



**NATIONAL OPEN UNIVERSITY OF
NGERIA**

SCHOOL OF LAW

COURSE CODE:LAW 100

COURSE TITLE:INTRODUCTION TO LAW

3.5.1 International Law

(a) Contrast with Municipal Law

As the term suggests, international law is concerned with the rules of law, which govern the relations between countries. On the other hand municipal law relates to the body of law, which governs the internal affairs of a country.

(b) Notes:

- The above branches are not to be seen as exhaustive but merely Indicative

Chisholm and Netheim describe the basic differences between international law and municipal law as:

It is easy to think of international law as relating to war and peace, control of international aggression, and the peace-keeping efforts of the United Nations. These are certainly matters which may involve international law, and are perhaps the most important areas of that law, but they are also areas where international law has most difficulty being effective. For the international legal system, dealing in general with legal relations between countries, does not ordinarily have the same extent of control over those countries as systems of national law usually have over people in the particular country. The problem can be helpfully explained by saying that international law does not have three things that national legal systems have: a legislature (to make laws), a police force (to enforce them), and courts (to apply the law to disputes). This is, of course, an over-simplification, but it is worth considering each aspect.

International Law has no legislature: there is no body which possesses recognized and effective authority to pass legislation which bind countries. The United Nations General Assembly has considerable influence and does pass resolutions about the rights and duties of countries, but its powers in relation to countries are very much weaker than the powers of a national parliament over its citizens. Only the Security Council has power to pass binding resolutions, and only in furtherance of its powers to deal with threats to the peace, breaches of the peace, and aggression. Countries incur obligations in international law only if they choose to, usually by becoming party to a treaty with one or more other countries.

Again, there is nothing in the international legal system really similar to a police force or an army. It is true that the United Nations has some peace-keeping forces, but these are very small in comparison with the

forces available to particular countries. They have to be contributed by member nations for particular operations, and in general can operate effectively only with the consent of the countries where they are deployed. Sometimes they can perform such tasks as policing political or national boundaries. Occasionally, substantial armed forces are assembled and deployed for particular operations. The best known recent example is probably the 1991 deployment of armed forces against Iraq following its invasion of Kuwait. In such exercises the involvement of particular countries through the supply of forces can be so substantial that there can be arguments about whether the force is properly regarded as a United Nations operation or is really an operation of one or more countries with a degree of support from the United Nations. The United Nations efforts are not always successful, and are sometimes criticized, as in the case of Bosnia. Further, in some situations, including some of the most tragic (such as those in Africa in the mid-1990s), the difficulties of the situation, and sometimes the perception by member countries that their own interests do not justify a major investment of funds and personnel, lead to a result that the United Nations is virtually helpless to assist. This is particularly so where the area is so dangerous and unstable that humanitarian relief cannot be provided to the people who need it.

Finally, there are no courts of the kind that exist in national legal systems. There are bodies something like ordinary courts, notably the International Court of Justice (the World Court). However, this court, like other international courts and tribunals, can in general decide cases only with the consent of the countries concerned; it is therefore quite different from national courts, in which people can be sued or prosecuted whether they like it or not. In some cases, as a result of regional treaties (as in Europe), a number of countries can create a legal arrangement in which courts and other bodies can make orders which will be respected and enforced in the member countries. (In recent times the UN Security Council has established international tribunals to deal with international offences committed in the former Yugoslavia and in Rwanda – the first such machinery since the Nuremberg and Tokyo tribunals after the Second World War).

In all three areas, therefore, legislature, police and courts, the international legal system is much less well-equipped than national legal systems. Not surprisingly, the United Nations and the international legal system generally are sometimes criticized as being ineffective, or not being 'law' at all. It is pointed out, quite rightly, that international law did not prevent the Vietnam War or the Middle East, Afghani, Iraqis or Nigeria Civil wars.

(Source: Chisholm and Netteim 1997, p 18)

3.5.2 Impact of International Law on Municipal Law

Chisholm and Netteim made reference to the importance of treaties as a source of international law. We have a federal system of government, as you are aware, and power is divided between the Federal and State Governments. The powers of the Federal government are restricted by the Federal Constitution. In recent times the power available to the Federal has increased substantially by the State choosing to implement in Nigeria international conventions to which Nigeria is a party. Those international conventions may deal with matters which normally would fall within the control of state governments but by the Federal Government, using its external affairs power in the Constitution, it can legislate against or for the particular conduct. Furthermore, the Federal Government has relied upon treaties concerning World Heritage Listing to protect the environment in Nigeria. This would normally be a state government matter. The issue of Federal-State Government power is explored more fully later.

International law impacts on our domestic law in other ways as well. In the first place customary international law which is law derived from the close adherence by countries to establish customs is technically part of our common law. Since the customs are usually of an international character (such as rules governing the collision of ships) their influence on municipal law is not great.

In addition, in developing the common law judges have been prepared to take into account trends in international law and the domestic law of other countries. For example in the Australia case 2 *Mabo v Queensland* Brennan J stated that:

Although the manner in which a sovereign state might acquire new territory is a matter for international law, the common law has had to march in step with international law in order to provide the body of law to apply in a territory acquired by the Crown.

(Source: Brennan)

In the particular circumstances of that case the majority of the High Court was prepared to vary the common law to ensure that it did not discriminate against a particular race. This change brought it into line with international law on land rights both in the way other countries such as Canada and New Zealand dealt with this issue but also in keeping with the judgment of the International Court of Justice in the *Western Sahara* case [1975] ICJR.1. That court severely criticized the *terra nullius* doctrine.

3.5.3 Municipal Law

Before examining some aspects of our municipal law it is useful to take a wider perspective and see how our law fits alongside the legal systems of other countries. While this enquiry has an international flavour it is treated under the heading **municipal law** because it is concerned with the internal laws of different countries.

4.0 CONCLUSION

You have learnt about the sources of law. Most Nigerian laws now derive from statute laws and you have treated the advantages and disadvantages of statutory law as well as the differences between International and municipal law.

5.0 SUMMARY

The laws in Nigeria can be found in the Acts of the National Assembly, the laws of each state, and the by-law of the local government council. Each derives from the common law, equality and English statutes of general application. Law Reports are growing sources of law in Nigeria. Customary law derives from the customs and traditions of the people. Islamic law is customary law but it is written. Treaties to which Nigeria is a signatory is another source of law. Differences lie between municipal laws, International law especially in terms of legislation, enforcement and adjudication.

6.0 TUTOR-MARKED ASSIGNMENT

1. What are the laws that apply in Nigeria?
2. "International law is no law" Comment

7.0 REFERENCES/FURTHER READINGS

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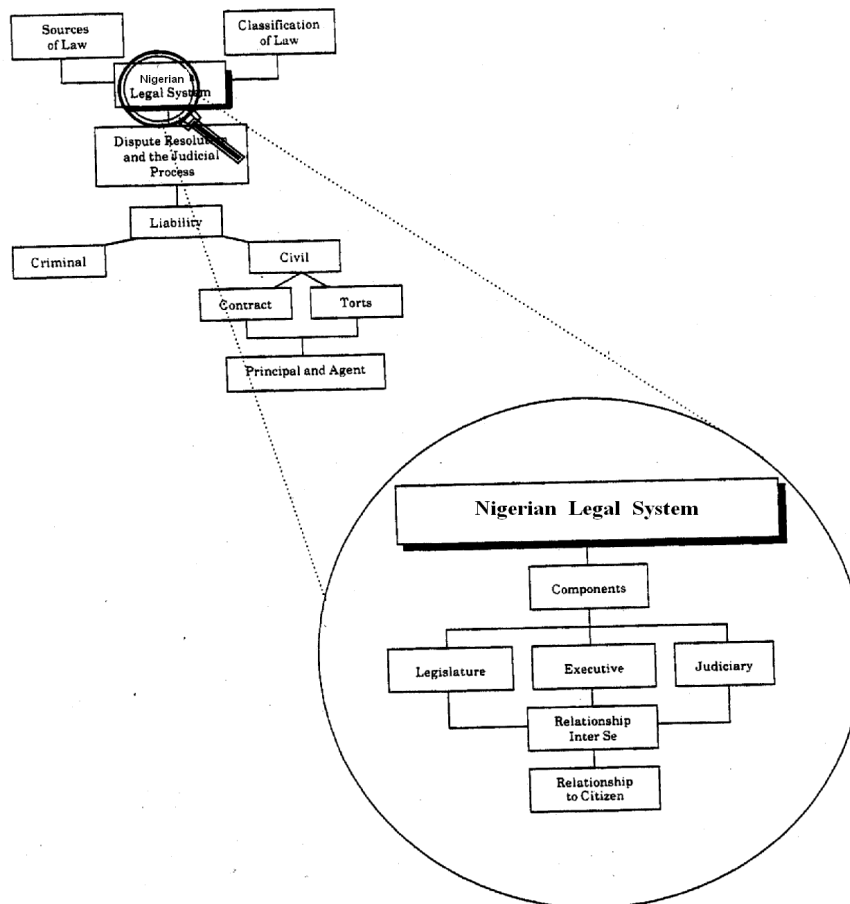
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UNIT 3 THE NIGERIAN LEGAL SYSTEM: LAW MAKING

CONTENTS

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 - 3.1.4 Growth of Federal Power
 - 3.1.5 Local Government
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Overview of the Nigerian Legal System



1.0 INTRODUCTION

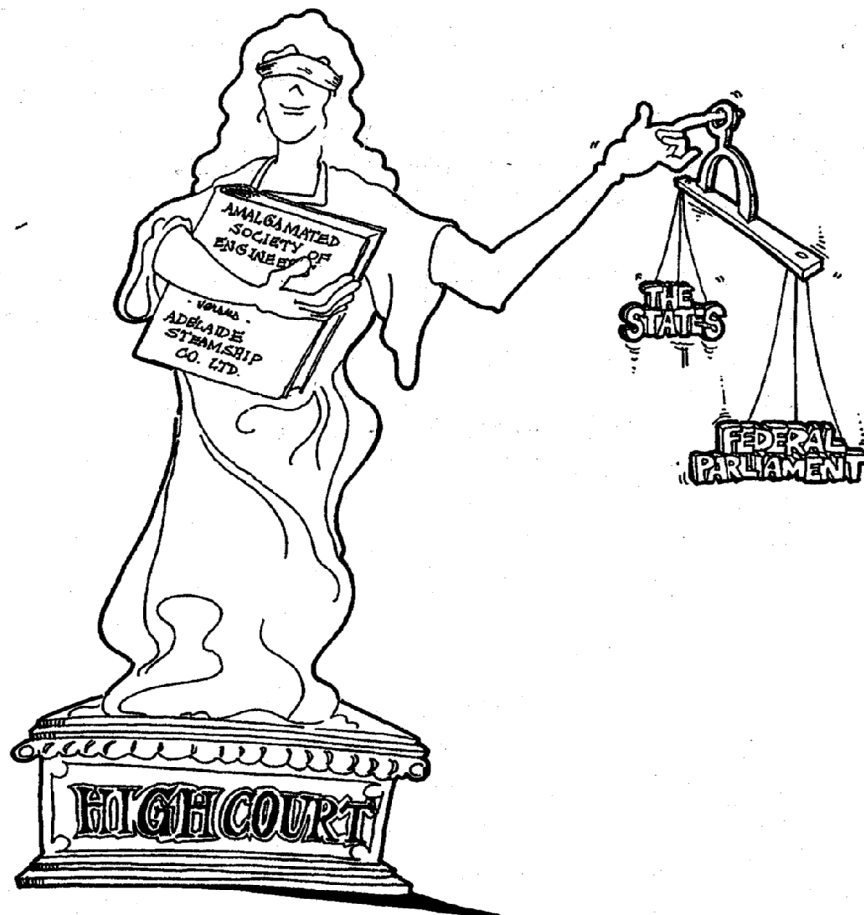
There are three major organs of government in Nigeria with the following functions:

- i. Legislature: to make law
- ii. Executive: to administer laws and the surrounding system; and
- iii. Judiciary: to interpret and apply the laws.

This unit discusses these three major organs as well as their relationship with each other and with Nigerian citizens. The important concepts which affect this relationship with citizens are the doctrines of the separation of powers and the rule of law.

The Pledge of Commitment on a citizen of Nigeria is:

I pledge to Nigeria my Country
To be faithful, loyal and honest
To serve Nigeria with all my strength
To defend her unity
And uphold her honour and glory
So help me God.



Note

The study schedule contains the complete list of pages from Turner that are required reading for this unit.

2.0 OBJECTIVES

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

- identify the three major organs of government in Nigeria and describe their components and functions
- outline the legislative powers of the National and State Assemblies and explain how they interrelate.

3.0 MAIN CONTENT**3.1 Legislature****3.1.1 National and State Assemblies**

There are three levels of legislature which have law making power with respect to Nigeria. They are:

- i. The National Assembly, (Senate and House of Representative)
- ii. State Assembly
- iii. Local Government Council

What we are concerned with here is the division of powers between the Federation and the States. It is assumed that you have a working knowledge of the structure of both Assemblies and the general procedure for passing legislation.

You will no doubt be aware that the National Assembly comprises two Houses, the House of Representatives and the Senate whereas in the State there is only one House. The Senate is comprised of an equal number of senators from each State – a feature of the Constitution which was designed to protect the position of the smaller states – and the Federal Capital Territory.

In this course we are more concerned with the question of the areas of control of the Federal and State governments. The answer to this question is essentially to be found in the Constitution of the Federal Republic of Nigeria.

SELF ASSESSMENT EXERCISE 1

What is a Federal System of Government?

3.1.2 Background to the Constitution

Before we look at the division of power in Nigeria, it is useful to examine briefly the nature of a federal form of government. The usual features of a federal government as listed by Solomon (1975) are:

- the central government must have full authority on behalf of the entire federation to handle relations with other nations;
- the functions of government are distributed between the central government and a number of states governments by means of a Constitution;
- power is distributed in such a way that both the federal and State governments have a direct impact on citizens; and
- there is usually brought into existence a judicial authority which acts as an umpire to ensure that neither the national nor the state governments step outside its limits of power as prescribed in the Constitution.

These four features are present in the Nigerian Constitution. Let us take them in turns:

- The Federal Constitution gives full and complete authority for the National Assembly to legislate with respect to matters within the exclusive legislative list; e.g. foreign affairs, international trade, customs, defence, police, immigration etc. and thereby to handle all aspects of relations with other nations.
- The functions of government are distributed between the Local Government, State and Federal Governments. The manner in which this is done is (i) to list the powers of the Federal Government and leave the residue to the States. (ii) The specific powers are listed in the Constitution and are referred to as concurrent powers, but once Federal legislation is enacted in one of these areas then the Federal law will prevail over an inconsistent State law.

The State governments have residuary powers by the manner in which the Nigerian Constitution is worded. The States once had their own Constitutions. The Constitutions allow the States to also legislate for the **peace, order and good government** of the State – a general formula in keeping with their residuary powers. Now however, there is only one constitution for the whole of Nigeria.

- For Nigerians it will be quite clear from personal experience that

both National and State Governments have a direct impact on citizens.

- Section (6) of the Constitution vests judicial power in the Nigerian court, as well as making the Supreme Court the final court of appeal. The Supreme Court is specifically granted the power to deal with matters arising under the Constitution and its interpretation of disputes between States and in any matters in which the Federation is a party.

Clearly then the Supreme Court fulfils the function of arbiter referred to by Solomon in the fourth of his points listed above. You should note that the Supreme Court is the final court of appeal in all matters. It is no longer possible to appeal to the Privy Council. This matter is more fully dealt with in the discussion on court system.

3.1.3 Legislative Powers

Briefly then, the power of the State and National Assemblies should be seen in the following perspective:

1. Initially, Nigeria and the former regions, were given power to legislate for the **peace, order/good government** of Nigeria, subject to the overriding sovereignty of the British Parliament.
2. Upon federation, the regions gave up some of these general powers to the Federal Parliament. The Federal Constitution then was drafted in specific terms either conferring powers on the Central government or imposing restrictions (e.g. that trade, commerce and intercourse between Regions shall be absolutely free).
3. The result is that there are:
 - powers vested exclusively in the Federal Government – i.e. the States have no power to legislate on these matters, e.g. laws dealing with the seat of government of the State, the military, the Police etc.
 - concurrent legislative powers – i.e. matters on which the Central Government may legislate and which also fall within Region or States' general powers. These are the powers mentioned in the concurrent legislative list. However, once the Federal Houses pass a law dealing with these matters, it prevails and any inconsistent state law is invalid to the extent of the inconsistency, e.g. divorce law.
 - Exclusive legislative powers of the State – i.e. any matters within the power of the State and not within the power of the Federation e.g. laws dealing with the State judicial system, the Constitution refers to these as residuary powers.

3.1.4 Growth of Federal Power

It would be misleading to list the powers of the Federal Government as enshrined in the 1990 Constitution without a discussion of the change in the balance of power between the Federal and Regional/State Governments since that time.

It is often said that the founding fathers of Nigerian Federation would be mortified if they were alive today to witness the vast expansion in Federal Government power. They would be aghast to learn that the Federal Government exercises power in relation to such matters as education, roads, health to name but three areas traditionally considered the province of the Regions.

How has this change come about? A number of factors are important:

1. The most significant reason for the growth of Federal power has been the manner in which the Constitution has been drafted and then interpreted by the Supreme Court of Nigeria. This process is a complex one and a study in itself.

Sometimes, the Courts have moved away from a legalistic approach to a more liberal, sociological approach, presenting the constitution not as a static document but one which must be interpreted to take into account changes in the political, economic and social structure of Nigeria. At other times, the Supreme Court is utterly legalistic.

- The court has conferred on the Federal Government, responsibility for raising income tax to the exclusion of the States thereby gaining control of the purse strings. The Nigerian press ensures that their readers and listeners are familiar with perennial problem of revenue allocation and states share of the fiscal cake.
 - Creation of Local Government is another. A number of states especially Lagos state, took the Federal Government to Court on the matter.
2. Changes to the Constitution itself. As many will be aware, the Constitution lays down a procedure for change to its provisions which in essence requires the alteration to be approved at a referendum of all of the citizens of Nigeria. Clearly this avenue for change has not been significant because the constitution has not been amended at any time.
 3. Huge inroads into State power by the Federal Government have occurred by the use of the Grants power in the Constitution.