ideological incompatibility of the two parties which controlled the Executive and the Legislature in the state was not sufficient cause for the impasse[80].

The above statement was informed by the governor's perception of what constitutes an ideal relationship between the Executive and the Legislature under a Presidential system of government. This observation of course, will not be out of place, given the practice of Presidentialism in the United States and other Western democracies where the party in power may not necessarily control the Legislature. By the constitutional provision, the Speaker of the House of

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80. See Solomon D. Lar 'The Relationship between the Executive and legislature' A paper presented at Ahmadu Bello University, New Nigerian (Kaduna) May 30, 1980.

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Assembly was supposed to be neutral in matters of impeachment. But prior to the impeachment exercise there were notable pronouncements by him which clearly left nobody in doubt as to the fact that Balarabe Musa's impeachment was a preconceived matter. For instance he said the Governor would be impeached even if it would cause an earthquake. This kind of statement was short of tact and diplomacy expected of a person presiding over a whole arm of Government. This statement is equally dangerous as it has the propensity of drawing sympathy for the Governor in the process of the conflict.

Similarly, in the bid to get the Governor impeached as early as the constitution permits, many tactical and constitutional mistakes were made. For instance, at the first public sitting of the impeachment committee only six of them were present and sworn-in. This runs foul of section 170(5) of the constitution which provided for a seven-man panel. It was not until June 15th 1981, five days after the panel had started and barely three days to the end of Tribunal's public sittings that the seventh member, Alhaji Ahmadu Commassie joined them. It was improper and probably against the law of natural justice for someone who was absent most of the time to participate in handing down the verdict. The reason for this is obvious, such a member would not have heard the whole evidence and proceedings thus unable to form independent opinion in the whole case.

Furthermore, since the case of Alhaji Dalhatu Bello, the Director of Audit who was removed by the governor was still pending in the Court of Appeal, it should not have been included in the charges against the Governor. Similarly, it was equally wrong of the tribunal to have invited and admitted the witness of Alhaji Dalhatu Bello as exhibit. It was an incontrovertible fact that Alhaji Dalhatu Bello himself was an aggrieved person in the case.

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The most objectionable aspect of the whole episode, perhaps, was the composition of the impeachment panel. There were affidavits sworn to against some members of the panel. The chairman of the panel Rev. Canon H. O Muhammed was said to be a public officer by virtue of his appointment as a Director of a Federal Statutory Corporation (Reinsurance Corporation of Nigeria) by the President of the Federal Republic Nigeria. His daughter was head of the Assembly's Legal Department-the very institution that wanted to get rid of the Governor. Similarly Alhaji Mohammed Jibo had been involved in questionable activities while in public service and as for Mallam Auta Hamza ,it was alleged that he was not a Nigerian but a Ghanaian[81]. One of the members was even said to be mentally unstable. It is very interesting to note that none of these allegations, and affidavits was contested in a form of counter affidavits or by other means. Another member was said to have held public office as Chairman of Management Board of the University of Benin Teaching Hospital and one was said to be a patron of the NPN.

Again, another serious objection to the composition of the committee is that most if not all members were unqualified for an assignment that bordered on intricate points of constitutional law, such as the nature and extent of the Governor's executive power and the interpretation of certain provisions of the constitution. This makes their findings difficult to be accepted at least from legal view points. As B.O. Nwabueze said:

> Many of their observations and findings were so sweeping and unreasonable as to betray a lack of appreciation of the issues presented. One would have expected that a committee which had to deal with such questions would have had a retired judge or

81. See B.P.O. Nwabueze op.cit p. 117.

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experienced lawyer as Chairman[82].

Another loop-hole in the impeachment exercise is that a good number of NPN legislators in Kaduna State were illiterates at least by Western education. Of the 69 NPN legislators in the House of Assembly, 39 of them were stark illiterates[83]. The House of Assembly in it's effort to hasten the impeachment of the Governor failed to comply with section 2 of the illiterates Protection Law of 1963.

This we expected them to know as law-makers. Besides, ignorance of law is not a defence. Given the fact that 39 of them were illiterates, it was most likely that the signatures that appeared against their names were signed for them. If this is so, to say the least, it was a criminal act.

It was also observed that members of the impeachment tribunal never sworn by either the Bible or the Quoran (depending on individual faith) as required by law. This omission was a technical violation of the constitution, and it was procedurally wrong.

The aftermath of the impeachment of Governor Balarabe Musa as two-fold. First, Alhaji Abba Musa Rimi, who took over from him as the Governor of the state soon became jittery for the fear of impeachment. So much was this fear that he bribed the House of Assembly with N500,000.00 from his contingency funds to avert what happened to his predecessor. It was for this that after the return of the Military, the Chairman of the Kaduna Zone of the Military Tribunal, Brigadier Ademokhai sentenced him to 21 Calendar years imprisonment. In addition, he also

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82. Ibid.

83. See West Africa Ibid p. 1521

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turned round to describe the Legislators as a bunch of irresponsible people who turned out to be looters instead of Legislators[84].

The other effect of the impeachment of Governor Balarabe Musa was that it opened the flood-gate of impeachment, threats and impeachment fever all across the country. The impeachment of the deputy governor Alhaji Ibrahim Bibi Farouk of the Kano State fell in the series of impeachment that followed that of Alhaji Balarabe Musa. How in fact did impeachment spread across the country? This is the issue to which the rest of this chapter would address itself.

Impeachment Elsewhere in Nigeria: The Case of the Kano State Deputy Governor Alhaji Ibrahim Bibi Farouk

The most important thing to note is that it was in the PRP controlled state governments, that there were impeachments of Governor and Deputy Governor during the period under review. Could this incident be a mere coincidence or a response to external or internal problems? While the removal of Governor Balarabe Musa could be regarded as a combination of the two, it would be difficult to locate the problem of Alhaji Ibrahim Bibi Farouk within the same context or factors. In other words the impeachment of Alhaji Balarabe Musa was a direct consequence of his struggle against a state Legislature dominated entirely by a rival party and his dissent with the PRP hierarchy which felt indifferent to his problems. On the other hand, Alhaji Ibrahim Bibi Farouk was a victim of intra-party differences, within the rank and file of the PRP.

The genesis of the intra-party quarrels in the PRP started precisely when an accord was said to have been signed between the PRP and NPN in November,

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84. For details of the judgement see Daily Sketch (Ibadan) March 28, 1985.>

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1979. This disagreement, no doubt, was a reflection of difference in the degree of commitment to the party's ideology and programmes between the conservative left as represented by Aminu Kano and Sam. G. Ikoku and the new Left represented by Alhaji Abubakar Rimi (the Governor of Kano State), Alhaji Abubakar Balarabe Musa (the Governor of Kaduna State), the intelligentsia (e.g. Drs Bala Usman and Mohammed Bala etc), Chief Michael Imoudu and other radical elements within the party. The new Left otherwise known as the Imoudu faction, argued against the desirability of Aminu Kano's pact with the NPN on the ground that it would compromise the party's ideology and programme for the creation of a new social order, thereby discrediting it as a militant socialist party. As Governor Balarabe Musa revealed:

> The crisis is over whether we should go on implementing the programme around which we formed the party, and for which we were elected, or we should drop that programme and become an appendage of another party.
>
> Our party, the Peoples Redemption Party, and the other party, are diametrically opposed. We represent the forces of change and justice. They represent the reactionary forces against change and against progress and justice. If we become linked with that party, we shall have no reason for existing[85].

With this statement, it was clear that the party would be factionalised along principles. Another important factor in the PRP crisis was that the national leadership of the party, Mallam Aminu Kano took exception to the continued attendance of the meetings of the Progressive Governors. He viewed such a meeting as a form of ganging-up against the NPN-controlled Federal Government. According to him, he was not opposed to Governors meeting with their

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85. See B.O. Nwabueze op. cit. p.140.

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counterparts from other States to discusss identical administrative problems but such meetings should not become so regularised and routinised as to be capable of other interpretations. In view of this, the Directorate of the Party resolved and published as a press release, on the 18th May, 1980, that its two governors should no longer attend the meetings on regular basis. But the governors defied the authority of the party, thus further deepening the party's crisis. The immediate result of this defiance was that the two governors were expelled from the party. The two of them thereby constituted an antagonistic faction within the party. How did this crisis affect Alhaji Ibrahim Bibi Farouk? In order to appreciate this, we shall now turn attention to the impeachment of the Deputy Governor.

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The Background to the Impeachment of Kano State Deputy Governor-Alhaji Ibrahim Bibi Farouk

As already observed, the factionalisation of the PRP threw the Governor of Kano State and his Deputy into two different camps. The deputy governor believed in the leadership of Mallam Aminu Kano and maintained an attitude of loyalty and support for him. He showed this overtly by meeting with him constantly. Alhaji Ibrahim Bibi Farouk justified this on the ground that Mallam Aminu Kano was still the national leader of the party and that he got his position as a deputy governor through his instrumentality. On the other hand the deputy governor was manifestly opposed and disloyal to the governor which showed that he no longer believed in his authority or potence as the governor of the State.

He challenged the Governor to resign with him and let them seek re-election[86].

The Governor regarded this challenge as affront on his office and retaliated by withdrawing the function which were hitherto performed by the Deputy Governor. Such responsibilities include liaison between the Government and Local Governments through the State directorate of the party and with the police on all party matters. The Governor also withdrew from his Deputy the power to deal with petitions on political matters. Again, the Deputy Governor could no longer deal with the State Radio and the Nigerian Television Authority (NTA) Kano and this function was taken from him and given to the State Ministry of Information.

In frustration, the deputy governor prepared a memo to the Governor couched in an unparliamentary language. He said the Governor lacked good culture and home training. He also addressed the Governor as stupid, power drunk, childish, wild and vulgar[87].

He described his own duty as not better than that of Executive Officer and warned the Governor:

> the so-called schedule of duties could end up in calamitous sequence of events to the detriment of the entire state... since no stone will be left unturned by anybody struggling to take his or her rightful constitutional place within the total set up of an executive leadership[88].

The Governor took exception to this rude, indecent and disrespectful

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86. See Report of the Investigation Committee into Allegations of Gross Misconduct against the Deputy Governor of Kano State, Alhaji Ibrahim Bibi Farouk, 1981, para. 11-1.

87. Ibid.

88. Ibid.

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language. The Deputy Governor was reported to the Legislature dominated by the Governor's own faction. The Kano State House of Assembly soon framed some charges against the Deputy Governor.

The first of the charges against him was that in spite of intervention of the State Legislators, the Deputy Governor had persistently refused to assume and discharge the duties assigned to him by the State Governor contrary to the oath of office subscribed to by the Deputy Governor.

The Deputy Governor was also accused of engaging himself in acts and conduct unbecoming of his office by soliciting for favours from persons whose official positions the State Government refused to recognise as a matter of policy.

The notice also said that the deputy governor continued drawing allowances and salaries from public funds in spite of the deliberate refusal to involve himself in the day-to-day running of the government and also in spite of his refusal to perform the functions of his office even while engaging in subversive activities against the State Government.

There was also the allegation that the deputy governor refused to act for the Governor while he was away on Holy Pilgrimage the previous year as directed by the Governor and the state Executive Council.

The fifth charge alleged that on different occasions, the deputy governor left the state without clearance or authority from the State government and travelled to Benue, Borno, Anambra, Plateau and Sokoto states and also to Mecca (Saudi Arabia)and Great Britain.

He (the deputy governor) was also accused of having held secret meetings with the state Commissioner of Police, Mallam Aminu Kano and others and involved

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humiliate the government of Kano state and to please his political mentors[90]. Alhaji Ibrahim Bibi Farouk contended that he wrote the letter in his private capacity as personal friend of the PLO. He argued that he was not expected to terminate his age-long friendship with the PLO in order to please the Governor.

The Deputy Governor also wrote a letter to the National Security Organization (NSO) and the State Commissioner of Police alerting them of the plans of the State Government to mobilise the people against the Federal Government in event of unfavourable findings of the Commission set up to probe theMaitaisine Religious disturbances of 1980. His defence being that he took this action out of genuine concern for likely loss of lives and properties that usually attend such political demonstrations, thereby safeguarding peace and order in the State. As Alhaji Bibi Farouk claimed, his oath of office might have required that, but there is no doubting the fact that he had constituted himself against the Government which he was constitutionally part of. This situation in Kano State was a case of a government within a government.

In a counter accusation, the Deputy Governor also alleged that the Governor had acted unconstitutionally by refusing to hold regular meetings with him as required by section 174(2) of the Constitution. The truth of the situation was that as a result of the protracted differences between the governor and his deputy, the former had ceased to invite the latter for security reasons. There is no doubting the fact that the two of them had acted unconstitutionally.

There was also the allegation that the deputy governor refused to act for the governor while the latter was on leave. The deputy governor refuted the allegation that he could not have acted for the Governor while he himself was on leave. He produced a letter of approval of his leave reference CO/Staff/4241 -

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90. Report of the Investigation Committee op. cit.

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other members of statutory boards. It is instructive to note that none of these attempts was ever carried to logical conclusion.

However, the most significant of these threats was that against Governor Ambrose Folorunsho Alli. The disagreement between the Executive and the Legislature of Bendel State had arisen out of who had power to create Local Governments. Prior to 1980 in Bendel State, the power to create Local Governments had been vested in the Executive but by 1980 the Legislature amended the Local Government Law thereby transferring the power to create Local governments from the Executive to the Legislature.

The governor, who felt slighted by the House's refusal to assent to this bill, and the Assembly which was more resolute, decided to pass the Local Government 1982 Amendment Bill into law with two-thirds majority. The House proceeded by resolving that its Local Government and Chieftaincy Affairs committee look into the issue of establishment of new local government councils and propose a bill to that effect[91].

The bill which was proposed and passed in 1982 sought to establish 59 local government councils as against the 71 earlier on proposed by the Executive. Governor Alli took the Legislature to court, and although he won at the High Court, but the judgement was reversed at the Federal Court of Appeal in favour of the Legislature[92]. Following its victory over the matter, the Legislature re-introduced the bill but the Governor persistently refused to assent to it. The Legislature again passed it to law by 2/3 majority. The Governor sought to score a political point against the Legislature when in the 1983 campaign 'he was quoted to have said that he was not going to implement the 59 Local Governments

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91. See A.O. Ikelegbe op.cit. p. 219.

92. See Bendel State of Nigeria, Official Gazette, 69, vol. 18 Benin City, Government Printer 13th December, 1981. p.8.

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created by the state legislature, but the 71 he had created'. In a swift reaction to the statement credited to the governor, the speaker of Bendel State House of Assembly, Hon. Benson Alegbe said:

> the line was now drawn between the House and the Governor...there is no going back... In the past, I have allowed the Governor with some impeachable offences in the interest of the UPN. Now the die is cast, if he takes any further step to implement the 71 Local Governments instead of the 59 passed by the House, he will be impeached[93].

Most legislators supported the idea of impeachment of the Chief Executive if only to give them breathing space as they were said to be tired of his unconstitutional acts, such as expenditure of money without authorisation from the House and his confrontational attitude towards the House. The Governor who felt that the Legislature could carry out the threat had to recognise the Legislature's 59 Local governments as against his own proposed 71.

Having analysed the legislature and impeachment in this chapter, we shall now discuss its implication for the purpose of our study.

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The Implication for the Study

As said above, the chapter analyses, both in theoretical and practical terms, the legislative control of the Executive through the impeachment provisions of the 1979 Constitution. Two states namely Kaduna and Kano States where impeachment of the Executive had been effected provide interesting case studies. What in fact is the implication of the successful impeachment of Governor

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93. See National Concord (Lagos) Friday 24th june 1983 p.1. The Governor was reported to have tagged Hon. Benson Alegbe as NPN speaker.

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CHAPTER FIVE
LEGISLATIVE CONTROL OVER APPOINTMENTS BY THE EXECUTIVE

Introduction

The control that the Legislature exercises over executive appointments or the appointment by the Executive, stems traditionally from the basic assumption that the Legislature embodies the will of the people and therefore it must be able to oversee the way in which appointments are made. It is also conceived that members of the Legislature as accredited representatives of the people should have a say in the choice of members of the chief executive's cabinet. It is thought that by this the public interest would be safeguarded by ensuring that people of doubtful or questionable characters are not appointed into public office.

However, the role of the Legislature in the appointment of political executives is not the same world wide. The role will depend largely on the type of regime and the constitution of the country concerned. For instance in the parliamentary system, the leader of the majority party in the lower chamber of the parliament is called upon by the Head of State to form a government. By this it is construed that the Head of State acknowledges the votes cast at the polls by the electorate, and the leader as chosen by the party[1]. The Prime Minister, who himself is a legislator, upon a call by the Head of State (President) appoints his cabinet ministers who again are subjected to the formal ratification of the President. Here, the parliament plays no direct role in the appointment except that a large proportion of them from the government party are normally appointed as ministers. On the other hand, the ministers (cabinet) as a whole are

[1] See Parliaments of the World: A comprehensive Reference Compendium Vol. II 1989 P. 1119.

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expected to retain the confidence of the parliament (the lower House). The implication is that in order to sustain the confidence of the parliament, the Prime-Minister's ministerial appointments must reflect forces of party, regional and ideological politics as well as concerns for leadership and administrative ability[2]. The Council of Ministers is expected to submit itself to the parliament in order to obtain it's confidence, hence the political supremacy of the parliament.

The Prime-Minister and his cabinet can theoretically remain in power against the expressed wishes of both Houses but can only do so for a limited period of time. This is because each year he has to seek the necessary budgetary approval of the Legislature to carry on the government. The support of the lower House is reflected continuously in the votes cast. If there is an adverse vote on a matter held to be of major importance by the government, then the Prime-Minister and his cabinet are expected to resign.

The Presidential system is at variance with what has been discussed above. Owing to the emphasis on the doctrine of separation of powers, there is the belief that ministerial office is incompatible with membership of the Legislature. In other words a Legislator is constitutionally expected to resign his seat in the Legislature, if he wishes to take up a position in the cabinet. This clause is intended to create a gap between the representatives of the people and the Executive in order to make unnecessary collaboration between the two arms of government difficult. It is also meant to make the Legislature alive to its responsibility as the watch-dog of the people's interest in the government.

Under the Presidential system especially in Nigeria's Second Republic the

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2. R. K. Alderman 'The Prime-Minister and the Appointment of Ministers' ^SParliamentary Affairs Vol. xxix, 2, Spring 1976 P. 101.

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appointments of ministers, commissioners and special advisers are vested explicitly in the President and Governors as the case may be, but the person so nominated by the chief executive must be approved by the Legislature. In other words, the Legislature was the clearing house of executive appointments. At the federal level, the Senate was empowered to ratify executive appointments. As the constitution states:

> There shall be such offices of Ministers of the Government of the Federation as may be established by the President. Any appointment to the office of Minister of the Government of the Federation shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President[3].

The same thing as above is also applicable at the state level[4]. Section 173 Furthermore, in order to ensure that the right calibre of people get to this office, the constitution states further that no person shall be appointed as minister or commissioner except that individual is qualified for election to the National Assembly and House of Assembly as the case may be[5].

Similarly in matters of remuneration of the Executive and its agencies, the constitution vests in the Legislature an absolute power to control the salaries and personal allowances of all officials of government. The Constitution states:

> There shall be paid to the holders of offices mentioned in this section such salaries and allowances as may be prescribed by the National Assembly.

The salaries and allowances payable to the holders of the offices so mentioned shall be a charge upon the consolidated revenue fund of the

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3. The Constitution of the Federal Republic of Nigeria 1979 op.cit Section 135.

4. Ibid

5. Sections 135 (5) and 173 (4) of the 1979 Constitution op.cit

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federation[6].

Since the people cannot directly determine or fix the salaries of public officials, the legislators as representatives of the people are expected to determine the salaries of the Executive having taken the state of economy of the nation into consideration. This provision is made in order to ensure proper accountability and responsibility in the disbursement of public fund.

It is against this background that we shall analyse the legislative control over appointments and remuneration of political executives. How has the Legislature faired in this constitutional responsibility? Were they subjected to extra legislative interference in this matter? These questions shall be addressed in this chapter.

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Control Over Appointments

The issue that dominated public attention soon after the inauguration of President Shehu Shagari on 1st October, 1979 was the appointments of ministers and special advisers. This was so in view of the rumour of intense lobbying going on within and outside the NPN party hierarchy. However, it was not until sixteen days after the inauguration (17th October) that the list of candidates was submitted to the Senate. The public expectation was that the President would name his cabinet immediately after his swearing-in ceremony. What in fact could be responsible for the delay of the President in choosing his cabinet? The issue of intense lobbying for ministerial appointments by powerful interest groups within the party was pronounced. The party chieftains thus assumed a veto

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6. Ibid. Section 78

power in the nomination process which they had no legitimate claim to.[7] Another most probable factor for the President's delay in selecting his cabinet is attributable to his 'generous' invitation to the four other parties to join the NPN in forming a broad-based national government of reconciliation. It is logical to expect that the President would give them time to ponder on his invitation and make up their minds.

The GNPP was one of the first parties to decline the invitation on the ground that it was against the spirit of the presidential system of government to have all the parties forming a government. This reasoning is quite apt as it was further underscored by A. Okolo who said that 'it is a height of presidential unorthodoxy to invite all the political parties to join his national government'[8].

The UPN on the other hand negotiated for an almost impossible thing. The party agreed to participate in the national government on condition that the NPN would implement all its four cardinal programmes as enshrined in its manifesto[9] nationwide.

The PRP on its part accepted the presidential invitation provided that all the other three parties would participate. When it was discovered that only the NPP agreed to participate, the PRP rejected the President's invitation. It is needless to point out here that the NPP's decision to participate in the NPN national government was informed by the 'accord' which the party entered into

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[7] See Daily Times (Lagos) Thursday November 22, 1979 P.2

[8]. Amechi Okolo, 'On the issue of Political Appointments' Daily Times (Lagos) Friday, 23 November 1979, p. 7.

[9] The Four cardinal programmes includes: (a) Free education at all levels for all, with effect from October 1, 1979. (b) Integrated rural development which is aimed at boosting food production. (c) Provision of free health facilities for all citizens of the country. (d) Full and gainful employment for all.

with the NPN. When it became glaring to the NPN that only the NPP would agree to join the Party to form a broad-based government, it got itself settled on how to share the offices. The NPN adopted a system of zoning for its ministerial appointments in which portfolios were shared among zones whose variable compositions were determined by ethnic and geographical factors. The zoning or federal character as it was being called is a combination of 'proportional and quota distribution of posts and other material advantages using population and extent of party support as variables[10]. The NPP which had lesser number of offices to fill seemed to have its National Executive Committee (NEC) in the process of selection of its ministerial team.

The Presentation of the Presidential Nominees and Legislative Response

The President presented the long awaited list of his ministerial nominees through the Senate leader Dr. Sola Saraki - it was described as a 'bald list'[11] of thirty-eight names with no memorandum, no curricula vitae and no other kind of information (except the states of origin of the nominees) to guide the Senate[12]. For instance one would expect such information to contain the background of the nominees, their character, level of competence or general suitability and whether they possessed the qualifications required by the

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10. L. Adamolekun, 'Nigeria's Executive Presidential System: A Critique'. Public Service lectures Series (Lagos, Federal Civil Service 1982-83) P.83.

11 See Jaja Wachukwu, National assembly (Senate) Debates Vol. 159.

12. Ibid.

constitution.[13] As A.A. Ali puts it, if there is nothing to show whether these people are Nigerians, whether they have performed any service to the public or to the private sector or whether they are even of age to be elected into any of the Houses[14].

In spite of these lapses on the part of the President, the Senate leader still urged his colleagues to accept the list. But the Senate commendably stood its ground by insisting that the President should submit all the details necessary to guide them in their selection. The Senate could not afford to make mistakes as appointment of the wrong people could prove "detrimental to the greatness and to the progress, stability, unity and peaceful co- existence of the people of this country"[15].

The fall of the First Republic could be traceable to this kind of thing where heavy responsibilities of affairs of the country were entrusted to men who could not perform.

It was therefore necessary for Senate, if it wanted to prove itself honourable, to proceed on the acceptable standard of procedures and principles and to inform itself adequately so as to establish a pattern for the future. It is for this reason that J.A.O. Odebiyi cautioned his colleagues:

> We want to set the pattern for the selection of the ministers for all time and, therefore, any mistake we make will amount to setting a dangerous precedent, which can never be corrected[16].

This warning was quite timely for it would be tantamount to a betrayal of

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[13] The constitutional requirements for ministerial position is the same as for a member of the House of Representatives.

[14]. National Assembly (Senate) debates Vol. 164.

[15]. Senator Uba Ahmed Ibid Vol. 176

[16]. J.A.O Odebiyi Ibid Vol. 158.

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duty for the Senate to have approved the list in bald form in which it was presented to it. The President was blameable for not doing his home-work very well even though the list was so delayed and thus taking the Senate for granted.

However, the Senate leader pleaded with the Senate not to throw out the list but that a kind of compromise be reached. The Senate also refused to treat the matter under the plenary session of the House as demanded. The matter was thus treated in a committee of the whole House. The implication is that the committee of the whole House, although consisting of the entire members of Senate could not, of course, confirm. This function could only be exercised by formal resolution and by the Constitution this function could not be delegated to the committee[17].

In the committee of the whole House, the President of the Senate is expected to leave his chair by moving to the lower one, the mace which is the symbol would also be put under the table instead of on top of it. The Senate President would now be addressed as Chairman like any other Chairman of any Senate committee.

It is also important to note that in the committee of the whole Senate, the public and press would not be in attendance. The nominees could however, be invited for personal interview. The exclusion of the public and press looks justifiable because a ministerial nominee is supposed to remain a private person until he is appointed a minister and as such his private life is supposed not to be subjected to a needless public discussion when there is no assurance that he will become a minister[18].

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17. See section 58 (4) of 1979 constitution op.cit By this act, the findings of the committee of the whole House must also be reported back to the Senate when in plenary session for adoption and formal resolution.

18. B.O. Nwabueze, Nigeria's Presidential Constitution 1979-1983 op.cit. P. 63.

From what has been discussed so far, what the Senate really requires of a nominee is that he must be of good moral character. He must discharge his civic responsibilities such as prompt payment of tax. A nominee must possess a very sound educational background necessary to cope with ministerial assignments. In addition, a nominee is expected to be a person whose known acts and utterances conform to the fundamental objectives and principles enshrined in the constitution such as social justice, equality, national unity, eradication of tribalism and abuse of power[19]. Furthermore a nominee must not be someone whose "behaviour does not accord with our national ethic of Discipline, Self-reliance and Patriotism"[20].

It is upon this background criteria that the Senate set itself at screening the President's nominees on the 18th october, 1979, having established the necessary principles and procedures. By this date only thirteen candidates had their documents completed, out of which twelve of them scaled through and one was rejected. By the next day additional eight were confirmed and two rejected. The Senate had to rush and make a return to the President on that day because it was due to go on recess for twenty-three days as from the 19th October. It is necessary to rush this if it fails to make any return for twenty-one days all the nominees will be deemed under the law to have been confirmed[21]. A return made to the President indicated that twenty nominees were confirmed, fifteen as not confirmed (either because their papers were not ready or because they were not available for interview) and three rejected. By the next day 20th October, the duly confirmed nominees were appointed and sworn-in by the President.

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19. Ibid P. 64

20. Olu Onagoruwa, Daily Times (Lagos) November 4th 1979 P. 17.

21. Section 135 (6) of 1979 Constitution op.cit

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It is interesting to know at this juncture why the Senate decided to reject three names. What in fact were their offences? Two of them present interesting case studies. First, let us consider that of Chief Richard Osuolale Akinjide, perhaps the more controversial of the two. When Chief R.O. Akinjide was presented before the Senate as a nominee for ministerial position, there was a lot of opposition especially from the UPN and a score of NPP senators. Not only was Richard Akinjide opposed to the UPN as a party, he contested against its gubernatorial candidate (Chief Bola Ige) and lost in Oyo State. He was also the counsel to Alhaji Shehu Shagari against Chief Obafemi Awolowo in a celebrated legal battle of what constitutes 2/3 of 19 states of which Chief Obafemi Awolowo lost to Alhaji Shehu Shagari. The fear was that the UPN Senators were still nursing the wound inflicted on the party as a result of the Presidential election. The allegation made against Chief R.O. Akinjide by Senator J.A.O Odebiyi was that Chief Akinjide as a federal Minister of Education in the First Republic did not conduct himself properly. He said:

> At that time his behaviour was below the normal standard expected of somebody occupying a very high office. For that reason if he was considered again, his activities which he might have learnt then would have been more than perfected fourteen years after. This is why we are saying he ought not be considered at all for public appointment.[22]

In addition to this, there was another revelation that Chief R.O. Akinjide as a Minister of Education demanded and took bribe from Jammal Engineering Construction Company. He was also said to have lodged N23,000 in his account in one day as Minister of Education[23]. In spite of the 'accord' the NPP Senators accused him of tribalism, that as a minister of Education most

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[22] National Assembly (Senate) Debates Vol. 991

[23]. New Nigerian (Kaduna), 14th December 1979 P.1

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scholarships awards went to the Yorubas.

It is interesting to note that when Chief Richard Akinjide's paper was re-submitted the NPN only used his impressive curriculum vitae to convince the Senate after intensive lobbying. There is no doubt the fact that Richard Akinjide was a brilliant and successful legal practitioner. He was a Pro-Chancellor of the University of Jos, and one time National President of Nigerian Bar Association. As a member of the CDC and CA, Chief R.O. Akinjide was one of the founding fathers of the 1979 constitution.

A possible argument which can be advanced for Richard Akinjide is that, if he is unsuitable as Minister, this revelation should have been made earlier when he was appointed to the CDC, elected to the CA and finally contested the gubernatorial elections in Oyo state under the umbrella of the NPN. In addition he was also found qualified under the electoral law. As for the allegation of tribalism against him, Chief Akinjide was a member of the NCNC (the party dominated by the Igbo) in the First Republic[24]. A tribalist would not have willingly joined a political party such as NCNC which was, as said earlier, primarily funded and dominated by the Igbo elites. In the Second Republic, Richard Akinjide also joined the NPN whose founding fathers were Hausa/Fulani elites of Northern Nigeria. If Chief Richard Akinjide was a tribalist perhaps the Unity Party of Nigeria would have been his best bet. Hence on these scores he could be absolved of this allegation.

By the time Chief Richard Akinjide's name was re-submitted to the Senate, the executive had lobbied the NPP Senators who were opposed to Richard Akinjide's candidature. This may also be in line with the 'accord' between the two

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[24]. For similar argument see Senator D.O. Dafinone National Assembly (Senate) Debates op.cit. Vol. 985

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parties. The NPP readily agreed to help Akinjide's case because of Paul Unongo's case which was similar to that of Akinjide. When it became apparent that Akinjide's candidature would be confirmed, the UPN and GNPP Senators staged a walk-out from the floor of Senate in protest. Thus Richard Akinjide's nomination was confirmed in the absence of opposition as UPN senators had left.[25] The absence of Unity Party of Nigeria and Great Nigeria People's party senators from the Senate helped Mr. Paul Iyopuu Unongo's case of renomination. It would be noted that Paul Unongo's nomination had been rejected by the Senate on the ground that he borrowed about N8 million from a Bank, hence he was declared bankrupt. He had been advised with regard to how he would liquidate the debt rather than being a minister as the office would make him susceptible to temptations.

The role the Nigeria People's Party played in getting Chief Richard Akinjide's candidacy pass through the Senate was compensated somehow in Paul Unongo's eventual success. As Dr. Sola Saraki assured the NPP legislators:

> Once we get the quorum, I can assure you, we on the National party of Nigeria side would vote one hundred per cent for Paul Unongo, so that he will become a minister of government[26].

Hence as soon as quorum was formed, the Senate moved a motion for Paul Unongo's reconsideration. Of the forty-one senators present, only twenty-eight voted in his favour, six voted against him with seven abstentions. It is interesting to note that of the six who voted against him, three of them were from Benue State the very home state of Mr. Paul Unongo. These people were

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[25] It was only Senator Adegoke that waited to vote for Akinjide. He was understandably reprimanded by the UPN Party hierarchy.

[26]. National Assembly Debates Vol. 985

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controlled the government namely Anambra, Imo and Plateau. The other two ministerial positions went to Mr. Paul Unongo and Professor Ishaya Audu who were secretary-General and Vice-Presidential candidate of NPP respectively before their appointments. Mr. Paul Unongo and Professor Ishaya Audu hail from Benue and Kaduna States respectively. The two women ministers namely Mrs Janet Akinrinade and Mrs Ebun Oyagbola are from the western zone of Oyo and Ogun states respectively. While Mrs. Janet Akinrinade was of non-cabinet, Mrs. Ebun Oyagbola had a cabinet position.

In summary, the Northern zone comprising 10 states had 23 ministerial positions (13 cabinet and 10 non-cabinet). The Eastern zone of two states had 4 ministerial positions all cabinet-rank, the Western zone with 8 ministerial positions had 4 cabinet and 4 non-cabinet rank. The Central zone which comprises the minority states in Southern Nigeria had 7 ministerial positions 3 cabinet and 4 non-cabinet rank.[28]

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Table 9
Selection of Cabinet Members

Ministry	Minister	Zone	Party	State	Rank
Mines and Power	Alh. Mohammed I. Hassan	North	NPN	Bauchi	C
Housing and Environment	Alh. Ahmed Musa	North	NPN	Bauchi	N
Commerce	Mr. Isaac Shaahu	North	NPN	Benue	C
Special-Duties	Mr. Paul Unongo	North	NPP	Benue	N
Steel	(resigned				

[28] For details See Alex E. Gboyega 'Choosing a new cabinet' in O. Oyediran (ed.) The Nigerian 1979 Elections (London, Macmillan Press 1981) PP. 162 - 163.

Development	Sept. 1990)				
External Affairs	Dr. Abubakar Usman (deceased) Dr. E. Y. Atanu (substitute)	North	NPN	Benue	N
Industries	Alh. Adamu Ciroma	North	NPN	Borno	C
Works	Alh. Asheik Jarma	North	NPN	Borno	N
Defence	Prof. Iya Abubakar	North	NPN	Gongola	C
Employment Labour and Productivity	Dr. T. Michaulum	North	NPN	Gongola	N
Finance	Alh. Ali Baba	North	NPN	Gongola	N
External Affairs	Prof. Ishaya Audu	North	NPP	Kaduna	C
Transport	Alh. Umoru A. Dikko	North	NPN	Kaduna	C
Social Devt., Youth, Sports and Culture	Alhaji I. A. Dan Musa	North	NPN	Kaduna	N
	Alh. Garba Wushishi	North	NPN	Kaduna	N
Internal Affairs	Alh. Bello Maitama Yusuf	North	NPN	Kano	C
Internal Affairs	Alh. Bilyamin Usman	North	NPN	Kano	N
Communi-cations	Alh. Akanbi Oniyangi	North	NPN	Kwara	C
Special Duties	Maman Ali Makele (July '80)	North	NPN	Kwara	N
Water Resources	Alh. Ndagi Mamudu	North	NPN	Niger	C
FCDA	Mr. Jatau Kadiya	North	NPN	Plateau	C

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Aviation	Mr. Samuel Mayufai	North	NPN	Plateau	C
Agriculture	Alh. Ibrahim Gusau	North	NPN	Sokoto	C
Commerce	Alh. A. Nahuce	North	NPN	Sokoto	C
Health	Mr. D. C. Ugwu	East	NPN	Anambra	C
SDYSC	Mr. P. C. Amadike	East	NPP	Anambra	C
Science & Technology	Dr. Sylvester Ugoh	East	NPP	Imo	C
Education	Dr. I. C. Madubuike	East	NPP	Imo	C
Housing & Environment	Dr. Wahab Dosumu	West	NPN	Lagos	N
Finance	Mr. Ademola Thomas	West	NPP	Lagos	N
National Planning	Mrs. Ebun Oyagbola	West	NPN	Ogun	C
Agriculture	Chief Olu Awotesu	West	NPN	Ogun	N
ELP	Mr. S. A. Ogedengbe	West	NPN	Ondo	C
Education	Mr. C. A. Bamgboye	West	NPN	Ondo	N
Justice and Attorney-	Chief R. Akinjide	West	NPN	Oyo	C
Internal Affairs	Mrs. Janet Akinrinade	West	NPP	Oyo	N
Police Affairs	Mr. E. C. Osamor	Central	NPN	Bendel	C
External Affairs	Chief P. O. Bolokor	Central	NPN	Bendel	N

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Finance	Prof. S. M. Essang	Central	NPN	Cross/R	C
Communication	Chief E. Okoi Obuli	Central	NPP	Cross/R	N
Works	Mr. Victor Masi	Central	NPN	Rivers	C
Industries	Dr. I. Igbani	Central	NPN	Rivers	N
Agriculture	Mr. Emmanuel Aguma	Central	NPP	Rivers	N

KEY

Northern Zone 23

Eastern Zone 4

Western Zone 8

Central Zone 7

Total 42

N = Non-Cabinet Rank

C = Cabinet Rank

FCDA = Federal Capital Development Authority

ELP = Employment Labour and Productivity

SDYSC = Social Development, Youth, Sports and Culture.

Source: A. E. Gboyega 'choosing a new cabinet' in O. Oyediran (ed.) The Nigerian 1979 Elections op. cit. pp. 160-161.

It is instructive to note that the President presented yet another set of nominees in 1982 for Senate confirmation. How in fact did Senate react to this? What was really responsible for the President's decision to propose other people for ministerial appointment? The study will address these questions shortly.

The 1982 Ministerial Nominees and Legislative Reaction

Background:

By 1982, the 42 member cabinet of Alhaji Shehu Shagari had been reduced for various reasons. Some of them died and some were dropped in cabinet reshuffle.

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Furthermore, in 1982, there were indications that some Ministers wanted to contest gubernatorial elections in their states. The NPN therefore issued a release directing all its office holders especially ministers with cabinet rank to resign their appointments if they wanted to contest the primary elections for the gubernatorial race in 1983 against the incumbents in their states. A score of them who thought they were popular enough resigned thus creating vacancies at both federal and state cabinets.

It is for these reasons that the President, presented a list of thirteen names for legislative confirmation as ministers of government at the federal level. The list is as set out in the table below:

S/N	Name	State of Origin
1.	Mrs. Ewanyidirim Kesiah Asinobi	Imo
2.	Arc Baba Ibrahim Bunu	Borno
3.	Alhaji Aliyu Habu Fari	Gongola
4.	Chief Yomi Akintola	Oyo
5.	Alhaji Buba Ahmed	Plateau
6.	Alhaji Bello Mohammed Kirfi	Bauchi
7.	Mr. Audu Ogbeh	Benue
8.	Alhaji Musa Habib Jega	Sokoto
9.	Alhaji Usman Sani	Sokoto
10	Mr. Udo Idung Okon	Cross River
11.	Mr. Ken Green	Rivers
12	Hon. Mark C. Okoye	Anambra
13.	Mrs.Elizabeth Afadwana Ivase	Benue

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The Senate Reaction

The President's nominees immediately gave rise to two schools of thoughts.

One school was clearly opposed to the President's action and therefore opined that the list should be returned to him. The second school did not see anything wrong in the President's seeking confirmation for the thirteen nominees.

The argument of the first school of thought was based on the fact that the economy of the nation was in shambles. This led the president himself to propose a set of austerity measures which inevitably led to freezing all appointments in the public sector. The implication of this argument is that the president himself did not believe in what he preached. Furthermore, it was discovered that only six vacancies existed in the President's cabinet and he sought to replace the six vacant positions with thirteen appointees. Therefore the act was seen as immoral more so when no ministry had been split into two since the last confirmation was made. There was also no information to the effect that individual ministerial responsibilities had increased to warrant additional hands. It therefore called on the President to show convincing justification for this request, or prune his nominees to six or eight as opposed to thirteen nominees submitted. This school called on their colleagues irrespective of their party affliations to let them throw the list back to the President and tell him 'We cannot consider any of these nominees until these conditions are fulfilled'[29]. This school of thought was dominated by the UPN, GNPP, and the Michael Imoudu faction of the PRP senators.

The second school mostly consisted of the NPN, NPP and Aminu Kano faction of PRP senators. This group did not see any logic in the argument advanced above as there are considerable differences between public service appointments and political appointments. This group was somehow legalistic in their approach to the whole issue as it cited the constitution which granted the President the power to appoint any number of ministers as he thought were necessary for the

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[29]. See A.A. Adesanya National Assembly (Senate) Debates 2nd February 1982 Vol. 8551.

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service of the nation. For instance section 135 of the 1979 constitution which provides for the offices of ministers of government of the federation was largely cited to buttress their case. For this school, once the President conforms with section 14 (3) of the constitution which enjoins him to reflect the Federal character in his own cabinet, then the senate would be over stepping its bounds by referring to the state of the economy of the country. As A. Ebute said:

> It is only the president of the Federation that can determine the number of ministers that he wants to serve this nation. The number is not limited by any other law and it is the constitution. Mr. President that is supreme to all laws in the federation... once the senate satisfies itself that the nomination conforms with the Federal character of Nigeria, then it is not the duty of the senate to look for other extraneous matters by referring to the state of the economy. We have no alternative than to confirm or not to confirm. The president is not required to give any reason for sending nominations of ministers to the Senate[30].

With constitutional provisions cited by the second school of thought, the first school of thought could not pursue the issue any further. Their hands seemed to have been tied constitutionally. Hence the Senate had no alternative than to screen and confirm the thirteen names. However, one thing worth nothing is that with the approval of additional thirteen nominees by the Senate, the total number of ministerial appointees amounted to forty nine (49). Hence this made the cost of governance exhorbitant. However, the constitutional right of the President to appoint ministers, notwithstanding,the impression created as a result of the appointment of additional thirteen ministers was that the president was wasteful. The act. also had a propensity of creating an impression that the nation's economy was not as poor as to warrant the proclamation of austerity measure as the president did in 1980. Be that as it may, one thing to note finally is that the President did not live by the philosophy and a spirit of the

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30. Ibid Vol.8554.

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austerity measure to have 49 ministers was perhaps too much for a third world country such as Nigeria.

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Legislative Confirmation of Appointments of Commissioners in Bendel State

Apart from the Federal level, it was only in Bendel and Kaduna States that the Legislature presented some interesting case studies in the confirmation of names proposed as commissioners. However, in this section, we shall only devote our attention to Bendel State because much of the Legislative refusal of the Executive's nominees in Kaduna state has been discussed under Chapter Four.

In October 1979, a list of eleven nominees for the post of commissioners was forwarded to the Bendel State House of Assembly by the governor of the state, Professor Ambrose Folorunsho Alli. It is interesting to note that of the eleven names only two were subsequently rejected by the House.

One of the rejected candidates, Dr. Bayo Akerele from Akoko Edo Local Government had his nomination rejected on different grounds. For instance he was said to be a member of staff of the University of Benin, and therefore a civil servant. It was also argued that while Dr. Bayo Akerele was Chairman of Bendel Construction Company, the Board of the said company was found guilty by an auditing company of mismanagement, bad planning and bad tendering. Legislators tendered a lot of documents which were admitted as exhibits. This forced the Speaker to rule that if the Board was found wanting, it *ipso factor* followed that Dr. Bayo Akerele was found wanting'.[31] He was thus considered by the House as not being qualified to occupy a position of trust which his confirmation would have otherwise bestowed on him as a commissioner.

In another case, Mr. George Idodo Umeh was rejected because he was said

[31] Bendel State House of Assembly Debates Official Report issue No. 4 24/10/79 P. 26.

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Constitution [33]

The House was highly embittered over the proposed plan of the Governor to swear in Mr. Idodo Umeh. In the meantime, there was division in the House as to the validity of the proposed plan of the Governor. A motion that a delegation of the House be sent to the governor to stop the swearing-in ceremony was defeated. However a motion urging the House to set up a panel of inquiry to investigate the conduct of the Deputy Speaker who was charged with complicity in the matter was agreed to.

In spite of this agreement to conduct investigation to the matter, Honourables G.S. Jideonwo and E. Urhobo representing the NPP and NPN respectively challenged the appointment of Mr. Umeh in court of law. In the case the governor, the speaker and his deputy, the clerk of the House of Assembly and Mr. George Idodo Umeh were defendants. In the judgement, the appointment of Mr. G.I. Umeh was declared null and void and of no effect.[34]

It is interesting to note that two days after the case has been decided in court, the governor re-presented Mr. Umeh for confirmation. The debates that ensued thereafter showed clearly that the Legislators had deviated from defending their corporate interest as the issue was turned to a contest between the UPN majority and NPN minority in the House. The UPN Legislators did not see anything wrong in the re-presentation of Mr. Umeh. They argued that it was only the method of his appointment that was declared defective by the court. The NPN Legislators on the other hand argued that the court had perpetually restrained Mr. Umeh from being commissioner. They (NPN legislators) also argued against the request put up by the governor that the confirmation should take effect from

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[33] op. cit

[34] .Bendel State House of Assembly Debates issue 74 13/2/87 P.3 - 10

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commissioner also covered the period of time he illegally occupied the office as declared by the court. By this act, the Judiciary and the Legislature had been seriously undermined by the Executive.

It was also discovered that candidates were screened in absentia as they were not invited to appear before the House or its committee. This was quite unlike what happened at the Federal level. It can be argued that the process of determining candidates in absentia was not fair enough as candidates were not given enough opportunity to make their case and defend themselves.

The Executive also did not include in its proposal to the House what portfolio it intended to give to the nominees. There was also no evidence that the Legislature requested for it. This omission on the part of the Executive and the Legislature makes a nonsense of the whole essence of Presidential system of government. It is expected under the Presidential system that cabinet positions will be made strictly on the basis of expert knowledge of the nominees. It is also expected that legislators would take cognisance of this in the screening exercise. Therefore there could not be any effective and objective consideration of candidates with respect to their abilities, suitability and aptitudes without a prior knowledge of what office they were to perform. Thus this act was rather parliamentary than presidential. It is a manifestation of the confusion of presidential and parliamentary systems of government.

Having analysed the appointment of ministers and commissioners let us now discuss the appointment of special advisers.

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Appointment of Special Advisers

Unlike ministerial appointments, the constitution empowered the President

to appoint special advisers without having to obtain confirmation from the Senate. However, the President cannot determine the number and allowance without prescribed law and resolution of the National Assembly.[37]

However, the constitution expects the President to know the areas where he needs specialist advice hence the National Assembly could not 'substitute its own judgement for the President's except to the extent of determining the number to be appointed'.[38]

On the 11th and 12th October, 1979, the President presented to the Senate and House of Representatives respectively ten positions of Special Advisers, one each on National Security Affairs, Economic Affairs, Information, Political Affairs, Petroleum and Energy, State Liaison, Budget Affairs, the remaining three were to serve the office of the Vice-President as Special Advisers on Political Affairs, Economic Affairs and Statutory Boards.

While the Senate for instance did not see any contestable thing in the demand of the President the only thing that worried the law makers was the Senate Leader's (Dr. Sola Saraki) pressure that the list should be approved immediately. A noticeable objection came from Hon. O. Obi (NPP) who felt that it would be tantamount to setting a bad precedent if the Senate considered the President's request without giving considerable time and thought to the request. He considered the matter as being sensitive and therefore more time would be required for such issue. He argued:

> ...the Senate has received the message of the President.
> The proper thing is for the Senate to fix discussion on this message for a date to be put in order paper, so that senators who are not here or who are not prepared for the discussion may have time to consider the matters raised. Otherwise when more serious matters like appointment of Ministers

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[37] See Section 139 (2) of 1979 Constitution op. cit.

[38] B.O. Nwabueze op. cit P.67

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> are suddenly introduced in the middle of the day, they may be rushed through without proper consideration or attention of the Honourable Senators. I suggest that the matter be deferred for a date to be set down on the order paper.[39]

This feeling cut across party affiliations as one of the NPN chieftains Chief J.S. Tarka also said:

> I find myself in difficulty not to support the order number that Senator Obi has cited. It is a question of fact and reality. I therefore suggest that whilst we have, every respect for the feelings and anxiety of the President of the Senate, to carry on with the business of the Senate, one must caution that once one has laid down a law, the law is no respecter of persons or person or even indeed of actions. I will therefore advise very seriously that you cannot eat your cake and have it....[40]

With the exception of few legislators who supported the Senate Leader almost all the Senators were of the opinion that they should not rush at taking the matter. The desire to comply with letters and rules of the constitution seemed uppermost in the minds of the legislators.

The National Assembly when it eventually considered the request of the President, did not see anything extra-ordinary in ten Special Advisers which he requested for. However, as for the request of three Special Advisers in the office of Vice-President, such a request looked unconstitutional as the constitution never assigned such to the office of the vice-president. What the President can do at best is to deploy any of them to advise the vice-president but their constitutional position would have to be retained as Special Advisers to the President.

The only issue that excited considerable interest among the legislators was the issue of remuneration and allowances attached to the positions of these

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[39] National Assembly (Senate) Debates 11th October, 1979 Vol. 47 - 48.

[40] Ibid Vols. 47 - 48

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Special Advisers. This matter was soon referred to the joint committee of both Houses. How did the National Assembly resolve the issue of remuneration of these public officials (special advisers) and others?

The Legislature and Remuneration of Public Officials

The most controversial issue handled by the National Assembly at the inception of the Presidential system, perhaps, was the fixing of remuneration for the political executives and all other public functionaries. The National Assembly under the 1979 constitution was empowered to prescribe the remuneration and allowances of the President, Vice-President, Special Advisers, Auditor-General, Federal Judges and members of statutory commissions.[41]

As said earlier, the President had earlier proposed to the National Assembly for approval of certain remuneration and fringe-benefits for special advisers he proposed to appoint. The proposal was referred to a joint committee of House of Representatives and Senate to work upon. In addition, the committee was charged with the responsibility to determine the remuneration and allowances of the President, Vice-President, Minister, Special advisers, Head of Service, Federal Judges as well as the Legislators themselves.

The committee on the 15th November, 1979 made the following recommendations for the consideration of the National Assembly.

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[41] See Sections 78(1) and 139(2)

Federal	Per Annum
President	50,000.00
Vice-President	30,000.00
President of Senate	22,000.00
Speaker	20,000.00
Ministers	16,000.00
Secretary to the Government	16,000.00
Special Advisers	16,000.00
Head of Service	16,000.00
Deputy President of Senate	18,000.00
Deputy Speaker	17,000.00
Ministers without Cabinet Bank	14,000.00
Senators	17,000.00
Members of House of Representatives	16,000.00
2. Chief Personnel Staff to the President GL. 17	12,996 - 14,260
Head, Personnel Staff to the Vice-President GL. 17	11,568 - 12,720
Leader of Senate	18,500.00
Leader, House of Representatives (plus Allowances as Chairman)	16,500.00
Party Leaders, House of Representatives	17,000.00

These recommendations were accepted by both Houses with slight modification by resolution on the same day (15th November, 1979). It is instructive to note, however, that the action of the National Assembly with

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respect to fixing the salaries of these public functionaries except that of Special Advisers by resolution is unconstitutional. This can only be done by legislation.[42] The Executive who felt slighted by the decision of the National Assembly reacted in a letter which the President wrote on 21 November, 1979 to the National Assembly. It reads:

> I have had the opportunity to read through the proceedings of the National Assembly and to confirm reports that the assembly had considered motions on the emoluments for various Public Officers. After a study of the outcome of the deliberations of the Assembly, I feel constrained to let you know how concerned I am about the manner this subject has been handled.
>
> The constitution of the Federal Republic generally vests in the National Assembly the power to authorise expenditure from the consolidated revenue Fund of the Federation and under section 78 the Assembly may prescribe the salaries and allowances to be attached to certain offices. In exercising this powers sight should however, not be lost of the provisions of section 75 which places on the President the responsibility for preparing and presenting before the Assembly the estimates of the revenue and expenditure of the Federation. In this light, it is my earnest opinion that for the Legislative and the Executive arms of the Government to exercise the functions prescribed for them in a complementary manner both arms have to act in consultation and avoid the temptation to take action in isolation of each other as seemed to have happened in the recent steps taken by the Assembly....[43]

The President who firmly believed that the action of the Legislators was unconstitutional sought to make a public issue of the case, as he simultaneously released the same letter to the Press. The President also cautioned the Legislators not to create the impression that they can on their own volition seek to evade the rigours of fiscal discipline. The proposed scales of remuneration of these political functionaries would create a gap between them and other public officers in the public and private sectors such that it would give rise to industrial action. He therefore submitted that the salaries and allowances of

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[42] Section 277 (1).

[43] National Assembly (Senate) Debates Vols. 617- 618.

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these political functionaries should be balanced with the existing salaries of officers in the public service.

It is important to note that the letter from the President did not make alternative proposals it merely stated its intention to do so later. The National Assembly received the action of the President with dismay and on the 27th of November, 1979 called a joint meeting of the two chambers to discuss the press release of the President. The National Assembly viewed the action of the President as unbecoming of the President of the Federal Republic of Nigeria. He was seen as "inciting the public and press against the National Assembly"[44] in order to attract cheap and unnecessary publicity. Some Legislators saw the issue beyond the question at hand, the action of the President was seen as an attempt by the Executive to subjugate the Legislature.[45]

By this the National Assembly viewed that the President wanted to "blackmail" it in order to create executive dictatorship, thereby subverting the separation of powers which is one of the essential ingredients of the Presidential system. It also felt that its image, credibility and independence as supreme Legislature of the country was being threatened. It was not surprising therefore to see the National Assembly after the end of its debate on the issue restraining the President in a resolution.

It reads:

(1) That in view of the President's emphasis on fiscal discipline and in order to enable the National Assembly to act judiciously, the President be requested to appraise the National Assembly of a detailed statement

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[44] Hon. Abubakar Triggar Ibid. Vol. 716.

[45] See Senators Sabo Bakin Zuwo and J.O.A. Odebiyi Vol. 717 and 723 respectively.

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of the state of the economy of the Nation as from the 1st of October, 1979 to enable the National Assembly determine what is prudent remuneration for public officers in the circumstances.

(2) That the President be informed that the National Assembly has not yet reached any final decision on remunerations payable to public officers contrary to the impressions being created; and that when such a decision is reached, a formal communication will be made to the President.

(3) That while the National Assembly has no objections to receiving recommendations and advice on the subject from either the President or the National Economic Council, it does not consider the press the most appropriate channel of communication between it and these bodies.

(4) That the fixing of remuneration for public officers is an exclusive responsibility of the National Assembly.[46]

The National Assembly no doubt, had a point against the President for releasing the letter meant for the consumption of the National Assembly to the Press. It is logical to think that the action was a calculated attempt to cause public opprobrium against the Legislators as noted earlier. However, on the other hand, it would not be correct for the National Assembly to arrogate to itself alone the exclusive responsibility of fixing the remunerations of public officers. Under the constitution of 1979 the President is vested with the responsibility for policy

[46] Ibid. Vols. 728 - 29.

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with regards to matters within the legislative competence of the National Assembly.[47] Hence this constitutional provision may be construed to mean that the Executive (President) is supposed to be one of the main organs of initiation of legislation. Hence in terms of fixing the remunerations of public functionaries both arms of government i.e the Executive and the Legislature, are supposed to function in a complementary manner.

Be that as it may, it thus, seemed that the Executive had achieved its objective as the public started condemning the legislators for fixing fat salaries for themselves and other political functionaries. The public thus blamed the Legislature for insensitivity to the common-man's problems. However we must quickly add that both the Executive and the public were ignorant of the basic requirements and involvements of the Presidential system of government. For instance there was the tendency on their part to equate the enormity of the work of the Legislature under presidential system with that of parliamentary system of government. Whereas under parliamentary system, parliamentarians work was part-time but legislators under the Second Republic were meant to function on full-time basis. In other words before one could condemn the legislators for fixing that much for themselves and others, there is the need to have some ideas of comparability in the functions of the Legislature under the Parliamentary and Presidential constitutions. It is viewed that legislators as full-time people, needed to be properly compensated.

It is rather unfortunate that the public debates on the remunerations of public functionaries lost sight of this important consideration. In the face of uncomplimentary reactions from the public, the National Assembly decided to

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[47] Sections 51 (1) and 136 (2) of the 1979 Constitution op. cit.

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suspend action on its proposals in this regard. In the interim, a salary advance of N1,000.00 a month was approved for each legislator. The National assembly further mandated the joint committee set up on remuneration to conduct an inquiry into salaries and allowances in the private and public sectors. This was meant to be the basis for determining the remunerations of the political functionaries. As a result of the inquiry the National Assembly came out with N19,830.00 p.a. for the Senate President and the Speaker; N17,180 p.a for the Deputy President and Deputy Speaker, Senate Leader, Leader of House of Representatives and Party Leader in each House. Each ordinary member was to earn N15,200 p.a.[48]

On the 22nd July, 1980, the President of the Federal Republic of Nigeria called a meeting of political party leaders to determine the remunerations of public officers. It was agreed at the meeting that N30,000p.a. should be the salary of the President, N21,000 p.a for the Vice-President, N17,000 p.a. for the Senate President and Speaker of the Representatives, N15,000 p.a for the Deputy Senate President and Deputy Speaker, N16,000 p.a each for ministers with cabinet rank and members of National Assembly were to earn N12,000.00 each p.a.

It must be restated as earlier noted, that the idea of bringing Party Leaders in a matter of fixing remuneration was rather unconstitutional. It is against the spirit of Presidentialism. This again confirms the fact that the operators of Nigeria's Second Republic ran the country as if the nation was operating a Parliamentary system of government. This basic confusion was responsible for the summoning of Party Leaders to determine the salaries and allowances of these political functionaries. The President seemed to be oblivious of the fact that it is the constitution that is supreme under the Presidential

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[48] National Assembly (Senate) Debates 10th June, 1980 Vols. 3398 - 3403.

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system as opposed to the supremacy of the party under Westminster democracy. As noted earlier, the issue of fixing of salaries under the Second Republic was a constitutional matter between the Executive and the Legislature, each operating in a complementary manner. The way the National Assembly was played out of the issue of fixing of salaries was rather unfortunate and the inability of the Legislators to stand their ground also border on a bad precedent. Here the National Assembly had to rubber-stamp a decision that was unconstitutionally arrived at this act to say the least did not give credit to the National Assembly the supposedly supreme Legislative body of the country.

Another area worth of attention is the issue of appointment of Presidential Liaison Officers (PLO) in all the states of the Federation. What really informed this appointment and what were the peoples' reaction to it? We shall devote the rest of this chapter to answering this question.

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The Appointment of Presidential Liaison Officers (PLO)

The appointment of resident Presidential Liaison Officers in each of the states was perhaps the earliest public appointment to be made by the president. Incidentally it was this appointment also that provoked perhaps 'the greatest controversy in the country'.[49] The controversy had centred around the administrative justification and the constitutionality of the appointments. The President justified the appoint of PLOs on the ground that they were needed to serve as a link between the people and the President. As the President said *inter alia*

> ....to fulfill the promises to the electorates the President needs another body of officials to give clear direction of policy. These types of officials are persons who understand the importance of the

[49] B.O. Nwabueze Presidential Constitution op.cit P. 253.

President's commitment to the people.[50]

The Federal Government under President Shehu Shagari went all out to convince the legislators who found it difficult to recognise them and the public at large, that the role of PLOs is to coordinate the activities of the Federal Government in the States. They were meant to inject speed into the President's programmes in the states. The functions of these officials according to the President can be briefly summarised as follows:

(a) Co-ordination of all activities of the Federal Government Ministries and Departments in the States, through which process the Federal Government would easily discharge its responsibilities under the constitution.

(b) Acting as a forum for exchange of opinion and co- operation among Federal officials heading various field units of the Federal Government Ministries/Departments and parastatals.

(c) Monitoring the progress of Federal projects and sending such reports direct to the President through the Secretary to the Government of the Federation.

(d) Effecting the desired publicity on Federal Government programmes in the states in cooperation with state publicity media, thereby creating awareness of Federal efforts in the states;

(e) Acting as conduit through which State/Ministries/Departments may reach their counterparts in Lagos for understanding and co-operation;

(f) Helping to draw Federal Government attention to State Government problems in the areas of high priority interest to the State Government, which may not properly be appreciated at Federal level: and

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[50] Ibid.

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(g) Act as a conduit between the State Governors/Government/ functionaries on the one hand, and the Federal Government and Federal projects, on the other hand, in the State, and only when requested by the State.[51]

Though lofty, these objectives and functions could not be supported by the constitution. For the National Assembly to have supported the appointments would mean that such appointments have constitutional backing. Furthermore it seems that these functions can be performed comfortably by the civil service or the ministries responsible for the projects concerned. It is because the constitution recognises the imperative need for superintendence at a political level of the administration of government services that ministerial appointments are recognised. For this, there is bound to be overlap between the roles of ministers and the PLOs.

Given the competitive nature of politics in the Second Republic, the most probable reason for the appointment of PLOs would be that the President wanted to use these officers to counterbalance the advantage of proximity and intimacy enjoyed by the state governors in the midst of the people. The President having been psychologically removed from the people wanted a kind of arrangement whereby his presence would be felt by the people at all times. This was necessary in order to put up close competition with the state governors.

The use of PLOs may also be conceived as a political strategy to keep watch over the activities of the State Governments. The matter was even made worse when most of them contested gubernatorial elections on the ticket of NPN and lost to the incumbents. These was the feeling that most of them (PLOs) still nurse Governorship ambitions in their respective states hence the decision by almost all the State Governments to keep them at arms-length. For instance the

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[51] Ibid.

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non-NPN State Governments made it a policy not to deal with PLOs officially. The Kano State Government issued an official circular directing its public functionaries not to have anything to do with the PLO in the state. It will be recalled that the Kano State House of Assembly included in the allegations made against the Deputy Governor for his impeachment the fact that he solicited assistance from the PLO attached to Kano state. Similarly a traditional ruler was issued a query by the Kano State government to show why he should not be disciplined for accepting membership of a relief committee set up by the PLO.[52]

In Bendel state,the hostility of the state towards the PLO took a different turn. The Bendel state government charged the PLO and his agents to a court for trespassing on its property at Benin city, which was being prepared for the PLO as official quarters by the Federal Government. The outcome of the case was in favour of the State Government as the court declared that the PLO 'though useful to the President of the Federal Republic of Nigeria has no constitutional recognition'.[53]

It must be noted, however, that the 1979 constitution did not empower the President to appoint other than Ministers any other category of executive functionaries outside the civil service. As B.O. Nwabueze noted; the office of Special adviser is certainly not required by the compelling necessity that makes the office of Minister imperative in the government of a modern state'.[54] In fact it took a considerable length of time before Chief Jerome Udoji could persuade his colleagues in the Constituent Assembly to include the office of Special Advisers in the Constitution. In fact the inclusion was subject to the condition

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[52] See *Inter alia* National Concord (Lagos) 26th October, 1981 and Nwabueze op.cit P. 83.

[53] Att. Gen., Bendel State Vs Omonuwa (1982) 3 NCLR 472 p.476

[54] Ibid. Nwabueze P. 256.

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that the number of special advisers, their remuneration and allowances would be prescribed by law.

Conversely there was no provision for the office of PLOs. It was for this reason the National Assembly rejected the President's nominees. But it is interesting to note that the President in spite of the National Assembly's refusal went ahead to create the office in each state. The President thus continued to pay their salaries from his security vote. This amounted to abuse of office. It is little wonder, to discover that a good number of the executives that were apprehended by the Military Tribunal set up by the Buhari regime, prosecuted them through the unauthorised way with which they made use of their security votes.

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Conclusion

From the preceding discussions, there is no doubt that the legislators in the Second Republic actually scrutinised the Executive nominees for Ministerial, Commissionership, and other appointments as required by the Constitution. It was discovered that most objections raised by the Legislators against the Executive nominees had to do with moral problems such as the level of integrity, uprightness etc, of the individuals concerned. We do not count this against the Legislature because an examination of the past of a potential public office holder is important for the image of the regime. However, it is disheartening on the other hand to notice that none of the criteria set up by the legislators was based on professional and academic competence of the nominees. Most of the appointments made were based on party patronage, loyalty and membership. In fact the way and manner the NPN and NPP shared the ministerial and other appointments after the 'accord' on the strength of their respective parties

regardless of other outside talents further underscores this point. This development is at variance with the principle and spirit of Presidentialism that tends to give preference to ability rather than party preference. This, again is a manifestation of confusion of Westminster model with presidential democracy by the operators of the Second Republic.

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CHAPTER SIX
LEGISLATIVE CONTRL OVER FINANCIAL MATTERS

Introduction

The Legislature is very crucial in the management and control of public funds. This is because representative theory sees all public funds as emanating from the people. It follows, therefore, that the Legislative branch as accredited representatives of the people must control the generation and disbursement of these funds i.e. public revenue and expenditure.

It is for this reason that financial matters, particularly the scrutiny of the budget form a special category among the various items of legislative business. This mainly reflects the historical evolution of the role of parliament in controlling the public funds which hitherto was the function of the monarch. In this modern time, the law relating to public funds is frequently regarded as a subsidiary aspect of constitution law, and there is a tendency to loose sight of the fact that, in many senses, Constitutional law derives from it. In the history of parliaments the powers to be won from the Executive branch were powers over finance and was around this that modern constitutional system gradually took shape[1]. In other words the victory of the Legislature over the Executive has since established the cardinal rule that any charge upon public revenue or public funds must be approved by the Legislature[2].

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1. Reference Compendium, vol. II, Documents prepared by Inter-Parliamentary Union (Aldershot, Goner Publishing Company Ltd., 1989) p. 1049.

2. For details see inter alia Paul Einzig, The Control of the Purse (London, Secker and Warbug, 1959) pp. 18-70 and David Coombes et. al. (eds.) The Power of the Purse; The Role of European Parliaments in Budgetary Decisions (London, George Allen and Union Ltd., 1976).>

This cardinal rule became codified to form part of the constitution in Nigeria in conformity with the Westminster model which Nigeria adopted in the First Republic[3]. This situation did not change, either, in the Second Republic as democratic/legislative principle all over the world recognises the right of the Legislature to control public finance[4].

The purpose of this chapter is to examine the general pattern of legislative control over (the) public revenue and expenditure. This will necessarily involve discussions on the budgetary matters. We shall also look at the potency or otherwise of the in-built mechanisms of the executive to check mis-use of public funds. Furthermore, the chapter will discuss the role of the Audit and Public Account Committees (PAC). Finally, the study will analyse the constraints of the Legislature in its bid to control public finance. Our conclusion which shall be based on our findings will further underscore our earlier propositions and objectives of this study.

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The Legislature and Control of Budget: Theory and Practice

It will, perhaps, serve a useful purpose to state from the onset that of the formulation of the Executive expenditure in Nigeria is of two dimensions namely the long-term planning otherwise known as Development Plan and the annual budgeting. The former refers to the periodic development plans centrally drawn

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3. Section 129(3) of the 1963 Republican Constitution of Nigeria. op. cit.

4. Section 75(1) of the 1979 Constitution op. cit.

up for the entire Federation[5]. The total public investment expenditures contained in the Development Plan are meant to be broken down into annual component hence the link between the Development Plans and annual budget. The long-term plan is meant to provide the broad frame- work within which the annual budget draws its inspiration. In other words the long-term plan is the basis for the annual budget. What the annual budget does is to enable the country realise the goals of the Development Plan.

However, for the purpose of this study we shall focus our attention on the budget as stated earlier. The budget here refers to an estimate of the total financial needs of an organisation and the total resources required to cover them. In other words, it is an estimated statement of public expenditure and income over a given period. It is a process of planning and of controlling the operations as far as finance is concerned. It is one of the major processes through which a government seeks to allocate resources rationally both within the public sector and between the private and public sectors[6]. It is an anticipated financial plan of the activities of the executive and what it intends to implement in the fiscal year. It is a statement of expected income and revenue as well as of proposed recurrent and capital expenditures.

As a collection of financial data, budget normally allows expenditure to be classified into various Heads. It enables the estimated total income of a country to be compared with the projected total expenditures. Thus affording the opportunity to assess the financial strength or otherwise of the country. It is at this stage that the Legislators will be able to determine what amount they

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5. See O. Teriba and O. K. Oji, 'Control and Management of Central Government Expenditure in Nigeria' Quarterly Journal of Administration Vol. VII, 3, April, 1973 p. 318.

6. Ibid. p. 318.

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would approve for the services of the government. Such occasions as when the budget is presented to the House afford the Legislators the opportunity to debate and discuss the policies of the Executive for which funds are being provided. The financial and economic conditions of the state are expected to be discussed . The estimates and the review of executive performance in the previous year often form the basis for such discussion.

The estimates would be referred to the Committee on Supplies for close scrutiny and recommendation of the whole House. It is this committee of the whole House that could pass a bill authorising the expenditure under each Head. The Legislators are expected to attend to details of Estimates. They are meant to pre-audit the various proposals under each Head with 'a view to modifying them if need be'[7].This period also, in addition, provides the Legislators and individuals the opportunity to criticise, opine and comment on any aspect of government's policy no matter how remotely related to the Estimates.

Finally after the third reading of the Estimates in the House, the Legislators are supposed to pass a resolution to authorise expenditure under all Heads hence the Appropriation Bill. On the other hand taxes, and other revenue-yielding resolutions are meant to be incorporated in the Annual Financial Bill. These Bills on legislative approval thus become Annual Appropriation Act and Finance Act. While the Appropriation Act 'authorises spending of funds from the consolidated Revenue Fund for recurrent expenditures from Development Fund for Capital expenditures as covered by the Act, the Finance Act authorises the raising of funds needed from taxes and loans as specified by the Finance Act'[8].In Nigeria's Second Republic the general pattern was that the days allotted for

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7. Ibid. p. 332.

8. See 1958 Finance Act.

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debates on the estimates were usually too short in most cases three or four days as against seven days specified by the standing order. The Legislatures were often rushed at considering the Executive's proposals. The argument of the Executive has always been premised on the need for early approval so that it could discharge its responsibilities to the people without hinderance. This phenomenon of inadequate debate on the part of the Legislature over Executive votes has been demonstrated in the contribution of the minority leader of Bendel House of Assembly. He said:

> I think all the sixty of us should be ashamed that we were elected here, to do our duty and when we come here, we rubber stamp Bills and go home ...[9]

The situation was such that the legislators were not always able to make substantial impact in form of amendments to the Executive estimates. This is quite unlike the situation in Britain where government lays annually before the Parliament estimates of expenditure and any member could move an amendment to reduce the amount of vote and if not satisfied by the explanation given by the Minister could force a division. The Minister would only be spared by the government majority, though on occasion like this an estimate could be amended or defeated. Whatever the result the private member would be satisfied because he has been afforded the opportunity to enforce the closest scrutiny to an estimate in which he is interested.

In the period under review there were many instances to show that the legislature did not often do more than to legitimise the executive expenditure, the Bendel State 1990 Appropriation Law below is a case in point.

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9. Bendel State House of Assembly Debates Issue 51 1980/81 Session p. 11.

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A critical examination of the appropriation bill and its passage above, showed that there were marked departures from the Executive proposal and the House appropriation in few areas such as in the Ministries of Works and Transport, Finance and Education. It must be noted that even this reduction was usually for the time being as the Executive would bridge the gap through Supplementary Appropriation Bill.

Our finding in this study also revealed that the Legislature did not use the power of appropriation it had as a kind of sanction to correct administrative abuses and ensure responsibility and accountability in administration. If for anything, the Legislatures (in Federal and States) often abdicated the control and powers by condoning illegal executive expenditures and late supplementary appropriation bills to cover such unauthorised expenditure. For instance in Bendel State there was the issue of unauthorised expenditures in 1979/80 and 1980 which resulted in late supplementary appropriation bills being hurriedly

Table 10: The 1980 Appropriation Law

No	Ministry	Executive Proposal	House Appropriation
1	Governor's Office	7,134,368	6,134,360
2	Agriculture & Natural Resoources	7,126,252	7,126,252
3	Economic Development	-	1,462,540
4	Education	2,937,900	2,937,900
5	Energy and Water Resources	1,118,150	1,118,150

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6	Finance	7,960,520	2,397,500
7	Health	2,535,350	2,535,350
8	Informnation, Information, Culture & Sports	–	5,572,560
9	Justice	–	895,670
10	Lands & Surveys	–	2,331,300
11	Local Government	–	2,527,500
12	Trade, Industry and Cooperatives	1,400,000	1,400,000
13	Works and Transport	8,940,270	8,940,270
14	Urban Rural Integration	1,500,000	1,500,000
15	Miscellaneous	–	–
16	Total Proposed	66,787,000	65,787,900
17	Subventions to Statutory Bodies	117,891,410	117,891,410

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1980 Appropriation Law

Capital expenditure

Ministry	Executive proposal	House Appropriation
Education	50,000,000	46,754,340
Works and Transport	49,950,000	35,800,000
Health	13,000,000	13,100,000

Source: Approved Estimates 1980 Published by the Ministry of Finance and Establishments. (Benin City, Government Printer 1980). Official document, 4, 1980 pp. 33 and 443.

passed in the House. The Bendel State House of Assembly also appropriated money for institutions which were not established by law. In reaction to this illegal act, a legislator in anger said:

> Professor Alli (referring to the Governor) has always departed from estimates, altered both the recurrent and capital estimates, juggles with the finances to implement at his discretion what he likes[10].

The situation was not peculiar to Bendel State, at the Federal level it was discovered by the Appropriation Committee under the chairmanship of Alhaji Muhammadu Bachaka that the President had expended a total sum of one billion and four hundred and thirty four million Naira (N1,434,000,000) before seeking legislative approval[11]. This issue of unsupported over- expenditure had its genesis shortly before the First Republic and it continued unabated until the demise of the First Republic. For example in 1958/59 268 of such cases were reported in the House of Representatives, 327 in 1962/63 and 573 in 1964/65[12]. A conclusion that can be drawn from these incidences is that the Legislatures were not often able to control the Executive expenditures. The Executives often found it easy to appropriate the funds at their disposal because the Legislatures

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10. See Bendel State House of Assembly: Report of the Parliamentary counsel for the 1979-83 legislative sessions, Issue, 60, 1983 p.6.

11. Proceedings of National Assembly Debates Cols 2143-2146..

12. See O. A. Akande 'Efficiency in Government Spending' (Unpublished M.Sc. Dissertation. University of Ibadan, 1971) in O. Teria ^Sop. cit.^S P. 325.

lacked monitoring devices to verify the adherence or otherwise of the Executive to appropriation laws.

Having discussed the general pattern of the Legislative control over public expenditure, we shall now analyse the in-built mechanisms of the Executive and see the extent of their workability in Nigeria within the period of the study.

The Executive Control Devices of Public Funds

It is important to note that as soon as the appropriation laws are made by the Legislature, the real control of expenditure in terms of day-to-day expenditure of public funds shifts back to the Executive. Each Ministry is expected to appropriate its own allocation subject to the control of Ministry of Finance. The Accounting Officer shoulders the responsibility of spending and accounting with regards to the execution of executive proposals as approved in the estimates of each Ministry or Department. In other words he has to make sure that expenditure is incurred in consonance with approved guidelines by the Legislature.

In the period under review the noticeable trend all over the Federation was that the permanent secretaries who were the Accounting Officers before the introduction of Presidential system did not relinquish the position[13].

This is a British tradition, which was carried over to the Presidential system and has been described by Alhaji Ciroma as 'a hangover of Westminster -

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13. See inter alia A. Adebayo, 'SPower in politics'S (Ibadan, Spectrum Books Ltd., 1986) PP. 95-97 and G. A. E. Longe, 'Managing the Civil Service in a Presidential System of Government. Issues, Problems and Prospects' ASCON Journal of Management vol. I, 2, 1982.

type of government in a Presidential one[14]. The corp of ministers and commissioners who were appointed at the Federal and State levels respectively did not like their roles as they were not made the Accounting Officers of their various Departments. This became a source of friction between the Permanent Secretaries and these appointed political executives. There was no evidence to show that this arrangement was successful in curbing financial misappropriation of the Executive in the Second Republic. It only succeeded in generating ill-feeling between the officials and politicians (Ministers and Commissioners). There were rivalry between them to control their departmental votes.

The use of book-keeping was another measure employed by the administration which aimed at making sure that expenditures were in consonance with legislative rules and procedures. The impact of book-keeping as a control mechanism is that it enables each book-keeper to work independently of one another. It is done in a manner that one book-keeper's function provides a check on the function of his other colleagues. For example, in preparation of emoluments, a book-keeper is supposed to be charged with its preparation, another is supposed to check the accuracy or otherwise of the first book-keeper and yet another is expected to approve the voucher for payment. After going through these procedures the voucher is still subjected to the Variation Control Officer (VCO), who has an up-to-date list of the staff of the Ministry, Department or Parastatal as the case may be, including their current entitlements. The VCO is expected to work out the total emolument expenditure of the Ministry and compare this with the total payments made by the payment officer to see that

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14. Alhaji A. L. Ciroma: Lecturer to Senior Management Cadres of the Federal Civil Service, Nigerian Herald (Ilorin) October, 15, 1980. p. 6.

both agree[15]. In spite of this tight control device, there were instances of over-payment of staff salaries as the military administration which took over from the civilian discovered 'ghost workers' in virtually all government establishments. A possible interpretation was that there was collusion among the officers concerned with the preparation of emoluments.

The Executives were also known to be involved in the use of treasury control to guard against mis-use of public funds. Treasury control is charged with the overall responsibility of supervision of the spending of the government departments by the Ministry of Finance. It is meant to ensure that each Ministry conforms with the approved estimates. It is also concerned with the details of making sure that attention is paid to efficiency in the spending of funds allocated by the Legislature. The responsibility of treasury control also extends to review of projects to determine their relevance in the circumstances. Its review power may lead to termination or cancellation of such projects if deemed irrelevant. This device did not serve any useful purpose as the Treasury did not use its power of review to terminate any government project during the period. Again owing to the nature of party politics in the Second Republic, it is doubtful if any Treasury Officer could muster enough courage to terminate or cancel any government projects as a result of its unviability or irrelevance. Such official would immediately be termed a saboteur and subsequently risk his career.

The financial instruction, which is another means of ensuring proper accountability and responsibility of public funds, is a government cum legal document which provides for procedures of disbursing funds and for accounting for funds so disbursed. This document is issued by the Ministry of Finance to serve as guide for Accounting functionaries. In addition, each self-accounting

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15. See O. Teriba & O. Oji 'Control and Management of Central Government Expenditure in Nigeria' op. cit. P. 326.

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ministry or department is expected to submit montly returns of the expenditure of their Heads of Estimates. This arrangement is made to enable the Treasury to monitor the trend of expenditure.

In theory, these control devices exist but in practice they were not employed to any significant extent in the Second Republic. Financial regulations were flouted with impunity as the Legislature did not bring pressure to bear on the government departments to enforce the regulations. This apparent lapse on the part of the Legislature may result from the fact of ignorance as majority of them were oblivious of these rules, hence could not direct the Executive to apply it in its administration. Another thing to note is that financial instruction can only be potent in an environment devoid of corruption and financial impropriety; with the general low level of accountability and mass corruption that pervaded the political life of the period, there was little the financial instruction could do.

Having discussed the various devices mounted by the Executive arm to control financial abuses, we will now discuss the role of the Audit Department in control of public expenditure.

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The Audit Control of Public Expenditure

The Audit department under the law is empowered to control the expenditure of the government. In order to ensure impartial and dispassionate discharge of this responsibility the constitution insulates the office of the Auditor-General, both at Federal and State levels from control of the Executive. The Executive can appoint (in acting capacity) but cannot terminate his appointment. Once appointed to act as Auditor-General, the power to ratify such appointment lies in the hand of the Legislature. In other words, it is the

Legislature that can determine the appointment of the Auditor-General[16]. Once appointed, the Auditor-General becomes independent of the Executive but he is required constitutionally to report his official assignment to the Legislature.

It is important to stress that this provision is made in order to prevent official intimidation of the Auditor-General. Hence it is designed to enforce prudence and financial accountability on the part of the Executive.

The Audit department functions under two levels, namely, internal and external. The purpose of internal audit is to prevent illegal or unauthorised expenditure thereby reducing the routine aspect of external audit. Whereas, internal audit is continuous throughout the year in all government departments or ministries, external audit is ideally a once-yearly affair. External audit is the responsibility of the Auditor-General. It is normally done to satisfy the general public and the Auditor-General that adequate financial control exists. Thus, he had to ensure that expenditure are incurred in accordance with Appropriation Act. He is also expected to ensure that the store-keepers and store Accountants comply with the existing regulations guiding their works. As said earlier, the Auditor-General is expected to examine all annual accounts and submit them with his own report to the Legislature.

The empirical situation in the Second Republic revealed that because Internal Auditors were generally lower in status compared with the Accounting Officer or the Departments Chief Accountants, Internal Auditors often gravitate to their own level. The result was that most Internal Auditors were unable to confront these officials and ask questions on discrepancies noticed in the course of their work. Hence most of these Accounting Officers made away with errors committed without having to account for them.

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16. See Sections 81 & 119 of 1979 Constitution op. cit.

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As regards external audit, more often than not, reports were not made available to the Legislature. The situation of things as at October 1979 when the Second Republic commenced was that the Audit report of the Federation was about five years in arrears. The Auditor-Generals (both at Federal and State levels) were unable to make substantial contribution to the financial control of the Second Republic. It is in realisation of this problem that the Civil Service Reform of 1988 sought to make Auditor-General's report an annual event. In order to facilitate the work of the external audit, the internal auditor is required to submit monthly reports to the Office of Auditor-General 'on the progress of the audit'[17]. This reform no doubt is an acknowledgement of the defects of the previous system of Auditing.

With the examination of the role of the Audit in enforcing financial accountability above, we shall turn to another instrument of control - the Public Accounts Committee.

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The Public Accounts Committee (PAC)

The PAC is one of the committees of the Legislature. Its origin in Nigeria could be traced to the pre-independence legislative arrangement[18]. The PAC, then, was charged with the responsibility 'to examine the accounts showing the appropriation of the sums granted by the House to meet the public expenditure

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17. Federal Republic of Nigeria, Implementation Guidelines on Civil Service Reforms, (Lagos Federal Government Printer 1988) p. 21.

18. See inter alia L. Adamolekun, 'Parliament and the Executive in Nigeria: The Federal Government Experience, 1952-1965' in Colin Baker and M. J. Balogun (eds.) Ife Essays in Administration (Ile-Ife, University Press 1975) pp 70-72; Western Region of Nigeria, Standing Orders of the Western House of Assembly (made under provisions of sections 70(2) and 71 of the Nigeria (constitution) order in council 1954) paragraph 71.

together with the auditor's reports thereon[19]. In other words, it is the responsibility of this committee to examine the audited accounts of government ministries, departments and parastatals on the bases of the report submitted by the Auditor-General. This committee was considered very crucial to the whole essence of public accountability; thus, the Military after the *coup de tat* of January 15th, 1966 ensured its survival by promulgating a decree to recreate the PAC[20]. The authors of the 1979 constitution also gave the PAC constitutional recognition by ensuring its provision in the Constitution[21].

The PAC under the constitution is expected to ensure that the funds appropriated by the Legislature to meet public expenditures are properly utilised for the purposes which they are intended. In order to make the committee effective in ensuring financial probity, it is given the power to send for persons, papers and records. It also has the power to examine any accounts, reports of any Boards or statutory corporations after such reports must have been laid on the table of the House. By these functions, the PAC provides a kind of quasi judicial forum in which the Executive or its agencies may be called upon to give evidence on issues arising from audit.

The PAC is expected to inform the National Assembly or House of Assembly and the public at large on any defect noticed from its investigation of the Executive and its agencies. The Legislature is expected to legislate in response to the findings of the PAC if considered necessary in order to promote public accountability. The public should also be informed, as a matter of decorum, on

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19. L. Adamolekun ibid. p. 7.

20. See, the Federal Military Government, Public Account Committee Decree 1967, No. 1 of 1967. The Regional Governors were also directed to promulgate appropriate Edict thereof>.

21. See, for instance, Federal Government of Nigeria, The constitution of Federal Republic of Nigeria (Lagos, Federal Government Printer 1979) Section 117(3).

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the efficiency or otherwise of the Executive in handling the public funds entrusted to it.

By 1979, the PAC at Federal and State levels had backlogs of reports from the Auditor-General to consider, some of these dated several years behind. When eventually the PAC met to review the Auditor General's reports several cases of serious financial neglect were discovered. For instance the PAC of the National Assembly reported that:

> Post and Telecommunication had not prepared accounts since 1966-67, the Board of Customs and Excise had not carried out proper bank reconciliations over a period of years, giving rise to differences between the bank statements and the cash- books amounting to N7 million debit, and N4 million credit; and the Ministry of Defence could not supply payment vouchers totalling over N63 million for 1970-71. Other shortcomings include improper maintenance of accounting records, non-attachment of documents to support expenditures, improper payment to contractors, over-payment, loss of fund through theft or fraud, failure to adopt public tender procedure and failure to produce books of account for audit purposes[22].

The situation at the period was such that the public did not have faith in the Executive. Even the findings of the PAC with respect to the Nigerian Police Force were embarassing. It discovered that cheques were prepared under fictitous names to exhaust budget allocations that would otherwise have lapsed. The discovery of such dishonest accounting methods elsewhere would have resulted in the Police being asked to investigate but in this case who prosecutes the prosecutor?

The lapses as noted is not limited to the Federal level. In Niger State at the inception of Presidential system where there was no audit reports

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22. See Koleade Oshisami and Peter N. Dean, Financial Management in the Nigerian Public Sector (London, Pitman Publishing Ltd., 1984) p. 168.

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with which the PAC would work. As A. A. Kagara said:

> In Niger State for a long time under Military administration, there was no audited report. So when the civilian government was ushered in, the Director of Audit found it very difficult to produce his report. His greatest handicap includes, among other things, the absence of proper records from the office of the Accountant-General, the transfer of officials from one post to the other and the lapse in the time period[23].

From the above statement, it would be noted that the mechanism for achieving public accountability had suffered from neglect as a result of thirteen years of Military rule. Hence in the Second Republic, there was considerable delay between the occurrence of an event and its subsequent investigation by the PAC; in most cases as long as nine years! Such delays, no doubt, imposed unnecessary strain on the record keeping and memories of those called upon to give evidence. In most cases, most of the officials involved had retired from the public service. It is for this reason that the 1989 constitution and the civil service reform of 1988 provided that public officials can be made accountable to the public even after retirement from the public service.

The above situation was quite unlike what really happened in the period 1952-59 and between 1960-65. The PAC at this period was active and really helped in exposing some financial irregularities in the Executive branch. So potent was the PAC that its recommendation such as 'recruitment and training of accounting staff and the designation of permanent secretaries as accounting officers were implemented[24]' by the government.

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23. A. A. Kagara 'Legislative oversight in the Presidential system: Powers of the Niger State Legislature to control Public Expenditure? A project for Award of Post Graduate Diploma in Public Administration, Ahmadu Bello University Zaria, 1983.

24. See L. Adamolekun, 'Parliament and the Executive in Nigeria: The Federal Government Experience 1952-1965' in Colin Baker & M. J. Balogun (eds.) Ife Essays in Administration, (Ile-Ife, University of Ife Press, 1977) p. 183.

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The PAC in the Second Republic was, thus, a complete contradiction of the First Republic experience. Its inactivity in the Second Republic was partly responsible for the weak control of the Legislatures over public finance of the period. Another factor that may explain poor legislative control over finance is that financial control involves intricate knowledge of accounts which most members did not possess. It will take a considerable time for legislators to educate themselves in this area. To compound it all, members did not have the opportunity as the Second Republic came to an end suddenly on the 31st December 1983. Again, the finance committee of the Legislatures which was supposed to have some experts as members did not use this criterion in selecting its members. In Britain, members of such committees are expected to serve for 5 to 10 years before any member could be said to have had adequate knowledge of its role[25]. In the Second Republic, the PAC hardly met and this coupled with the fact that its members were dominated by supporters of parties in power. Hence, in matters of technical and professional competence, the PACs members as constituted all over the states of the Federation were most unqualified.

It is against this background that one will examine the problems facing financial control during the period.

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The problems of Financial Control

A major defect in the legislative control over financial matters, in the Second Republic, has been the lack of adequate consideration of the budget in all its entirety. The Legislatures were not always able to assess the proper level and direction of expenditure in relation to the available resources. It is observed

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25. B. Chubb The Control of Public Expenditure (London, Oxford University Press, 1957) P. 183..

that the legislators, more often than not, used supply days to attack government policies at the expense of debates on public expenditure. The Legislatures just became a 'talking shop' as far as controlling public expenditures was concerned.

Other operational problems relate to the inadequate staff that were meant to serve all the government departments including non- ministerial departments or the parastatals. It was noted that the staffing situation in the Office of Auditor-General both at Federal and State levels was poor. Staff available to this Department did not increase in proportion to government departments and Agencies. The result was that the available staff could not cope with the demands of the ever increasing executive agencies.

The problem of the government vis-a-vis inadequate skilled workers in the accountant cadre was amply stated by the deputy Accountant General of the Federation. He said:

> We cannot get staff. We get people who applied for appointment, they are interviewed and only half of those interviewed would report. Out of those who report, one third would have gone within three months. In another year only about one fifth of the number of those employed would remain. You find this in most Ministries[26].

It is interesting to note that most of them used the government departments as a stop gap; as soon as they are appointed in the private sector which offered better remuneration they left the public sector.

In order to further appreciate this problem of lack of manpower it will be

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26. See Federal Republic of Nigeria, Reports of the Public Account Committee 1979 Session (Lagos, Federal Ministry of Information 1979) p. 308.

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relevant to state that the National Development Plan 1975-80 declared 1004 established positions for accountants and auditors. By 1979 only 409 positions were filled, thus giving a vacancy rate of almost 60 per cent[27].

Similarly, the educational level of most of the auditors are generally and undesirably low compared with the Chief Accountants or other bureaucrats who are charged with disbursement of expenditure. The result is that very little or no impact is made in bringing these superior officers to book because the auditors have had to suffer personal inadequacy before these people who are educationally and in most cases professionally more competent or qualified.

Another problem area with regard to financial control of the executive is the way in which audit reports, Accountant-General's reports and reports of the Public Account Committee (PAC) were normally handled. It was such that these reports were not made readily available to the public at large. This is undoubtedly against the concept of public accountability which pre-supposes that public officials are accountable or answerable to the public at large. The only way to fulfil this obligation is to make copies of these reports available to the public. Most of these reports were not in the government press and other public institutions such as Libraries and Archives. As R. O. F. Ola observed:

> It (referring to these reports) appears to have been conceived by some public officers as a document to be restricted to the Public Account Committee (PAC) rather than one to be given the widest possible publicity[28].

The public did not know what was really happening with concealment of such reports and this did not give the legislators a good image as watchdogs of

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27. Kolade Oshisami and Peter N. Dean op cit. p. 4.

28. R. O. F. Ola 'The Federal Auditor-General of Nigeria: The Role and constraints of a public Financial Watchdog' Quarterly Journal of Administration, vol. XIV, 1, October 1979. P. 11..

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public finance. Furthermore, by this act the executive was not also seen to be accountable to the general public.

Conclusion

Our findings in this chapter show that the Legislative control over finance was weak during the Second Republic. The Legislative instruments of financial control such as appropriation, audit, PAC etc. were not used to any considerable extent. The legislative either for reasons of professional incompetence (because most of them were not grounded in financial matters) or negligence of duty did not make the Executive alive to its responsibility. For instance there were cases of unauthorised spending of public funds which often resulted in late supplementary appropriations. This further underscores the earlier proposition in the study that legislative control of the executive in the period was largely ineffective. In actual fact the ineffective Legislative control of the Executive over financial matters was the bane of the Second Republic. The Buhari/Idiagbon Regime which overthrew the Alhaji Shehu Shagari's administration made startling revelation of misappropriation of funds on the part of the operators of the Second Republic. In order to forestall future occurrence, the study will proffer some solutions to problems of financial control in the concluding chapter.

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CHAPTER SEVEN
MISCELLANEOUS CONTROL

Introduction

Miscellaneous Control devices include Investigative powers of the Legislature, Adjournment motions, Question time, Observations and the use of Committees. The grouping of all these control mechanisms under the chapter does not in any way suggest that they are less significant than others, we have grouped them together because most of them were sparingly employed in the period under review.

Public Petitions and Legislative Investigatory Power

The right to petition the Legislature for redress of grievances is acknowledged as a fundamental principle of the 1979 Constitution. It is for this that the Legislature is acknowledged as a powerful force in ensuring accountability. The constitution allows any person, organisation, or corporate group to petition the House upon conviction that he/she has been wronged. For the sake of credibility, such petitions must be signed. In addition, the language of a petition is expected to be respectful and temperate. In other words, the language of the petition must not be offensive in itself or indecorous in its terms[1].

However, in the period under review we discovered that Ondo State House of Assembly dealt with a number of public petitions. Indeed, the state made use of petitions more than any other state in the Federation. This is probably due

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1. David Lidderdale (ed.) Erskine May, Parliamentary Practice, 9th Edition (London) ButterWorths 1979 p. 814.

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to the high level of literacy in the state in question. We shall endeavour to discuss a few of these petitions.

The first in these series of petitions involves the Permanent Secretary, Ministry of Agriculture and Natural Resources, Mr. Barnabas Kolawole. He was said to have misappropriated the public funds entrusted to him and refused to answer audit queries therefrom. This allegation against the Permanent Secretary was referred to the House Committee on Public Petitions. The Committee's findings later confirmed the allegation of the petitioner. Based on the findings of the Committee, the House resolved:

(i) That the case of irregularities has been proved against Mr. Barna bas Bamidele Kolawole in the discharge of his duties as the Permanent Secretary and Accounting Officer in the Ministry of Agriculture and Natural Resources during the period 1977 to 1979.

(ii) That this House accepts the fact that Barnabas Bamidele Kolawole refused to cooperate fully with the Director of Audit.

(iii) That this House now directs that Mr. Barnabas Bamidele Kolawole should submit himself to audit and that the Director of audit should go and Audit the Account of the Ministry of Agriculture and Natural Resources from January 10, 1977 to December 31, 1980 and submit a report to this Honourable House by the end of March 1981[2].

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[2]. Ondo State of Nigeria, House of Assembly votes and Proceedings, 10th December, 1980.

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It is interesting to note that the directives of Ondo State House of Assembly as given above were not complied with by Mr. B. B. Kolawole. What he did was to resign his appointment with the Ondo State Civil Service. The Director of Audit could not also effect the auditing of the Ministry of Agriculture and Natural Resources during the period 1977 to 1979 as directed by the legislators. When the House of Assembly inquired from the Director of Audit as to his inability to audit the accounts of the said Ministry, he merely begged for extension of time to do so. From all indications there is evidence that the Executive and the Audit had colluded to cover the Permanent Secretary, who the Legislature wanted to expose for his financial impropriety. The Executive was of the view that the Permanent Secretary could only be disciplined by the Civil Service Commission. It also felt that the matter was beyond the legislative competence of the House of Assembly. However, the views of the Ondo State Executive on this matter was contrary to the spirit and intents of Sections 120 and 121 of the 1979 Nigerian Constitution. By the provisions of these sections, the Legislature has almost a limitless power to investigate anybody and anything within the country.

The only conclusion that we may draw from this episode is that the inability of the Legislature to insist on probing the issue resulted from its inadequate knowledge of its power under the Presidential system. It is also unlikely that the Legislature got carried away with the Executive's interpretation of power to discipline civil servants as solely the responsibility of the Civil Service Commission. This is a clear confusion of the role of civil servants under the Parliamentary system with that of Presidential system. The public bureaucrats are also meant to be directly accountable to the Legislature just as the political executives. There was infact over protection of the civil service in the Second

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Republic.

In the same vein, it can also be argued that the inability of the Legislators to stand their ground on this issue is a confirmation of our proposition in this study that the legislative control of the Executive was weak in the Second Republic. The Legislature thus left the Executive to determine the case of the Permanent Secretary. It is not surprising then why nothing substantial came from the issue.

The Executive also frustrated the Legislature on the case of Okitipupa Oil Palm Company in Ondo State. There was a petition to the effect that there was gross financial mismanagement and abuse of office by the Chairman and Director of the said company. When the Legislature decided to set the machinery in motion to probe the issue, the State Commissioner for Justice and Attorney- General refused to cooperate in the matter. The Ministry of Justice soon sent a letter to the House of Assembly (to say) that it lacked competence to investigate the matter as the company is a limited liability company. The Legislature also allowed itself to be frustrated by the Executive as it did not worry itself beyond this level. It is possible under the constitution for the Legislature to legislate in a manner that would bring the said company under the sledge hammer of law.

There was also a similar incidence in Bendel State, The Oriokpa Community in Oredo Local government petitioned the House of Assembly that the Government of Bendel State refused to pay compensation for the land acquired. The Committee on public petitions after due investigation recommended to the House that the governor be directed to terminate further processes of acquiring the community land. It also directed the Executive to further pay the necessary compensation for land already acquired[3]. The House accepted the recommendation of the

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3. Bendel State House of Assembly Official Reports Issue 36, 1982, p. 2.

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Committee and accordingly passed a resolution to this effect to the Executive. The Executive refused to abide by the directives of the House and it went on to acquire the said land without compensation.

When on another occasion, there was a case of someone who was wrongfully dismissed from the service and he sought the House of Assembly's help through petition for reinstatement, the deputy speaker felt there was no need pursuing the matter with the Executive. He said in apparent disillusionment:

> The crucial question I will ask is that, among all those people you have passed motions to be reinstated in the State, how many of them have actually been reinstated? You are wasting your time[4].

The above statement clearly shows the degree of irresponsibility of the Executive to the Legislature. The situations can be likened to the case of a tail wagging the dog. By the same token the Kwara State House of Assembly could not investigate a petition brought to it on allegation of administrative malpractices preferred against the State Housing Corporation. The Public Petition Committee invited some officials of the Corporation to submit some documents that could help it in the determination of the case but they refused[5]. In the light of these experiences it can thus be concluded that the use of public petitions as a tool to control administrative abuses was counter productive in the period under review. It could not provide adequate redress to the victims of such abuses. We also observe that when Legislature granted relief to petitioners, it did not often ensure the implementation of its decision by the Executive. The issue of lack of adequate monitoring device by the Legislature appears to be a fundamental

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4. Ibid. Issue No. 35, 1982, p. 17.

5. Kwara State House of Assembly votes and proceedings 11th July, 1980.

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omission on the part of the law-makers in the Second Republic. This again further attests to our proposition in this study that the lack of monitoring device on the part of the Legislature resulted in the weak control of the Executive.

Adjournment Motions as Instrument of Legislative control of the Executive

Adjournment motion is a way by which the Legislature obtains information and exercises control over the activities of the Executive. Adjournment motion is usually moved at the end of each day's business, when a legislator may, within the space of an hour, raise a matter of public concern with a minister and obtain a reply.

It is also employed on the day the Legislature rises for a recess. Members hold a succession of short debates on the motion[6].

But this does not involve the casting of votes except for specific and important matters which need urgent consideration and decisions taken on them.

Adjournment as a legislative device to control administration is a feature of parliamentary systems of government which the Nigerian legislature adopted in the Second Republic. Adjournment Motion as an instrument of Legislative control of the Executive was not really directed against the government but used retroactively to investigate the activities of the past governments. This practice was more common with the Military. For instance, it was on record that 'of the 522 Decrees passed by the Federal Military Government between 15th January,

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6. Reference Compendium, Vol. II Documents prepared by Inter-Parliamentary Union (Aldershot, Goner Publishing Company Ltd., 1989) p. 1132.

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1966 and 31st December, 1978, 257 or nearly 50 per cent had retroactive effects.

One of such issues that was raised in the Senate and by the late Senator Bakin Zuwo was in respect of an alleged nine tons of Nigerian currency notes seized by the former President of Uganda - Idi Amin. However this motion was not taken seriously by the Senators.

Further, indictments of Obasanjo's administration by Bakin Zuwo were equally ignored by the Senate except for the aspect which dealt with the missing of N2.8 billion in the NNPC. This allegation raised by Bakin Zuwo generated a lot of public reactions, especially from students in institutions of higher learning. The students in higher institutions demonstrated against the management of the NNPC and demanded that the Federal Government should 'fish out' the 'culprits'.

Later, on 10th March, 1980, the Senate Leader reported to the Senate that the Managing Director had come to see him with their files. He confirmed that the money was not missing and to further prove this, the audited account of the Company was submitted to the Committee on Petroleum. But in order to further erase possible doubts in the minds of the general populace, the Senate in accordance with the investigatory power granted it by the Constitution[1] directed the executive to investigate the matter.

The Executive in response accordingly set up a five man Panel under the Chairmanship of Justice Ayo Irikefe - a Justice of the Supreme Court. Other members of the Panel were Mr. A. Mbanefo, a chartered accountant; Mr. A. O. Akinrinmisi, a banker and an Executive of the Union Bank of Nigeria; Mr. Aliyu Musa Dangiwa, General Secretary, Nigeria Labour Congress (NLC) and Alhaji Kurfi Sule, an engineer and Oil Marketing expert. Mr. V. A. G. Warmate, a Permanent Secretary in the Rivers State Public Service served as Secretary to the Tribunal.

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1. Ibid. Col: 425.

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The Tribunal was saddled with the responsibility of urgently examining among other things:

All contracts or other arrangements entered into by Nigerian National Petroleum Corporation or its predecessor, the Nigerian National Oil Corporation, or by any other person or authority acting on behalf of crude oil between 1st January, 1976 and 31st December, 1979 with a view of determining:

(a) whether crude oil supplied to customers and payments therefrom are in all respect in accordance with the terms of their contracts;

(b) whether any proceeds of any such contracts or other arrangements for the sale or other disposal of crude oil were missing or not properly accounted for in the accounts of the Nigerian National Petroleum Corporation or of any other appropriate authority or agency of the Government of the Federal Republic of Nigeria;

(c) whether any such proceeds were ever deposited in any private account in any bank anywhere in the world, and if so whose accounts, how much, and for how long;

(d) whether the deposit of any such proceeds in any private account was authorised by any person whatsoever and if so to identify such persons;

(e) whether any person or persons wrongfully benefited directly or indirectly, from interests which ccrued from the deposit and if so to ascertain the amount involved and to identify the person or persons and the extent of the benefit;

(f) whether any person has been guilty of fraud in connection with contracts or arrangements for the sale or other disposal of crude oil and to name such person and recommend measures that may be necessary to prevent a recurrence of any fraud that may be discovered and punish any person that may be found guilty; and

(g) to make such other recommendation or recommendations as the Tribunal might deem fit in all the circumstances.

The Tribunal was expected to submit its report on or before Monday, 16th June, 1980. But its report was not ready until 30th June, 1980 about two weeks later.

The Irikefe tribunal discovered that all the crude oil sold by the Company

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and the payment therefrom were in accordance with the terms of agreement earlier on entered into between the Company (NNPC) and its customers. It was also discovered by the Tribunal that 'no proceeds of any such sales was missing or not properly accounted for'[8] What really happened at the NNPC during this time was that the company between 1975 and 1978, was unable to collect 182,952,104 barrels of its programmed share of equity crude oil expected to be produced by Shell, Mobil and Gulf. This was referred to as 'deemed production' because from the operator's viewpoint, the fault for not producing this quantity was NNPC's. Had this quantity been produced and sold, Government would have earned addition revenue of $2,503,791,264.8. This was in fact the origin of the allegation of the missing $2.8 billion. The oil company neither produced nor sold any oil totalling the above figure. However, there was one operation problem in the accounting system in the NNPC, the Accounts Department of the company only prepared invoices for sales of crude oil for marketing by the Commercial Department. With the systems as it was then, the Accounts Department cannot be in possession of information on any sales that the Commercial Department may not wish to pass to it. Hence this operational arrangement is susceptible to "fraud" as it is devoid of effective monitoring by the Accounts Section of the Company.

At the state level adjournment motions were used to a certain degree of success, in the Second Republic, to influence the Executive on a number of issues in Ondo State. For instance, the establishment of Advisory Council on Prerogative of Mercy was a direct result of an earlier Adjournment motion in the Ondo Sate House of Assembly urging the Executive 'to establish the council as a matter of urgency'[9].

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8. See New Nigerian (Kaduna) August 9, 1960 p. 3.

9. Ondo State of Nigeria House of Assembly, Votes and Proceedings of 14th February, 1980.

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Other series of adjournment motions passed by the Ondo State House of Assembly concerned the establishment of administrative agencies. For instance the House called on the Executive to establish divisional offices for the Ministry of Works and Transport so that its impact could be felt by the generality of the state on matters of infrastructural development. The Ondo Legislators also called for the establishment of Treasury Cash Offices and Information Centres in all the Local Government Headquarters. The state Executive actually established these offices. However, it is important to note that the establishment of Information Centres in all the Local Government Headquarters helped in boosting the image of the state Executive as well as the UPN. These Information Centres (as they) eventually turned out to become the official mouth organs for disseminating the party's programme and policies in the state.

In the same vein, the Ondo State House of Assembly used adjournment motions to seek redress in the policies of the state administration which it considered repugnant to the best interest of the service. Such was the discrimination and alienation which the professional staff suffered in matters of promotion to the post of Permanent Secretary (now tagged Director General). It will be recalled that the Udoji Commission sought to rectify this anomaly when it provided that any professional on Grade Level 13 could be appointed to the post of Permanent Secretary. This was never implemented in many states of the Federation. In most cases, the professionals were merely promoted to salary Grade Level 16 (salary scale of a Permanent Secretary), but they were never addressed as Permanent Secretaries. Sequel to this, the Ondo State House of Assembly passed a motion calling on the governor 'to remove the discrimination in the Civil Service against the professionals'[10].

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10. Ibid.

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Similarly there was a motion called on the state governor 'to make new appointments to the post of Permanent Secretaries to reflect the state geographical spread'[11]. The state Executive was particularly sensitive to this motion as 'all the subsequent promotions to the posts of Permanent Secretaries were made with full regard to the local government areas'[12].

In Ondo State, unlike other states what one discovers is that most important motions during the period was referred to appropriate Committees of the House for "thorough" scrutiny on the feasibility of such motions. This was aimed at preventing mistakes. Examples of motions that were referred to appropriate House Committees included the one dealing 'with cancellation of competitive entrance examination to the administrative and other cadres in Ondo State Civil Service'[13]. Similarly, there was another motion which called on the state governor to leave the appointment of gradel Level 01-06 in the Local Government Service to each local government council. It is important to note that hitherto the Local Government Councils had the power to employ only Officers on Grade level 01-04[14].

The above adjournment motions were referred to the House Committee on Employment, Establishment and Training. The Committee did a thorough job. It invited many government officials to seek their expert opinions on these all important motions. The Committee went to the extent of inviting the Secretary to the State Government. The Committee based, on the information received,

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11. Ibid. 3rd August, 1981.

12. O. Adegboro, 'The Legislature and Administration Relationship in Ondo State under the Nigerian Presidential Constitution' Oct. 1979-1981. (MPA University of Ife 1982) p. 103.

13. Ibid. p. 104.

14. Federal Government of Nigeria, Guidelines on Local Government Reforms 1976 (Kaduna, Government Printer 1976).

recommended to the House to reject the motions.

The Bendel State House of Assembly also used adjournment motions to make the Executive responsible to the people. Such motions included the one that called on the State Executive 'to increase the value of Bursary Awards to Bendel State students in Institutions of higher learning'[15]. Another adjournment motion called on the State Governor to provide land for Federal Low Cost Housing Project[16]. The House also called on the State Government to accelerate the expansion and modernization of Radio Bendel and establish a State Television Station[17].

It is interesting to note that some of these motions were accepted and acted upon by the Executive. For example, the value of bursary awards was increased and a state Television Station was established.

However, adjournment motions do not have the force of law and therefore their enforcement rests on the discretion of the administration. One other limitation of Adjournment Motions is that (more often than not), they do cover a wide range of problems some of which require a considerable length of time to plan and implement. Legislators, many a times pass motions without due regard to the workability of their proposal. Examples of such motions abound in Ondo State between 1979-83. One of such motions called on the State Executive to provide for the citizens cheap accommodation. Another called on the Executive to adopt in its administrative units principle of management by objective (MBO). Others included a call for the establishment of State Library Board, State Electricity Board, *etc.* Most of these motions, if the Executive would implement

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15. Bendel State House of Assembly, Votes and Proceedings 5th March, 1980.

16. Ibid. 13th Sept. 1980.

17. Ibid. Sept. 1980.

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them, have a lot of financial implications which the state Executive may not have got enough fund to implement. The net result is non- implementation of such motions. What normally happens at the level of administration is that once motions and resolutions are passed and sent to the Executive, the Executive in turn will direct such resolutions to the appropriate section of the administrative agency for necessary action. If they are feasible or in conformity with the programmes of the government, it would be implemented, if otherwise, it will just be noted[18].

The use of adjournment motions, though having its own limitations, has proved useful in ensuring the executive responsibility at least from the point of view of Ondo and Bendel States between 1979-1983.

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The Question-Time as a Legislative Control of the Executive

Like many other parliamentary practices, the use of Question-Time as a means of controlling the government originated from the United Kingdom. It is therefore right to describe question time as a feature of British Parliamentary process. It is not often commonly used in Presidential system but owing to the fact that there was infusion of Westminster system and the Presidential system in the Second Republic as amply demonstrated earlier, some legislative institutions adopted it as a means of executive control.

A Question is a request by a member of the House to the Executive for explanation of, or for action on, a specific matter. The purpose of questions

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18. For details - see interview with Dr. Olufemi Lewis, Head of Service, Lagos State in O. Adegboro op. cit. p. 257.

however is to elicit concrete information from the administration, to request its intervention and, where necessary to expose abuses and seek redress[19]. Questions may also be employed to procure detailed facts which will aid legislators to comprehend complicated Bills and other items laid before the Legislature. It is also possible for legislators to discover the work of the government and influence decisions as well as public opinion through the use of Question.

There is also the provision for Supplementary Questions arising from the answers given by the Executive. Thus Supplementary Questions are naturally the extension of original Questions. Supplementary Questions are often used in situations where the questioner is not satisfied with the answer given by the Minister or when he considers that the answer needs clarification. Unlike the original Question, no notice is needed to be given before supplementary Questions are asked and the executive would have to answer them without the help of briefs prepared in advance.

Having described briefly what Question time is, it will perhaps be expedient to discuss the significance of Question -time as it relates to the whole question of Executive accountability.

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The Significance of Questions

The use of Questions in the House is a means of assessing the work of administrative agencies of the Executive. Through the use of Question-time, political executive as well as administrative heads of government departments are aware of the public opinion about the activities of the Ministries and parastatals.

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19. Parliament of the World. op. cit. p. 1204

Arising from this awareness it is possible to make an overall assessment of their performances. Consequently, if properly handled, it can be a source whereby career administrators can be made directly accountable to the people through the Legislature.

It also affords the legislator no matter how lowly placed to take up issues with the political executives even the most senior cabinet ones such as Ministers and Commissioners in the Federal and State levels respectively. Through the use of Questions ministers/commissioners are put on the stand only to be examined and cross-examined by the legislators.

Question time according to R. Butt probably has a beneficial effect on the collective psychology of British politics, because 'it obliges even the Prime-Minister, the most powerful man in the executive to come down to parliament and endure attacks of the humblest backbencher[20].

The mere knowledge by the public that the executive can be interrogated for their action has a propensity of playing down the myth surrounding the power of this branch of government. As Sidney Low urges:

> The knowledge that any pertinacious opponent may at any moment summon a member of the Government to the witness-box is a certain drag upon the cabinet autocracy, since it prevents ministers from sitting and working entirely in the dark and compels them to keep an anxious eye on the public and the press[21].

Hence, the use of Question provides a way of checking or curbing the excesses of the Executive. Most of the questions asked on the floor of the House

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20. R. Butt, The Power of Parliament (Lond. Univ. of Lond. Press 1967) p. 32.

21. Sydney Low, the Governance of England (London) in K. Abayomi. 'Parliamentary Democracy and Control of Administration in Nigeria 1960-1966'. A Thesis submitted for Doctor of Philosophy Law, Clare College, Univ. of Cambridge, April, 1970.

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do attract the attention of the public as well as the press thereby making real the executive accountability to the mass of people. It is needless to point out at this juncture that the press is capable of moulding the public opinion strong enough to enforce accountability from the Executive.

Questions in the House can lead to useful criticisms of the Executive. This may invariably lead to change of policy on the part of the administration after reviewing its activities. As Nevil Johnson said:

> A minister may find himself in serious difficulties if he faces a stream of Questions on the same issue, which are backed by a fair amount of popular support. In these circumstances, the Government's care for its own standing amongst its supporters, as well as a more objective assessment of the situation within the administration, may dictate a change of policy or some concessions to the point of view of the Questions[22].

Hence Questions can force the government to reconsider its stand on certain issues thereby compromising its earlier stand. Another significance of Questions is that they can further help in exposing the work of the Executive to the public. This is because Questioning normally takes place in the public gallery of the House. It is for this that A. L. Lowell said:

> The system provides a method of dragging before the House any acts of omission by the Departments of State and of turning a search-light upon every corner of the public service. It helps very much to keep the administration of the country to the mark, and it is a great safeguard against neglect or arbitrary conduct or the growth of bureaucratic arrogance[23].

A public official who knows that his act can subject him to public ridicule

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22. See Nevil Johnson 'Parliamentary Questions and the conduct of Administration' Public Administration vol. 39, 1961 pp. 136.

23. A. L. Lowell, Government of England (1919), quoted by Dr. Chester and N. Bowring, Questions in Parliament (Oxford, 1962) p. 269.

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will likely be more careful in the ways he goes about his official activities. Hence it helps to provide a check on the administration, as it has to be sensitive to the opinions of the legislature. The Executive in a sense will have to conduct its official activities against the background of awareness of responsibility for the legislature and the general populace.

Questions are a veritable means by which the Legislature can get itself acquainted with the work of the Executive. This acquaintance is inestimable for it could help in annual appropriation exercise and enactment of appropriate laws to guide the administration. It will also enable the Legislators to review the conduct of administration, the execution of policies, the performance and activities of the various agencies of the administration.

Finally, Questions place the administration on a state of alertness over its activities. It enables the Executive to oversee every activity and policy, know the progress made and attendant problems resulting from such activities and policies. The public bureaucracies are always kept busy as they have to make enquiries, collect information and prepare the answers to every Question asked.
It provides some psychological relief to communities whose problems are discussed in the House. No matter the response from the administration, the people are never left in doubt as to legislator's concern for their welfare. With our discussion on the significance of Questions now let us briefly enunciate the procedures for asking Questions.

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Procedures for asking Questions

The legislative procedures expect the legislators to give notice of Questions to be asked in writing to the Clerk of the House. The clerk, in return, will

screen the Questions to see that they conform with the requirements of the standing orders regarding Questions. Such requirements are that references are not made to any matter awaiting judicial decision, a Question, the answer to which is readily available in official publications, shall not be asked, member should make themselves responsible for any facts stated in the questions, etc[24].

It is the duty of the Clerk of the House to help legislators frame or reframe their Questions in acceptable parliamentary language. If in the opinion of the Clerk a Question is capable of prejudicing public interest, he has the responsibility of referring such Questions to the Speaker. Finally the Clerk ensures that Questions are printed in the Order papers for the day to enable members ask questions as previously indicated.

The Speaker on the other hand has overall power over the Questions that may be asked on the floor of the House. For instance he has the discretionary powers as 'to whether or not a Question seemingly detrimental to the public interest should be published'[25]. He can direct that such be printed subject to alterations as he deems fit. Conversely he may declare a Question as totally inadmissible. The Speaker can equally allow Questions which have not appeared in the Order book for consideration and attention, if in his considered opinion such Questions relate to matters of public importance[26].

Nature of the Questions Asked

The Questions which could be asked by the legislators during question time

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24. For details, see - The Federal Republic of Nigeria Standing Orders of the House of Representatives, (Lagos, Federal Ministry of Information, 1960) Sec. 13.

25. K. Abayomi, op. cit. p. 107.

26. Standing Orders, op. cit. Sec. 14(4).

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can be grouped into four categories:

1. There were Questions which centre on attempts by the legislators to point out government inaction on appropriated projects. They were Questions which concerned performance vis-a- vis appropriate expenditure. Thus they were meant to oversee the administration of laws and appropriations passed by the Legislature. Such Questions include:

   (a) To ask the Commissioner of Finance why N4 million approved by the Honourable House in the 1982 Estimates for the construction of Oba Market has not been released to the Oredo Local Government Management Committee?[27]

   (b) To ask the Honourable Commissioner to tell this Honourable House if he is aware that the Administrative Map of Ondo State prepared by his Ministry is incorrect in a number of details, for example, it does not show an existing road from Ifaki- Ekiti to Omuo-Ekiti while it shows a non-existing road from Arigidi-Ekiti to Omuo-Ekiti[28].

2. The second set of Questions refer to the general conduct of administration and its lapses. Their motives are to point out these lapses and to influence and direct government attention to them. An example of such Questions was the one asked the Federal Minister of Mines and Power as to why there was constant power failure all over the country and what Ministry was

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27. Bendel House of Assembly Debates Official Report issue No. 54, 12th January, 1983. p. 11.

28. See Ondo State House of Assembly (Debates) House Question 175.

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doing to arrest the situation[29].

3. The third group of questions were aimed at ascertaining facts or gathering genuine information. In Bendel State, for instance, a legislator asked the Commissioner of Finance the total amount of money received as revenue allocation and grants from Federal Government from 1979-1981. He equally sought to know how much internally generated revenue had accrued to the government[30]. A similar question was directed in Ondo State to the Secretary to the Government as to how many Permanent Secretaries were in Ondo State service and their Local government areas of origin[31].

4. The last set of Questions were those that aim at highlighting and drawing executive's attention to the needs and problems of constituencies. In fact, most of these categories of Questions were geared towards lobbying the Executives to provide one socio-amenities or the other to their villages or constituencies. L. Adamolekun made a similar findings in his study on the Parliament and the Executive in Nigeria, He said:

> The majority of questions were related to the distribution of amenities - postal services, electricity, roads, water and so on and each questioner was primarily interested in securing one or more of these

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29. National Assembly Debates (Representatives) Col. 5624.

30. Bendel State House of Assembly, op. cit. House Question 184.

31. Ondo State House of Assembly, op. cit. House Question 184.

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> amenities for his constituency which was in almost every case his home town, district or division. Whether or not such questions turned a search light on the public services was of secondary importance to the questioners[32].

In a situation where everybody concerns himself with what his community shall benefit from the executive's patronage, little can be achieved in terms of using Questions as a means of enforcing administrative accountability and responsiveness.

The Importance of our findings

It was discovered that all Questions asked by the legislators were directed towards the political executives alone. The legislators seemed to be oblivious of the fact that over the years the whole apparatus of government has become more complicated. It is such that some of them are 'highly technical that it may no longer be realistic to try to check the whole range of administrative action by summoning ministers to account for everything'[33].

The whole idea of limiting Questions to the political executive is a parliamentary idea as it is largely borne out of the notion that career officials are not supposed to be heard. The role played by the bureaucrats in the Second Republic as regards Question-time in the Legislature was same as the First Republic. They helped the political executives to prepare briefs and often

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[32]. L. Adamolekun, 'Parliament and the Executive in Nigeria: The Federal Government Experience 1952- 1965' in Colin Baker and M. J. Balogun, Ife Essays in Administration (Ile-Ife, University of Ife Press, 1975) p. 73.

[33]. Nevil, Johnson op. cit. p. 147

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accompanied them to the Legislature but they never overtly contributed to answering the Questions posed by the Legislature. This idea as noted earlier in the study is unpresidential, because the 1979 Constitution granted the Legislature the power to summon anybody in the Federation for the purposes of enforcing accountability and eliciting information that it may deem necessary in the course of its legislative duties. The Legislature seemed to have limited itself in the use of this power and the result was weak control of the Executive branch.

It must also be noted that Question-time is not a feature of Presidential system of government. This idea was borrowed into Nigerian Presidential system from the Westminster model which Nigeria adopted in the First Republic. This may partly explain why its operation was largely Parliamentary in nature.

Legislative Observations

Observation is one of the potent instruments often employed by the Legislature to draw the attention of administration to its lapses. The period of Observation-time varies from place to place. In some Legislatures, it is often taken before the orders of the day, while in some it is often the last thing to consider. Observation-time affords the legislators the opportunity to speak out their minds on public issues. Such speeches may result in total condemnation, commendation or warning the Executive.

Observations as used in the Second Republic may be grouped into four categories, namely:

1. There were some observations that were intended to expose governmental abuses or irregularities. For

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instance, in Bendel State an NPN member of the House said on point of Observation:

> The Governor's salary and allowance for a year put together is N30,000. By spending N632,000 to bury his father, the Governor has spent his salary and allowances for twenty one years exactly. I want to know the rationale behind the spending[34].

This statement no doubt, embarrassed the State Governor, Professor Ambrose F. Alli, who had wanted to bury his father privately before he was persuaded to use state funds[35].

2. The second group of observations were those intended to direct the attention of the Executive to the problems in its agencies. One of such problems related to the non-payment of teacher's salaries. As a legislator in Ondo State said:

> My people in Ekiti North, particularly the Teachers have not taken their salaries for October. I want to appeal to the Commissioner for Local Government and Community Development to look into this matter and find a solution[36].

It should be noted that the issue of non-payment of Teachers' salaries was perennial in the Second Republic, as this was not limited to Ondo State alone. In most States of the Federation, the issue was not resolved

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34. Bendel House of Assembly Debates Official Report Issues 50, 1980. p. 5.

35. See Nigerian Observer (Benin-City) July 7, 1980.

36. Ondo State House of Assembly, Official Debates 6th November, 1980.

until the Military took- over in 1983. In fact, the Federal Government had to concede special grants to some states before Teachers' salaries could be settled, some of which were in arrears of one year.

3. Another group of Observations were aimed at protecting the powers, interests and integrity of the Legislators. For instance, there was the general complaint by the legislators that they were not accorded enough respect in matters of official protocol. This type of complaint often come after state ceremonies[37]. The legislators often felt that as a matter of protocol, they should have precedence over the other political executives apart from the governors and Deputy governors. They were often surprised to see commissioners being given more official attention at ceremonies than themselves.

4. The last group of Observations were intended to highlight and draw attention of the Executive to constituency problems. For instance a legislator observed:

> I went to my constituency and found that they have a lot of problems. I also discovered that there is no facility anywhere in the Local Government Area. I am

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[37]. See inter alia National Assembly Debates (Senate) November 6, 1979, Col. 625; Bendel State House of Assembly Issue No. 6, 1979, p. 3.

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suggesting that they establish Mobile Dental Clinics...[38]

This type of request from individual legislator's constituency abound in the Second Republic. This of course is desirable because Legislators as representatives of the people are meant to represent the needs of their constituencies. This, of course, is a constitutional duty.

However, it is important to note that Observations as Legislative instruments were potent at least in publicizing executive lapses and problems. Sometimes Observations resulted in immediate intervention of the Speaker to issues being observed by the legislators. For example, when Observations were made by legislators at federal and state levels about discriminatory treatment, they suffered in matters of official recognition, the Speakers discussed the matter with the Executive. The Executive had to disabuse the minds of the Legislators on this issue.

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The Committee System and Control of Executive

Committees are very crucial in the workings of any Legislature. They are recognised as an important structural element in the rules of procedure of Legislatures all over the world. The rational philosophy behind the establishment of Committees in the Legislature is that the House as a whole is too unwieldy a body to make full enquires into matters of interest to it. It was therefore conceived that a dispersal of power independently owned by these Committees but collectively held by the Legislature would meet these varying dimensions of

38. Bendel State House of Assembly (Debates) Issues No. 147 1979/80 session, p. 5.

human needs[39]. Over the years, the increasing range of subjects with which legislatures are concerned has led to a steady development of Committees.

However, it is important to stress that committees do not have the same utility values all over the Legislatures across the world. The importance attached to the Committee system will depend on the type of political system that is being practised. For instance in a Presidential system, legislators do most of their work through the Committee than in the Westminster model. In Parliamentary system, more often than not the Committee work as Ad-hoc Committees established to deal with a particular matter and they cease to exist as soon as they have made a report to the House[40].

In the Parliamentary system apart from Ad-Hoc Committees, there are also Select Committees. This term is used to 'describe any committee consisting of a small number of members in contrast to the Committee of the Whole House'.[41] As a rule they are appointed to inquire into a particular subject and they make recommendations to the Legislature. The committee stands dissolved after their reports have been received and considered in the House. Moreover, unlike Standing Committees, Select Committees can meet even when the House is on recess or adjournment. In Presidential systems, the Select Committees cannot consider Bills.

In contrast to this, is the Standing Committee in the Parliamentary system which is often appointed to consider a specific Bill.[42] The terms of reference of

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39. See Robert K. Carr and Marver H. Bernstein. American Democracy (Illinois, The Dryden Press 1977) p. 293.

40. Parliaments of the World: op. cit p. 626

41. Ibid, p. 627.

42. Ibid, p. 627.

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Standing Committees are not specialised, i.e. they have no exclusive field of legislation to work in. Each of the Standing Committees is expected to consider any Bill allocated to it.

The Committee of the Whole House whether in Parliamentary or Presidential system 'is a working body which comprises all the members of the House presided over by a Chairman instead of a Speaker.'[43] When a legislature in session is constituted into a Committee of the Whole House, the more stringent rules of debate of the House are normally laid aside and more informal procedure applied. In fact, the Speaker would have to leave his official desk and the mace of the House which is the official symbol of authority of the Speaker set aside. Here, the legislators are expected to see themselves in more or less on equal terms except occasional reverence to the chairman. Examples of occasions when the whole Legislature constitutes itself to Committee of the Whole House is when Budget, Expenditure and Taxation matters are about to be considered.

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The Importance of House Committee to Executive Control

One of the ways by which the Legislature can make the administrative agencies to be directly accountable for their actions is through the establishment of Committees. In order to be able to fulfil this role. Legislatures usually organise themselves into various Committees along the lines of Ministries and Parastatals. This is the only sure way by which the Legislature could positively respond to the every increasing areas of administration. In the United States, for instance, congressis usually organised into committees along major administrative units of the Executive. This was also the case in the Nigerian Second Republic

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43. Ibid, p. 627.

where committees were created along major administrative agencies of the Executive.

These Committees were expected to monitor and control each governmental department under its care in order to ensure that the bureaucrats actually work in line with the policies as formulated by the Legislature. Hence it can be said that most work of a Legislature under a Presidential system are expected to be carried out in most cases of Committees.

In addition, the Committee system often allows legislators to concentrate on narrow administrative activities thereby making it easier for them to effect one of the most vital democratic functions, i.e. criticism and review of Executive activities. Hence it could be said that the committee system provides a means of specialisation of effort within the Legislature. As it has been pointed out earlier, committees are generally suitable for discussing details, while the House is better suited for debating the general principles. This is because there would be little or no time to consider every issue in detail but the committee on the other hand is expected to have more time and collect
information which can be used to arrive at useful resolutions.

Arising from the issue of specialisation as a result of Legislators constituting themselves into committees, is the respect and influence which a legislator can easily engender through the Committee. This is possible if he works hard in committee thereby developing expertise. As G. Y. Steiner said:
The members who are most successful are those who pick a speciality or an area and become real experts in it. As a consequence, when they speak they are looked upon as authorities and are highly respected. Even though they may be

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an authority in only one field, their influence tends to speak into other areas[44].

This specialised knowledge of the legislators on the Executive departments will no doubt serve to counter balance the expert knowledge of bureaucrats over their administrative units. This will no doubt, help the Legislature to master the diverse areas of the Executive branch.

The House Committees may also be utilised to create official forum for public participation in the policy formulation and decision making. The committee system allows members of the public to attend the meetings of any of the committees. They may also be allowed to participate in their proceedings, thereby providing committees information that could facilitate their work. For instance, when the local government committee in Kwara State Legislature was considering the Bill on the creation of more Local Governments, members of the public were allowed to make representations and present documents which may help the Legislature in reaching rational decisions.

Having considered the importance of the House Committee *vis-a-vis* the Executive branch, we shall go further to see how they, in fact, relate to the administrative units in a practical sense. We shall only make allusions to Kwara State and Ondo States in this discussion but these discussions will have implications for other states as well as at the Federal level.

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The Committees and the Administrative Units

In the Second Republic, each political party assigned its party caucus in the Legislature the responsibility to assign the legislators to Standing

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44. Gilbert Y. Steiner, The Congressional Conference Committee (Urbana, Illinois, University of Illinois Press, 1971) p. 65.

Committees. Because committee assignments of legislators largely determine the areas of public policy in which a legislator will specialise, the administrative units on which he will have the greatest influence, and the subject on which he will generate the most publicity. Legislators were known to have lobbied seriously for prominent Committees. The most desired of the Committees were Appropriations and Finance, Rules, Ways and Means Committee[45]. This is because these committees are most central to the Legislative control of the Executive.

The initial enthusiasm died down, when the legislators settled down for the business of government. This was because at the initial stage neither the legislators nor the administrative agencies knew precisely what they were supposed to accomplish under the committee system. The bureaucrats found the new system extremely strange because under the Parliamentary system which they were accustomed to, bureaucrats were never summoned by the Parliament on the account of their ministries or agencies. This was largely responsible for the usual reluctance of the Permanent Secretaries when they were being summoned by the legislators. For instance, in Kwara State, one of the chairmen of committees set up by the Legislature expressed disappointment over the non-appearance of Permanent Secretary despite the fact that he was written and the Committee caused same invitation to be announced
over the Radio and Television[46].

Similarly, officials of the Ministry of Education in Kwara State refused to make available necessary information and documents which would have helped the

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[45]. The Appropriation & Finance Committee handles all spending Bills, i.e. those that appropriate public funds, The Rules Committee determines what proposals reach the floor for debate and a vote. The Ways and Means Committee considers Tax legislation and related matters such as revenue sharing an social
security.

[46]. See the Report of the Committee on Housing and Environment, Kwara State House of Assembly, 10th July, 1981, p. 5.

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Education Committee in its probe of N200 million Foreign Education Loan alleged to have been misappropriated by the Ministry.

At the same period, the Trade, Industries and Cooperative Committee discovered that the Ministry of Trade, Commerce and Industry did not implement its recommendations as adopted by the House. The resolution of the House was to the effect that 60% of the capital of government-owned companies should be sold to the public.

Hence the Kwara State experience with respect to Committee control of the administrative agencies was not a success story. Their relationships were marked by mutual suspicion for each other. Even when some kind of unity was being forged between the Legislature and the Executive, the Legislators did not seem to have a clear perception of their roles in their circumstance. The Committee chairmen soon become chief lobbists for the ministries and parastatals which they superintended. As a

chairman of one of the committees said:

> I think any chairman worth his salt should be able to defend his Ministry as much as possible in order to attract additional funds to executive its programmes[47].

This statement clearly shows the misconception of the rule the Committee *vis-a-vis* administrative agencies. The administrative agencies were expected to defend their proposal and not vice versa. The various House Committees of Kwara State thus played incrementalist roles in the Executive budget proposals to the Legislature.

However, Ondo State presented a different picture from that of Kwara State

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[47]. See the Report of the Committee on Agriculture and Natural Resources Ibid. 28th August, 1982, p. 9.

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in respect of the ways in which the Committees related to the administrative agencies. The House Committees as constituted in Ondo State was by far more effective that than that of Kwara State. For instance, the House Committee on Finance, Economic Planning and Statistics was very effective between 1979- 1983. The Committee was able to revert the Executive decision to grant Ondo State Health Management Board autonomy. In its report to the House, the Committee on Health argued:

> Since the Health Management Board reports to, and is supervised by the Commissioner for Health, the Board should not be treated as a parastatal reporting directly to the Governor's Office. It should therefore not be given one life vote as parastals[48].

The Ondo State House of Assembly accepted and adopted the recommendation and accordingly passed a resolution to the Executive arm to reduce the status of the Health Management Board to that of a subsidiary of the Ministry of Health. Perhaps, the more cogent reason for this action was the thinking that to integrate the Board with the Ministry of Health would facilitate health care delivery in the State. The two institutions needed to work together and integrate their efforts in order to be able to plan adequately for the health needs of the people of the state.

The committee also rejected the Executive proposal to transfer the salaries of Primary School Teachers to Ministry of Local Government. The officials of the Ministry of Local Government lobbied the committee in order to shelve off the responsibility. As the committee said:

> We agree with the Ministry of Local Government that in view of tight state of cash, the salaries of Primary School Teachers should continue to be disbursed by the Ministry of Finance. To transfer

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48. Report of Finance and Appropriation Committee of the Ondo State House of Assembly on the 1981 Appropriation Bill, p. 2.

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that function to the Local Government Ministry will only succeed in adding another link to the claim of delay which cold lead to an industrial action by the teachers[49].

This recommendation was also accepted by the House. This caused a reduction of N 56 million in the Budget of the Ministry of Local Government. The Ministry was not worried over the reduction because the said N 56 million would not be enough to pay the Teachers salaries and allowances for the year. The reduction was transferred to the Ministry of Finance thereby increasing the estimates of the Ministry by N56 million. This major shift from the allocation of the two Government Departments was a sign that the Committee actually did its work in the period.

The Committee also proposed formula for sharing the Local Government revenue in Ondo State[50].

The formula was as follows:

Population	35%
Primary School Enrolment	30%
Equality	20%
Land Area	15%
Total	100%

The House did not accept the percentage allocation on Primary School

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49. Ibid. p. 3.

50. See Minutes of Meeting of Ondo State House of Assembly of the Committee on Finance Economic Planning and Statistics, 21st July, 1981.

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enrolment and the other 20% based on Equality. However, late, the decision that was reached by the House was based on the earlier proposal of the committee. The Health Committee of the House was able to influence the establishment of additional Schools of Nursing at Okitipupa and Ikare. The siting of the two schools under the law belonged to the Executive branch but the fact that the Legislature was able to have its way in this matter showed the kind of cooperation or intensive lobby that must have transpired between the two arms of government.

Conclusion

From what has been discussed in Kwara and Ondo States as regard the role of Committees in the control of the Executive, there is no doubting the fact that the House Committees at Ondo State were more effective than those of Kwara State. The House Committees in Ondo State played a crucial role and had a lot of influence over the operation and orientation of the administrative units. However, this statement is limited to a few committees such as Finance and Appropriation and Health committee.

In Ondo State at this period there were eleven committees[51], and for only two committees to have functioned well out of eleven was not quite commendable. However, in comparative terms, the performance was better than that of Kwara State where the Legislature was unable to influence executive decision.

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51. Ondo State of Nigeria, House of Assembly votes and Proceedings, 18th October, 1979.

CHAPTER EIGHT: THE PROBLEMS OF LEGISLATIVE CONTROL OF THE EXECUTIVE

Introduction

From our analysis in the preceding chapters, one fact is easily discernible, i.e. the Legislature in both parliamentary and presidential systems of government had failed to ensure effective control of the Executive and its administrative agencies. What then were responsible for the failure of the legislators in the two Republics? This question is of paramount importance in order to understand the political development of this Country. It is interesting to note that some scholars[1] have attempted to provide some reasons for this pitfall. Reasons advanced by such authors include the young age of the legislators, the low educational background, the crisis theory etc. While these factors as analysed by them were well articulated, we nevertheless believe that the reasons advanced are not exhaustive. It is therefore the intention of this chapter not only to complement these works but to view the problem of legislative control of the Executive within the framework of more complex series of historical explanations. In this study, therefore, a number of issues have been raised and considered as factors militating against effective control of the Executive by the Legislature whether in the parliamentary or presidential system of government. Such issues include the colonial factor, the quality of the political class, the political instability, the prebendal politics, the nature of political party system, clientelism, corruption in the body politics etc. Now let us begin to analyse these factors.

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1. See inter alia Barry Munslow, 'Why Has the Westminster model failed in Africa?' Parliamentary Affairs Vol. 36, 2, Spring 1983 pp. 218-229; Dele Olowu, Constitutionalism and Development in Nigeria, Lagos State, Governance, Society and Economy, (Lagos, Malthouse Press Limited, 1990) p. 115; Oyeleye Oyediran 'The Chosen Few, Policy - Makers in the New Local Government System in Western Nigeria' Quarterly Journal of Administration Vol. VIII, 4, July, 1974 pp. 399-400; Oyeleye Oyediran 'Legislators in the 1989 Constitution' The Guardian (Lagos).

corruption in the body politics etc. Now let us begin to analyse these factors.

The Colonial factor

The colonial independent settlement of Nigeria's political and administrative affairs were artificial. Several factors accounted for this. For instance, on the eve of Nigeria's independence the colonial administration acted as a referee among the contending political forces in the country. As a referee, the colonial administration had the coercive power to impose its rules of politics. Hence the colonial administration was able to curtail the internal dissension within the country. Apart from the relative political tranquility which the country enjoyed under colonial rule the emergent politicians had little or no opportunity to learn the 'value or reverence for law and respect for the rules of the game'[2]. The 'rules of the game' here refers to the limitations on the use of executive power and its absence had resulted into recklessness in the use of power. The legislative arm which is supposed to act as a check in the use of power by the Executive arm did not also seem to have grasped this role at independence. The ultimate result was mis-use of power with reckless abandon, this largely resulted in the abrupt end of the constitutional democracy.

Another issue that may be raised on colonial factor relates to the State of some of the various communities which were amalgamated by the colonial administration. The pre-colonial history of most amalgamated communities witnessed independence from their neighbours. There were also States, Kingdoms, Empires with history of inter-state relations in area of commerce and sometimes

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2. James O' Connell 'The Inevitability of Instability' Journal of Modern African Studies, Vol. 5, 2, 1967 p. 188.

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military warfare. They were only forcibly united with one another by the colonial power by the use of superior technology of warfare. With the British occupation and its 'civilising or modernising' influence there was no end to inter- tribal wars. But during the colonial period, its policy like 'divide and rule' gave rise to inter-ethnic rivalries. Owing to this 'divide and rule' policy the various ethnic groups or regions were given little or no time to forge a sense of belonging as the colonial administration believed in separate development of these units. This was bound to affect the legislators as products of these communities. This problem was compounded at independence with introduction of multi-party system, inter-ethnic rivalries became aggravated as political elites had to compete for the control of the apparatus of political and administrative power. Indeed all the political parties were either regionally or ethnically based.

The result was that most politicians (including legislators) did not rise above tribal sentiment. In other words owing to the intense rivalries among the political elites and coupled with ethnic politics of the time, none of them had national appeal. The result was that legislators coming from different parties could not pull their strength and resources together to curb most of the excesses of administration. It could be inferred that communalism or communal politics precluded the emergence of a legislature that has national outlook in terms of the modus operandi of executive control.

In addition, because of the mode of operation of colonial authority, the legislative arm was ill-schooled in the politics of representation. It is for this that B. Munslow affirmed that "colonial rule was by no means a preparation for post- independence democratic government"[3]. For instance in the hey days of

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3. Barry Munslow op. cit. p. 224.

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colonial authority in Nigeria, it combined 'executive, legislative and judicial powers in the hands of a single foreign caste and permitted only a minimum separation of these powers. On the eve of its departure (and precisely in 1952 when quasi parliamentary system was introduced) the colonial administration tried to reduce the powers of the governing elites by incorporating the issue of separation of powers in the constitution. The legislative arm so created was subordinate to the Executive Council. There is perhaps no where in the literature where the apprehension of this body has been vividly described as in the work of B. Munslow:

> Until the terminal stage of colonial rule, colonial government was dominated by the Secretariat and its goals was efficient administration. Even when legislative councils were set up as part of the preparatory process, they were doubly subordinated both to the Executive Council and a few unofficial members. There was no nation-wide parties and certainly no opposition which could form an alternative government... The legislative council met rarely and were not intended to represent the people or make government responsible of the people. They were expected to act as mouthpiece for the administration. When Ministers were eventually appointed, they were made responsible to the Governor and not to the legislative Council[4].

At independence the Council of Ministers and the administrators saw themselves as the rightful owners of power and the paraphernalia of office which the colonial authority left behind. Hence they were peculiarly ill-placed or disposed to accept the doctrine of checks and balances beyond its mere inclusion in the constitution. In the Nigerian experience, opposition parties in the

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4. Ibid. p. 225.

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Legislature were merely tolerated and not treated as potential government parties[5]. The frustration suffered by most of them in the hands of the governing party had resulted in carpet-crossing in the First Republic. In the Second Republic, where the practice of carpet- crossing was outlawed some legislators resigned from their parties, vacated their seats in the Legislature as demanded by the constitution and joined the government party[6]. In a situation where legislators were in disarray not much could be expected of them in terms of control of the administration.

Party Conflicts and Legislative Control

The history of party politics in Nigeria has been marred with inter and intra party conflicts. This conflict can be traced to the 1959 federal election which was intended to herald Nigeria into independence. The three major parties the Action Group (AG), National Council of Nigerian Citizens (NCNC) and Northern Peoples Congress (NPC) were the major contestants. The result did not produce a clear cut winner and an alliance had to be worked between NPC and NCNC to form a government; while the AG became the official opposition party. The three political parties had mutual distrust for one another such that they could not work together in the interest of the country.

By 1962, the crisis in the AG had resulted into the break up of the party

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5. The opposition party (AG) in the First Republic was numerically weak. Its maximum strength was 75 in a House of Representatives of 312 members. The membership of the Opposition Party was further reduced to 20 following a lot of carpet-crossing that took place as a result of the internal crisis within the party in 1962. As a result the Prime Minister said that he did not recognise the AG as official opposition party again. He said: 'The whole idea of an Opposition, I think, is that the Opposition should provide an alternative Government ... A handful of twenty, people cannot provide an alternative Government' (See House of Representatives Debates, 1962).

6. A significant number of UPN were known to have done this, following the crisis in the party over gubernatorial primaries of 1983.

into two factions led by Chief Obafemi Awolowo and another by Chief S. L. Akintola. The AG Parliamentarians at Regional and Federal levels had also been split into two along this division. The Akintola faction formed another party known as the Nigerian National Democratic Party (NNDP). The crisis became deepened as the NNDP was declared winner in Western Nigeria in an election which many electorate believed to have been rigged by the Federal Government in order to favour the NNDP.

By 1964, there had been changes in the Federal coalition. The NPC teamed up with the NNDP to form the Nigerian National Alliance (NNA) and the NCNC with AG formed the United Progressive Grand Alliance (UPGA). The immediate post-election period witnessed civil disorder, thuggery, arson, blood bath etc. especially in Western and Middle Belt areas of Nigeria[7]. Indeed, it can be said that this conflict served as the immediate cause of the 1966 military *coup d'etat.*

The history of the Second Republic was not different from the First Republic in terms of political conflicts that engulfed the nation, as history has a way of repeating itself. The NPN had to work out an alliance with NPP before it could commence the administration of the country by 1st October, 1979. The other three political parties, namely UPN GNPP. and PRP forged a kind of unity in order to be able to counter the federal might as represented by NPN and NPP By the end of the first term of office in 1983 the political landscape of the country had unofficially collapsed into two alliance competition between the NPN and the other parties which formed the Progressive Parties Alliance (PPA) The military again had to intervene in December 1983 to terminate the Second Republic.

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7. In the Middle Belt the contest was between the NPC and the United Middle Belt Convention (UMBC) led by Chief J. S. Takar. For details see B. J. Dudley Parties and Politics in Northern Nigeria (London, Frank Class, 1968) pp. 78-84.

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The point that we are trying to make is that the Legislature was never an Island of its own. Its members were actively involved in these political conflicts. These conflicts also affected the workings of the Legislature such that its members could not forge a sense of unity. In a situation where legislators were being polarised along party lines not much could be achieved by them in terms of supervising the conduct of administration.

The issue of disunity among the Legislators may also be viewed against the background that their party leaders wielded tremendous influences over them. The likelihood that Legislators were being affected by the factionalisation was very high since they were expected to react to the external stimuli emanating from their leadership.

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The Low Quality of the Political Class

On the eve of Nigerian independence there were few educated elites in the country. These few were also unevenly spread among the three regions of the country. As a result of this scarcity many educated men who could have otherwise gone into politics were being attracted to public service in order to replace the expatriates and keep the administrative machinery running. This meant that this set of people could not be involved in active party politics at the same time. Thus, in the generation behind the leading nationalists, many able talents were not available for political posts and this weakened the ranks of the political class'. Indeed, of the few talents that were available in the political class a good number of them went into the executive branch leaving the Legislature to the poor second. As James O'Connel aptly noted that 'they

possessed little knowledge and capacity to stimulate the administration to prepare strategic feasibility studies and insist in the economies in spending'[8]. This weakness has resulted in ineffective legislative control of the Executive and its administrative machineries.

Another argument that can be advanced for poor legislative control of the Executive relates to the generally low educational standard of the members of legislature as compared with the Executive branch[9]. The experience of Nigeria's Second Republic had been that the Executive branch was more educated, consequently more exposed and perhaps more sophisticated than the Legislative branch. In this modern society the crucial position of education in maintaining and upholding constitutional democracy cannot be over emphasized. It is for this that the 1989 constitution set secondary school education as the minimum standard of entry to any legislative institution. Education is therefore perceived in the light of the above as one of the most potent weapons which the legislators could employ to fight ineffective control resulting from their own ignorance and timidity.

It can thus be inferred that since majority of members of Legislature possessed inferior educational qualifications as compared with the administration, they became susceptible to manipulations in the hands of the Executive branch. It was an open secret that at the period members of the Legislature were educationally rated lower than the Executive. This no doubt created a lot of psychological problems for the legislators.

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8. James O'Connel op. cit. p. 187.

9. For instance in Oyo State Legislative Manual 1981 of 121 Legislators only 21 of them were University or Polytechnic graduates representing 17% of the total population. The rest were Grade II Teachers, Photographers and Artisans. Whereas in the Executive cabinet of 22 membership 16 of them (73%) were University graduates. We only take Oyo State as a point of illustration. This was the general pattern throughout the Country. Again, Dele Olowu has also analysed this in his work Constitutionalism and Development in Nigeria, Lagos State Governance, Society and Economy (Lagos, Malthouse Press Limited, 1990) p. 115.

The Question of Political Instability and Legislative Control

The history of Nigerian political system has been marred by political instability. The First Republic barely lasted five years (1st October 1960 - 15th January 1966) when there was military intervention in the governing process of the country. The military interregnum kept the Legislative arm from operating for over thirteen years (13.6 years) its duration. Politics like any other game needs constant practice to master. The high turn-over of the military *coups d'etat* did not afford the Legislature the opportunity to learn and practice politics. Hence, when the Legislature was allowed to function again, it had to start from the base level. As O. Oyediran has aptly said "however efficient, effective and responsive an institution and its members may be, continuity of existence is very important'[10].

This situation became aggravated with the change in 1979 from Parliamentary democracy to executive Presidential system with all its complexity. The Legislators of the Second Republic had little to fall back on in terms of precedence. Few of them who had considerable experience in legislative process were schooled under the Parliamentary system and were therefore expected to teach and lead their colleagues. The situation was like a blind leading the blind as the so called experienced legislators among them had not fully internalised the Parliamentary system before the military took over in 1966 and as a result they were themselves found wanting. The situation could be likened to what B. J. Dudley described as 'men trained to play draughts are led to make those same

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10. See O. Oyediran 'Legislators in the 1989 Constitution'. The Guardian (Lagos) 28th July, 1990 p.9. 9.

moves in the game of chess'[11]. The inevitable result of such moves was neither draughts nor chess as our findings have amply demonstrated. In other words, it can also be said to have resulted in the marked confusion of Parliamentary with Presidential systems as exhibited by the legislators in the Second Republic.

The Nature of Political Party System

The problem of ineffective Legislative control of the administration can also be viewed in terms of the nature of our political party system. For instance, the multiplicity of political parties in the Second Republic did not allow for a national consensus among the legislators especially at the National Assembly. The multi-party system saw the emergence of many political leaders representing their parties. The result of elections conducted shows that these leaders had their support based on their geographical areas. It is important to stress that the result into the Legislature was not different. The legislators were quickly identified with their party leaders and their ethnic affinities. Hence they lacked collective will to exert pressure on the administration of the period.

Similarly, another point that can be raised relates to the question of the predominating position and influence of the non- elected party officers such as Chairmen and Presidential candidates of these political parties. Because most of them were the main financiers and patrons of the parties, party consideration in the Second Republic was given a high degree of priority and this made it difficult to draw a line of demarcation between the legislative behaviour and the party decisions. The pattern of debates as it was being observed in most

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[11]. B. J. Dudley, 'The Traditionalism and Politics: A case study of Northern Nigeria' in Government and Opposition (London, July, 1967).

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legislative institutions of the period was geared towards defending the parties' decisions rather than the constituencies' interests. This further weakened the emergence of a strong and active Legislature as conceived by the 1979 Constitution.

The Issue of Patron-Client Relation in the Body Politic

The grid of Nigerian political society according to Richard Joseph is 'an intricate and expanding network of patron- client ties, which serve to link communities in a pyramidal manner'[12]. As it is commonly observed, at the apex of such networks are found individual political office-holders in the federal and state levels. What is very crucial to our discussion of patron-client relation is the exchange of diverse patronage for assistance, support and loyalty among the political class.

Indeed, in contemporary Nigeria, an analysis of Legislative- Executive relation needs take cognisance of 'the spatial as well as vertical dimensions of what can be termed ethno-clientelism'[13]. Without such an understanding one cannot grasp the ease with which the societal resources were being appropriated by the Legislature and Executive. Clientelism and more broadly ethno-clientelism, provide the linkages between the Legislature and the Executive arms of government in which the essential functions or roles to be performed by each are blurred and inconsequential as long as individual or group interests are served.

The issue of patron-client relation seemed to be a notable feature of party politics in Nigerian political system. In situations where such exist one may not

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12. Richard A. Joseph, Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic (Cambridge: Cambridge University Press 1987). p. 55.

13. See Richard A. Joseph, 'Class, State and Prebendal Politics in Nigeria' Journal of Commonwealth and Comparative Politics Vol. XXI, 3, November 1983 p. 29.

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expect wonders from the legislators in its control of the administration. This is because legislators were expected to support their kinsfolk for patronage or assistance.

The concept of patron-client relation can be analytically broadened to include what R. A. Joseph tagged as Prebendal Politics in Nigeria[14]. The term Prebendal refers to 'patterns of political behaviour which reflect as their justifying principle that the offices of the existing state may be competed for and then utilised for the benefit of office- holders as well as that of their reference or support group[15]. These features are too familiar to scholars of Nigerian government and Politics to be disputed.

The state as seen by many public office holders was not more than a congeries of offices susceptible to individual communal appropriation. The official purposes of the offices which they occupy become a matter of secondary concern to them. As Douglas Rimmer observed:

> Either directly or through the medium of the parties, men in authority benefitted their supporters and home communities by provision of amenities, misappropriation of funds, and nepotism in appointments. They received fealty and delivered largesse.
>
> ... Public economic power and patronage were valued mainly as instruments of distribution ... Appointments to public offices (particularly ministerial and in the public corporations) were therefore decisive, and the dominant purpose of electoral activity was to control preferment[16].

This position as adopted by Rimmer has been corroborated by L.

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14. Richard A. Joseph, Democracy and Prebendal Politics in Nigeria op. cit. p. 30.

15. Ibid. p. 30.

16. Douglas Rimmer, 'Development in Nigeria: An Overview' in Henry Bienen and V.P. Diejomoah (eds.) The Political Economy of Income Distribution in Nigeria (New York and London, Homes and Meier Publishers, Inc. 1981).

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Adamolekun in his study of the Second Republic. He observed inter alia that what pre-occupied the Legislators of the period was far from ideals of enforcing accountability and administrative responsiveness. Indeed 'a political executive that was willing to be responsive to the personal (usually financial) interests of the legislators could be as irresponsive and as unaccountable to the mass of the population.

Corruption in the national life

'Corruption' both as a concept or a social phenomenon of relationship in governmental administration is often difficult to prove. This is because the term looks elusive in nature and often prone to controversy. However its existence cannot be doubted in Nigeria[17]. M. A. Tokunboh vividly captures the reality of this phenomenon in Nigeria's national life. He said:

> It is not an exaggeration of the tragic events of the years since independence to say that all efforts to establish a just and efficient administration have been frustrated by corruption. The evil exists in every facet of our society. You bribe to get your child into a school; you pay to secure a job and you also continue to pay in some cases to retain it; you pay 10 per cent of any contract obtained; you dash the tax officer to avoid paying taxes; you pay the hospital Doctor and Nurse to get proper attention; you pay the Policeman to evade arrest. This catalogue of shame can continue without end.
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> Against this background the administration at national, state and local levels has been adversely affected. Management and control of affairs are, in many cases, in the wrong hands. This sordid state of

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17. See inter alia Sola Aina 'Bureaucratic corruption in Nigeria: The continuing search for causes and causes' International Review of Administrative Sciences XLVII, 1, 1982 pp. 70-76: Dele Olowu, 'The Nature of Bureaucratic Corruption in Nigeria' International Review of Administrative Sciences Vol. XLIX 3; Femi Odekunle (ed.) Nigeria Corruption in Development (Ibadan, Ibadan University Press 1986).

affairs has virtually developed into a conspiracy against the people[18].

Indeed, in Nigeria, there is a general acquiescence to bribery and corruption that one may be tempted to say it had almost gained official recognition[19]. For instance, in the Second Republic, Alhaji Shehu Shagari having approved the N200 million supplementary allocations to the state governments in 1983, in order to meet the overdue payment of salaries of their officials, was persuaded to comment that a number of state governments were in financial mess because the money they received earlier had changed hands[20]. The military leadership that toppled the Shagari's administration clearly lent credence to the corruption of the period;

> ... While corruption and indiscipline have been associated with our state of under development, these two evils in our body politic have attained unprecedented heights in the past four years. The corrupt, inept and insensitive leadership in the last four years (1979-83) has been the source of immorality and impropriety in our society.
>
> ... This government will not tolerate kickbacks, inflation of contracts and over invoicing of imports ^Setcetera^S. Nor will it condone forgery, fraud, embezzlement, misuse and abuse of office and illegal dealings in foreign exchange and smuggling[21].

It is important to note that such vices as kickbacks, inflation of contracts, embezzlement, smuggling illegal dealings in foreign exchange etc. were the manifestations of corruption in the period under review. The inability of the

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18. M. A. Tokunboh 'The Challenge of Public Service' Quarterly Journal of Administration, Vol. II, 2, 1976 p. 76.

19. Eukora Joe Okoli 'Corruption in High Places' West Africa (London) 24th January 1983 p. 191.

20. President Shehu Shagari, Lagos Radio Broadcast, 5th April, 1983).

21. See Maiden speech of the then Head of State and Commander-In-Chief of the Armed Forces Major General Muhammadu Buhari of 1st January 1984 in Daily Times (Lagos) 2nd January, 1984. p.1.

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Legislative and Executive arms to arrest these situations through appropriate legislation and exemplary leadership had spent doom for the Second Republic.

One crucial point which must be noted when analysing corruption as a social phenomenon is that it is pervasive and knows no bound in its interacting device. It can be asserted, therefore, with the above evidence that the political class in Nigeria had appropriated the surplus of the society for their own advancement. It logically follows, that since legislators were part of this class, their involvement in the misappropriation of the societal resources had inescapably rendered them ineffective as watchdog of the public purse. To be an effective watchdog there is the need to abstain from the societal vices. The legislators were equally involved in corruption and indiscipline which characterised the daily conduct of the public affairs of the Second Republic, which R. A. Joseph described;

> Procedural rules governing the conduct of state business became fig leaves behind which a range of informal mechanisms and strategies are employed to achieve access to the public till or to procure valuable licences to import, build, borrow or exchange[22].

Indeed, in the Second Republic, it was an open secret that members of the legislature as well as the administration were involved in corrupt practices. In situation whereby members of the legislative arm could not rise above financial temptations, to expect this body to control the Executive in an effective manner would amount to asking for impossibility.

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The Political Actors and Class Consciousness

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22. Richard Joseph 'Class, State and Prebendal Politics in Nigeria op. cit. p. 24.

This study assumes that the political actors in both Legislative and Executive arms belonged to the same political or governing class: a class, in the sense that they all stand in specific relationship to the means of production of the state. As members of the same class they are conscious of their positions and determined to maintain their prestige. They are also inclined to protecting and guarding jealously their own interests. As a class, the political actors in Nigeria had 'an economic orientation and a set of priorities that render it fundamentally incapable of ruling without squeezing dry the arteries of the state itself'[23]. In other words the objective of this class was not only to serve but to amass wealth at the expense of the people who elected them. The wealth of this class has been largely sustained through their access to the societal scarce resources. As our analysis above has amply demonstrated, this class was involved in corrupt practices such as inflation of contracts, over invoicing of imports, smuggling etc. Owing to the wealth which have been accumulated, they were always involved in fund-raising and self-help projects all over the country. It can thus be safely assumed that legislators as members of this class were not likely to proffer any control measure that would in American terminology 'rock the boat' because of their own interest and class consciousness.

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Conclusion

It is important to note that the issues that were raised above can be viewed in terms of system analysis which the study adopts as its framework. The problems of ineffective control of the Executive by the Legislature are multi-dimensional in nature and they can be linked with one another. The inability of the

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23. Ibid. p. 24.

Legislature to control the Executive effectively is also linked with the fact that Legislature as a sub system within the political system is intricately and socially linked with the Executive such that distinction between the two branches of government cannot be easily made. It was such that the problem in one is bound to affect the other.

The concluding chapter shall attempt at proffering solutions to the problems that have been raised in the study.

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CHAPTER NINE: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

Findings of the Research

Our survey of literature on legislative control of the Executive in Nigeria showed that the subject has been poorly researched, and there has not been any comprehensive study on the subject.

This study also reveals that the legislative control over the Executive was rather weak in the Second Republic. This was because most of the legislators were largely ignorant of their roles under the presidential system of government. Instead of seeing themselves as watchdogs of the Executive, many believed (though erroneously) that they were elected to defend executive actions, so long as they belong to the same party.

Arising from this impression, legislative debates were characterized by division along party lines. They often saw those from other parties as 'political opponents'. It was such that ideas and programmes were opposed not because they were intrinsically inimical to the welfare of the people but because they were proposed by the 'other side'.

Another finding is that even though the 1979 Constitution provided for a presidential system of government, most of the actors throughout the Second Republic behaved as if they were operating the parliamentary system of government. In other words, the governmental structures and apparatus were changed via 1979 Constitution but the dramatis personae remained unchanged bringing to bear their old habits of the First republic. For instance, the accord between NPN and NPP, and the alliances entered into by the so-called 'progressives' were behavioural traits inconsistent with the intent and spirit of

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the 1979 Presidential Constitution.

In the same period under review, it was also found that the legislative control over public finance was weak. This found its expression in corruption which became prevalent in the period.

Finally, it was discovered that the inability of the Legislators to control the Executive had its origin in the colonial period as our analyses in chapters two and nine of this study had explicitly shown. This situation continued with little or no improvement in the Second Republic. It is for this reason that the thesis makes a number of proposals aiming at ameliorating the situation.

Proposals for Strengthening Legislative Control of Executive

It is the contention of this thesis that for accountability to be result-oriented, it must be internalised so as to become a daily habit of all and sundry particularly the Legislature, the Executive and its administrative agencies. Therefore public interest values must occupy a prominent position in the education and training of the administration. The preparation for accountable Executive must work toward resisting the pursuit of personal gain. To this end curricula should be drawn for public officials as well as our institution of learning which will aim at building a greater sense of ethics. This as a matter of policy should include:

(i) A sense of the constitutional system and limitations to be placed on the administrative discretion of the Executive. This will help curb the Executive excesses that are capable of posing problem for administrative

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accountability.

(ii) A well-rounded background drawing on liberal curricula ranging from Anthropology to Psychology to introduce political operators to a wide range of values held by different groups in Nigerian Society is essential. This is necessary because as leaders, the politicians are not expected to work in a vacuum. An understanding of the political environment would rather complement their work.

In addition, it is also proposed that studies in History and Biographies would help in deepening the understanding of all and sundry. It will provide judgmental tools about recurring dilemmas or every day problem which may be encountered in course of administration of the society.

There is also the need to introduce the study of Political Philosophy in order to provide a base for understanding fundamental values of the society. This will no doubt widen the scope and horizon of our public officials.

As part of regularised in-service-training briefing sessions are necessary on ethical conduct and accountability. The emphasis of this in-service-training should be on discharging of responsibilities as public officials. For instance when administrators discharge their duties effectively, they aid clients and simultaneously increase the agency resource base, giving administrators greater rewards and recognition for a job well done[1].

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1. J. B. McKinney and L. C. Howard, Public Administration, Balancing Power and Accountability (New York Mcmillan coy. 1973) p. 442.

The proposed concept of accountability in Nigeria's political milieu must reduce the power of the Executive and its administrative agencies while simultaneously increasing the power and influence of legislators as ambassadors of various constituencies. This proposal underscores what Larry M. Schwab[2] calls legislative supremacy model. This model sees law making as the most important governmental function. Therefore Legislatures should dominate the political system. In addition, Legislative supremacy provides the most democratic type of representative government. It will be undemocratic to consider supremacy of Judicial or Executive branch because Federal judges and bureaucrats are not elected and their function of interpreting and administering the law should not be held as central function of the government. Although the people elect the Chief Executive i.e. President and Governor, presidential dominance will still pose danger to democracy. Similarly, too much power in the hands of one individual produces an unhealthy situation for representative democracy.

The new philosophy of administration in the nation must be geared towards getting the people's needs satisfied through their accredited representatives. In order to do this, the Executive programmes must be subjected to the people's acceptance. The participation of the people in administration will promote greater accountability of the Executive.

In order to further consolidate the Legislative power, it is proposed that election into the Legislature should be conducted every six years as opposed to the Executive term of four years. With the Legislative term lasting six years, legislators will be able to develop a stable system to perform their functions. The more years in service will also enable legislators to acquire some degree of expertise in selected areas of public policy. The experience and expertise in

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2. Larry M. Schwab, Changing Patterns of Congressional Politics (New York, D. Van Nostrand Company 1980) p. 223.

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policy areas seem essential if the Legislature is to serve as watchdog over the executive's action.

The position of audit is very crucial in the whole issue of financial accountability. Therefore there is need for drastic transformation of that office. For instance if the audit department is to make appreciable impact in the Third Republic, the Office of auditor-general must increase markedly in terms of staffing situation. This is necessary in order to be able to cope with the ever increasing Executive agencies. In the same vein there is need to step-up in-service training of auditors and other financial staff so as to bring them to the same level with administrative officials whom they must deal with in the field[3]. This will, help to off-set the psychological problem or inferiority complex often suffered by most financial staff.

The office of auditor-general also needs structural reform to create opportunities for young and promising staff who will need upward movement in their careers. As at present the office is structurally limited with little opportunity provided for the staff below the auditor-general. Most of them who consider themselves educationally and professionally competent to take responsibility often leave for the private sector. In addition, adequate incentives comparable to what is obtainable in the private sector must be offered in order to attract and sustain their interest in the job. A similar solution is offered by K. Oshisami and P. N. Dean[4]. They said:

> A solution would be to recognize the professional accountant as a separate career grade within the civil

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3. For a similar recommendation See Federal Republic of Nigeria, Report of the Task Force on Tax Administration, (Lagos, Cabinet Office, 1979) p. 80.

4. Koleade Oshisami and Peter N. Dean, Financial Management in the Nigerian Public Sector (London, Pitman Publishing Ltd. 1984).

service, with its own remuneration levels and conditions of service designed to retain accountants in sufficient quality in the public service[5].

It is our considered opinion that no price is too high to pay in order to ensure the stability of Auditors and other financial staff in the public sector. This is one of the steps to ensure financial responsibility and accountability of the public officials.

As said earlier, the 1984 military tribunals charged with investigation of financial impropriety of the public officials between 1979-1983 revealed that there was over-spending of votes for sub-Heads and Heads of expenditure. Many executives were also said to have used contingency funds for purposes which could not be justified as emergency expenditure. The authors of the 1979 Constitution introduced contingency funds for meeting emergency expenditures which cannot await the due process of supplementary order. In the Second Republic, contingency funds were used to finance party secretariats, and to reward other party faithfuls. In one of the States, an incumbent Governor after losing the election withdrew N10 million about a week to handing-over to his successor[6].

In the light of the above experiences, we therefore submit that there should be a review of constitutional provisions governing the control and management of public expenditure in the country. This review should aim at tightening the loophole built in the system of financial control that leaves the executive alone to define what is contingency funds. The 1989 Constitution should be amended to define what contingency is. Similarly not only should the

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5. Ibid pp. 4-5.

6. See Reports of the Military Tribunal that probed Governor Alhaji Adamu Attah of Kwara State.

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Executive be made to limit the use of contingencies fund to what can really be defined as emergency expenditures but it should be provided in the constitution such that the Executive cannot spend the fund without the approval of the Legislature.

Similarly, the present financial system which allows for virement from one Head to the other and supplementary appropriation should be discouraged to the barest minimum in the Third Republic. This will help to curb unauthorised expenditures usually made by the Executive. It will also help in bringing financial sanity into our financial system by stopping a situation whereby the Executive would have disbursed the fund before seeking Legislative approval. This will not only inculcate fiscal discipline in the minds of the Executive and its agencies but it will save it from embarrassment that often attend such developments in the Legislature.

While this study appreciates the need for popular democratic control of public finances by legislatures as enshrined in the constitution, there is need to strengthen this popular control by limiting the legislative scrutiny to few but highly technical members of the Legislature in matters of final approval of Executive estimates. The situation in the Second Republic whereby the whole House constituted itself into Committee of supply was perhaps too large a body to make for effective and detailed discussion of the Executive budget proposal. The end result was that Executive estimates were approved without thorough scrutiny. A way out of this dilemma is for the Legislature to provide for the establishment of a sub-committee to do the more detailed job of scrutinising and examining the Executive estimates Head by Head. This Committee is expected to work in stages and report back to the Legislature. This will complement the general discussion that takes place in the Legislature.

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It is also proposed that external auditing be made bi-annually instead of the present annual event of its operation. This will help in tracking down financial culprits early enough and provide remedy rather than having to wait till the end of the year. The arrangement will not only keep the office of auditor-general busy all the year round but it will on the long run reduce the pressure of work and the work load of the Office of the auditor-general who must have to wait until the end of the financial year.

We also suggest a review of the constitution in a manner that would empower the Legislature to have the right to approve the accounts of expenditure. This will enable the Legislature check whether the Executive has conformed with what was approved by the House. This will keep the Executive on its toes most of the time thereby making it more accountable and responsible.

The idea of pre-budget consultation between the executive and the Legislative arms should be encouraged. This will in no doubt reduce the barrage of criticisms that always greeted Executive proposals of budget presentations in the Second Republic. This will also ensure quick delivery of services to the masses of the people as little time would be used for budget debates. It would also prevent Executive frustrations in the event of rejection of its proposals by the Legislature.

The Legislature, will no doubt, improve its position if it moved away from annual appropriations. This job is time consuming and the Legislature lacks the patience it requires to examine all aspects of the budget in great depth. Our proposal to ease this problem is to adopt a two-year budget cycle. This would afford the Legislature ample time for analysis and detailed discussion without constant pressure to pass the annual budget.

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Another probable thing to do is to adopt what Aaron Wildavsky[7] called radical incrementalism. According to him, all executive programmes will continue at their previous years' appropriation level except the Legislature directs otherwise. He explains:

> My proposal is that we abandon the annual budgetary process, as it is known and substitute a continuous consideration of incremental changes to the existing base. Each agency will assume that the funds for its programme will automatically be continued. All appropriations will be continuous, except for a small number designed for a limited time period. When an agency wishes to increase or decrease its funds for a programme or to eliminate an old programme or begin a new one, it will submit a request to congress through the Bureau of the Budget. The President may submit requests to congress, and have them considered right away. The appropriations committees may call for testimony at any time on any budgetary matter and change appropriations irrespective of the fiscal year. By altering authorizations to spend, the substantive committees may also bring reconsideration of budgetary matters[8].

The above proposal would afford the Legislature ample opportunity to study different programmes and agencies in great detail. The Legislature can now familiarise itself with the budget in all ramifications as opposed to passing the budget within allotted days with temptations of committing mistakes owing to pressure of time.

In order to ensure proper control and accountability of public funds, the annual estimates should be submitted as soon as possible and in any case not later than September of every other year. This will facilitate speedy consideration and approval of the budget. The Legislature as represented by the

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7. See Aaron Wildavsky, 'Toward a Radical Incrementalism: A proposal to Aid Government' in Alfred de Grazia (Ed.) The American Enterprise (Washington, American Enterprise Institute Press, 1966).

8. Ibid. p. 141.

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committee on Appropriation should be involved in a more meaningful fore-budget or pre-budget discussions with the Executive. There is need for a budget department in our legislative institutions to be staffed by experts to assist various committees on issues that pertain to budgetary allocations.

In the Third Republic, the legislators should as a matter of prime importance set up a capital implementation committee to monitor the progress of capital projects and penalise the Executive if it fails to comply with the Legislative approved format. Our finding of the Second Republic was that the Legislatures did not concern themselves with seeing the Executive implementing its budgetary directives faithfully. In fact as a convention, side by side with the annual budget there should be facts and figures to show us how much was actually spent the previous year. This is meant to assist the lawmakers in its assessment of what would be required in the current year.

Another area that needs review is the membership of individual legislators into many committees as witnessed in the Second Republic. Several studies on legislative reforms have suggested re-organisation plans for the committees by reducing their numbers and shifting jurisdictions over subject areas. There is need to have small number of committees in the Third Republic with much broader areas of jurisdiction. To this end, we propose that the Legislature clarifies and rationalise its committee structure, reallocating jurisdictions based on substantive programmes and national goals. This will permit reduction in the number of standing committees and more coherent policy determination. At the federal level, the House of Representatives and Senate Committees should be structured along parallel lines in order to encourage coherence and integration of decisions.

In addition, we propose that each standing committee needs to hire the

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services of an outside specialist adviser. The specialist adviser is supposed to be an unusual servant of the House, because he is not going to be on the regular pay-roll of the Legislature. He is an outsider with a gainful employment outside the Legislature. He is recruited
to do a specific work for the Committee based on his expertise. However it must be noted that we are not necessarily advocating that committees should build up large subject expert staff so as to weaken their authority and competence but it may be desirable to have experts at times to help the Legislature in its multifarious activities. This is the practice in the United States where Standing Committees have specialist advisers to advise them on highly technical areas. It will amount to a deception to feel that the Legislature has the solutions to all the problems.

It was discovered in almost all the Legislative Houses in the Federation that the Legislature did not employ the opportunity afforded by Question time in the House to any appreciable advantage. Question time was meant to check the excesses or malpractices of the Executive, but it was on record that nothing meaningful was extracted from the Executive between 1979-1983 in Nigeria owing to the following reasons.

(i) The Legislatures more often than not did not always prepare for questions they wanted to ask the executive hence they will become easy preys for the executive who will hood-wink them.

(ii) Forum for the questions which was usually the floor of the House or public gallery had the propensity of

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undermining the status of these officials. The Legislators were not likely to elicit the truth from them as the venue was too public.

Hence, before any member of the executive branch is brought to the Legislature to answer questions, it is hereby suggested that the Legislature must have carried out a thorough investigation and collected comprehensive information on such issues so as not to embarrass itself before the Executive. It is further suggested that in future, investigations should be conducted in the Committees, since Committee business is always conducted in private places. The civil servants may resent the idea of bringing them to the floor of the House for questioning.The Kwara State experience during the controversial N200 million foreign educational loan should suffice. During the investigation into the loan scandal civil servants were summoned by the legislators with military precision, but nothing reasonable was extracted from them. Having discussed proposals that will make for the effectiveness of legislative control of the executive branch, the writer believes that these proposals will be an exercise in futility if not accompanied with tolerable conditions of service.

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Legislative Services and Facilities

This section shall discuss services and facilities which can further encourage the Legislature in its official duties. By services and facilities we mean infrastructures which we expect to be provided for Members to further assist them in their legislative duties. We expect, of course, that these services would be provided at the tax payers expense.

The provision of appropriate services and facilities is of crucial importance to the Legislature. While we are not necessarily advocating provisions of infrastructure that will make them super-humans, there is need to provide basic and essential services that will further assist them in their legislative duties.

One of such basic services we expect that should be provided liberally to the Legislature is library services. The purpose of a library in the Legislature is not only to serve as repository of books and parliamentary papers but it should, aim at providing members with precise and detailed information on subjects connected with their duties. To this end, we expect the library of the Legislature in the Third Republic to develop along reference and research functions. Its principal aim should be to provide for members whatever books, documents, oral or written information they may require in connection with their legislative duties[9]. The research division of the library should be given adequate attention. This section should be further subdivided into five namely: Economic Affairs, Legislative Affairs, Scientific i.e. Science and Technology, Statistical and International Affairs. Each section should be headed by a senior researcher graded as a deputy assistant librarian and the division itself comes under the day-to-day supervision of one of the two assistant librarians. For the most part, the graduate staff of the Library should have specialist qualifications and experience (for example in Economics, Political Science, statistics or Scientific Policy), in addition to a good honours degree.

Further, individual Library clerks are expected to specialise in one or several broad areas of Public Affairs such as Agriculture, Higher Education, Housing, Immigration, International Relations, etc. Such specialisation involves

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9. See The Library of the House of Commons: Handbook (London, Library Association, 1970) p. 1.

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keeping abreast with current development and making useful contact with outside bodies and individuals[10].

The services of this research section and indeed of the entire library should be free of any selectivity of bias in terms of materials and information to be given to members. The library should be made to serve members in the best possible objective manner. The Library strictly speaking is not a public Library, hence, it should be maintained for the use of members of legislature in course of their duties.

Computer

As an innovation in Nigerian legislative system there is need to introduce the use of computer technology in research and retrieval of information. This will facilitate the numerous work in the Legislature. Like wise, the use of computers by legislators' staff will provide more useful data for legislators. We propose that each legislative House in the Federation should be equipped with terminals or console, a legislator could obtain at any time the title, number, sponsor and summary of any or all of the bills passed in the House. It is also possible for committees to store summaries of all bills under their jurisdiction in the data bank. The computer can also prepare any kind of calendar for the use of the Legislature in standing committees, sub-committees and House proceedings.

Expenses and Allowances of Legislators

In the Third Republic, there should be provision of free transport services to

10. Ibid. p. 151.

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Legislators once on legislative duties. This free transport should be extended to public air, private aircraft, chartered air services and sea services. Members' wives or husbands should be entitled to limited return tickets a year so that they could visit their wives or husbands as the case may be. Those legislators who prefer to use their cars may claim a car allowance for legislative duties.

Legislators representing metropolitan areas need to receive a supplementary allowance per year to meet the extra cost of living in such areas. Provincial members should also be given a subsistence allowance worked on daily basis when engaged in legislative duties outside their constituencies[11].

We also propose that legislative career should attract high pay and be comparable to many standard legislature in the Western democracies. It logically follows that if we desire our legislators to perform like their counterpart in Britain, Japan or the United States, we must give them comparable salaries. One suggestion often made especially in the Second Republic was that remuneration of legislators should in some way be linked to a level of salary in the Civil Service. The reason for this suggestion was that this would indicate some comparative level of salary to be adopted initially thereby ensuring that when salaries in the Civil Service are adjusted, the salaries of legislators would also be adjusted.

I do not support this proposal for three reasons: In the first place there is no basis for comparison between the two types of service. Secondly, there is no reason why the salaries of the legislators should be linked to an external scale; it should be determined on its own merit and should not enjoy any automatic in-built protection. This is the convention all over the world. A third argument which can be advanced against such a proposition is that any link

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11. Ibid. p. 172.

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between salaries of members of House and salaries in the Civil Service might involve the latter at times in political controversy which would not augur well for the service.

The Legislature and the 1989 Constitution

It is useful for our conclusion on this study to make a brief comment on the provisions of the 1989 Constitution as it affects Legislature. We do not intend here to discuss the legislative provisions *per se*[12], but the areas we consider repugnant to ideal Legislative control of the Executive.

It is fair to conclude that the few changes that are made in the 1989 constitution were informed by the operations of the 1979 Constitution[13]. However, this point can only be valid to the extent that we agree with the authors of the said Constitution. One commendable provision on the legislature in the 1989 constitution relates to the minimum educational standard set for the legislators. It states:

> a person shall be qualified for election (into the legislature) if he has been educated up to at least the School Certificate level or its equivalent[14].

The provision is meant to ensure that only literate people find their ways

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12. For a detailed discussion on 1989 Constitution on Legislature, See Victor Ayeni, Political Parties and the Legislature' Quarterly Journal of Administration vol. xxiv No. 3., April 1990 pp. 123-126.

13. See *inter alia* Federal Republic of Nigeria, 'Government's Views and Comments on the Findings and Recommendations of the Political Bureau' (Lagos, Federal Government Printer 1987) - Federal Republic of Nigeria, Report of the Constitution Review Committee Containing the Reviewed Constitution Vol. I (Lagos, Federal Government Printer 1988).

14. Federal Republic of Nigeria, The Constitution of the Federal Republic of Nigeria (Promulgation) 1989 Federal Republic of Nigeria Official Gazette, vol. 76, No. 29, 1989 (Lagos, Federal Government Press, 1989) Sections 63(2) and 104.

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into the Legislature. This will, no doubt, improve the quality of debates in the Legislature. However the knowledge required to operate in Legislature requires more than a minimum qualification as amply demonstrated in the Oye Oyediran[15] symposium.

However, the most objectionable provision in the Constitution as it relates to Legislature relates to the reduction in number of Legislators at the centre. Three senators[16] are to represent each state as opposed to five in the Second Republic. The high cost of governance in the Second Republic coupled with the current economic crisis must have been responsible for the reduction. By this act, the poor, the lower and the middle class (whose number is diminishing) would be denied authentic representation of their members in the Legislature. The three senators per state would not only enlarge geographically Senatorial districts as more local governments would fall under the same senatorial district but the three Senators would not be able to represent adequately the opinion that are bound to exist on national issues. This policy, no doubt, would render political representation an exclusive preserve of the wealthy class and make nonsense of the whole essence of representative democracy.

The state Legislatures are to serve on part-time basis[17]. This again is a clear departure from the 1979-1983 experience. By this arrangement, legislative work is considered of secondary importance hence the primary thing is for a legislator to pursue his private business. This would afford the Legislators the opportunity to amass wealth even at the expense of the people that elected them.

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15. O. Oyediran (ed.) Nigerian Legislative Houses - Which Way? (Ibadan, University of Ibadan Consultancy Services 1990); Victor Ayeni 'Political Parties and the Legislature' op. cit.

16. The Constitution of the Federal Republic of Nigeria (Promulgation) 1989 op. cit. Sec. 46.

17. Ibid. Sec 108(2).

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This, of course, would make contradict the idea of asset declaration as entrenched in the Constitution as it would be difficult to curb a part- time legislator from running other businesses. We may not have any moral right after all to condemn our legislators for chasing government contracts to make ends meet. This a food for thought. The above provisions are sheer contradictions of what the position of the Legislature should be under a Presidential System of government. If the Legislature must enforce accountability from the Executive and its agencies, the Constitution needs to enhance its position, power and influence beyond its current provisions. The question of three senators representing a state and the issue of part-time legislators need immediate and unconditional review. In fact, to provide for part-time Legislature in a Presidential democracy is to be grossly oblivious of the enormity of duties and responsibilities of a Legislature in a Presidential System of government as practised in the United States and other Western democracies to which references have been made in course of this study. Again, the Nigerian experience with regard to part-time Legislature in the First Republic was not impressive. Many of them did not take their work seriously and a great number of absenteeism were recorded in all the legislative Houses[18]. The re-introduction of part-time legislature does not only imply that as a country we are not being guided by the past but it will be counter-productive. A most likely problem that may result from the part-time legislators is that many Legislators may not take their work seriously. Therefore the 2/3 members required to form a quorum may not be met most of the time.

Another plausible argument that can be advanced against part-time legislators is that if the three arms of government i.e. the Legislature, the

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18. For details See inter alia J. P. Mackintosh (ed.) Nigerian Government and Politics, (London, Allen & Unwin Ltd. 1960); L. Adamolekun 'Parliament and Executive in Nigeria: The Federal Government Experience, 1952-1965' in C. Bakar and M. J. Balogun (eds) Ife Essays on Administration. (Ile-Ife, University of Ile-Ife Press, 1975) pp. 65-87.

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Executive and the Judiciary are meant to complement and check the activities of one another then there is the need to be given equal status within the Constitution. It is wrong and perhaps illogical to allow two of these arms i.e. the Executive and Judiciary to function on a full-time basis while the Legislature which is the most representative of the three institutions to function on part-time basis. It can also be said that a constitution which reduces the citizens' representatives to third class status is not the people's Constitution. In other words, the 1989 Constitution is not geared towards safeguarding the interest of representative democracy.

The sections 61 and 102 of the 1989 Constitution which states that the Legislature "shall sit for a period of not less than 161 days and not more than 181 days in a year" is a repugnant measure. The reason being that such provisions tend to loose sight of national or state emergencies which might crop up after the Legislature must have expended the maximum of 181 days in a year as required by the constitution. In view of this there is the need for a review of the 1989 Constitution so as to take care of unforeseen circumstances that may demand the attention of the Legislature.

It can be said therefore that in view of the above observations made in respect of the Legislature in the 1989 Constitution, the only option for Nigeria as a nation is to revert the Legislature to its pre-eminent status as provided for by the 1979 Constitution. Any attempt to do otherwise will be tantamount to paying a lip-service to the issue of public accountability.

Finally, for effective Legislative control of the Executive to be meaningful, the three arms of government must fully understand their constitutional powers and limits and must be prepared to adhere strictly to them. There must be mutual respect, co- operation and avoidance of subversion. This type of mutual

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understanding would improve the sensitivity and positive response of the Executive to Legislative decisions.

Above all, it is important to add that effective Legislative control of the Executive must aim at achieving results. The Legislature should ensure that its control power does not degenerate into threats or exhibitions of public praise. The Legislature of the Third Republic must ensure that some feedback mechanisms are built into the legislative process in order to ensure that its laws, decisions, resolutions etc. are implemented in order to achieve desired goals.

New Areas for Future Research

It will be relevant to point out what may constitute new areas for future research. Research on legislative control of the Executive like any other research in social sciences, is hardly conclusive. It would be useful to re-examine some of the conclusions in this thesis. The study, for instance, has not addressed legislative response to policy issues emanating from the Executive. Other areas which might interest future researchers include: the impact of legislature on foreign policy of Nigeria; Legislature, Budget-Making and Policy Analysis, Presidential Democracy and legislative control of Public Bureaucracy. Bureaucracy here simply means Civil Service or government department as opposed to private organisations. Most of government departments are set up by legislative act hence their control by the Legislature is inevitable. But whether the Legislature can in reality control bureaucracy which is reputed as 'a fourth branch of government' is another question. The way bureaucracies operated in the Second Republic did not make for direct control by the Legislature. This has been amply demonstrated in Chapter Three. With the Civil Service Reform (1988), it is hoped

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that the Legislature would be able to penetrate the Civil Service.

Other veritable areas which might interest future researchers are the patterns of committee surveillance in the National Assembly, and the extent to which party politics has influenced legislative control of the Executive.

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Appendix I
TEXT OF THE TEN ARTICLES OF 'GROSS MISCONDUCT'

The following are the charges of 'gross misconduct' brought against Governor Balarabe Musa by the Kaduna House of Assembly.

NOTICE OF ALLEGATIONS OF THE GUILT OF ALHAJI BALARABE MUSA REGARDING HIS GROSS MISCONDUCT IN THE PERFORMANCE OF THE FUNCTIONS OF HIS OFFICE AS THE GOVERNOR OF KADUNA STATE OF NIGERIA.

PRESENTED TO THE HONOURABLE SPEAKER OF THE KADUNA STATE HOUSE OF ASSEMBLY.

WHEREAS Alhaji Balarabe Musa, before his assumption of Office as the Governor of Kaduna State of Nigeria, swore and subscribed to the oath of office of the Governor of Kaduna state, as prescribed in the sixth schedule of the Constitution of the Federal Republic of Nigeria 1979.

WHEREAS by the said oath, the said, Alhaji Balarabe Musa was obliged and bound, inter alia, to:

(i) Discharge his duties faithfully and in accordance with the Constitution of the Federal Republic of Nigeria.

(ii) Discharge his duties faithfully in accordance with the law.

(iii) Execute the Laws faithfully.

iv) Devote himself to the service and well-being of the people of Nigeria, including the people of Kaduna State.

BUT WHEREAS in his conduct of the Office of the Governor of Kaduna State, the said Alhaji Balarabe Musa has, by sundry acts, violated his Constitutional oath and has breached his Constitutional and legal duties and obligations aforesaid and has thereby become guilty of gross misconduct.

WE, the undersigned Petitioners, being Honourable Members of the Kaduna State House of Assembly and constituting not less than one-third of the Members of the said House of Assembly, do hereby present the NOTICE to the Honourable Speaker of the Kaduna State House of Assembly in respect of the said gross misconduct.

NOW, in maintenance, support and establishment of the said gross misconduct, your Petitioners humbly and respectfully enumerate hereunder the acts of the said gross misconduct, together with detailed particulars relating thereto, THAT IS TO SAY, that Alhaji Balarabe Musa:

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ARTICLE 1

Unconstitutionally removed Alhaji Dalhatu Bello from Office as the Director of Audit of Kaduna State and thereby, illegally exercised the powers vested in the Kaduna State House of Assembly by section one hundred and nineteen of the Constitution of the Federal Republic of Nigeria.

ARTICLE 2

Unconstitutionally appointed Abidu Yazid to the office of Secretary to the Government of Kaduna State at the same time to the Office of the Head of the Civil Service of Kaduna State, whereas it is the intent and/or spirit of the Constitution for the two posts to be separated and held by two different persons in accordance with sections one hundred and eighty-seven and one hundred and eighty-eight of the Constitution of the Federal Republic of Nigeria.

ARTICLE 3

Unconstitutionally appointed Dr. Aliyu Muhammed to the Office of the Head of the Civil Service of Kaduna State when the said Dr. Aliyu Muhammed was not a member of the Civil Service of any State or of the Federation as required by section hundred and eighty-eight, subsection three, of the Constitution of the Federal Republic of Nigeria.

ARTICLE 4

Unconstitutionally and unlawfully established various Executive Boards in Kaduna State without a law or laws establishing those Boards having been passed by the Kaduna State House of Assembly.

ARTICLE 5

Unconstitutionally and unlawfully appointed to the said Executive Boards, illegally established as aforesaid, Board Members and officials to whom unauthorised payments were and are being made from public funds without a law or laws authorising such expenditure. The Executive Boards referred to in Article 4 and 5 above include the following:

(a) Kaduna State Integrated Rural Development Authority.

(b) Kaduna State Rehabilitation Board.

(c) Kaduna State Pilgrims Welfare Board

(d) Kaduna State Scholarship Board.

ARTICLE 6(a)

Unlawfully appointed Board members in a composition different from that stipulated by law. Also without due regard to economy, revised and raised both

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the number of the Board members as well as form of remunerations (formerly sitting allowance revised to fixed salary) against the previous standard inherited.

ARTICLE 6(b)

Unlawfully vested the Executive powers intended for General Managers unto Chairmen, whom he appointed as full-time Executive heads, not so provided by the law.

ARTICLE 6(c)

Unlawfully appointed full-time Executive Chairmen in private limited liability companies which are governed by company degree of 1968 under which act, it is provided that such appointment of a Chairman (Managing Director) shall be done by and from among the Directors who shall also determine his (Managing Director/Chairmen) remunerations.

The bodies and Boards referred to in articles 6(a) to 6(c) above include the following:

(a) Kaduna State Hotels Board;
Established by edict No. 6 of 1977, Sections 5(b) (ii) and (iii) and section 14 of this edict have been disregarded both in terms of composition of Board members and Executive functions intended for General Manager.

(b) Kaduna State Transport Authority;
Established by edit No. 9 of 1978, section 6 and 11 of this edict have been disregarded in terms of both composition of Board members and Executive function vested unto the General Manager.

(c) Kaduna State Distribution Agency Ltd:
He has registered as a private limited liability company under company decree of 1968. Both the Decree and the Article of Association stipulate that Directors of the company will be appointed by the shareholders. The Chairman or Managing Director shall thereafter be appointed by and from among the Directors. Directly appointed both Chairman and Board members (Directors) contrary to the provision of the law as well as the Article of Association of this company.

(d) Kaduna State Co-operative Bank Ltd.
According to the Article of Association, new Directors will always be elated by the outgoing ones at the end of each Annual General Meeting of the Board. The Chairman will thereafter be appointed by and from among the Directors. Directly appointed Board members (Directors) as well as a full-time Executive Chairman contrary to the provisions of the Article of Association of the Bank.

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ARTICLE 7(a)

Released and without going through the system of control established through the Allocation Committee, applied Kaduna State public funds to legally non-existent entities on the last day of 1980, financial year - December 30, 1980. The special legislative control placed upon this particular vote of expenditure which was convened under vote and proceedings No. 100 of May 15, 1980, was disregarded, also Government financial regulations were abandoned. The instances include:

(a) N18.9m out of N28m. appropriated by the Kaduna State House of Assembly and assented by him for the establishment of new industries in each of the 14 local Government Areas in the State, was misapplied when without obtaining clearance from the Kaduna State House of Assembly, shares were purchased instead of establishing industries.

(b) N13,936,053 of the N18.9m. expended (over 70 per cent) went into companies that were not incorporated at the material time the money was invested, furthermore, the amount purported to have been invested in each of the non-existent companies was greater than the proposed share capital of that company, thereby inflicting heavy financial strangulation on Kaduna State, tantamounting to abuse of the trust reposed:

Name of Company	Proposed Share Capital	Amount Invested
Zaria Pharmaceutical Company Limited	N 1,000,000	N 2,000,000
Ikara Food Processing	N 1,000,000	N 2,000,000
Alumaco Ltd. (JEMA'A)	NIL	N 2,000,000
Mani Flour Mills Ltd.	NIL	N 2,000,000
Malumfashi Starch and Derivatives	N 1,500,000	N 2,000,000
Kaduna Agro-Industry Ltd	N 2,000,000	N 2,000,000
Daura Arewa Tanners Limited	N 2,000,000	N 2,000,000

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ARTICLE 8(a)

Unconstitutionally and unlawfully altered the 1980 appropriation law of the Government of Kaduna State, which law has assented to. In consequence, both the recurrent and capital expenditure votes transformed into:

	Submitted Proposal	Assented Budget	Government Authorised Budget
Recurrent	N189,433,245	N209,603,180	N212,163,894
Capital	N 78,728,069	N 83,752,202	83,559,700
Total	N268,161,314	N293,355,382	N295,723,594

ARTICLE 8(b)

Unlawfully implemented unapproved figures in the 1980 Estimates by unconstitutionally and unlawfully increasing the remunerations approved for Special Advisers by the Assembly from N10,000 per annum to N14,500 per annum and paying out same thereby usurping the powers of the Kaduna State House of Assembly vested in her by section one hundred and seventy-seven of the Constitution of the Federal Republic of Nigeria.

ARTICLE 9

Unconstitutionally and unlawfully repudiated and refused to implement some of the provisions of the 1980 Appropriation Law passed by the Kaduna State House of Assembly and duly assented to by him, namely:

(i) Salaries in respect of most of the political office holders, including his

(ii) Sharing capital expenditure to consolidated revenue fund appropriated against Head 349 in conformity with section one hundred and thirteen, sub-section two, of the Constitution of the Federal Republic of Nigeria, 1979.

ARTICLE 10

Imposed restrictions on a number of items of expenditure approved in the 1980 appropriation law assented to by him merely to circumvent legislative authority, thereby preventing the implementation of the projects for which the funds were intended and consequently undermined the economic development and social

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well-being of the people of Kaduna State, for example:

(i) About 10 capital expenditure items were withheld by him when he placed them under reserve,

(ii) His schedule to general warrant, the footnote in the printed estimate and the 'R' placed under items - 30, 32, 36, 56, etc. under Head 429 would not reconcile.

(iii) How he arrived at the N505,378.50 he subjected items (1)-(13) under sub-head one of the Head 429 is yet to be understood.

(iv) The totals of the amounts reserved through his schedules to general warrant and statutory expenditure - warrant cannot supply - sufficient warrant of discharge to the Accountant General.

YOUR humble petitioners hereby affirm that the said gross misconduct of Alhaji Balarabe Musa warrants his being investigated and his removal from Office.

WHEREFORE your humble petitioners hereby pray the Honourable Speaker of the Kaduna State House of Assembly to set in motion the machinery for the investigation and removal from Office of the said Alhaji Balarabe Musa in accordance with the provisions of section one hundred and seventy of the Constitution of the Federal Republic of Nigeria, 1979.

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Appendix 2
THE DEFENCE OF BALARABE MUSA

The day before he was impeached (Monday, 22nd June 1981), Governor Balarabe Musa explained at a World Press Conference in Lagos why he was being removed from office by the NPN-dominated Kaduna legislature. His defence is contained in a 26-page pamphlet titled: "Why they fear our forces of democracy and social progress." The following are extracts from the pamphlet.

MOST OF YOU are aware that political developments in Kaduna State have, since October 1, 1979, attracted more attention than those in any of the other 18 states of our federation. This has not been merely because of the strategic position Kaduna State, and its capital, occupied and still occupy in the country. This has been because of the consequence of the fact that the election to the office of Governor and Chief Executive of the State Government, in 1979, was won by our party, the People's Redemption Party, while the State Legislature came to be dominated by the National Party of Nigeria.

The Constitution of our country can cope with this type of situation, inevitable in a multi-party, federal, democracy. It makes specific the separation of powers between the executive and the legislature, entrenches public accountability and elections every four years. Within the provisions of the Constitution, both sides can co-exist, with an independent judiciary adjudicating in areas of conflict. These conflicts occur, even where one political party controls the two arms of government. The political contest and competition would continue, with one side seeking support through popular legislation and the other through the Executive of popular programmes, and of course other democratic means.

This is what most of you expected would take place when you looked at Kaduna State at the beginning of the Second Republic. We were generally expected to provide an interesting testing ground for Executive/Legislature relationship, at the state level. It was expected that the coming elections at Local Government, State and Federal levels, would give the electorate a chance to pass their judgement on the performance of the two sides. After all, that is what democracy is all about.

But these expectations were too optimistic. They were based on basic misunderstanding of the roots and nature of the National Party of Nigeria and its position in our country today. In fact since October 1, 1979, the NPN has been making desperate efforts to deliberately misapply the constitution to undermine the decisions and wishes of the electorate in Kaduna State.

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The National Party of Nigeria is not like any other political party, in one very important respect. This is very often ignored. In all the other political parties, including our own, the core of members and leaders is made up of people who have achieved their positions through contest and competition, in villages, towns, schools, colleges, public institutions, professionals, and business and associations, in which a person's own ability and achievement, is what really counts. This is not the case with the National Party of Nigeria.

The real hardcore of the National Party of Nigeria is made up of a tiny oligarchy drawn from particular parts of the northern states of our country. This oligarchy is made up of a number of families with their circles of clients, dependants and agents. This most significant of facts about the nature of the NPN is largely covered-up by the colourful and noisy, front-men, hangers-on and jesters, this oligarchy uses, drawn up from the other parts of Nigeria. These are the Wayases, the Abiolas, the Akinloyes, the Okadigbos, the Takumas, and a host of others, some of whom have risen in the service of this oligarchy, for over two decades, and others who have just been recruited.

The nature of the oligarchy itself is distinct because it is made up of people who have got to the positions they are, not because of any personal capacity of achievement, but because of birth, favour, patronage and privilege. They rose to where they are today through the native authorities; the NPC (Northern People's Congress); the hierarchies of the regional, federal and state civil services and parastatals; and the Police and Armed Forces, not because of their ability, but because of their birth, background, privileged connection, and patronage.

This oligarchy, forming the hardcore of the NPN had its foundations laid down by the colonialists. It rose at the expense and on the backs of millions of our people whom they exploit, humiliate, discriminate against and cheat. The most directly oppressed, are the talakawa of the areas this oligarchy is drawn from. But of course their contempt, superiority-complex, and discrimination against other Nigerians from other parts of the country, of different cultural background is well-known. It currently constitutes the most dangerous and most rapid strain of tribalism and sectionalism threatening the unity of this country.

When this oligarchy controlling the NPN, a direct heir and descendent of the NPC came face-to-face with a political party strongly rooted in these talakawa, with a proletarian ideology, a broad national basis, and a consciousness of the NEPU experience namely, our party, the People's Redemption Party - they saw their days of ruling not just Nigeria, but any piece of it, are clearly numbered.

An effete oligarchy, appointed, nominated, "elected", promoted, credited, to positions and wealth because of birth, favour and privilege, cannot accept competition and contest from its immediate slaves and subjects, under whatever type of democratic Constitution.

The fact that our party was elected to control the executive in Kaduna and Kano States in the strategic heartland of this oligarchy's base area; and, secondly, the fact that we set out decisively implementing our party's programmes, particularly on taxation, land, public industries, mass literacy,

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democratic local government, and human rights, made this oligarchy even more frightened.

For political formations like the NPN, the constitution and the law have always been mere window-dressing. After they failed to effectively destabilise our party and two governments, using the twin instruments of Mallam Aminu Kano and the movements for creation of new states, they began to throw away this window dressing in their attempt to weaken and crush us. The culmination of this fear and desperation of the NPN, what that it unleashed against us all its weapons of money; lies, and violence, both official and unofficial. This almost backfired in the Maitatsine riots. The campaign through the media, the Police, Federal Electoral Commission, and hired thugs has continued. This latest attempt to remove me from office is part of this campaign born out of the NPN's mortal fear of the popular forces of democracy and social progress we represent. The exercise being conducted now, purportedly to remove me from the office of Governor, has from the very beginning been conducted in an illegal and unconstitutional fashion.

I am not saying that any intention or attempt to remove me from office is illegal and unconstitutional because I have a divine right to be the governor of Kaduna State. Far from it. Indeed I am in the party I am in, right now, because I believe that any political system which does not provide for the democratic election of its leadership and their constitutional removal, when they fail, is unjust, unstable and unacceptable. It is correct, proper and necessary that constitutional provisions are made to impeach and remove every public officer, particularly the President and governor in whose offices so much power is concentrated. Unless there are such provisions, people holding these offices will easily develop divine, or semi-divine, hallucinations about their positions, as several leaders have done in this country with disastrous consequences to the nation.

What is more, I believe that these provisions for the removal of all public officers, when they fail to carry out their responsibilities, should not just be mere decorations. They should be brought into use and applied whenever a public officer commits acts of gross misconduct, otherwise they cannot serve a check. It would be unfortunate if the heaven's fall, or an earthquake occurs because of these measures, for they are necessary in any democracy!

But as in the conduct of everything else, the rule of law must prevail and the constitutional provisions and the rights of everyone must be protected. Whims, caprices, wishful desires and malice on the part of any of the three arms of government, whether the Legislature, the Judiciary or the Executive, must not be allowed to play any part. But, unfortunately, the current exercise conducted by the NPN in Kaduna, which being the first of its kind should set a good example to the whole country is illegal and unconstitutional and in some of the omissions and evasions involving the various arms of government, just plain shoddy.

Take the following acts of omissions and commissions in this so- called impeachment exercise. For example, no notice of allegation has been served on me as provided for by Section 170(2) of the Constitution. The document sent to me by the Speaker on 7th May, 1981 which is appended to this statement has no legal or constitutional standing as such notice because of the following three

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reasons: (i) The actual document on which the allegations are purported to be made titled:

> "NOTICE OF ALLEGATIONS OF THE GUILT OF ALHAJI BALARABE MUSA REGARDING HIS GROSS MISCONDUCT IN THE PERFORMANCE OF THE FUNCTIONS OF HIS OFFICE AS THE GOVERNOR OF KADUNA STATE OF NIGERIA. PRESENTED TO THE HONOURABLE SPEAKER OF THE KADUNA STATE HOUSE OF ASSEMBLY".

is unsigned by any member of the House of Assembly. It is however, brought together with a separate document, in one form of a letter to the Speaker titled:

> "NOTICE UNDER SECTION 170(2) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1979".

This document strangely enough concludes with the paragraph:

> "AND TAKE NOTICE that the detailed particulars of acts of gross misconduct of the said Governor Alhaji Balarabe Musa are as herein-after specified".

This is immediately followed by a list of names, constituencies and signature without any particulars of acts of gross misconduct specified in the whole of the rest of the document. Significantly, neither of the two documents contains any reference to the other.

(i) Many of the signatures on the document are, I believe forged. There are cases before the High Court in Kaduna on forgery and fraud, arising from these signature.

(ii) Thirty-nine of the sixty-nine members whose names appear on this other document are illiterate in English language. Section 2 of the Illiterates Protection Law (1963) provides that whenever an illiterate signs a document (unless it is compiled by a Solicitor whose full particulars shall of course be appended) the person who read it to that illiterate should sign and give his name and address alongside whatever mark that illiterate persons makes. This section of the law has been clearly violated in the case of thirty-nine of the sixty-nine names on the list.

Secondly, the Speaker of the House of Assembly, Alhaji Mamman Abubakar Dan Musa, whom section 170(5) of the Constitution empowers to set up the committee of seven persons to investigate, when such allegations are legally made has disqualified himself from the role of neutral umpire because of his brazenly partisan actions and utterances since October 2, 1979. That constitutional provisions in Section 170(5) is made because the speaker is assumed to be a non-partisan and unbiased legislative officer who can set up such a tribunal. But after speaker has said time and time again his commitment to see me impeached and on Tuesday, April 14, 1981, made his famous statement at a press conference

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in Kaduna that "if impeachment of Balarabe will cause earthquake, let the country be in ruins... We shall impeach him!" a tribunal made up of seven members nominated by him to investigate these charges against me violated my fundamental human right, entrenched in Section 33(1) of the Constitution, to a fair trial. This section provides that:

> "33(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality".

Thirdly, the body now posing as "a committee of investigation, includes 5 members whose sanity, integrity, non-partisanship and even citizenship status has been challenged through six duly sworn affidavits in courts of law in Kaduna sworn by five competent indigenes of Kaduna State. The Speaker has not refuted these charges or caused them to be investigated, and they are very serious charges duly sworn to by responsible citizens. For example, the "Chairman" of this body is the father and dependant of the First Legal Counsel to the House of Assembly, and derives benefits from her employment. He also holds a public office to which he has been appointed by the NPN President, on the Board of the Reinsurance Corporation of Nigeria. Another member holds public office as chairman of the board of management of the teaching hospital of the University of Benin and is therefore a holder of a public office. Another is said to be a patron of the National Party of Nigeria. While one is said to be a lunatic and the actual nationality of two of the members has been challenged.

For all these reasons and others I have gone to court challenging the legality and constitutionality of the whole exercise. My counsel has formally informed this body set up by the Speaker of my positions, although even purely numerically they have never met properly.

The following are therefore the facts of the impeachment:

(1) it is a continuation of the 1979 gubernatorial election petition.

(2) the whole exercise is politically motivated and clearly inconsistent with the spirit of the Constitution and the development of democratic ideals and institution.

(3) the allegations contained in the so-called notice of allegation of gross misconduct deal with only administrative matters. @COL.1

(4) the notice of allegations, the appointment of the committee, the composition of the committee, the integrity of the members of the committee, and the conduct of the work of the committee are all grossly in violation of Section 170 of the Constitution. For example, Section 170 Sub-section 5 of the Constitution specifies a Committee of 7 persons but the allegation are being

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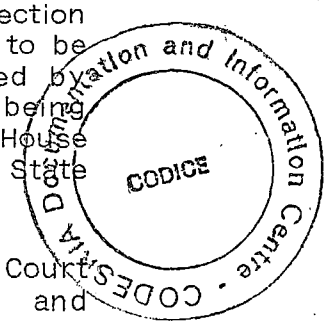
investigated by a committee of 6 persons. Also, Section 170 Sub-section 7(a) specifies that the procedure to be followed by the Committee shall be that prescribed by the House of Assembly but in fact the procedure being followed were prescribed by the Speaker of the House of Assembly alone without any section by the State House of Assembly.



(5) Affidavits have been sworn at the High Court challenging the citizenship, sanity, integrity, and impartiality of the members of the committee.

(6) All unconstitutional and illegal aspects of the allegations and the committee are now the subject of Court actions instituted by me. One would have expected the so-called committee charged with grave offences and also aware that I am making legal moves to solve the issueconstitutionally to show respect for rule of law and the Courts by suspending its meetings etc., until fundamental issues before the Court are resolved. However, the committee is very much in a hurry so much so that it has no time for constitutionality and legality.

(7) In the course of examining the signatures to the purported notice of allegation of gross misconduct, further discrepancies on some payment vouchers for mileage and travelling allowances claim forms were discovered which raise strong suspicions of fraud and forgery. The suspected crimes take the form of double claims for journeys never made. About 25 NPN members of Kaduna State House of Assembly are now in Court in connection with the suspected crimes. The least moral standard these legislators can demonstrate is to clear their names in this connection before judging any other person. Everything about the impeachment is yet another style of rigging.

If the final Court's verdict is that the so-called committee is legal and constitutional, I shall appear before it to defend myself, in detail. This would be a great opportunity to expose the baselessness of all that the NPN has spread about our government.

They have consistently refused to face up the challenge of the great progress we have made in Kaduna State, which we have regularly recorded and published in Progress Reports. None of the three arms of the NPN whether the Federal Executive, their Kaduna legislators or their media have even once tried to scrutinise our Progress Reports. This is in spite of our regular challenges to them to do so and to go into all nooks and crannies of the State to see for themselves and to tell the public what they have seen.

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Source: West Africa, (London) 6th July, 1981.

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