

CONSTITUTION AND CONSTITUTIONALISM

MEANING OF CONSTITUTION

Blacks Law Dictionary defines constitution as –
"The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties."

From this definition, it is clear that the institutions, organs, agencies and even officials of government owe their existence to the constitution. They must accordingly exercise the powers of such offices in time and within the limits of the constitution. Most importantly, since the constitution which establishes the offices, agencies and sovereign powers also guarantees individual rights, freedom and liberties, these powers must also necessarily be exercised without interference with the guaranteed rights of citizens.

What is not said in the definition, perhaps, is that in most cases, even the state itself owes its establishment and existence to the constitution. That is to say that the constitution also creates the state. A classic example of this is seen in the United States Constitution of (1787) which provides in its preamble as follows:-

"We, the People of the United States, in order to form a more perfect union, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, to ordain and establish this constitution for the United States of America."

The 1999 Nigerian Constitution (like its predecessors) also proclaims in its preamble:-

*"We the people of the Federal Republic of Nigeria: Having freely and solemnly resolved:
To live in unity and honour as one indivisible and indissoluble sovereign Nation Under God....."*

(suffice it to say at this stage that this is not only the most controversial aspect of the Constitution but indeed the fallacy of the "Nigerian State")

There were similar provisions in the 1918 Revolutionary Socialist Constitution of Russia and several other constitutions across the world.

The most important ingredient of the definition of Constitution seem however to lie in its "fundamental" and "organic" nature. To these extent, the Constitution is regarded as the Supreme Law of every State or Nation or what is jurisprudential parlance is called the "ground norm" from which all other laws derive their life and validity and of course, outside which all other laws would be invalidated.

Thus Section 1(1) of the 1999 Constitution of Nigeria provides:

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

Section 1(3) provides:

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

This is the inviolate nature of the Constitution. Another character which the Constitution (indeed law in general) possesses in its organic or growing nature. This implies that as times, circumstances and experiences of nations continue to change and expand, the Constitution also grows to meet up with the attendant situations arising from them. Hence, the United States Constitution has gone through series of adjustments referred to as Amendments while the Nigerian Constitution has had to be "changed" from 196 to 1979 and 1999.

ORIGINS OF THE CONSTITUTION

The Constitution has its origin in ambiguity

The story of the origin of the constitution, like that of the proverbial elephant is told differently depending on who the story teller is. To some, including McIver, the Constitution (or, at least the idea of it) dates back to the earliest history of human social institution, with its roots in the family and communal mores and regulations. McIlwain traces the origin to the republican era in Thome i.e. 508-27BC. Some others place its beginnings nearly three quarters of a millennium back in he fields of Runnymede. Still others say three centuries or so ago, during the tumultuous years of the seventeenth century, English revolutions; or the events in the Western Hemisphere from the Mayflower Compact, the Massachusetts Charter of 1629 or the number of Charters and constitutional documents that the colonialists resorted to and constitutional documents that the colonialists resorted to during the first century and a half of American history, during the first

century and a half of American history. To some people, the American constitution of 1787 and the preceding constitutional debates of the 1760s marked the real origin of the constitution.

THE FAMILY ORIGIN

In the writer's opinion, the view that the constitution (which is the fountain of law) evolved from the original family content appears to be the unassailable. Right from time immemorial, even in the traditional African and other societies, there existed some entrenched though unwritten, including habit formation, rules, or codes, practices, and regulations human assumptions, beliefs, notions. This is primarily a product of man is the knowing one (homo sapiens) which makes him different from other animals which are transmitted to the children by their parents and to the wider members by the heads of the family or kin groups. Over time as the families widened with communities, these practices aggregated into customs, mores, usages but that was not the end.

The communities resulting from the congregation of families had the threats of external aggression and economic challenges to contend with.

As a result of these, some communities needed to form alliances to ward off common enemies or interests and reach understandings in the form of conventions and charters. A corollary to this was also the inevitable need to appoint leaders and set up institutions and organs to be manned by the leaders at different levels of the resultant complex society. The customs, practices, usages, values, conventions and charters taken together with precedents emanating from them accordingly

yielded constitutions for the resultant socio-political units or states.

THE SOCIAL CONTRACT THEORY OF CONSTITUTIONAL EVOLUTION

Apart from the family origin, there is yet the theory of social contract propounded by John Locke, Thomas Hobbes, Jean Bodin, Hug Grptius, Jacques Rocosseau, and Montesque. This theory, which is actually, in conflict with the "family bond" concept takes off from the concept that in the state of nature all men are equal. As Hobbes stated in Leviathan:

"Nature hath made men so equal, in the faculties of body, and mind as that though there been found one man sometimes manifestly stronger in body, or of quicker mind than another, yet when all is reckoned together, the difference between man, and is not so considerable on that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he....."

This theory was a transformatory attack on their perceived assumption that men are by nature quarrelsome and vainglorious so that every man's hand is against his fellows i.e. "might was right" and each man could operate in whatever manner and as far as his might could carry him and the man with greater might subduing and dominating others. So life was "poor, solitary, nasty, brutish and short.

They reasoned that force without authority is destructive violence, spasmodic, undirected and futile and never creates right as "the strongest is never strong enough to be always the master,

unless he transforms strength into right. Force, alone has never held people together.

So government, to them was a "social contract" which men entered into to rescue themselves from the consequences of their unbridled desires by surrendering their natural liberties (property) to a sovereign (man or assembly of men) able to overcome them all and thus converting the "state of nature" with all its commodities, into the order and security of "civil society".

It is important to note that the sovereign is not entitled under this contract to take away the proprietary right without the consent of the citizen. And as John Locke stated, he has no arbitrary power over the citizen's life or property but so much of it is given. Failure of the ruler to use the power for the common good, will, at the extreme stretch of the theory, be resisted and the sovereign overthrown.

TYPES OF CONSTITUTION

There are two basic types of constitution. These are the Unwritten and the Written Constitutions.

UNWRITTEN CONSTITUTION

This type of constitution is not contained in a single written document but consists of the customs, values and precedents which provide the organic and fundamental law of a state and some of which expressed in statutes.

The British Constitution remains the classical example of an Unwritten Constitution. It is a collection of historical documents, statutes, decrees, conventions, traditions, and royal prerogatives

including Magna Carta (1215) the Bill of Rights (1689) and the European Community Act of 1972.

WRITTEN CONSTITUTION

In contrast with the Unwritten Constitution, a Written Constitution is a Constitution which is written out or compiled in a single document.

The 1789 Constitution of the United States of America blazed the trail of written constitution but today, virtually all other constitutions of the world are largely written.

Unlike the American Constitution, Constitutions which is in a class of its own, much of the other written constitutions can be termed "unfair parting shots or relics" of colonialism. The United States Constitution is a product of the wills and agreement of the original 13 union members. In the other cases, the thought of the colonial masters/overlords were, probably that the colonies at the points they were being let out of the hook of imperialism had no or at least very negligible knowledge of governance.

So, they apparently took it upon themselves, to draw up handouts of rules for the conduct for the new self governing peoples or states. In most cases this was done without any or due regard to or even with reckless abandonment to whatever might be the views, opinions, wishes, aspirations, differences and or similarities of the largely plural states. These so called constitutions have till date been the bane of most to the ex-colonies, with Nigeria retaining an unfair share.

A vital nexus which must be noted between written and unwritten constitutions, apart from their supremacy is the fact that no

constitution is ever so comprehensively written to have foreseen or provided for all exigencies or all eventualities.

In practice, therefore, the courts have had to play the crucial role of filling the gaps by applying or invoking the implied provisions of the Constitution. The examples will buttress this points.

The first is under the US Constitution, it is to be noted that US the Constitution does not give the Supreme Court the power to declare laws unconstitutional like the Nigerian Constitution, but the US Supreme Court does so. The US Constitution, surprisingly, also does not expressly guarantee a right of privacy, but the Supreme Court has declared that the right exists and is protected.

The implication of this to Nigeria is that rights such as right to health. Education and shelter , though not expressly guaranteed under Chapter IV of the 1999 Constitution can as well be declared by the court drawing from decisions from other similar jurisdictions.

The important difference between the two types of constitution however, is the absence in the British Unwritten Constitution of the Constitutional supremacy principle or doctrine. Indeed, under the British Constitution, the Parliament is sovereign and is only limited by the Constitution as a matter of convention but not of law. Accordingly, the Parliament is not bound to act in conformity with the constitution and if it does, the only remedy will lie in public opinion or protest and not legal sanction. The British Parliament can therefore alter the Constitution as it please. It is only the Judiciary and the Executive that are limited by the constitution.

It is worthy of note however that even with this constitutional "loop hole" as it were, the English man still retains what Prof. Nwabueze noted to be "the most constitutional of all constitutional governments."

This is possible because in the writer's view, law o constitution (even agreement) is more of issue o freewill, conscience and commitment than sanction and compulsion. Here again, lies the fundamental vice with the Nigerian Constitution which lies against itself and the Nigerian Peoples:

"We the people of Nigeria, having firmly and solemnly"

The US Constitution for instance was not passed after many years number of years of debates, from 1776 of 1787 during which period they ran a confederacy pending the ratification of the Constitution. That is the natural advantage a well debated and agreed written constitution should ordinarily offer.

FORMS OF CONSTITUTION

It might be noted in passing here that Constitutions are also given nomenclature according to the system of government operated under it. Thus, there could be Presidential, Federal, Unitary, and perhaps "Automatic" or "Totalitarian" Constitutions etc. There are also rigid, flexible and semi-rigid constitutions depending on how easily amenable they are to the process of amendment. The 1999 Constitution would probably be a semi-rigid, federal, presidential constitution in view of sections 8 and 9.

FUNCTIONS OF GOVERNMENT

The Constitution performs very crucial function in the social, political and economic life of any nation. These include, in the main:-

Constituting the People into a State

As stated earlier, where peoples have found cause to come together under a common geo-political entity, it has always been proper and ideal to first chart the extent nature and particulars of the entity contemplated. This is usually done by virtue of a constitution. Reference had earlier been made to the preambles of the US, Soviet and Nigerian Constitutions to illustrate this.

It is important to realize that it is in keeping with the avowed collective will, that the entire state virtually rises against any attempt by any part of the state to break away unlawfully. Useful instances may be found in the case of the United States Civil War between the North and South, the Nigerian Civil War among very many others even the Niger Delta crisis.

Constituting or Creating Powers, Institutions and Principles of Government

Governance entail largely the exercise of power in running public and their affairs. The source of this power, its scope, limits and modes of exercise are usually the prerogative of the constitution. The Nigerian Constitution, consistent with the Anglo-American system gives a full ambit of executive, legislative and judicial powers in sections 4,5, and 6 thereof.

Instructively, the legislative powers are to be exercised for the "peace, order and good government of the country in a loose or general sense as regards matters in the constitution in addition to inherent powers of the legislature to legislate on other matters outside the constitution but with their legislative competence.

The Executive has enormous powers under the constitution (with its dangerous implications) to execute the laws and policies of government. On the other hand, at least under the Nigerian Constitution the judiciary is empowered to exercise the judicial powers of the country through the institution of the courts established under the constitution or other "lawful" laws/

It is in this regard that the doctrine of separation of powers becomes a pivotal and indeed a most crucial ingredient of constitutional or democratic governance. Where therefore any of the arms of government veers off or beyond the precincts of its powers, any act done in that regard would be declared ultra vires and unconstitutional.

(c) The Constitution Guarantees the Freedoms of the Citizens

Government by its size and might and paraphernalia is usually monstrous and obviously larger-than-life.

In the face of this colossus, an ordinary citizen standing above would naturally tremble and fall if not totally crushed. To prevent this, the constitution therefore, usually not only guarantees the liberties and freedoms of the individual, but also goes further to delineate the borders between the state machinery of power and the liberties of the individual beyond which no encroachment is permissible.

This is ensured by the provision of a Bill of Rights of Chapter IV of the 1999 Nigerian Constitution, and the provision also of separation of powers to forestall the concentration of excessive powers in the same hand or among the government be it the legislature or the Executive. In practical sense, the judiciary which is usually said to be the last hope of the common man comes to stand in between these powers and the citizens, as noted by Lord Atkin in *Liversidge v. Sir John Anderson* (1942) AC 204 at P.244.

(d) The Constitution Declares the Ideals and Fundamental Objectives of a Nation and Affirms its Duty to the People

Again, as I have noted earlier, there is also an ideological aspect of constitution making where the people truly aspired for it. In such a situation, it would be a common creed of the constituent, or at least, their leaders, what the envisioned state should be geared towards providing the people either as citizens or as members of any organization.

This sort of positive declaration also usually has a way of offering bearing to the operation of the constitution as well as affording the subjects the parameter for assessing them.

The preamble is often utilized for the purpose of this declaration. Thus, out of the 160-odd Written constitutions in the world, only 41 do not have a perambulatory affirmation. Some affirm belief in God or Allah etc and others the United Nations Declaration of Human Rights etc. Some Constitutions also make fuller declarations in the body of the Constitution. An example is the fundamental objectives and directive principles of State Policy under Chapter II of the 1999 Constitution.

(e) Ensuring Social Justice for Sections or People with Peculiarities

Yet another function of the constitution noted in the literature is ensuring social justice or balance for people or sections with ethnic, racial or even sexual peculiarities so as to prevent undue disadvantage over them. The practice is a recurring feature of multi-ethnic states many of which are found in Africa.

Under some constitutions, this is achieved by way of affirmative action (with the attendant controversies). In Nigeria, the nearest the 1999 Constitution comes to this is the Federal Character Principle enshrined in S.14(3) and (4) of the Constitution.

PART II

CONSTITUTIONALISM

The term constitutionalism is a deeply impregnated term. In the simplest, sense (to the inter) it means the application of the constitution in governance or government according to the constitution. And, since the constitution is the mother of all laws, it means necessarily that constitutionalism in the rule of law or rule by law i.e. the observance of the express and implied contents of the constitution and it duly begotten laws in the actual conduct of governance of administration (imperial rule) contra-distinction with arbitrary or personal idiosyncratic rules.

It is said therefore, that constitutional government or constitution is institutional government making relevant the Hobbesian allusion re-echoed in President Obama's advice to Nigeria to strong institutions rather than strong men. Of course Socrates had long insisted that the law rather than man should rule because power corrupts and absolute power corrupts absolutely.

In modern legal lexicon, constitutionalism has even shifted paradigm to attain a synonymous or coterminous usage with "constitutional democracy. To this extent, a government must not only be constitutional, but also democratic; for there seem to have been an emergence of "constitutional tyrannies". Unfortunately, my continent, seem to be ahead of all others in breeding and donating the latter to the modern world!

Africa is home of Robert Mugabe (Zimbabwe) Mobutu Sese Seko (Zaire) Kamuzu Banda (Malawi) Jomo Kenyatta and Arap Moi (Kenya) Eyadema (Togo) Samuel Doe(Liberia) Honghet Biogny (Ivory Coast), Biya (Cameroon) Idi-Amin (Uganda) etc.

Returning to the constitutionalism, it also connotes and implies government by consent, renewable or otherwise by popular free

and fair election; political responsibility answerability and accountability to the people.

As Professor de Smith puts it:

".... Constitution is practiced in a country where the government is genuinely accountable to an entity or organ distinct from itself where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organize in opposition to the government in office and where there are effective legal guarantee of the fundamental civil liberties enforced by an independent judiciary; andin a country where any of these conditions is lacking."

This captures it all.

THE ROLE OF THE COURT IN CONSTITUTIONAL IMPLEMENTATION

There is no gainsaying the fact that the beginning and end of constitutional observance of constitutionalism is the existence of and independent judiciary which would stand completely behind and without any clog of any kind to balance power and its exercise between the armless citizen and the state machinery on one hand and between the powers that be themselves.

It should be and must be as Lord Atkin puts it in *Liverside v. Sir John Anderson* inter alia that:-

"..... that judges are no respecters of persons and stand between the subject and any attempted encroachment on his liberty by the executive to see that any coercive action is justified in law."

But these judges must, most importantly not be corrupt or abuse their office.

THE FEATURES/MAKING/ATTRIBUTES OF A GOOD JUDGE

A good judge is a jewel of inestimable value to society. Quoting Charles Evans Hughes, he is "*...the most valuable servant of democracy, for he illuminates justice as he interprets and applies the law...*"¹

A good judge should, first and foremost be thoroughly educated, vastly read and possess profound knowledge of the law. He must know something about everything and not just law alone. Granted, a judge would always need the assistance of lawyers but he must be knowledgeable and competent himself.

But integrity, good character or reputation, and fair-mindedness are crucial attributes a judge must possess to be able to dispense justice.

A judge must be bold, courageous, fearless and incorruptible. He must possess what Oputa, JSC referred to as "judicial rectitude" and eschew corruption in all its ramifications.

A good judge must be unassuming. He needs to be patient, humble, cool, calm, fully collected and suppress completely every reactionary tendency to rashness. He must therefore be a master of his emotions and well behaved on the bench.

Let me illustrate this with a few of Lord Denning's stories:

¹ 1925 Presidential Address to the American Bar Association

In the court next to Carey Street, he said, while as a junior he waited for his court case to be called, just before the midday adjournment, a man got up from the row behind him, The man threw a tomato at the judges. He aimed poorly, so, it passed through Lords Justices Clauson and Goddard and hit the paneling with a squish. The man got a six week imprisonment after a short adjournment.

Much later when Denning was presiding, one Miss Stone who was often in court when the court heard litigants in person made an application which the Court refused. She picked up one of Butterworth's books "Workmen's Compensation Cases" and from the front row where she sat, threw it at the Justices. It passed between Lords Justices Diplock and Denning. She picked up another which also went wide. She then said, "I am running out of ammunition". Denning's words "We took little notice", "She had hoped we would commit her for contempt of court – just to draw more attention to herself. As we took no notice, she went towards the door. She left saying "I congratulate your Lordships on your coolness under fire"".

But a good judge must also be firm and never be partisan or partial. *Political partnership on the part of some judges has in the past emasculated the dispensation of justice in this country.*

It must always be remembered that politics is a threat to justice. To be able to discharge their roles in the society credibility, judges must not get themselves involved in politics and must resolutely resist every form of political manipulation. During the first republic, political pressures on the judiciary reached a climax, particularly in the last years of the Balewa regime. In the West, Political murder was rampant; the government party was in office despite an obviously rigged election and the opposition was

vociferous. In such a situation, Judges naturally came to be divided into those who resisted the pressure and those who did not. One who had the reputation of firmly resisting was Mr. Justice Oyemade, before whom came a case involving the murder of a government party supporter. A local lawyer, known for his sympathies with the government party drafted an affidavit and had it sworn by two local men. They swore that they had considered the judge biased in this case and asked for the removal of the case for trial in another area. Rejecting the affidavit, Mr. Justice Oyemade fined the lawyer ₦25 and sent the two men to prison for six months contempt of court. He said: "I will not allow myself to be intimidated into sending innocent persons to jail. Even if this means losing my job, I am still sure of leading a decent life.

The only thing we have in this country is the judiciary. We have seen politicians changing from one policy to another and one party to another. But the only protection the ordinary people have against these inconsistencies is a fearless and upright judiciary."

I commend this admirable judicial attitude of Mr. Justice Oyemade to our Judges whenever they are faced with political pressure from any quarter.

A good judge must be punctual and ready to work. He must also be alert and watch over the conduct of the officers of his court. Some of them have dragged judges' names into disrepute by seeking to receive gratification on their behalf.

According to Evans Hughes,

"A poor judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry good stock, but you have no recourse if you are halled

before a judge whose mental or moral goods are inferior.” “A habitual borrower is unfit to be a judge”. A bad judge who is brilliant would probably become a terror.”

A judge should not be too old but he should certainly not be a youth and as Plato admonished, he should have learned to know evil, not from his own soul but from late and long observance of the nature of evil in others. Knowledge should be his guide and not personal experience.² They should, “like Caesar’s wife”, be above suspicion.

Four things, said Socrates, belong to a Judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.

No one is ever innocent when his opponent is the judge says Lucan, Roman Poet in Pharsalia.

THE HUMBLE, RESPECTFUL BUT COURAGEOUS, FIRM AND HONEST INNOVATOR-JUDGE – HON. JUSTICE UMARU ABDULLAHI, CON,PCA

As I said at inception of this contribution, it is the personality of the Hon. Justice Abdullahi, PCA that invoked my domination over the various types of judges I have come across or read about in my close to fifty years as an active legal practitioner. Of all the judges I have appeared before, Hon. Justice Abdullahi is unarguably one of the humblest. He is cool and calm, very respectful and most unassuming.

² Plato, “The Republic” C. 370 B.C.

He keeps his tongue within his cheek during trial and never interrupts lawyers like "Hippy" Hallet or threaten them with committal like Kessington and Adetosoye JJ. When assaulted, he would still keep his cool like Denning and his learned brother Justices under the fire of Miss Stone which I recounted earlier.

In the course of the trial of the Falae v. Obasanjo case, Justice Abdullahi and other members of the tribunal accompanied by a Surveyor, an Engineer and the writer went to see the then President Obasanjo on the new Court of Appeal land which was trespassed upon by the Executive. The following day, the press went to town with the false story that he was summoned by Obasanjo over his ruling which did not favour him. All he did was to explain what actually happened without getting irritated or angered at all.

Hon. Justice Abdullahi is a very courageous, fearless, firm, meticulous and very innovative judge in spite of his humility and coolness. Perhaps some of his leading judgments from 1999 should say the rest.

Whenever the Constitution is violated, abused or breached by any of the holders of public office, including the legislature, it is the courts that the people would loop up to. Alas, a few judges have made themselves ready tools in the hands of politicians especially those who had a hand in their appointments.

Otherwise, how can one explain a High court granting ex parte orders restraining the Police from carrying out their statutory duties of arresting and investigating suspects, criminals, even when the Supreme Court has stated that no court can do so?

CONSTITUTIONAL BREACHES AND THE PEOPLES ROLE

By far, the greatest threat to constitutionalism is the willful breach of its provisions by both the officers entrusted with power and the citizens themselves. The greatest manifestations of this come in the form of disobedience of court orders and subversion of constitutional provisions.

The two classical illustrations of disobedience of court order in Nigeria are in the cases of Chief Lakanmi & Ors. V. A.G. Western Nigeria, Military Governor of Lagos State v. Chief Ojukwu and Dr. Beko Ransome Kuti v. A.G. Federation.

UNSAVOURY EXPERIENCES OF PERSONAL LIBERTY IN NIGERIA

EXECUTIVE LAWLESSNESS AND SUNDRY CASES OF VIOLATIONS

The oppressive action of governments in the country have at one time or the other forced uncharitable but very apt acronyms from the courts. In 1971, the Supreme Court descended heavily on the Western States House of Assembly for targeting their powers at an individual in order to deprive Chief Lakanmi of his liberty to acquire and hold property. The apex court described the action of the House as nothing more than a "legislative judgment". 142 Even then, the Federal Military Government hastily enacted another Decree to nullify the judgment of the Supreme Court. Again in 1985, in Lagos State, it was the turn of the executive arm to face the judicial and judicious fury of the Supreme Court. The then Military Governor of Lagos State had sought to eject Chief Emeka Odumegwu Ojukwu and his family from their property at 29 Queens Drive, Ikoyi. Upon an ex parte application

brought by Chief Ojukwu, the High Court of Lagos State made an interim order of injunction restraining the Lagos State Government from ejecting Chief Ojukwu. The interlocutory injunction was however refused on the ground that the property belonged to the Ojukwu Transport Company and by Ojukwu's late father and that Emeka Ojukwu failed to show that he had a legal interest in the property. But while the matter was still pending at the Court of Appeal, the Lagos State Government resorted to self-help and ejected Ojukwu. The Supreme Court could not contain its infuriation at this brazen violation of liberty. The apex court impugned the action of the government in these strongest words:-

"To use force to effect an act is an attempt to infuse timidity into the court and operate a sabotage of the cherished rule of law. It must never be."

In Dr. Beko Ransom Kuti's case, the court ordered his production in court by the detaining authority; but the order was never obeyed. The police, at the instance of the government have continued to harass, arrest and detain peaceful protesters for failing to obtain police permit despite the express declaration of the court that the law in this country lays no burden of obtaining police permit to embark on such demonstrations.

INTERVENTIONS BY THE COURT

The Judicial Committee of the Privy Counsel set the pace for Nigeria in the old case of Eshugbayi **Eleko v. Officer Administering the Government of Nigeria**.¹⁴⁹ The Court refused to licence the deportation of the Oba of Lagos and stated unequivocally that:

"The Executive can only act in pursuance of powers given to him by law in accordance with British jurisprudence, no member of the Executive can interfere with the liberty of a British subject except on the condition that he can support the legality of his action before a court of justice. "

In Lakanmi's case, the Supreme held:

" the Government, however well-meaning, fell into the error of passing legislation which specifically in effect, passed judgment and inflicted punishment or in order words eroded to the jurisdiction of the courts, in a manner that the dignity and freedom of the individual, once assured, are taken away, the courts must intervene. "

In Ojukwu's case, the Supreme Court of Nigeria descended heavily on the Lagos State Military Government and declared, per Kayode Eso, JSC:-

"They have no right to take the matter into their own hands once the court was seized of it. The essence of the rule of law is that it should never operate under the rule of force or fear. To use force to effect an act is an attempt to infuse timidity into the court and operate a sabotage of the cherished rule of law. It must never be. "

Oputa, JSC went further:

"I can safely say that here in Nigeria even under a Military Government, the law is no respecter of persons, principalities, governments or powers and that

the courts stand between the citizens and the government alert to see that the state or government is bound by the law and respects the law. "

Again in 1994 when the Federal Military Government tried to proscribe the Guardian Newspapers and African Weekly Magazine by Decrees and used force to eject their workers, the Court of Appeal overturned the Decrees and held that:

*"The Federal Military Government is not above the law; it has been () established. Until such a law is abolished or **repealed, it must abide by it** It **must conduct its affairs according to the laid down law.** ,,152*

An activist court no matter how tightly it is boxed to a corner, will always innovate means, even without direct confrontation to take the oppressed citizen by the hand and meander through the deadly teeth of a repressive government.

NIGERIAN EXPERIENCE OF CONSTITUTIONALISM

Of course, so much, has been said and demonstrated in this lecture about how Nigerian governments and government officials apply the constitution in governance.

It is indeed not a very pleasant commentary that many holders of power in the country are primarily concerned about their pockets, their personal interest and their sectional interest up to the highest political offices.

Just a few months ago, the President and Commander-In-Chief of the Armed Forces, Alhaji Umaru Yar-Adua fell sick, as could any other person. He chose to travel outside the country in search of medical treatment. But because he is not an "ordinary person or citizen" but the number one citizen, the constitution placed a duty on him to communicate the National Assembly of such vacation

so that necessary steps could be taken to empower the Vice President to act as Acting President until he returns. For whatever reason, Mr. President failed or refused to transmit the notice thereby throwing the entire nation into confusion for barely 3 months.

Some pundits have argued that the President is not bound under the constitution to transmit the notice but had a discretion do so. The pertinent question is, if the constitution requires the do any ac or take any step in the overall interest of the country, need it be in coercive terms? Should the President of a country and custodian of its constitution not ordinarily be a man of honour who, even in the absence of such a provision, should have considered it a worthwhile step especially when that would not have amounted to permanent abdications of his office? That is part of our Nigeria experience at constitutionalism, although it could be argued that a US President had once failed to take a similar step. Again, the writer would ask, should we imitate good or evil?

THE INTERVENTION OF THE NATIONAL ASSEMBLY – INVOCATION OF DOCTRINE OF NECESSITY

The issue of the President Umaru Musa Yar'adua's ill health is not a recent phenomenon. Right from the period of his campaign for the presidential election of April 2007, Nigerians had come to know that the man who would likely emerge as their next President would not enjoy the best of health.

Indeed on ... the President traveled to Saudi Arabia for medical reasons and on ... it was widely speculated that he had died. Even then, that did not stop his campaign train from persuading

Nigerians that they had no other choice than the man Yar'adua. These supporters were in Ado Ekiti when he was flown back into the country half healthy to join the campaign train. Most people still recollect till this day former President Obasanjo telephone conversation with him where he echoed **"Umoru, is it true you are dead?"**

Since assuming office, the President has continued to look pale and gaunt. During his speeches, listeners and viewer listen to more of coughing than words to the embarrassment of everybody. He is always hardly audible.

Between the 29th of May 2007 and 23rd of November, 2009, President Yar'adua has traveled to Saudi Arabia alone for medical treatment for at least ...times. One common feature of all these visits however is their absolute secrecy. Nigerians are never told where and for what reason and for how long he was going. It is as if a man in public service owes the public no explanation as to his whereabouts.

There were many times that Nigerians got to know that their President was not in the country only on his return.

The above is put in context the recent prolonged absence of the President for nearly 100 days, and the wide-spread worries that it generated. Most people felt that the President and his kitchen cabinet had no respect for their office, the nation and its people.

During the period also, there were reported denials by the authorities of King Fard Hospital in Saudi Arabia of the President's presence there for those long days. On at least three occasions, official delegations, traditional rulers from the North, Yar'adua's section of the country, the National Assembly, members and National Chairman of the Peoples Democratic Party (PDP) and

lately select members of the National Assembly went to Saudi Arabia after such immigration hiccups without being able to see him.

While this disdainful absence and the attendant suspense and speculations lasted, the country suffered. Most things that had worked hap-hazardly ceased to work at all. Electricity returned to its nightmarish state. Even the self-professed 7-point agenda of the President went into coma like the President himself. Most bills could not be signed. Orders that could be made or given only by the President could not be made. The restive Niger Delta militants who had held the country hostage for over a decade but who were pacified into dropping their arms only few months before the President's departure, threatened to return to the creeks because of the FG's abandonment of the amnesty pact reached between the parties. When the threat was disregarded, rumours became wide wailings and before anybody knew what was happening, Egbe Terminal Station in Lagos was blown up with the group claiming responsibility and threatening to do worse. And they did. They went to oil installations in the Niger Delta and blew them up, throwing the country into enormous loss of revenue and brutal damage to its economy and infrastructure.

It was at this time that Nigerians were forced to start clarmouring for anything apart from Yar'adua. It got so bad that somebody even suggested scrapping of the present government and the institution of an interim government to mid-wife the birth of another democracy.

Nigerians began to seriously and desperately look for solutions by whatever means and every hole became a doorpost. A group called Save Nigeria Group comprising some of the remaining civil rights activists took to the streets of Lagos and Abuja

renouncing the unwarranted lull in government activities and clamoring for a total and immediate removal of President Yar'adua from office.

Others looked up to the FEC or the NASS to act in the spirit of Ss. 144 or 145 of the 1999 Constitution. Neither of these bodies acted. It was clear they were shy of rocking the boat for some of them would lose their daily bread in the event of the President's return to the country.

It was at this time that the Chief Law Officer then, (AGF), Mr. Kaase Mike Andoaaka, SAN, came up with theories that suit his fancy saying that the President could rule the country from anywhere by telephone. Neither the criticism of this most absurd position nor even its apparent unreasonableness could change his stance.

Enraged by this absurdity, some Nigerians approached the Court for an interpretation of the relevant sections of the country's Constitution and asked for the removal of the President and the swearing in of the then Vice President, Dr. Goodluck Jonathan as Acting President. Former Heads of State, including Alhaji Shehu Shagari, also held an emergency meeting and presented a position that Jonathan should be sworn in as Ag. President pending the return of Yar Adua.

In all of these, Dr. Jonathan remained his loyal, pensive and unambitious self. It was clear that he would not want to assume power as Ag. President in the absence of authorization from the FEC, or the NASS or the Court. But the Court failed to give him a categorical go-ahead when it held that he could only assume the functions of the President if the President directed. As the President failed to direct, he kept his cool.

In the ensuing confusion, the NASS then realized that it was the only solution to the stalemate. But as it has no power to compel the FEC to give effect to S. 144 of the Constitution, it then purported to exercise the powers conferred on it under S. 145 of the Constitution.

S. 130(1) of the 1999 Constitution provides for the Office of the President of the federation while S. 141 provides for the office of the Vice President. The same Constitution also provides for situations that may arise before the office of the President can become vacant or be declared vacant. These include:

- * when the President dies or resigns from office; or
- * is removed from office under any of the provisions contained in Ss. 143, 144 and 145 of the Constitution.

The President can be removed under S. 143(2)

"Whenever a notice of any allegation in writing signed by not less than one third of the NASS:

- (a) is presented to the President of the Senate;*
- (b) stating that the holder of the office of the President...is guilty of **gross misconduct** in the performance of the functions detailed particulars of which shall be specified...*

The steps that the NASS shall take pursuant to this allegation before the President can be lawfully removed from office are stated in S.143(3) – (1).

It must be noted that the misconduct envisaged under the above stated provision must be "gross". Gross misconduct has been defined as (a) a gross violation or breach of the provisions of the

Constitution; (b) a misconduct of such nature that amounts in the opinion of the legislature as gross misconduct.

Therefore, it is not every misconduct that would attract impeachment by the legislature. Acts that can constitute misconduct are however not closed. The legislature has the discretion to determine the acts that come within this provision, although such acts are nonetheless supposed to be apparent to all and sundry. See **Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423 at 669.**

In the above case, the Supreme Court per Niki Tobi, JSC enumerated some of the acts which could constitute grave or gross misconduct to include (a) refusal to perform a constitutional functions, (b) corruption, (c) abuse of office or power, (d) sexual harassment and so on.

Under S. 144 of the Constitution, the FEC, a body of persons appointed at the discretion of the President is also empowered to remove him from office where a two-thirds majority of them by a resolution declares the President incapable of discharging the functions of his office. See S. 144(1)(a) of the Constitution.

It is clear from the provisions of S. 144(2) that the incapability which the Constitution envisages is that bothering on health. It is also for this reason that a Medical Panel established under Section 144(4) must under S. 144(2) certify that the President:

"is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office."

S. 144(5) provides for a temporary abdication of power by the President himself. The section provides:

"Whenever the President transmits to the President and the Speaker of the House of Representatives a written declaration that he is proceeding on vacation or that he is otherwise unable to discharge the functions of his office, until he transmits to them a written declaration to the contrary, such functions shall be discharged by the Vice President as Ag. President."

It would be noted from the above provision that the purpose of the vacation is not material nor is it material whether the inability to discharge the functions of his office is health induced or not.

In Section 146(1), the functions of a President who is removed from office by the NASS or the FEC are performed by the Vice President automatically as the President. That S. 146(1) provides:

"The VP shall hold the office of President if the office of President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason in accordance with S. 143 or 144 of this Constitution."

After waiting for 86 days without any official information as to the whereabouts of the President or the state of his health and with so much suspense, confusion, embarrassment imminent threat to national security and democracy and virtual grinding to a halt of the state machinery, the NASS on Tuesday, 9th February 2010, adopted resolutions on the state of the nation. The NASS then resolved as follows:

- 1) That the VP, Dr. Goodluck Jonathan should henceforth discharge the functions of the Office of the President,

- Commander-in-chief of the Armed forces of the Federal Republic of Nigeria as Acting President.
- 2) That the VP will cease to discharge the functions of the Office of the President when the President pursuant to S. 145 of the Constitution of the FRN 1999, transmits to the President of the Senate and the Speaker of the House of Representatives that he has returned from his medical vacation.

The President of the Senate, Mr. David Mark, GCON provided justification during the sitting of NASS on 9th February, 2010 for the action of the National Assembly, and this was widely reported on Pages 2, 11 and 12 of the Guardian of Sunday, 14th February, 2010. He said:

***"The President:** Distinguished Colleagues, I would like you to listen to me for a few minutes.*

On November 23, 2009, our President, His Excellency, Alhaji Umaru Musa Yar'adua, GCFR, traveled to Saudi Arabia for medical treatment. The President's prolonged absence has bred anxiety and tension. Since his departure, Nigerians from various walk of life have engaged in debates over his health stats and its effect on governance.

As an institution charged with the responsibility for making laws for the good governance of our nation, the Senate has responded to the debate guided by patriotism, wisdom and our collective national interest. You will recall that we moved the motion to ascertain the health status of Mr. President on this floor. Consequently, the Secretary to the Government of the Federation (SGF), Alhaji Yayale Ahmed, was invited to brief the Senate.

In furtherance of this and consequent upon the information provided by the SGD, the Senate urged Mr. President to notify the National Assembly of his medical vacation in

compliance with the provisions of Section 145 of the 1999 Constitution. We further resolved that the Senate committee on the Review of the 1999 Constitution should undertake a critical review of Section 145 of the Constitution in view of the present unforeseen circumstances and urged Nigerians to continue to pray for the speedy recovery of our dear President. We had also invited the Special Adviser on National Assembly Matter, Senator Mohammed Abba-Aji, to brief the Senate on the circumstances surrounding an alleged failure to transmit a letter from Mr. President to the National Assembly. Needless to state that in all these actions, the spirit and letters of the constitution as well as a collective desire to sustain our hard-earned democracy served as our guide and road map.

The last 78 days have been very challenging to us as a nation. We have come under intense pressure, stress and pain. However, we have examined all the options available to us and today rightly concluded that it is necessary to take this stand and allow the country move forward.

My distinguished colleagues and bosses, shorn of legalese and technicalities, the intendment and spirit of the Constitution, as far as Section 145 is concerned, is that the legislature have foolproof and irrefutable evidence that Mr. President is going on vacation, or is otherwise incapable, in the interim, of discharging the functions of his office.

A rigid and inflexible interpretation will not only stifle the spirit and intendment of the Constitution, but will also affront the doctrine of necessity. The doctrine of necessity requires that we do what is necessary when faced with a situation that was not contemplated by the Constitution. And that is precisely what we have done today. In doing so, we have as well maintained the sanctity of our Constitution as the ultimate law of the land.

Viewed from an ordinary reading of Section 145, we came to the conclusion that the President, through his declaration transmitted on the BBC, has furnished this parliament with irrefutable proof that he is on medical vacation in the Kingdom of Saudi Arabia, and has therefore complied with the provisions of Section 145 of the 1999 Constitution.

For the avoidance of doubt, let me re-emphasise the import of prayer two of our resolution.

The President will automatically resume office as President and Commander-in-chief once he is well enough and returns to the country and informs us accordingly, pursuant to Section 145.

I have re-emphasised this salient constitutional provision to dispel the obvious disinformation and distortion which both mischief and ignorance will inevitably spawn. In accordance with this solemn resolution, in this extraordinary time, the Senate shall henceforth receive and accept communication from His Excellency, Dr. Goodluck Ebele Jonathan, GCON, as Acting President, in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

"The fact that we have resolved the logjam democratically is a measure of the depth that democracy has attained in our polity.

This is not the time for winners and losers, but the time to remain united as a people because as a nation, our voyage is on the same tide and we cannot afford a drift. Today is indeed a historic day for constitutional development in our country. The wisdom, patience, endurance, tenacity and understanding of the Nigerian people have strengthened us to attain this milestone and to resolve a seemingly intractable political and constitutional conundrum. We salute the patriotism and unalloyed support of the Nigerian

people, even as we pray for the quick recovery and return of Mr. President."

With all respect to the members of the NASS, their resolution anchored on the doctrine of necessity amounts to being clever by half. It is shirking one's responsibility. In fact, it is itself a constitutional breach.

The doctrine of necessity is not rearing its head in Nigeria nor is its use peculiar to the country.

In Pakistan, the judiciary until very recently, had debased itself on account of its constant resort to the doctrine of necessity. Whenever any of the judges of Pakistan's higher courts was faced with a critical decision on the Constitution or military rule, the Court had always employed this doctrine. In 1954, Governor Ghulam Mohammed dissolved Pakistan's first constitutional Assembly and the government of Khawja Nazim Uddin. He was challenged by the President of the Assembly. Tamiz Uddin in the High Court. It was held that the dissolution was illegal and unconstitutional. On appeal to the Chief Court of Pakistan, later to be named the Supreme Court, the Chief Justice Munir found for the Governor-General.

His Lordship employed the doctrine of necessity and held that in order to preserve the country, the Constitution must be abandoned. From that point on, the doctrine of necessity rather than the provisions of the Constitution became the basis for every decision on a military take over or a knotty political issue. It is the same doctrine that has justified or sustained successive military coups in Pakistan till today.

It has been said by analysts that this doctrine, the invention of judges in Pakistan, is also a sign of their failings. The misinterpretations which it has occasioned have cost the judges themselves their dignity and "millions of others have lost far more: their lives, their hopes, their democracy, their human rights".

In the last one year, a lot has happened in the Pakistan Judiciary. Lawyers in the country have insisted on the rule of law rather than of necessity. There have also been public staging of a symbolic funeral of the doctrine and its burial in front of the High Court building. The Chief Justice of the Pakistan Supreme Court has also praised the country for burying the doctrine of necessity.

In Nigeria, the first noticeable time that the doctrine of necessity would appear in our judicial lexicon was during the events immediately following the January 15, 1966 military take over of power. The military then promulgated a number of Edicts and Decrees under which Tribunals were set up to investigate the assets of some political office holders of the time. These include Edict No. 5 of 1967, Decree No. 37 of 1968 – The Investigation of Assets (Public Officers and Other Persons) Decree 1968; Decree No. 43 of 1968 – The Investigation of Assets (Public Officers and Other Persons Amendment Decree 1968; and Decree No. 45 of 1968 – The Forfeiture of Assets, etc (Validation) Decree 1968, dated August 28, 1968.

These Edicts and Decrees and the powers exercised under them came up for interpretation in the case of *Lakanmi & ors. v. AG West & ors.* (1970) NSCC 143. In this case, the Supreme Court considered the implication on the Constitution the hand over of the reign of government by the civilian administration of the first republic to the Armed Forces following the mutiny of 15/1/66.

The apex Court agreed with Counsel to the Appellant in that case that the disruption of 1966 to political governance and the hand over of government to the military were events which not envisaged by the Republican Constitution of 1963.

The doctrine of necessity which was applied in that case was borne out of the fact of the occurrence of a political situation which the Constitution did not envisage and therefore did not provide for.

It therefore follows that as provided in S. 1(1) of the Constitution is supreme and the affairs of the country must strictly be regulated in accordance with its provisions. There can only be deviations from its provision not when it is convenient but where there is no other alternative.

This much was decided in the Cyrus case of AG For the Republic v. Mustapha Ibrahim of Kyrania (1964) 3 S.C. of Cyprus (1) quoted with approval in Lakanmi's case (supra). The Court held in that case:

"Faced with ...functioning of the two superior Courts of the land and the partial breakdown of the district Courts, the Government had to chose between two alternatives, vis, either to comply with the strict letters of the constitution (the relevant articles being unutterable under any condition) i.e. cross its arms and do nothing but witness the complete paralysis of the judicial power, which is one of the three pillars of the state...; or to deviate from the letter of the Constitution which had been rendered inoperative by the force of events (which situation could not be foreseen by the farmers of the Constitution), in order to do what was imperatively and inevitable (sic) necessary to save the

judicial power temporarily until return to normal conditions so that the whole state structure may not crumble down..."

The foregoing situation is obviously what the Senate President had in mind in his justification of the 9th of February 2010 and what some lawyers, public affairs commentators, politicians and the public relied on when they landed the declaration of the NASS of Dr. Jonathan as the Ag. President of the country.

Now the crucial question is, is the situation that led to the declaration of Dr. Jonathan as the Ag. President and envisaged by the Constitution? Is his declaration as the Ag. President the appropriate step to be taken under the Constitution considering the general circumstances of this case?

Our considered opinion in both cases is that it is certainly not. The only reason which could have informed the invocation of the doctrine of necessity by the NASS is the unwillingness of its members to act according to the imperative of the Constitution and their oath of office. It is sheer cowardice.

What is more, the NASS purported to rely on S. 145 of the Constitution in adopting their resolution. And this, to us, is the real paradox indeed the height of contradiction. This contradiction is underscored by the simple fact that while the doctrine of necessity is usually applied or resorted to, where the Constitution makes no provision, the NASS in their own case, found a provision of the Constitution on which to anchor their reliance on the doctrine of necessity. This cannot, in our view be right as the two alternatives are mutually exclusive.

Surprisingly still, the NASS which purporting to act pursuant to S. 145 claimed to have relied on the President's interview on BBC! S. 145 provides expressly for transmission in writing and not a broadcast. It is also clear that the interview by its content, was also not meant by the President to be a broadcast to Nigerians or the NASS as he never at any time in the interview addressed them. He only answered questions put to him.

Here was a President of a country with sensitive national issues who was traveling outside the country for medial treatment for how long he could not tell yet he did not deem it fit to notify his deputy not to talk of the Nigerian public and whose whereabouts were left to speculation. He abandoned his duties for close to three months. Enquiries and efforts were successfully blocked by his wife and members of his kitchen cabinet.

One can only appreciate the gravity of Alhaji Yar'adua's abscondment against the background that if an ordinary civil servant who is not in any position to take any meaningful decision on any issue of national importance is promptly queried if he fails to attend to his duties or leaves his duty post for only one day without notice.

Events since Wednesday, 24th of February, 2010 when President Umaru Musa Yar'adua was sneaked into the country have not helped the arguments of the pro-necessity polemicists. It is clear now that President Yar'adua lacks the strength that is required for the holder of a highly demanding office such as he holds. Since his return, nobody except the very few who benefit from general ignorance of the people on the state of his health, knows his whereabouts, his health status and how long it will take for him to resume his duties, if he ever will.

If the President does not deem it enough honour to resign as has been advised by his close associates and well-wishers such as former President Obasanjo, and the members of the Federal Executive Council cannot remove him because they are afraid of biting off the fingers that fed them, then the National Assembly should do what the Constitution under Section 145 and the majority of Nigerians expect of them in the interest of our fledging democracy and continued existence as an indivisible nation. That step consists only in impeaching him for a gross violation of the Constitution of Nigeria where he swore on the 29th of May, 2007 to uphold. Any other thing is not borne of necessity but cowardice.

THE WAY FORWARD

1. TRUE NIGERIAN PEOPLES CONSTITUTION

It is the writer's view that the way forward in Nigeria's search for a stable regime of constitutional governance lies first and foremost in a search for a truly Nigerian democratic constitution.

To this end, Nigerians must have the ample opportunity to discuss, debate thoroughly ALL issues pertaining to their natural existence or co-existence. It is only then that we can truly say that we have "firmly and solemnly resolved". A constitution made and handed down by the colonial masters or by the military cannot represent the wishes and aspirations of the peoples and nations in Nigeria.

2. RESPECT FOR THE CONSTITUTION AND THE RULE OF LAW AND OBEDIENCE TO ORDER OF COURT

There is no way Nigeria, or any country at that can make any meaningful progress in governance if its constitution and other laws is breached, abused or relegated to the background. Both the wielders of power and ordinary citizens must respect and obey the laws of the land especially orders of competent courts. Nations and peoples make progress when and where laws are obeyed in observance and not in breach.

3. CONSTITUTIONAL AND HUMAN RIGHTS EDUCATION

Nigerians must now begin to be exposed to and taught the culture of constitutionalism and human rights education from the earliest human rights education from the earliest stages of their education. This has become extremely necessary to re-orientate the people, especially the younger generation of Nigerians who have been given to military culture due to long years of military incursion into the governance in the country especially as the new democratic order is yet to extinct itself completely of the grips and the vestiges of the military dispensation. Of course, this should not be to the abandonment of general education.

4. REDUCTION OF SIZE OF POLITICAL STURCTURES

The size of political structures in the country must be reduced with an attendant reduction in the funds spent on servicing political offices and political office holders. Legislative offices should be made part time offices and the remuneration attached to executive offices reduced to make

them less attractive to political jobbers. Power concentrated in the hands of the Federal (Central) government should be reduced or omitted down to make the federation units stronger and more self sustaining. This would save a lot of funds for the

5. MORATORIUM FOR EX OR RETIRED MILITARY OFFICERS

Having regard to the past experience of Nigeria under military regimes, it would do the community great good if a law is made giving former military officers a moratorium of at least 5 to 10 years after leaving the military before venturing into sensitive executive political offices. During this period, the officers would have had opportunity of demilitarizing their mentality and psyche, and made the necessary adjustment and adaptation into civil life and culture which are indispensable for civil governance. The situation today where very sensitive positions of Governors, Deputy Governors, Federal and State legislatures and Ambassadorial positions are held by fresh former military officers immediately on their retirement or dismissal from the military is certainly not the best for our constitutional development.

6. QUOTA SYSTEM AND FEDERAL CHARACTER

The Federal character or quota system should be abolished to ensure that better qualified and more credible Nigerians are given appointment for which they are qualified rather than appoint ill qualified persons for sensitive positions because they come from a particular part of the country or the other.

7. RETURN TO REGIONAL ARRANGEMENT AND FISCAL AUTONOMY

The country should return to the regional arrangement whereby each region would be entitled to manage its own resources and pay an agreed percentage of the proceeds to the central government. This arrangement would enable each region to develop and make progress at its own pace and at the same time encourage constructive competition among the regions or federating units as the case may be, i.e. fiscal autonomy.

8. REMOVAL OF IMMUNITY CLAUSE

I have always called, and I will continue to call for the removal of the immunity clause in S.308 of the Constitution because it only serves as a cover by the relevant public officers to perpetrate criminality. It is not serving the country any useful purpose.

9. RE-ORIENTATION OF SECURITY AND LAW ENFORCEMENT AGENCIES

There is no doubt that the greatest abuses of the constitution or human rights of citizens have always been carried out by, through or with the active connivance or acquiescence of the security agencies, especially the Police, the Military and the SSS.

It is therefore the writers recommendation that an intensive orientation of these institutions and their officers should be

embarked upon to acquaint them with the tenets of constitutional governance and the rule of law.

Reference is made here to the English Police which is well reputed for their civil disposition and high standard of proficiency.