

SUPREME COURT OF NIGERIA
FRIDAY 7TH JUNE, 2002. SC. 200/2001
CORAM:- M. L. UWAIS CJN, A. B. WALI,
E. O. OGWUEGBU, U. MOHAMMED,
A. I. KATSINA-ALU, S. O. UWAIFO, A. O. EJIWUNMI, JJSC

ATTORNEY-GENERAL OF
ONDO STATE PLAINTIFF
AND

1. ATTORNEY-GENERAL OF
THE FEDERATION & 35 ORS DEFENDANTS

CONSTITUTIONAL LAW - Legislative power - National Assembly -
By s.4(2) 1999 Constitution - National Assembly can make laws for
good governance of the federation - With respect to matters in ex-
clusive legislative list (H1)

CONSTITUTIONAL LAW - Constitution - Interpretation - Principle -
Since Constitution is the grundnorm - Any narrow interpretation of
it - Will fail to achieve the goals set therein (H2)

CONSTITUTIONAL LAW - Legislature - Legislation - Supremacy of -
Where National and State House of Assembly exercise power under
s.4(2)(4)(b)(7)(c) 1999 Constitution - Legislation by the former
prevails by virtue of s.4(5) thereof (H3)

CONSTITUTIONAL LAW - Constitution - “State” - Meaning - By
s.13 1999 Constitution - The word refers to all organs of government
and authorities - Exercising legislative executive and judicial powers
(H4)

CONSTITUTIONAL LAW - Criminal proceedings - Commencement
- Powers of A.G. Federation - By s. 286(1)(b) 1999 Constitution -
A.G. Fed can initiate such proceedings in any State (H5)

FACTS

The National Assembly enacted the Corrupt Practices and Other
Related Offences Act No. 2000 (i.e. the Act). The Act has a broad

objective to prohibit and prescribe punishment for corrupt practices and other related offences throughout the Federal Republic of Nigeria. To implement its aims, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was set up. Being dissatisfied with the establishment of the Act, plaintiff commenced this action by way of originating summons brought under the original jurisdiction of the Supreme Court of Nigeria. Plaintiff sued 1st defendant (i.e. Attorney-General of the Federation) and joined 2nd – 36th defendants as parties whose rights may be affected by the action.

Plaintiff's contentions in the main are that the National Assembly has no power to enact the Act and that neither the Attorney-General of the Federation nor the ICPC have power to initiate criminal proceedings in Ondo State for Criminal Offences created by the Act. Plaintiff further contended that because so many provisions of the Act are unconstitutional and void, the entire enactment has become invalid.

ISSUES FOR DETERMINATION

“(i) Whether the Corrupt Practices and Other Related Offences Act, 2000, is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 constitution of the Federal Republic of Nigeria.

(ii) Further and in the alternative to question (i), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices And Other Related Offences Act, 2000.

(iii) Whether the Attorney-General of the Federation or any person authorized by the Independent Corrupt Practices And Other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.

(iv) Whether all the powers conferred on the Independent Corrupt Practices And Other Related Offences Commission or on other functionaries or agencies of the Federal Government by the Corrupt Practices And Other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in

that state (including any public officer or functionary or officer or servant of the government of Ondo State)."

HELD (Unanimously allowing the action in part per
UWAIS CJN)

Legislative power - National Assembly

1. Now section 4 subsection (2) of the constitution provides that the National Assembly has the power to make laws for the peace, order and good government of the federation with respect to any matter included in the exclusive legislative list. This means that the National Assembly is empowered to legislate under item 60(a) for the purpose of establishing and regulating the ICPC for the federation. This the National Assembly has done by enacting the act. The ICPC is, by the provisions of item 60 (a), to promote and enforce the observance of the fundamental objectives and directive principles of state policy as contained under chapter II of the constitution. The question is: how can the ICPC enforce the observance? Is it to use force? Is it to legislate or what? The ICPC cannot do either of these because the use of force or coercion in enforcing the observance will require legislation. The ICPC has no power to legislate. Only the National Assembly can legislate.

The question is how can the National Assembly exercise such powers? It can only do so effectively by legislation. Item 67 under the exclusive legislative list read together with the provisions of section 4, subsection (2) provide that the National Assembly is empowered to make law for the peace, order and good government of the federation and any part thereof. It follows, therefore, that the National Assembly has the power to legislate against corruption and abuse of office even as it applies to persons not in authority under public or government office. For the aim of making law is to achieve the common good. The power of the National Assembly is not therefore residual under the constitution but might be concurrent with the powers of State House of Assembly and

local government council, depending on the interpretation given to the word “state” in section 15 subsection (5) of the constitution, which I will deal with anon. (pp. 1509 C/1511 B)

Constitution - Interpretation - Principle

- B **2. It has been argued that the fundamental objectives and the directive principles of state policy are meant for authorities that exercise legislative, executive and judicial powers only and therefore any enactment to enforce their observance can**
 C **apply only to such persons in authority and should not be extended to private persons, companies or private organizations. This may well be so, if narrow interpretation is to be given to the provisions, but it must be remembered that we are here concerned not with the interpretation of a statute**
 D **but the constitution which is our organic law or grundnorm. Any narrow interpretation of its provisions will do violence to it and will fail to achieve the goal set by the constitution.**
 (p. 1510 D)

E *Legislature - Legislation - Supremacy of*

- 3. In that case the power to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can be exercised by the federal and state governments by virtue of the provisions of section 4 subsections (2), (4) (b) and (7) (c)**
 F **of the constitution. It is doubtful however if the third tier, viz the local governments can legislate on the subject there is 110 provision under section 7 and the fourth schedule to the constitution that empowers them to do so. Although the power**
 G **to legislate on the subject is given to the National Assembly and State House of Assembly, when both exercise the power, the legislation by the National Assembly will prevail by virtue of section 4 subsection (5) of the constitution which provides**

- H **“(5) If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.”** (p. 1511 H)

Constitution - "State" - Meaning

4. It has been argued also that the word "state" in section 15 subsection (5) means the federal government alone, because if the whole of the provisions of chapter II of the constitution on fundamental objectives and directive principles of state policy are read together, it will be seen that only the federal government is in a position to carry out the principles and objectives. With respect, I do not accept this argument, because the provisions of section 13 thereof apply to "all organs of government, and all authorities and persons exercising legislative, executive or judicial powers." The provisions do not distinguish between federal, state or local governments.

Again the provisions of section 14 subsection (4) specifically apply to the "government of a state, a local government council, any agencies of such government or council, and the conduct of the affairs of the government, council or such agencies. (p. 1512 D)

Criminal proceedings - Commencement

5. The next point is whether the Attorney-General of the Federation or any person authorized by the ICPC can lawfully initiate or authorise the initiation of criminal proceedings in any court in Ondo State in respect of offences created by the act. The plaintiff's contention is that the answer is in the negative if the answers to issues nos. (i) and (ii) have been answered in the negative. But I have held otherwise and so the opposite is the case. I, therefore, hold that the criminal proceedings can be initiated in the court in Ondo State in accordance with the provisions of section 286 subsection (1) (b) of the constitution. (p. 1513 C)

NOTABLE POINTS OF INTEREST

OGWUEGBU JSC

1. Consequences of corruption in Nigeria

It is a notorious fact that one of the ills which have plagued and are

still plaguing the Nigerian nation is corruption in all facets of our national life. It is an incontrovertible fact that the present economic morals and or quagmire in which the country finds itself is largely attributable to the notorious virus which is known as corruption. This court is bound to take judicial notice of these facts and is so invited to do so. In foreign countries, Nigerians are regarded and treated as corrupt people. Unlike other Nationals, no bank would allow Nigerians to open a bank account as of right. The Nigerians green passport is synonymous with corruption. Consequently, at foreign airports, Nigerians with green passports are separated from other Nationals.

“...Nigerians are subjected to degrading and inhuman treatments and treated as pariahs on the ground that they are Nigerians who hail from the most corrupt country in the world.”

If these were the only consequences of corruption, it would not have been so threatening. The deadly threat is the effect on the economy of the country with the attendant inflation and lack of control on the monetary and fiscal policies of the government. (p. 1542 A)

2. Court may take judicial notice of existence of exceptional circumstances

Re: Anti-Inflation Act (1976) 9 NR 541; 68 DLR (Ed.) 452, where the Supreme Court of the Dominion of Canada was faced with the test of determining whether the Canadian Anti-Trust Act, 1976, was enacted for the peace, order and good government of the Dominion of Canada and whether it did not, in the circumstances under which it was enacted invade the legislative competence of the provinces. The court in its judgment observed that when an issue is raised that exceptional circumstances underlay resort to a legislative power which might be properly invoked in such circumstances, the court might be asked to consider extrinsic material bearing on the circumstances alleged, both in support and in denial of the lawful exercise of legislative authority. In considering such material and assessing its weight, the court does not examine whether it provided proof of the exceptional circumstances as a matter of fact. The matter concerned social and economic policy and hence governmental and legislative judgment. It might be that the existence of exceptional circumstances is so notorious that the court might, of its own motion, take judicial notice of them without reliance on extrinsic material. Where it is not so evi-

dent, the extrinsic material needs go only so far as to persuade the court that there is a rational basis for the legislation which it is attributing to the head of power invoked in support of its validity.
(p. 1542 H)

3. Court must give effect to intention of framers of Constitution

A Constitution is an instrument of government under which laws are made and are not mere Acts or law and the construction which the court will give to a constitutional provision must be such that will serve the interest of the Constitution and best carry out the subject and purpose and give effect to the intention of the framers.
(p. 1544 A)

REPRESENTATION

Chief F.R.A. Williams, SAN with T. E. Williams, A.O. Adebuseye (DCL Ondo State) F. Gambari-Mohammed [Mrs.] and O.K. Uloha), for the Appellant

Chief O. Kumuyi (Ag. DCL Federation) with C. I. Onuogu [Mrs.] Asst. Director; O.O. Fatunde, [Mrs.] CLO; S. Kado, PLO; S. O. Ayayi, SLO; B. Taiwo Esq., and I. Pam, Esq.

Awa U. Kalu, SAN, A.-G., Abia State with Dr. I. N. Ijeoma; M. N. Oti [Miss] S-G.; Chief M. A. A. Ozekhome and J. Ukpai (S.S.C.)

Obi W. Dah, A.-G., Adamawa State with Yakubu S. Ngbale (D.C.L.)

I.E. Ukanna, D.D.C.L., Akwa Ibom State

5th Defendant unrepresented

6th Defendant unrepresented

F. Falana Esq., with R. Uka Esq.

I. A. Angweh, A.-G., Benue State with S. C. Egede (Asst. D.C.L.)

9th Defendant unrepresented

V. J. Azinge [Mrs.] with N. Adegbayemu [Mrs.], E.T. Shima, Esq.,
C.E. Dibiaezue, Esq.

Prof. A. A. Utuama, A.-G., Delta State with D. C. Maidoh, S-G, G. E.
Okirhienyefa, D.C.L., O. Pedro, Esq.

B

Chief 1. Eze, A.-G., Ebonyi State with O. Ogbonna (Ag. D. C. L.)

13th Defendant unrepresented

C

O. Adewale, A.-G., Ekiti State with C. I. Akintayo (S-G)

15th Defendant unrepresented

16th Defendant unrepresented

D

J.T.U. Nnodum, A.-G., Imo State with A. N. Ukwuegbu (PSC)

18th Defendant unrepresented

E Alhaji M. S. Aminu, A.-G., Kaduna State

20th Defendant unrepresented

F S.I. Shema, A.-G., Katsina State with A. Abdu (S.S.C.I.)

O.S. Obayomi (Director Legal Drafting Kogi State)

24th Defendant unrepresented

G

Prof. O. Osinbajo, A.-G., Lagos State with O. Olayinka [Mrs.] (Director
Commercial Law) and A Ipaye, Esq.

26th Defendant unrepresented

H

P. Uzori, Esq. with M. Liadi, Esq., for the 27th Defendant

Chief O. Oyebolu, A.-G., Ogun State with O. V. Osunfisan, D.L.C.),
for the 28th Defendant

29th Defendant unrepresented

A. A. Lawal, A-G., Oyo State with A. I. Raheem (S.L.O)

H. Fwangchi [Mrs.] D.P.P., Plateau State

B

R.N. Godwins, Asst. D.C.L. Rivers State

33rd Defendant unrepresented

C

A. Y. Riki [Mrs] A.-G., Taraba State

35th Defendant unrepresented

D

Alhaji A. B. Mahmud, A.-G., Zamfara State

Professor B. O. Nwabueze, SAN (amicus curiae)

Chief Afe Babalola, SAN with Chief Bayo Ojo, SAN, O. Okunloye, Esq., Dr. O Ayeni and A. Maikori, (amici curiae)

Olisa Agbokoba, SAN with A. O. Koko (amicus curiae)

F

CASES REFERRED TO

Balewa v. Doherty (1963) 1 WLR 949

Canadian Pacific Ry. Co. v. A-G. British Columbia (1950) A.C. 122

A.G. Ogun State v. A.G. Federation (2000) 2 WRN 52

Anyebe v. The State (1986) 2 NWLR (Pt. 14) 39

G

Nafiu Rabi v. The State (1981) 2 NCLR 293

A-G Bendel State v. A-G Federation (1982) 3 NCLR 1

Adesanya v. President of the Federal Republic of Nigeria (1981) 2 NCLR 358

Atolagbe v. Awuni (1997) 9 NWLR (Pt. 522) 536

H

Federal Minister of Internal Affairs v. Shugaba (1983) 3 NCLR 915

Malbourne Corporation v. Commonwealth (1947) 74 C.L.R. 31

New York v. United States (1946) 326 U.S. 572

R v. Kidman (1915) 20 CL.R. 425

Kalu v. Odili (1992) 5 NWLR (Pt. 240) 130

A.G. of Ogun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395

STATUTES & RULES REFERRED TO

Corrupt Practices & Other Related Offences Act 2000 No.4 of 2000,
B ss. 6(a), 26(3), 28, 29, 35 and 37

Constitution of the Federal Republic of Nigeria 1999, ss. 4(2)(4)(5)(7),
13, 14, 15(5), 174(1)(a), 286(1)(b), 318(1)

Interpretation Act Cap 192 LFN 1990, s. 10

C Supreme Court Rules 1985, O. 3 rr. 2(2), 6(1)

BOOKS REFERRED TO

Black's Law Dictionary 6th Ed. p. 528

Federalism in Nigeria under the Presidential Constitution 1983 Ed.
D p. 95

LEAD JUDGMENT BY UWAIS CJN

By order 3 rule 2 (2) of the Supreme Court Rules, 1985 civil
proceedings in the original jurisdiction of this court may be commenced
E by inter alia filing originating summons. Order 3 rule 6 (1) of the
Supreme Court Rules, 1985 as amended, also permits any party
claiming any legal or equitable right, the determination of which
depends on the construction of the constitution or any other
enactment, to begin proceedings by causing an originating summons
F to issue.

In exercise of the provisions of the aforementioned rules on
behalf of the government of Ondo State, the plaintiff brought this
action against the Attorney-General of the Federation and the
G Attorneys-General of the 35 states comprising the Federal Republic
of Nigeria, as representatives of the federal and their states government
respectively. The plaintiff applies for the determination of the following
questions:

H *"1. A determination of the question whether or not the Corrupt
Practices and Other Related Offences Act, 2000, is valid and as a law
enacted by the National Assembly and in force in every state of the
Federal Republic of Nigeria (including Ondo State).*

*2. A determination of the question whether or not the Attorney-
General of the Federation (1st defendant) or any person authorised*

by him can lawfully initiate legal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.

3. *A declaration that the Corrupt Practices and Other Related Offences Act, 2000, is not in force as law in Ondo State.* B

4. *A declaration that it is not lawful for the Attorney-General of the Federation (1st defendant) or any person authorised by him to initiate legal proceedings in any court of law in Ondo State in respect of the criminal offences purported to be created by the provisions of the Corrupt Practices and Other Related Offences Act, 2000.* C

5. *An order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Independent Corrupt Practices and Other Related Offences Commission) or howsoever from executing or applying or enforcing the provisions of the Corrupt Practices and Other Related Offences Act, 2000 in Ondo State whether by interfering with the activities of any person in Ondo State (including any public officer or functionary or officer or servant of the government of Ondo State) in exercise of powers purported to be conferred by or under the provisions of the said act or otherwise howsoever.* D E

6. *An order of perpetual injunction restraining the Attorney-General of the Federation including his officers, servants and agents whomsoever or howsoever from exercising any of the powers vested in him by the constitution of the Federal Republic of Nigeria, 1999 or by any other law in respect of any of the criminal offences created by any of the provisions contained in the Corrupt Practices and Other Related Offences Act, 2000"* F

On 22nd January, 2002 the parties were directed by the court G to file briefs of argument within a given time. The plaintiff complied on 12th February, 2002. The 1st defendant as well as the 2nd, 4th, 7th, 8th, 11th, 12th, 14th, 17th, 19th 23rd, 25th, 27th, 28th, 30th, 31st and 32nd defendants also filed their briefs on different dates in compliance with the direction. The other defendants failed to comply H and therefore forfeited the right to address us.

The court had also invited Professor B. O. Nwabueze, SAN, Chief Afe Babalola, SAN and Olisa Agbakoba, SAN as amici curiae and they each filed briefs of argument. At the hearing of the case,

which took place on the 12th and 13th March, 2002 following parties were not represented - 5th, 6th, 9th, 13th, 15th, 16th, 18th, 20th, 22nd, 24th, 26th, 29th, 33rd and 35th defendants.

Chief Williams, learned Senior Advocate for the plaintiff, formulated the following issues in the plaintiff's brief of argument for us to determine:

(i) *Whether the Corrupt Practices and Other Related Offences Act, 2000, is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 constitution of the Federal Republic of Nigeria.*

(ii) *Further and in the alternative to question (i), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices And Other Related Offences Act, 2000.*

(iii) *Whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices And Other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.*

(iv) *Whether all the powers conferred on the Independent Corrupt Practices And Other Related Offences Commission or on other functionaries or agencies of the Federal Government by the Corrupt Practices And Other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in that state (including any public officer or functionary or officer or servant of the government of Ondo State)."*

The following defendants have adopted in their briefs of argument the plaintiff's case in its entirety - 2nd, 4th, 12th, 17th, 25th, 28th, 30th and 32nd, in stating the facts relevant to this suit.

Chief Williams said that the claims of the plaintiff are based upon the fact that the Corrupt Practices and Other Related Offences Act 2000, No.4 of 2000 (hereinafter referred to as "the Act") contains provisions concerning several matters, including punishable offences, with respect to which it is the House of Assembly of Ondo State that is vested with the powers to make laws and not the National Assembly. He referred

to the explanatory memorandum, at the end of the act, which reads as follows:-

“The act seeks to prohibit and prescribe punishment for Corrupt Practices and Other Related Offences. It establishes an Independent Corrupt Practices and Other Related Offences Commission vesting it with the responsibility for investigation and prosecution of offenders thereof. Provision has also been made for the protection of anybody who gives information to the commission in respect of an offence committed or likely to be committed by any other person.”

The plaintiff’s action, as already seen, is brought to challenge the constitutionality of the act and to seek the reliefs aforementioned. In arguing the plaintiff’s issue no. (i) as contained in his brief of argument and quoted above, Chief Williams, stated that the plaintiff is aware that the case of the 1st defendant is that the power of the National Assembly to enact the act is derived from the provisions of sections 4(2), 15(5), of the constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as “the 1999 constitution”), items 60(a), 67, 68 of the exclusive legislative list in part 1 of the second schedule to the 1999 constitution and paragraph 2(a) of part III of the second schedule.

Learned senior advocate referred to item 60 (a) in the exclusive legislative list and argued that it is the provisions therein that enable the National Assembly to make law for the establishment and regulation of authorities for the purpose of promoting and enforcing the observance of the fundamental objectives and directive principles contained in chapter II of the 1999 constitution. That item 60(a) does not vest the National Assembly with the duty to promote and enforce the observance of the directive principles nor does it confer on the National Assembly the power to create offences generally on corrupt practices and related offences by any or every person. He submitted that it cannot have been the intention of the 1999 constitution to confer exclusive power on the National Assembly with respect to Corrupt Practices and Related Offences. And argued that if this were intended section 15(5) of the 1999 constitution would not have provided as follows:-

15(5) -;” *The state shall abolish corrupt practices and abuse of power.”*

Learned counsel referred to the definition of the word “state”

in section 15 subsection (5) by drawing attention to 318 subsection (1) of the 1999 constitution which provides that the word “state” includes the federal government or government of any state or local government council any person who exercises power or authority on its behalf, to buttress his submission that the National Assembly is not
 B vested with exclusive legislative power to make laws with respect to corrupt practices and related offences.

He referred to the provisions of sections 4 subsection (2)13, 15 subsection (5), items 60(a), 67 of the exclusive legislative list and
 C paragraph 2 (a) of part III of the second schedule of the 1999 constitution and cited page 95 of the work of Professor B. O. Nwabueze -Federalism in Nigeria under the Presidential Constitution as well as the case of *Balewa v. Doherty*, (1963) 1 WLR 949 at page 96 and pages 97-98; and *Canadian Pacific Ry. Co. v A-G. for British*
 D *Columbia & Anor* (1950) A.C. 122 at pp. 136 - 137 to urge upon us to hold that the answer to question no. (i) of the plaintiff’s issues for determination is in the affirmative, that is, that the act is not a law with respect to a matter or matters upon which the National Assembly can make laws. Or to hold in the alternative that question no. (ii)
 E thereof should be answered in the negative, that is that the National Assembly has no power to make laws with respect to the criminal offences contained in the act.

With regard to issue no. (iii), learned senior advocate, submitted
 F that the answer is simply that the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Related Offences Commission (hereinafter referred to as “ICPC”) can only initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State, in respect of any of the criminal offences
 G created by the provisions of the act, only if the act is validly enacted. He urged us to answer question no. (iii) in the negative.

On issue no. (iv), Chief Williams canvassed that not all the powers and functions conferred on the ICPC under the act are constitutional and valid. He referred to sections 6(a), 26(3), 28, 29,
 H 35 and 37 of the act as such and argued thus -

“Section 6(a) imposes on ICPC a duty to receive and investigate report and prosecute any person for offences under the act.

Section 26 subsection (3), which provides that the prosecution of an offence before a court and judgment shall be delivered within

90 working days of the commencement of the prosecution is an usurpation of judicial functions or power by the National Assembly

Sections 28 and 29 which confer powers exercisable over any person whether or not such person is exercising governmental functions.

Section 35 which empowers ICPC to arrest and detain any person who having been served with a summons and defaulted to appear, until the person complied with the summons.

Section 37, which confers on any officer of the ICPC, who has reasonable grounds to suspect that any moveable or immovable property is the subject matter of an offence or evidence relating to the offence, may seize such property."

Learned senior advocate concluded his argument by canvassing that the whole of the act ought to be invalidated.

I do not deem it necessary to deal with the arguments by the defendants D
aforementioned who have associated themselves with the plaintiff's
case as such arguments merely repeated or at best place emphasis on
the submissions made by the plaintiff. I shall however advert to
contentions of the other defendants who are really in opposition to
the plaintiff's case.

In reply the 1st defendant contends in his brief of argument
that although the exclusive legislative list in the 1999 constitution,
does not contain corruption as an item. The constitution provides for
"corruption" under item 68 of the exclusive legislative list which F
mentions "any matter incidental or supplementary to any matter
mentioned in the exclusive legislative list." Therefore, by virtue of
section 10 of the Interpretation Act. Cap. 192 the National Assembly
is vested with the necessary powers to stop corruption or to do anything
incidental to check it. Chief Kumuyi. Ag. director of civil litigation. G
submitted that section 15 subsection (5) read together with section
88 subsection (2) (a) and (b) and paragraph 2 of part III of the second
schedule to the constitution gives the National Assembly the power
to create offences under the act as such offences are incidental and
supplementary matters. He argued that by the provisions of item H
60(a) of the exclusive legislative list, the National Assembly is
empowered to make laws for the establishment and regulation of
authorities to promote and enforce the observance of the fundamental
objectives and directive principles contained in chapter II of the 1999

constitution. That the word “enforce” is defined in Black’s Law Dictionary, 6th Edition at page 528 to mean “to put into execution, to cause to take effect, to make effect to compel obedience to.” The 1st defendant canvassed that when item 60(a) is read together with section 4 subsection (2) of the constitution, they not only impose a
B duty on the federal government to abolish all corrupt practices and abuse of power but also impose the duty of making law through the National Assembly for that purpose.

Next he argued that the word “state” in sections 14 and 15
C subsections (1) to (5) inclusive of the 1999 constitution means, in the light of section 318 subsection (1) of the constitution of the Federal Republic of Nigeria. It alternatively also means federal, state and local governments. Therefore the National Assembly which is one of the three arms of the federal government acted ultra vires when it enacted
D the act pursuant to section 15 subsection (5) of the 1999 constitution.

On the powers of the Attorney-General of the Federation to initiate prosecution in any State of the Federation, reference was made to the provisions of section 174 subsection (1) (a) of the constitution and it was submitted that the Attorney-General of the Federation is
E competent to prosecute the contravention of any offence created by or under any act of the National Assembly including the act in question. Finally the 1st defendant submitted that the provisions of sections 6(a), 26(3), 28, 29 and 35 of the act are valid by reason of
F the fact that the sections had been enacted pursuant to the powers vested in the National Assembly by the relevant provisions of the constitution.

The 7th defendant submitted that the National Assembly has powers under section 4 of the constitution to make laws for the peace,
G order and good government of the federation. That such powers are however limited by the items in the exclusive legislative list contained in part 1 of the second schedule to the constitution and some of the items under the concurrent legislative list. The case of A.G. of Ogun State v A.-G. of the Federation, (2000) 2 WRN 52 at p. to 57 was
H cited to show that the federation has no power to make law on residual matters. That is matters which do not fall under either the exclusive or the concurrent legislative list in the constitution. The defendant submitted that the National Assembly acted rightly when it enacted the act for the purpose of abolishing corrupt practices and abuse of

power in view of the provisions of section 15 subsection (5) of the constitution. However, it is argued that the power of the National Assembly to establish the ICPC cannot be extended or widened to empower the National Assembly to create offences in relation to corrupt practices in the federation or any part of the federation. Attention is drawn to the decision of this court in *Anyebe v The State*,^B (1986) 2 NWLR (Part 14) 39 where it was held that a federal offence cannot be prosecuted in any state of the federation without the fiat of the Attorney-General of the Federation; and conversely, it is submitted that the offences of corruption which are contained in the criminal code of Ondo State, 1976 cannot be prosecuted by ICPC without^C the fiat of the Attorney-General of Ondo State.

The 7th defendant agreed with the argument by the plaintiff that the powers of the ICPC cannot be exercised in relation to the functionaries of Ondo State government or persons in the public service of Ondo State. The case of *A-G. of Ogun State v. A-G. of the Federation* (supra) as per *Eso, JSC* was cited in support. The defendant then urged upon us to strike down the provisions of the act, which are constitutional, on the authority of the case of *Nafiu Rabi v. The State* (1981) 2 NCLR 293 at p. 326 per *Udoma, JSC*.^E

On the validity of the act, the defendant cautioned that this court must resist the invitation by the plaintiff to strike down the act as a whole. He argued that since section 15 subsection (5) of the constitution empowers the Nigerian state to abolish all corrupt practices and abuse of powers, we can only declare invalid those provisions of the act which are found to be unconstitutional. It is submitted that a law can only be declared invalid as a whole if the process or mode of enacting it is illegal - see *A-G. of Bendel State v. A.-G. of the Federation* (1982) 3 NCLR 1. However, it is contended, that where it is only a section or sections of the law that are found to be unconstitutional, it is the section or sections that are held to be invalid to the extent of their inconsistency with the constitution in accordance with section 1 subsection (3) thereof.^F

The 8th defendant submitted that the combined effect of section 4 subsection (2) and items 60 (a) and 68 of the exclusive legislative list and paragraph 2(a) of part III of the second schedule, all of the constitution, is that the National Assembly has the power to enact the act and the power to create the offences under the act.^H

The 11th defendant submitted that by virtue of the provisions of sections 4 subsections (1), (2) and (4) (b), 13, 15 subsection (5), items 60 (a), and 68 of the exclusive legislative list, all of the 1999 constitution and the decisions in *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria*, (1981) 2 NCLR 358 at 374 paragraphs 6 -7 per Fatayi-Williams, CJN and Nafiu Rabi'u's case (supra) at p. 326 per Udoma, JSC; the National Assembly had the power to enact the act. The defendant made reference to sections 2 subsection (1) and (2), 3 subsection (1), 5 subsections (1) and (2), 169 -175 and 206-212 of the constitution to submit that the responsibility to enforce the fundamental objectives and directive principles of state policy is a collective responsibility of both the federation and the states. The case of *Atolagbe v Awuni*, (1997) 9 NWLR (Part 522) 536 at p. 609 C-E was cited.

D It is finally submitted that the Attorney-General of the Federation can competently prosecute in a state or the Federal Capital Territory the offences committed under the act but that such prosecution is only with respect to public officers in the public service of the federation.

E The 14th defendant submitted that the constitution vested on the National Assembly unfettered powers to legislate on corrupt practices and abuse of power. It is argued that the power of the National Assembly is not, by virtue of item 60(a) of the exclusive legislative list, limited to making law for the establishment and regulation of authorities for the federation or any part thereof but it further gives the National Assembly powers to promote and enforce the observance of the fundamental objectives and directive principles amongst which is the abolishing of all corrupt practices and abuse of power in Nigeria. It is submitted finally, that the act is consistent with the aim of the constitution to wipe out corrupt practices.

The 19th defendant argued that the provisions of sections 6 (a), 26 subsection (3), 28, 29, 35 and 37 are valid and constitutional. He submitted that section 26 subsection (3) is not a usurpation of judicial powers of courts by the National Assembly and argued that the provisions were meant to encourage speedy trial by court of offences created by the act. That in any case the limitation has been rendered ineffective where good grounds for delay in delivering judgment exist.

The 23rd defendant submitted that sections 6 (a), 26 subsection (3), 28, 29, 35 and 37 are valid and constitutional since none of the sections contravenes any provision of the 1999 constitution.

The 27th defendant submitted that the creation of criminal offences under the Act is ancillary and supplemental to the constitutional capacity and powers of the National Assembly to make laws for the establishment and regulation of the ICPC to abolish corrupt practices and abuse of power. In conclusion the defendant contended that some of the provisions of the act are in direct conflict with the provisions of the 1999 constitution and are to that extent null and void. B
C

The 31st defendant argued that by the provisions of section 15 of the constitution when read as a whole together with those of section 318 thereof the intendment of the constitution is that the federal as well as states and local governments are empowered under section 15 subsection (5) to abolish all corrupt practices and abuse of power. It is submitted that this does not mean that the power of the National Assembly is limited to the establishment and regulation of authorities only. Reference was made to paragraph 2 (a) of part III of the constitution, items 60 (a), 67 and 68 of the exclusive legislative list to submit that the National Assembly has a general power to make laws with respect to corrupt practices and abuse of office. Therefore its power to legislate cannot be limited to matters that are incidental and supplemental to the abolishment of corrupt practices and abuse of power. The defendant urged us to distinguish this case from *Balewa v. Doherty* (supra) and to adopt the comment on the case on page 96 of *Federalism in Nigeria under Presidential Constitution* by B. O. Nwabueze, cited by the plaintiff. D
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On issue no. (iii) pertaining to the prosecution of criminal offences, the defendant submitted that in so far as the answer to issue no. (i) is in the affirmative so also should the answer to the issue be in the affirmative. Therefore, he urged upon us to hold the act is validly enacted by the National Assembly and that the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Other Related Offences Commission, can initiate criminal proceedings in any court of law in Ondo State for the prosecution of any offence under the act. G
H

Professor B. O. Nwabueze, learned senior advocate of Nigeria,

opened his submission by stating that the task before this court in determining the validity or otherwise of the act is most challenging because the issue impinges on the cardinal principles of Nigeria's federal system. He referred to the provisions of the act in general in relation to the autonomy of state governments vis-à-vis the federal government and argued that the provisions of the act clearly impinge upon the three requirements of the autonomy of the state governments, which firstly carries the notion of equality of status, as each government has, by virtue of its independent existence, an equal status as a government with the other governments and is entitled to an equal say, though not necessarily equal weight, in the common councils of the federal state. However, federalism accommodates a certain amount of inequality in powers and financial resources between the national and regional governments, so long as any preponderance in favour of one is not such as to reduce the other to virtual impotence. He submitted that the conception of federalism as implying a dualism between two equal and competing sovereignties, gives a misleading picture since federalism accommodates a certain amount of inequality in powers and financial resources between the federal and regional governments.

Secondly, the principle of autonomy in a federal system implies that neither the central government nor the regional governments can confer functions or impose duties on the functionaries of the other without the consent of its chief executive as was expressly enacted in sections 99 and 100 of the constitution of the Federal Republic of Nigeria, 1963. He submitted that although the same provision are not made in the 1979 and 1999 constitutions, the 1963 prohibition still remains applicable as a necessary implication of the autonomy of the federal and state governments in relation to each other. He cited the case of *A-G. of Ogun State & Ors. v. A-G. of the Federation & Ors* (1983) 3 NCLR 583, where the prohibition was applied by this court in relation to the 1979 constitution as per *Fatayi-Williams, CJN* and *Udo Udoma and Idigbe, J.S.C.*

Thirdly, the principle of autonomy prohibits one government, while keeping within its power, from exercising it in a way as, in its practical effect, impedes, burdens or interferes with the exercise of the power or the management of the affairs of another government. This is the doctrine of non-interference which was affirmed as a re-

quirement of our federal system in the case of the Federal Minister of Internal Affairs & Ors. v. Shugaba, (1983) 3 NCLR 915 per Nasir, PCA. The Australian cases of *Malbourne Corporation v. Commonwealth*, (1947) 74 C.L.R. 31 at pp. 82 - 93; *R v. Commonwealth Court of Conciliation and Arbitration, ex parte Victoria* (1942) 66 CLR 488 and the American case, *New York v. United States* (1946) 326 U.S. 572 at p. 587 were cited also in support. B

With regard to the act, learned senior advocate stated that it raises the question whether the federal government has the power under the constitution to punish corruption, fraud and related offences by the enactment of such a general law. He stated that the creation and punishment of offences is undoubtedly a most complex aspect of the division of powers under our federal system and argued that under our constitution, it is largely residual matters, since it is not assigned to the federal government either in the body of the constitution or in the legislative lists in the second schedule to the constitution. There are however a few exceptions to this, he admitted. He submitted that the point to be especially noticed is that corruption, fraud and allied offences fall within the category of ordinary offences and being therefore a residual matter, their creation and punishment belong exclusively to the state governments, subject of course to the exceptions mentioned. C D E

Learned senior advocate contended that the exceptions fall into three categories. Firstly, offences against the Nigerian state or the federal government, its agencies, functionaries or property, which are unquestionably within its power to punish. See *R v. Kidman*, (1915) 20 CL.R. 425. Secondly, offences against safety and public order by virtue of the power of the National Assembly under section 11 of the 1999 constitution. This is a source of federal offences of the ordinary type, but he argued that, the provisions of the section do not provide any authority whatsoever for the offences created by the act. Thirdly, offences created with respect to matters on the exclusive and concurrent legislative lists. He referred to item 68 thereof of the exclusive legislative list and the definition of incidental and supplementary matters in paragraph 2 (a) of part III of the second schedule to the constitution which provides for the creation of offences. He posed the question whether the creation of offences in relation to the 66 items on the exclusive legislative list and the matters on the F G H

concurrent legislative list exist as an independent power or only an incidental power. He submitted on the authority of *Balewa v. Doherty*, that a matter does not become incidental to another matter merely by being closely connected with it; the matter must actually have been created or legislated upon before something else, like the creation of offences, can be said to be incidental to it. In other words, he argued, an incidental power in relation to the creation of offence implies no more than a power to punish violation of or non-compliance with the law. He argued further on the authority of *R v. Kidman*, (supra) per Griffith CJ and *McCulloch v Maryland*, (1819) 4 Wheat 31, per Marshall, C.J. that the notion of law as a rule of conduct prescribed by a superior authority connotes provisions as to the consequences which are to follow from its infractions and such offences are known as technical offences.

Learned senior advocate, conceded that the federal government has power to punish for corrupt and fraud in relation not only to its property but also to all matters within its legislative competence. However, beyond this, he submitted that the rest of the offences in the act are ultra vires the federal government and therefore unconstitutional.

On the power to prosecute the offences created by the act, he argued that the act trenches on the state government's power because it has usurped the power of the state in regard to the prosecution, trial and punishment of offences under state power. It is submitted that unlike the 1960 constitution, the 1979 and 1999 constitutions of the Federal Republic of Nigeria contain no provisions for inter-delegation of functions between the federal and state governments. Learned senior advocate argued that the act being subversive of the cardinal principles of federalism enshrined in the constitution, which provides for the autonomy of the state governments vis-a-vis the federal government and the division of powers between them, should be declared unconstitutional and void in its entirety since its good and the bad parts are so interwoven to make it impracticable or inexpedient to sever one from the other.

On the provisions of section 15 subsection (5) of the constitution and item 60(a) of the exclusive legislative list, learned counsel, submitted that section 15(5) must draw its meaning and effect from the character of the fundamental objectives and directive principles

of state policy in chapter II of the constitution of which it is part. He argued that the provisions of the chapter are merely a declaration expressly made non-justiciable by the constitution itself in section 6 subsection (6) thereof, defining in the main the duties of state towards individual setting out the objective and principles according to how the powers conferred in other parts of the constitution are to be exercised. He contended that the fundamental objectives and directive principles of state policy do not themselves grant any power but only impose a non-justiciable duty on all organs of government and all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the declared objective and principle one of which is to use their powers to abolish all corrupt practices and abuse of office. He submitted that the word “state” in section 15 (5) as defined, under section 318 of the constitution refers to not the federal government alone but to both the federal and state governments each within the limits of the powers assigned to it by the constitution. In other words, the divisions of powers between the federal and state governments under the constitution has to be read into section 15 subsection (5).

Learned senior advocate argued also that item 60 (a) of the exclusive legislative list must draw its meaning and effect from the character and purpose of the fundamental objectives and directive principles of state policy. Construed in that light, it does not, nor is it intended to, confer on the federal government power to create and punish offences outside its power to do so under other provisions of the constitution or power to derogate from the autonomy of the state governments. The words of item 60 (a) make this clear. He canvassed that the words seem clear enough that the only power conferred on the federal government by the item is power to establish and regulate authorities but not power to prescribe the functions of any authorities so established. The functions of the authorities so established are already prescribed and delimited by item 60 (a) and are to promote and enforce the observance of the fundamental objectives and directive principles. He submitted that the word “establishment” or the term “to establish” raises no difficulty of interpretation. To regulate an authority within the meaning of item 60 (a) does not certainly enable the National Assembly to confer upon itself the authority and powers which the National Assembly

does not otherwise possess. To regulate an authority within the meaning of item 60 (a) it is submitted, simply means to prescribe its membership, quorum, procedure, finances and such other matters, but not its powers and functions, which are already defined in item 60(a) itself. Learned senior advocate also contends that the observance of the fundamental objectives and directive principles of state policy is limited to “all organs of government and all authorities and persons exercising legislative, executive or judicial powers.” Thus any authorities established pursuant to item 60(a) cannot enforce against private persons the observance of the fundamental objectives and directive principles of state policy. Therefore, in so far as the offences created by the act are enforceable against private persons, they are ultra vires the powers of the National Assembly.

Chief Afe Babalola, learned senior advocate of Nigeria dealt at the beginning of his address with the attitude of both foreign and Nigerian courts to constitutional interpretation. On plaintiff’s issue no (i), he made reference to section 4 subsections (2), (3) and (4) of the constitution as well as paragraph 2 of part III to the second schedule to the constitution and submitted that the act was enacted by the National Assembly pursuant to its exclusive power to do so by virtue of the provisions of sections 4 subsections (2), (3) and (4); 15 subsection (5) and item 60 in part 1 of the second schedule to the constitution. He referred to items 67 and 68 of the exclusive legislative list and submitted that the National Assembly has the power to enact an act to establish the ICPC and to create offences with sanctions provided for contravening the offences. He cited in support the case of *A-G. v. Great Eastern Rly* (1880) 5 Appeal Cases 473 HL, where it was held that whatever is fairly incidental to the object established in a statute will, unless expressly prohibited, be intra vires. He referred to the definition of the phrase “incidental power” in *Black’s Law Dictionary*, 7th Edition, which states that it is a power that although not expressly granted must exist because it is necessary to accomplish the express power. He cited the case of *International Shoe Co. v. Pinkins*, 278 U.S. 261, 73 L.ed. 495 where it was held that that which is implied in a constitution is as much part of it as that which is expressed. He therefore contended that the relevant provisions of sections 4, 15, items 60, 67 and 68 of the exclusive legislative list of the constitution which confer on the National Assembly the power to

make laws for eradication of corruption must necessarily carry with them other powers not expressed but vital to their existence. He submitted that the act, being an enactment of the National Assembly aimed at giving effect to the provisions of section 15 subsection (5) of the constitution; and argued that the word “state” in the section means, in the context in which it is used, the federal government alone since in interpreting the provisions of a constitution all the provisions must be read together and not dis-jointly. See *Kalu v. Odili* (1992) 5 NWLR (Part 240) 130 at p. 156. He therefore urged us to read the provisions of section 15 together as a whole. If this is done, he submitted, it will become obvious that by “state” in the section is meant the federal government and not the constituent states of the federation which are not in a position to effect all the provisions of section 15. He drew our attention to the opening words of section 318 subsection (1) of the constitution to further argue that the word “state” as used in sections 14 and 15 of the constitution can only apply to Nigeria as a state. In the alternative, if the word is to be considered as submitted by the plaintiff, that it applies to the federal, state and local governments, then all the governments would have concurrent powers to legislate on corrupt practices and abuse of power. He submitted that even under such circumstance the federal government could competently legislate to cover the whole field by virtue of the decisions in the case *A.G. of Ogun State v. Aberuagba* (1985) 1 NWLR (Pt. 3) 395 at p.469.

Learned senior advocate, contended that the decision in *Balewa v. Doherty*, (supra) that no offence can be created under an item relating to incidental power in the exclusive legislative list unless the creation of the offence is incidental or supplementary to some other matter which matter must have been in existence, does not apply to this case. This is so because the offences created under the present act are enacted pursuant to item 60 of the exclusive legislative list under which list the National Assembly is empowered to make laws on all items therein. That the power to make law with respect to a given matter is wide enough to embrace the creation of offences in relation thereto as a separate and independent exercise. He cited *R v. Kidman* (supra) in support. He submitted that it will be sterile and startling for the constitution to grant the National Assembly the power to make law on a matter without the power to create offences

thereupon. He contended further that the duty or obligation imposed on the state in section 15 subsection (5) of the constitution to abolish corrupt practices and abuse of power carries with it, in law, a correlative power to carry out the duties; as it would be absurd to impose a duty on the state and deny it the power to discharge the duty. The constitution could certainly not have intended or manifested such absurdity. He referred to section 10 subsection (2) of the Interpretation Act, Cap. 192 of the Laws of the Federation of Nigeria, 1990 which reads:

“10(2) An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it.”

He urged us to answer issue no (i) in the affirmative. On issue no (ii) learned senior advocate canvassed that notwithstanding the general principle of state autonomy, it is settled law that a federal constitution can either expressly or by necessary implication permit derogation from the principle and withdraw any such power from the component states of the federation. To buttress the point he cited *Twinning v. New Jersey*, 211 U.S. 78; 53 L.ed. 29 S.C. and *Hurtado v. California*, 110 U.S. 516; L.ed. 4 S.Ct. 11. He stressed the point that there is no item in the concurrent legislative list of the 1999 constitution which enables State House of Assembly to make law for the establishment and regulation of authorities to promote and enforce observance of the fundamental objectives and directive principles as contained in chapter II of the constitution. Nor does the concurrent list contain any item with reference to incidental and supplementary matters. He, therefore, submitted that part III of the second schedule to the constitution is inapplicable to State House of Assembly. Therefore, since there is no express constitutional provision which vests states with the power to make law on corrupt practices and abuse of power, the question of interference with the autonomy of the state did not and could not arise. In effect, the federal government cannot interfere with a non-existent function or power of the states. He argued that the act has not conferred any powers or duties on any state functionary so as to bring such functionary within the investigatory or scrutinizing powers of the National Assembly. Accordingly, the facts of the case of *A.G. of Ogun State & Ors. v. A-*

G. of the Federation & Ors. (*supra*) are distinguishable from the facts of the present case he submitted.

On issue no (iii) learned senior advocate submitted that the Attorney-General of the Federation has constitutional power to prosecute, in any court in Nigeria, federal offences created by enactments made by the National Assembly, as has always been the case. Mr. Olisa Agbakoba, learned senior advocate of Nigeria, drew attention to the fact that the section of the constitution under which the National Assembly enacted the act is not clear on the face of it. He stated that the predominant arguments, by counsel on this case, have proceeded on the assumption that the act was enacted pursuant to item 60(a) in the exclusive legislative list. He contended that this argument overlooked the fact that there is a correlation between corruption on the one hand and peace, order and good government on the other. He submitted as a matter of fact, endemic corruption in a polity signifies absence of good governance. Thus it can be argued that inherent in the general power of the National Assembly to make laws for the peace, order and good government of the federation or any part thereof, which is prescribed under section 4 of the constitution is the power to make laws for the eradication of corruption. He said however, the problem posed by the act is that it deals with corruption and crime which are matters not on the exclusive legislative list nor in the concurrent legislative list. They are therefore residual matters on which only state governments should ordinarily have exclusive competence to legislate. He conceded that this argument will make nonsense of section 4 subsection (2) and item 60 (a) on the exclusive legislative list in the constitution, which empowers the National Assembly to establish an anti-corruption commission. Therefore he argued, this is the crux of the case. If we hold that the act is law made for the peace, order and good government of the federation or any part thereof or made for the regulation and establishment of an authority for the observance of the fundamental objectives and directive principles of state policy, then the validity of the act must be upheld. If we hold the contrary, then the act is invalid and must be struck down.

Learned senior advocate pointed out that this case is not concerned with the enforcement of rights under the Fundamental Objectives and Directive Principles of State Policy because the power

to enforce provisions of the constitution is not vested in the legislature but in the executive. It is well established as per section 6 subsection (6) (c) of the constitution that rights under the fundamental objectives and directive principles of state policy are not justiciable except as otherwise provided in the constitution - see also the case of *Okogie v. A-G. of Lagos State* (1981) NCLR 2187. But this case is principally concerned with the power of the National Assembly to make law. He submitted that it cannot be argued that the power is vested in the legislature and it includes the power to make law in respect of matters under chapter II of the constitution. It cannot also be contended that power is derived from section 4 and not chapter II of the constitution. The only question to be answered is the extent and scope of the power under section 4 as between the National Assembly and State Houses of Assembly are with respect to matters on the legislative lists and any other matter not included in the lists but which it is empowered to make law under any other part of the constitution as provided by section 4 subsection (4) (b) thereof. He submitted that the relevant provision of the constitution in relation to this case is item 60(a) of the exclusive legislative list which provides for the establishment and regulation of authorities for the federation or part thereof to promote and enforce the observance of fundamental objectives and directive principles of state policy. Learned counsel referred to the provisions of section 13 of the constitution and canvassed that the duties and responsibilities stipulated therein are not to be exercised by every person or all organs of government or authorities but only those who exercise legislative, executive and judicial powers are affected. One of such duties is to abolish all corrupt practices and abuse of power as provided in section 15 subsection (5) of the constitution. He submitted that the provisions of the section will have no meaning unless they are interpreted in conjunction with other provisions of the constitution, that is section 2 subsection (2), 4, 5, 6 and 318 of the constitution. When read with sections 2 (2) and 318, he submitted, the word "state" would mean both the federal and state governments and not federal government alone. Therefore the division of powers as provided under sections 4, 5 and 6 of the constitution will have to be read into section 15 subsection (5). He further contended that section 15 (5) is not a grant of power at all, but only a non justiciable directive to the federal and state governments as to how to exercise the powers

already vested in them by other provisions of the constitution. He emphasized that section 15 (5) like all other provisions of chapter II of the constitution only imposes duties with respect to how vested powers are to be exercised. It does not confer power he argued. Therefore the authority established, under item 60 (a) of the exclusive legislative list, cannot be extended by the National Assembly to involve the enforcement of any provisions of the constitution that are not part of the fundamental objectives and directive of principles of state policy. The head title of the act reads - "An act to prohibit and prescribe punishment for Corrupt Practices and Other Related Offences." It was argued that this clearly is outside the limit of item 60 (a); however the saving grace about the act is that its other provisions establish the ICPC which fall within the ambit of item 60 (a). It is argued that the extraneous matters contained in the act are ultra vires the National Assembly. These include provisions relating to offences and penalties in sections 8-26; power of investigation, search, seizure and arrest in sections 27-42; provisions relating to the chairman of the ICPC in sections 43-52; provisions pertaining to evidence in sections 53-60; prosecution and trial of offences in sections 61-63 and the general provisions in sections 66 - 71.

Learned senior advocate cited the case of *Balewa v. Doherty* (supra) and submitted that none of the offences created by sections 8-26 of the act are incidental or supplemental to item 60 (a). That is that none of the offences pertains to or connected with the establishment and regulation of the ICPC. He argued that for us to allow the offences to stand, would be to render them as federal offences and by the doctrine of covering the field, the states would be excluded from legislating on them. This, he submitted, cannot be the intention of the constitution. If that were intended, he submitted further, the constitution would have listed the item in the exclusive legislative list. In further argument, he contended that the offences created by the act in sections 8 - 26 have the effect of defeating the purpose of the provisions in chapter II of the constitution and bringing paragraph 2 (a) of part III of the second schedule of the constitution in conflict with section 4 of the constitution which he said makes corruption as crime, residual matter. The provisions of item 60(a) and paragraph 2 (a) must be read subject to section 4 as held by this court in *Egolum v. Obasanjo* (1999) 7 NWLR (Pt. 611) 355 at p.

412D per Achike, JSC. Therefore, he submitted that the act ought to be declared null and void pursuant to the provisions of section 1 subsections (1) and (3) of the constitution.

B Learned senior advocate referred to section 6 (a) and other sections of the act which have not been mentioned in connection with the relief being sought by the plaintiff, and submitted that the provisions of section 6 (a) of the act are in conflict with those of section 214 of the constitution.

C Now, I think it is necessary for the sake of clarity and ease of reference to set out all the relevant parts of the constitution that have been severally referred to in argument by the parties, namely sections 4 subsections (2) - (4); 13, 15 (5), items 60(a), 67 and 68 of the exclusive legislative list and paragraph 2(a) of part III of the second schedule:

D *“4(2) The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part I of the second schedule to this constitution.*

E *(3) The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the exclusive legislative list shall, save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of States.*

F *(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say -*

G *(a) any matter in the concurrent legislative list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto;*

(b) and any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.”

H *“13. It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this constitution.”*

“15(5) The state shall abolish all corrupt practices and abuse of power.”

“60. The establishment and regulation of authorities for the federation or any part thereof -

(a) to promote and enforce the observance of the fundamental objectives and directive principles contained in this constitution;”

“67. Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this constitution.

“68. Any matter incidental or supplementary to any matter mentioned elsewhere in this list. ”

“2. In this schedule, references to incidental and supplementary matters include, without prejudice to their generality, references to - (a) offences;

Now section 4 subsection (2) of the constitution provides that the National Assembly has the power to make laws for the peace, order and good government of the federation with respect to any matter included in the exclusive legislative list. This means that the National Assembly is empowered to legislate under item 60(a) for the purpose of establishing and regulating the ICPC for the federation. This the National Assembly has done by enacting the act. The ICPC is, by the provisions of item 60 (a), to promote and enforce the observance of the fundamental objectives and directive principles of state policy as contained under chapter II of the constitution. The question is: how can the ICPC enforce the observance? Is it to use force? Is it to legislate or what? The ICPC cannot do either of these because the use of force or coercion in enforcing the observance will require legislation. The ICPC has no power to legislate. Only the National Assembly can legislate.

The constitution of India has similar provisions to ours on directive principles of state policy in part IV thereof. In the Indian case of *Mangru v. Commissioners of Budge Budee Municipality* (1951) 87 CLJ 369, it was held that the directive principles require to be implemented by legislation, and so long as there is no law carrying out the policy laid down in a directive neither the state nor an individual can violate any existing law or legal right under colour of following a directive. See also the shorter constitution of India 12th Edition by Dr. D. D. Basu at pages 296 - 297.

Since the subject of promoting and enforcing the observance comes under the exclusive legislative list it seems to me that the provisions of item 68 of the exclusive legislative list come into play. Therefore, it is incidental or supplementary for the National Assembly to enact the law that will enable the ICPC to enforce the observance of the fundamental objectives and directive principles of state policy. Hence the enactment of the act which contains provisions in respect of both the establishment and regulation of ICPC and the authority for the ICPC to enforce the observance of the provisions of section 15 subsection (5) of the constitution. To hold otherwise is to render the provisions of item 60(a) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the constitution. Paragraph 2 (a) of part III of the second schedule to the constitution, which provides that reference to incidental and supplementary matters in the constitution (and therefore item 60 (a) of the exclusive legislative list) includes reference to offences, I think strengthens the view which hold.

It has been argued that the fundamental objectives and the directive principles of state policy are meant for authorities that exercise legislative, executive and judicial powers only and therefore any enactment to enforce their observance can apply only to such persons in authority and should not be extended to private persons, companies or private organizations. This may well be so, if narrow interpretation is to be given to the provisions, but it must be remembered that we are here concerned not with the interpretation of a statute but the constitution which is our organic law or grundnorm. Any narrow interpretation of its provisions will do violence to it and will fail to achieve the goal set by the constitution. See Nafiu Rabiu v. Kano State (1980) 8 – 11 SC 130; (1980) 2 NCLR 117; Aqua Ltd. v. Ondo State Sports Council (1985) 4 NWLR (Part 91) 622; Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 and Ishola v. Ajiboye (1994) 6 NWLR (Pt. 352) 506.

Corruption is not a disease which afflicts public officers alone but society as a whole. If it is therefore to be eradicated effectively, the solution to it must be pervasive to cover every segment of the society.

It is submitted that “corruption” is not a subject under either

the exclusive or the concurrent legislative lists and therefore being a residual matter, the National Assembly has no power to legislate upon it. This submission overlooks the provisions of section 4 subsection (4) (b) of the constitution which provide that the National Assembly has the power to legislate on any matter with respect to which it is empowered to make law in accordance with the provisions of the constitution. Section 15 subsection (5) directs the National Assembly to abolish all corrupt practices and abuse of power. B

The question is how can the National Assembly exercise such powers? It can only do so effectively by legislation. Item 67 under the exclusive legislative list read together with the provisions of section 4, subsection (2) provide that the National Assembly is empowered to make law for the peace, order and good government of the federation and any part thereof. It follows, therefore, that the National Assembly has the power to legislate against corruption and abuse of office even as it applies to persons not in authority under public or government office. For the aim of making law is to achieve the common good. The power of the National Assembly is not therefore residual under the constitution but might be concurrent with the powers of State House of Assembly and local government council, depending on the interpretation given to the word “state” in section 15 subsection (5) of the constitution, which I will deal with anon. C D E

It has been argued by the plaintiff that the reference to “state” F in section 15 (5) can be ascertained by reference to the definition in section 318 subsection (1) of the constitution. The latter section provides that the word “when used other than in relation to one of the component parts of the federation, includes government.” The G same section of the constitution has defined “government” to include the government of the federation, or of any state, or of a local government councilor any person who exercises power or authority on its behalf.” Going by these definitions the directive under section 15 subsection (5) of the constitution will apply to all the three tiers of H government, namely, the federal government, state government and local government.

In that case the power to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can

be exercised by the federal and state governments by virtue of the provisions of section 4 subsections (2), (4) (b) and (7) (c) of the constitution. It is doubtful however if the third tier, viz the local governments can legislate on the subject there is
110 provision under section 7 and the fourth schedule to the
constitution that empowers them to do so. Although the power to legislate on the subject is given to the National Assembly and State House of Assembly, when both exercise the power, the legislation by the National Assembly will prevail by virtue
of section 4 subsection (5) of the constitution which provides
“(5) If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be
void.” See the cases of the Military Governor Ondo State v. Adewumi (1988) 3 NWLR (Pt.82) 280 at page 283 and A-G of Ogun State v. Aberuagba (*supra*).

It has been argued also that the word “state” in section 15 subsection (5) means the federal government alone,
because if the whole of the provisions of chapter II of the constitution on fundamental objectives and directive principles of state policy are read together, it will be seen that only the federal government is in a position to carry out the principles and objectives. With respect, I do not accept this argument,
because the provisions of section 13 thereof apply to “all organs of government, and all authorities and persons exercising legislative, executive or judicial powers.” The provisions do not distinguish between federal, state or local
governments.

Again the provisions of section 14 subsection (4) specifically apply to the “government of a state, a local government council, any agencies of such government or council, and the conduct of the affairs of the government,
council or such agencies.

It has been pointed out that the provisions of the act impinge on the cardinal principle of federalism, namely, the requirement of equality and autonomy of the state government and non-interference with the functions of state government. This is true, but as seen

above, both the federal and state governments share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principles of federalism, then, I am afraid, it is the constitution that makes provisions that have facilitated breach of the principles. As far as the aberration is supported by the provisions of the constitution, I think it cannot rightly be argued that an illegality has occurred by the failure of the constitution to adhere to the cardinal principles which are at best ideals to follow or guidance for an ideal situation. In the light of the foregoing I will answer both the plaintiff's issues for determination nos. (i) and (ii) in the affirmative.

The next point is whether the Attorney-General of the Federation or any person authorised by the ICPC can lawfully initiate or authorise the initiation of criminal proceedings in any court in Ondo State in respect of offences created by the act. The plaintiff's contention is that the answer is in the negative if the answers to issues nos. (i) and (ii) have been answered in the negative. But I have held otherwise and so the opposite is the case. I, therefore, hold that the criminal proceedings can be initiated in the court in Ondo State in accordance with the provisions of section 286 subsection (1) (b) of the constitution, which provides:

"286(1) Subject to the provisions of this constitution -

(b) where by the law of a state jurisdiction is conferred upon any court for the investigation; inquiry into, or trial of persons accused of offences against the laws of the state and with respect to the hearing and determination of appeals arising out of any such trial or out of any proceedings connected therewith, the court shall have like jurisdiction with respect to the investigation, inquiry into, or trial of persons for federal offences and hearing and determination of appeals arising out of the trial or proceedings."

"Federal offence" is defined in subsection (3) thereof to mean "an offence contrary to the provisions of an act of the National Assembly or any law having effect as if so enacted."

The plaintiff contended that not all the powers conferred upon the ICPC or other functionaries and agencies of the federal government are exercisable in Ondo State in relation to the activities of persons in that state including any public officer or functionary of the government of Ondo State. He submitted that sections 6 (a),

26(3), 28, 29, 35 and 37 of the act are unconstitutional and invalid.

The sections provide as follows:

6(a) - imposes on the ICPC the power to receive, investigate and prosecute any person for offences under the act.

26(3) - the prosecution of an offence shall be concluded and judgment delivered within 90 working days of commencement of the prosecution except that the jurisdiction of the court will not be affected if good grounds exist for delay.

28 - gives the ICPC wide powers when investigating the commission of an offence to summon any person, order him to produce any book or document or require him to make written statement under oath or affirmation etc.

29 - empowers the ICPC to issue summons to a person complained against for the purpose of being examined,

35 - gives the ICPC the power to arrest and detain any person, who failed to obey a summons directed to him, until the person complies with the summons,

37 - empowers the ICPC to seize any moveable or immoveable property on suspicion that the property is the subject matter of an offence or evidence relating to the offence.

In considering whether the provisions of these sections of the act violate the provisions of the 1999 constitution, I will answer issue no (iv) as follows -

Section 6 (a) - this power is exercisable in Ondo State in view of the provisions of section 4 subsections (2) and (3) of the constitution,

Section 26(3) - the provisions therein infringe on the principle of separation of powers and the subsection is unconstitutional, null and void see *Unongo v. Aku* (1983) 2 SCNLR 332 and *A-G. Abia State v. A.-G. of the Federation & Ors.* (2002) 6 NWLR (Pt. 763) 264 at p.397.

Section 28 - the powers of the ICPC are co-extensive with those of the police under the Police Act, Cap. 359 and do not usurp the police power under section 214 of the constitution. The power is exercisable on a person not exercising government function. The National Assembly has the power to so enact.

Section 29 - The power is not unconstitutional by reason of its being exercisable on persons not exercising government function.

The National Assembly has the power to so enact.

Section 35 - the power of the ICPC to arrest and detain persons indefinitely, that is, until the person complies with the summons, violates the provisions of section 35 of the constitution which guarantees the fundamental right to personal liberty. The provision is therefore unconstitutional, null and void

B

Section 37 - the power of the ICPC is constitutional. The National Assembly, as shown earlier, has the right under the constitution to create the offence

Applying the blue pencil rule, sections 26 subsection (3) and 35 will be struck down. When this is done the rest of the act is not affected. So that the good can be severed from the bad. There is no reason therefore to justify the whole of the act being invalidated as sought by the plaintiff. See *Doherty v. Balewa* (1963) 2 SCNLR 256; (1963) 1 WLR 949 and *A-G. of Abia State & 36 Ors. v. A.-G. of the Federation*, (2002) 6 NWLR (Part 763) 264 at p. 436; (2002) 3 SC 106 at pp. 199 - 200 per Ogundare, JSC.

C

On the whole the plaintiff's action succeeds only in part. I make the following order:

(1) Section 26 subsection (3) of the act is unconstitutional and therefore it is hereby declared null and void.

E

(2) Section 35 of the act is unconstitutional and therefore it is hereby declared null and void.

(3) I make no order as to costs. Each party shall bear its costs.

F

Finally, I wish to thank all the counsel in the case and in particular the amici curiae for the tremendous assistance which they have rendered to the court in their briefs of argument and oral addresses.

G

WALI JSC

I have had the privilege of reading in advance the lead judgment of my learned brother Uwais CJN, with which I entirely agree and adopt same as mine.

The power to legislate for the Federal Republic of Nigeria by virtue of section 4(1) of the 1999 constitution is vested in the National Assembly to wit: the senate and the house of representatives. Subsection (2) of section 4 empowers the National Assembly to make laws for the peace, order and good government of the federation or

H

any part thereof with respect to any matter included in the exclusive legislative list which is set out in part 1 of second schedule of this constitution. In chapter II - fundamental objectives and directive principles of state policy, section 15 (5) thereof provides as follows:

“The state shall abolish all corrupt practices and abuse of power.”

- B To enable the state carry out the directive contained in section 15(5) supra, item 60(a) of the second schedule - Part 1 of the constitution empowers it to establish and regulate authorities for the federation or any part thereof. Subsections (1), (2), (3) and (4) of section 4; subsection (5) of section 15 items 60(a), 67 and 68 of the second schedule - part 1 of the 1999 constitution provide as follows:-

“4(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives

- D *(2) That National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this constitution.*

- E *(3) The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the exclusive legislative list shall, save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of States.*

- F *(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, this is to say:-*

- G *(a) Any matter in the concurrent legislative list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto; and*

(b) Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

- H *15(5) The state shall abolish all corrupt practices and abuse of power.*

The establishment and regulation of authorities for the federation or any part thereof-

- (a) To promote and enforce the observance of the fundamental*

objectives and directive principles, contained in this constitution.

67. *Any other matter with respect to which the National Assembly has power to make law in accordance with the provisions of this constitution.*

68. *Any matter incidental or supplementary to any matter mentioned elsewhere in this list.*”

Reading these provisions of the 1999 constitution together and construed liberally and broadly, it can easily be seen that the National Assembly possesses the power both “incidental” and “implied” to promulgate the Corrupt Practices and Other Related Offences Act, 2000 to enable the state, which for this purpose means the Federal Republic of Nigeria to implement the provision of section 15(5) of the constitution. This is in consonance with the fundamental objectives and directive principles of state policy. Under the provision of section 3 of the act, the Independent Corrupt Practices and Other Related Offences Commission is established with the powers to implement the provisions of the act, both penal and otherwise. What the National Assembly did by the promulgation of the act was aimed at abolishing corruption and corrupt practices in all their facets throughout Nigeria. It is an effort aimed at promoting and enforcing the observance of the provision of section 15(5) of the constitution .

Since the act is to operate throughout the federation the Attorney-General of the Federation has power, conferred on him by section 174(1)(a) of the 1999 constitution, to institute criminal proceedings against any person before any court in Nigeria, other than a court martial, in respect of any of the offences created by the said act. Save for the provisions of sections 26(3) and 35 of the act, which are ultra vires the 1999 constitution and are hereby struck out, the remaining provisions are constitutional and therefore valid.

The plaintiff’s action partially succeeds, and I make no order as to costs.

OGWUEGBU JSC

The Corrupt Practices and Other Related Offences Act, 2000 came into effect on 13th June, 2000 which was the date the President of the Federal Republic of Nigeria assented to it. The government of Ondo State through its Attorney-General instituted this action against

the Attorneys-General of the Federation and all the thirty six states of the Federal Republic of Nigeria representing the governments of the Federal Republic of Nigeria and the thirty six states of the federation.

The plaintiff by an origination summons challenged the constitutionality of the said act, invoking the original jurisdiction of this court as provided in section 231(1) of the constitution of the Federal Republic of Nigeria, 1999 which will hereafter be referred to as the constitution. The plaintiff's claim is for the determination of the following:

C *"1. A determination of the question whether or not the Corrupt Practices And Other Related Offences Act, 2000 is valid as a law enacted by the National Assembly and in force in every state of the Federal Republic of Nigeria (including Ondo State).*

D *2. A determination of the question whether or not the Attorney-General of the federation (1st defendant) or any person authorised by him can lawfully initiate legal proceedings in any court of law in Ondo state in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.*

E *3. A declaration that the Corrupt Practices and Other Related Offences Act, 2000, is not in force as law in Ondo State.*

F *4. A declaration that it is not lawful for the Attorney-General of the Federation (1st defendant) or any person authorized by him to initiate legal proceedings in any court of law in Ondo State in respect of the criminal offences purported to be created by the provisions of the Corrupt Practices and Other Related Offences Act, 2000.*

G *5. An order of perpetual injunction restraining the federal government, its functionaries or agencies whomsoever (including the Independent corrupt Practices and Other Related Offences Commission) or howsoever from executing or applying or enforcing the provisions of the Corrupt Practices and Other Related Offences Act, 2000 in Ondo State whether by interfering with the activities of any person in Ondo state (including any public officer or functionary or officer or servant of the government of Ondo State) in exercise of powers purported to be conferred by or under the provisions of the said act or otherwise howsoever.*

6. An order of perpetual injunction restraining the Attorney-General of the Federation including his officers, servants and agents

whomsoever or howsoever from exercising any of the powers vested in him by the constitution of the Federal Republic of Nigeria 1999 or by any other law in respect of any of the criminal offences created by any of the provisions contained in the Corrupt Practices and Other Related offences Act, 2000.”

It should be mentioned in passing that the 1st defendant (Abia State) in this suit instituted suit No. SC. 153/2001 against the Attorney-General of the Federation challenging the constitutionality of the aforesaid act. That suit was adjourned sine die to await the outcome of the present proceedings. Briefs of argument were ordered. The plaintiff, 1st, 2nd, 4th, 7th, 8th, 11th, 12th, 14th, 17th, 19th, 23rd, 25th, 27th, 28th, 30th, 31st, and 32nd defendants filed briefs. Professor B. O. Nwabueze, SAN, Chief Afe Babalola, SAN and Olisa Agbakoba, Esq. SAN filed briefs as amici curiae. Of the sixteen states that filed briefs, the 2nd, 4th, 12th, 17th, 25th, 28th, 30th and 32nd defendants/states stood on the side of the plaintiff that the act is unconstitutional. The 7th, 8th, 11th, 14th, 19th, 23rd, 27th, and 31st defendants/states lined up behind the 1st defendant and canvassed the view say nothing about the remaining states/defendants who did not take part in the proceedings and were sitting on the fence as it were.

Chief FRA Williams, SAN who appeared for the plaintiff adopted the plaintiff’s brief. He identified four issues for determination in the action:

“(i) *Whether the Corrupt Practices and Other Related Offences Act, 2000, is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution of the Federal Republic of Nigeria.*

(ii) *Further and in the alternative to question (1), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices And Other Related Offences Act, 2000.*

(iii) *Whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in*

respect of any of the criminal offences created by any of the provisions of the Corrupt Practices and Other Related Offences Act, 2000.

(iv) *Whether all the powers conferred on the Independent Corrupt Practices and Other Related Offences Commissions or on other functionaries or agencies of the federal government by the B Corrupt Practices And other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in the state (including any public officer or functionary or officer or servant of the government of Ondo State). ”*

C In its brief of argument, the 1st defendant who is the principal defendant identified the following three issues for our determination:-

“(a) Whether the National Assembly has power to enact the Anti-Corruption Practices and Other Related Offences Act, 2000.

(b) Whether the National Assembly has power to enact laws D for the peace, order and good government of the Federal Republic of Nigeria.

(c) Whether the Federal Attorney-General is competent constitutionally to initiate criminal prosecution in any court in Nigeria pursuant to an enactment of the National Assembly.”

E I do not consider it necessary to set out the various issues formulated by the other defendants. They either adopted the issues formulated by the plaintiff or the 1st defendant or identified issues, which are identical with those of the plaintiff or the defendant. All the issues will be considered in this judgment.

F The facts which led to the institution of this action by the government of Ondo State are brief and straight forward. By an enactment published as Act 2000 No 5 bearing the short title “Corrupt practices and other Related Offences Act, 2000,’ the National Assembly G enacted into law -

“An Act to prohibit and prescribe punishment for corrupt practices and other related offences.”

H In this judgment, the said enactment will hereinafter be referred to simply as ICPC Act. The plaintiff’s claims are based upon the fact that the said act contains provisions concerning various matters which include punishable offences with respect to which it is the House of Assembly of a State and not the National Assembly which is vested with the power to create such offences. The following provisions of the act were mentioned in the plaintiff’s brief:

(i) The establishment of the commission and its powers and duties (sections 3, 5 and 6).

(ii) Offences and penalties (sections 8-26).

(iii) Investigation, search, seizure and arrest (sections 27-42)

(iv) Special powers of the chairman of the commission (sections 43-53) B

(v) Evidence (sections 53-60).

(v) Miscellaneous Provisions.

Issues (1) and (2) are in the alternative and they deal with the legislative powers of the National Assembly. C

Chief Williams, SAN said that he is aware that the case of the 1st defendant is that the National Assembly derived the power to enact the ICPC Act from the combined effect of section 4(2), 15(5), items 60(a), 67 and 68 of the second schedule and section 2(a) of Part III of the second Schedule of the constitution. He submitted that the provisions of item 60(a) did no more than empower the National Assembly to make law for the establishment and regulation of authorities for the federation or any part thereof to perform the functions clearly spelt out in the said section, namely, D

“to promote and enforce the observance of the fundamental objectives and directive principles contained in this constitution.” E

He contended that it is the authority to be established by a law enacted by the National Assembly and not the National Assembly itself that is vested with the duty to promote and enforce the observance of the directive principles and that the constitutional validity of the ICPC Act depends upon the answer to the question whether it is a law with respect to the establishment and regulation of the authority envisaged under item 60(a). He also submitted that the constitutional validity of any provision of ICPC Act which creates an offence depends also on the answer to the question whether the offence is incidental i.e. connected with or arises from or pertains to the establishment and regulation of the authority envisaged under the said item. F

It was further contended that it would not have been the intention of the constitution to confer exclusive power on the National Assembly with respect to corrupt practices and related offences and if it were so, section 15(5) of the constitution would not have read: G

“The state shall abolish all corrupt practices and abuse of power;” H

and that the expression The State in section 15(5) is not limited to the Federal Government. He referred to the definition of state in section 318(1) of the constitution as including government and the word government as including the government of the federation, or of any state, or of a local government councilor any person who
 B exercises power or authority on its behalf. On the powers of the National Assembly generally in relation to enactments creating criminal offences, Chief Williams, SAN submitted that item 68 on the exclusive legislative list empowers the National Assembly to make laws with
 C respect to any matter incidental or supplementary to any matters mentioned in the list and that section 2(a) of part III provides that references to incidental or supplementary matters includes, references to offences and that none of the offences created by the ICPC Act
 D can be said to be incidental to item 60(a) on the exclusive legislative list. In other words, none of the offences created can be said to arise from or pertain to or connected with the establishment and regulation of authorities mentioned in the item, He referred to Federalism in Nigeria under the Presidential constitution by Professor B.O. Nwabueze 1983 edition at page 95 and urged the court to determine the question
 E whether a provision creating a criminal offence under the ICPC Act is incidental or supplementary to some other matter, for example item 60(a).

The court was also referred to the case of *Balewa v. Doherty* (1963) 1 WLR 949 at 961 on the exercise of incidental or
 F supplementary power and urged the court to accept the decision of the privy council on this point as good law in spite of the comment of Professor Nwabueze at page 96 of his book where he seemed to have adverted to the wider scope of the power to make laws with
 G respect to the 65 specific matters on the exclusive legislative list.

It was further argued that the directive principles contained in chapter 2 of the constitution do not directly or indirectly add to the quantum of legislative powers conferred on the National Assembly and that the duties and responsibilities set out in the directive principles
 H are meant to be conformed to, observed and applied by all organs of government and all authorities and persons exercising legislative, executive and judicial business to direct its activities towards individuals who are not acting for or on behalf of any government organ or who are not exercising governmental powers under the constitution. We

are urged to hold that the ICPC Act is not a law with respect to a matter or matters which the National Assembly is empowered to make laws for the peace, order and good government of the federation under the constitution.

As to the prosecution of criminal offences, Chief Williams, SAN submitted that the Attorney-General of the Federation or any person authorised by the ICPC can only initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by the provisions of the ICPC Act only if that enactment is validly enacted. He urged the court to answer the third question in the negative.

As to whether all the powers and functions conferred on the commission under the act are constitutional and valid, Chief Williams, SAN submitted that not all the powers are constitutional and valid. He referred to sections 6(a), 26(31), 28, 29, 35 and 37. He finally submitted that after the unconstitutional provisions have been struck out what is left cannot be treated as operative.

Mr. Kumuyi, Acting Director of Civil Litigation adopted the 1st defendant's brief. He urged us to look at all the items listed in part 1 of the second schedule and the relevant sections of the constitution. He submitted that although the exclusive legislative list is silent on corruption, the constitution allows legislation under the heading incidental Powers as provided in item 68 of the said legislative list and that section 10(2) of the Interpretation Act, 1990 provides that an enactment which confers power to do any act, shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it. He cited the case of Ibrahim v. Judicial Service Commission, Kaduna State (1998) 14 NWLR (Pt. 584) 1.

On the incidental powers of the National Assembly he submitted in the brief that in addition to the powers conferred on the National Assembly by section 4 of the constitution, that section 15(5) of the said constitution enjoins the state to abolish all corrupt practices and abuse of power. He enjoins the state to abolish all corrupt practices and abuse of power. He referred to section 88(2)(a) and (b) which empowers the National Assembly to make laws with respect to any matter within its legislative competence for the purpose of exposing corruption and correcting defects in the existing laws.

He referred the court to section 2 of part III of the second schedule which explains references to incidental and supplementary matters to include:

- (a) offences
- (b) the jurisdiction, powers, practice and procedure of courts of law,
- (c) acquisition and tenure of land.

That having named offences as one of the incidental and supplementary matters, the National Assembly was in order and acted within its legislative competence in enacting the ICPC Act.

On item 60(a) on the exclusive legislative list, Mr. Kumuyi submitted that the National Assembly is empowered to make laws for the establishment and regulation of authorities to promote and enforce the observance of the fundamental objectives and directive principles in chapter 11 of the constitution and when section 4(2) of the constitution is read together with item 60(a), that it imposes a duty on the federal government to abolish all corrupt practices and abuse of power through a law by the National Assembly. He referred to the definition of the words establishment and regulation in Black's law Dictionary at pages 546 and 1286.

As to section 15(5) of the constitution, we were urged to construe the word state as used in sections 14 and 15 of the constitution as Nigeria and that sections 15(1),(2),(3),(4) and (5) show that reference to state means Federal Republic of Nigeria and if state means federal, state and local governments, it means that the three tiers of government can legislate on corruption and abuse of power. The National Assembly being part of the federal government can enact a law pursuant to the provisions of section 15(5). We were referred to the case of Military Governor of Ondo State & Or. v. Adewunmi (1988) 3 NWLR (Pt. 82) 280 at 283 to the effect that where the federal government has validly legislated on a matter, any state legislation on the same matter which is inconsistent with the federal legislation will be void to the extent of the inconsistency. He urged the court to hold that the ICPC Act enacted by the National Assembly was in furtherance of the provisions of section 15(5) of the constitution and was validly made.

On item 67 of the exclusive legislative list, it was submitted that the item gave general powers to the National Assembly to legislate on

matters which are not specifically mentioned in the exclusive legislative list. Mr. Kumuyi further submitted that even though courts are enjoined to apply ordinary meaning to any word or expression when interpreting any statute, the same cannot be said of the provisions of the constitution and that courts in Nigeria when interpreting provisions of the constitution have always adopted broad rather than narrow interpretation in order not to defeat the clear intention of its framers. The court was referred to the case of *Rabiu v. Kano State* (1981) 2 NCLR 239 and *Tinubu v. I.M.B. Securities Plc* (2001) 8 NWLR (Pt.740) 670, (2001) 9-10 SC 49 at 57.

I will briefly refer to the arguments of the other defendants in the manner in which they aligned themselves with the plaintiff or the 1st defendant. Chief Awa Kalu, SAN. Learned Attorney-General for the 2nd defendant adopted the arguments presented by Chief Williams, SAN. By way of emphasis he submitted that any matter not mentioned either in the exclusive or concurrent legislative list is deemed to be residual and therefore within the purview of the states. He referred to the case of *Emelogu v. The State* (1988) 2 NWLR (Pt.78) 524 SC; (1988) NSCC Vol. 19 (Pt.1) 869 and that a careful perusal of the sixty-eight items in the exclusive legislative list and of the thirty in the concurrent list shows no trace of crime or criminal law and that only evidence among the substantive and adjectival law is listed at item 23. He concluded that this evinces the intention on the part of the framers of the constitution that crime and criminal law must remain within the legislative competence of the states.

Learned senior advocate pointed out that sections 8-26 of the ICPC Act created specific offences which do not arise from legislation dealing with any of the items in exclusive legislative list on which only the federal government through the National Assembly can legislate. He compared the offence of robbery, which is a specific offence and a residuary matter with corruption which is also a specific Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 3 NCLR 116 which re-affirmed the independence from one another of the federal and state legislative houses. In the view of the learned Attorney-General of the states.

The 4th and 12th defendants adopted the arguments in the plaintiff's brief. Mr. Nnodum, learned Attorney-General of Imo State (17th defendant), adopted the arguments proffered by Chief Williams,

SAN. He urged the court to hold that the National Assembly does not possess the legislative competence to make provisions in the ICPC Act in respect of the sections mentioned in his brief, that those provisions are unconstitutional, null and void. That the Attorney-General of the Federation cannot initiate or authorize the initiation of criminal proceedings, arising from the provisions of the act in a High Court of a State and cannot be deemed to have initiated criminal proceedings arising from a state legislation pursuant to the provisions of the ICPC Act.

Professor Osinbajo, learned Attorney-General for the 25th defendant submitted that under the provisions of section 4(2) and (3) of the constitution, the National Assembly is empowered exclusively to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to the constitution and in addition to above, it has power to make laws with respect to any matter in the concurrent legislative list set out in the first column of part II of the second schedule to the constitution to the extent prescribed in the second column opposite thereto. That by this scheme of enumeration, and having regard to the provisions of section 4(7) of the constitution, any matter which is not included on the exclusive legislative list and not reserved to the National Assembly on the concurrent list, is necessarily within the legislative competence of the State Houses of Assembly. He cited the case of Attorney-General, Ogun State v. Aberuagba (1985) 1 NWLR (Pt.3) 395; (2002) Vol. 22 WRN 52 at 77. He submitted that the general power to create and punish crimes is a residual matter as it has no independent listing in the exclusive and concurrent lists of the constitution. He referred to Professor Nwabueze's book - Federalism in Nigeria under the Presidential Constitution, Sweet & Maxwell (London) 1983 page 87 where the learned author opined that the creation of general offences and prescription for punishment must inhere in one legislative authority (not as an incidental power) but as a substantive power and in the case of the Nigerian Federation, that power is in the state legislature. He cited the cases of *Mc Arthur v. Williams* (1936) 55 CLR 324 at 339, *R. v. Kidman* (1915) 20 CLR 425 at 448 and *R. v. Bernasconi* (1915) 19 CLR 629 at 634-635. He further submitted that the ICPC Act is not limited in its application to

corruption in any particular sphere of legislative and executive jurisdiction, that it applies generally across all spheres of life and all states of the federation and that such a generalized criminal law on corruption and other related acts can only be validly enacted by a State House of Assembly and not the National Assembly. He contended that in the absence of a general power to create and punish offences, the legislative competence of the National Assembly over crimes is confined to the prohibition and punishment of infractions against laws made pursuant to its exclusive and concurrent powers and that item 68 does not confer general powers on the National Assembly to make laws on crime. He referred to *Doherty v. Balewa* supra.

As to item 60(a), he submitted that the fundamental objectives and directive principles cover a wide range of issues and that the word state as used in the constitution is not synonymous with the federal government and that it includes government which is defined to cover state and local government (section 318 of the constitution). That being the case, the constitution imposed a duty on local government, state and federal authorities to fight corruption within their respective spheres and that item 60(a) cannot confer on the National Assembly any exclusive or general power to create offences for all tiers of government on corruption or other related subjects covered in the list. It was further submitted that item 60(a) merely authorizes the National Assembly to make law for the establishment and regulation of authorities to promote and enforce the fundamental objectives and directive principles contained in the constitution and that it and regulation of authorities to promote and enforce the fundamental objectives and directive principles contained in the constitution and that it is the commission not the National Assembly which is then enjoined by item 60(a) to promote and enforce the fundamental objective of abolishing corrupt practices.

It was submitted that section 26(2) of the ICPC Act is unconstitutional and void to the extent that it adds to the express powers conferred on the Attorney-General of the Federation in section 174(2) of the Constitution and that it is also in direct collision with section 211(a) of the constitution. That section 61(3) abridges the jurisdiction conferred on a State High Court by section 272 of the constitution. It was also submitted that sections 27 to 36 of the ICPC

Act which confer general powers of investigation, search, seizure and arrest which may be used against all persons, including functionaries of a state government are clearly unconstitutional and that such powers are not exercisable in Ondo State in relation to the activities of any person in that state (including public officers or functionaries or servant
B of the government of Ondo State).

Chief Oyebolu, learned Attorney-General appearing for the 28th defendant concluded in their brief thus:

“...The 28th defendant respectfully urges this Honourable
C Court to hold that the *Corrupt Practices and Other Related Offences Act, 2001*, is unconstitutional, illegal, null and void because the National Assembly acted ultra vires its constitutional powers, not only in terms of enacting the act without authority, but also in terms of the various unconstitutional provisions included therein which make the
D act incurable bad. Consequently, this Honourable Court is urged to further hold that-

(a) the Act has no operative validity within the territory of any of the States of the Federation, including Ogun State.

(b) The Act cannot lawfully impose duties on any public officer,
E functionary or servant of the Ogun State Government of which the 28th defendant is the official representative.”

“1. That Nigeria is a Federal Republic under section 4(1) of the constitution and as such federal structure and arrangement should
F be guaranteed and protected.

2. That the doctrine of covering the field and incidental and supplementary powers cannot avail the federal government because the anti-corruption Act do (sic) not relate strictly to exclusive legislative list and concurrent legislative list.

3. That the enactment of anti-corruption Act is an usurpation
G of the residual powers of the House of Assembly of a State to legislative and control crimes and corrupt practices in the state.

4. That the main powers of the Attorney-General of a State under section 211 have been drastically eroded thereby turning the
H office of the Attorney-General of a State into a paper tiger. The Attorney General of a State no longer has powers to prosecute any person with respect to *Corrupt Practises and Other Related Offences* committed in the state and with respect to matters concerning the state particularly the state civil service and other state functionaries

and agencies.

5. *That the powers of Governor of a state under section 212 of the constitution have also been drastically circumscribed since the Governor no longer have (sic) constitutional right to exercise the powers of prerogative of mercy on the matters concerning the state particularly in the state civil service in and other state functionaries.*” B

We were urged to grant the relief claimed by the plaintiff.

Mrs. Cookey-Gam, learned Attorney-General of Rivers State concluded as follows in the brief filed on behalf of the 32nd defendant:

“From the foregoing premises, and the fuller reasons and supporting argument amply articulated by the plaintiff in his brief and which the 32nd defendants wholly adopts (sic), the Honourable Court is respectfully prayed to grant the plaintiff’s claim as contained in his originating summons in its entirety. C

Accordingly, the court is further urged to discountenance any argument by the 1st defendant or any other defendant to the contrary, in respect of the plaintiff’s claim before the court.” D

Mr. Falana, learned counsel for the 7th defendant submitted that by virtue of section 4 of the constitution, National Assembly is given powers to make laws for the peace, order and good government of the federation and that such powers are limited to the issues contained in the exclusive legislative list as clearly set out in part 1 of the second schedule of the constitution in addition to certain matters in the concurrent legislative list reserved for the National Assembly. Any matter not so reserved in the concurrent legislative list is therefore a matter in which only the State House of Assembly can legislate. He cited the case of Attorney-General of Ogun State v. Attorney-General of the Federation (supra) and submitted that the National Assembly has no powers to make laws on residual matters. He agreed with the plaintiff that the National Assembly lacks the legislative competence to enact laws on corruption as it is not one of the items mentioned in the exclusive legislative list. F G

As to item 60(a) of the exclusive legislative list, he submitted that the National Assembly was in order to have enacted a law establishing the ICPC for the purpose of abolishing corrupt practices and abuse of power in line with the provisions of section 15(5) of the constitution but the power of the National Assembly to establish the commission cannot be extended or widened to empower the Na- H

tional Assembly to create offences in relation to corrupt practices in the federation or any part thereof. He contended further that:

“Under the constitutional arrangement, there is the Nigerian Police Force which is a federal agency or establishment. Notwithstanding, it has powers to investigate any criminal offence in any part of Nigeria. But after investigation of a state offence like murder the prosecution is left entirely in the hands of the Attorney-General of the state concerned. If this Honourable Court agrees with our contention that the commission created under the Corrupt Practices and Other Offences Act 2000 is saved by item 60(a) of the exclusive legislative list we submit that its powers to investigate cases relating to corrupt practices cannot be extended to the prosecution of such offences without the fiat of the Attorney-General of the State concerned.”

He further submitted that section 15(5) of the constitution imposes a duty on the state to abolish all corrupt practices and abuse of power, that the state has been defined in section 318(1) of the constitution to include government which means federal government, state government or local government council, that each of the three tiers of government is duty bound to fight corruption and abuse of power and that the National Assembly cannot hide under item 60(a) of the exclusive legislative list to enact a law prescribing offences and punish corrupt practices for the entire federation. He cited the case of *Melbourne Corporation v. The Commonwealth* (1947) 74 CLR 31 at 61- 62.

On the prosecution of criminal offences, Mr. Falana referred us to the case of *Anyebe v. The State* (1986) 2 NWLR. (P. 14) 39 where this court held that a federal offence cannot be prosecuted in any state of the federation without the fiat of the Attorney-General of the federation and vice versa. It was his further contention that the offences of corruption fully covered by the criminal code Laws of Ondo State, 1976 cannot be prosecuted by the ICPC without the fiat of the Attorney-General of Ondo State.

He disagreed with the plaintiff that the ICPC Act be invalidated on the ground that its sections 6(a), 26(3), 28, 29, 35 and 37 contravene certain provisions of the constitution. He urged the court to resist the temptation because it would give the impression that the judiciary is out to encourage corruption in the country and since section

15(5) of the constitution enjoined the Nigerian State to abolish corruption and abuse of powers, this court can only declare invalid those provisions that are unconstitutional. He cited the case of the Attorney-General of Bendel State v. Attorney-General of the Federation (1982) 3 NCLR 1.

Mr. I.A. Angweh, learned Attorney-General representing 8th defendant adopted the arguments on the issues as set down in the brief of the 1st defendant in support of its defence and urged the court to dismiss the claims because by the combined effect of various sections of the constitution and the schedules thereto which he argued in the brief of the 8th defendant, the National Assembly has power to enact the ICPC Act.

Professor A. A. Utuama, learned Attorney-General of Delta State (11th defendant), associated himself with the submissions of Chief Williams, SAN. The summary of his submissions is as follows: D

"1. The National Assembly has power to make the Corrupt Practices and Other Related Offences Act, 2000 and to create the criminal offences therein based upon sections 4(2), 13, 15(5) and item 60(a) on the exclusive legislative list of the 1999 constitution.

2. The power of the National Assembly to make the Corrupt Practices and Other Related Offences Act, 2000 does not preclude the House of Assembly of a State to legislate on the subject matter because the constitution to all intents and purposes has created a collective obligation to observe and apply the fundamental objectives and directive of state principles and policy in line with section 4(3), 4(7)(c), 12 and 15(5) and the decision of the supreme court in the case of Atolagba v. Awuni (1997) 9 NWLR (Pt. 522) at page 609. Para CE.

3. The Attorney-General of the federation can competently G initiate and prosecute the offences created by the provisions of the Corrupt Practices and Other Related Offences Act 2000 with respect only to public officers in the public service of the federation serving in the Federal Capital Territory or any state.

4. On the other hand, the Attorney-General of a State is H competent to initiate and discontinue criminal prosecution in respect of corrupt practices offences and abuse of power in respect of public officers in the public service of a state either in the applicable criminal or penal code or any other enactment in pursuance of section 13

and section 15(5) of the constitution in his or her state.

5. *Section 2 of the Corrupt Practices and Other Related Offences Act 2000 which defines “public officer” to include public officers in the public service of a state and local government councils in relation to the offices created in section 8(b), 9, 10(a)(I) &(ii), 11, 12, 18, 19, 22(3),(4),(5)&(6), 23(1) and (2),25(1) and (2) of the Corrupt Practices and Other Related Offences derogate from the principle of federalism and therefore unconstitutional; and*

6. *Section 53 of Corrupt Practices and Other Related Offences Act 2000, is inconsistent with section 36(5) of the constitution as it denies a person standing trial in respect of any offence under the Corrupt Practices and Other Related Offences Act 2000, the presumption of innocence and to that extent, it is void and unconstitutional in accordance with section 1(1) and (3) of the 1999 constitution.”*

Mr. Adewale, learned Attorney-General of Ekiti State filed a brief in respect of the 14th defendant. He submitted that the offences and punishment created are incidental, to the items in the legislative list or supplementary to the items in the exclusive legislative list which the National Assembly has powers to legislate upon. He urged the court to hold that the act is valid and consistent with the provisions of the constitution.

Alhaji Aminu, learned Attorney-General of Kaduna State filed a brief on behalf of the 19th defendant. He urged the court to dismiss all the claims of the plaintiff because the criminal offences created by the ICPC Act are constitutional and valid and that the Attorney-General of the Federation has the constitutional power to initiate criminal proceedings in Kaduna State or indeed any other state of the federation in respect of the offences created by the ICPC Act. Mr. O. S. A. Abayomi, Director of Legal Drafting, Kogi State filed a brief in respect of the 23rd defendant. He adopted the arguments of Chief Williams, SAN and urged the court to dismiss the claim. Mr. Usoro filed a brief on behalf of the 27th defendant. He urged the court to hold, based on the submissions contained in his brief, that the ICPC Act enacted by the National Assembly as enshrined in the constitution.

Mrs. H. Fwangchi, Director of Public Prosecutions appeared for the 31st defendant. She submitted and urged the court to hold that by the combined effect of the provisions of the constitution as

enumerated in the brief of the 31st defendant, the National Assembly has the power to make peace, order and good government of Nigeria including the ICPC Act and that the said act is constitutional and valid.

AMICI CURIAE:

Professor Nwabueze one of the amici curiae adopted his brief of argument filed on 7/3/2001 and proffered oral submissions in amplification of the written brief. He opened his submissions by pointing out that the task before the court in determining the constitutional validity of ICPC Act is most challenging because it impinges on the cardinal principles of Nigeria's federal system on which depends, to a considerable extent, the stability and unity of the country.

He submitted that the ICPC Act clearly impinges on the three requirements of the autonomy of the state government which carries with it the notion of equality of status as a government, independent existence, equality of status as a government with others and so entitled to an equal say, though not necessarily equal weight in the common councils of the federal state. He said that the principle of autonomy in a federal system implies that neither the central government nor the regional ones can confer functions or impose duties on the functionaries of the other without the consent of its chief executive and that this principle was expressly enacted in the 1963 constitution in the provision forbidding the President as well as the federal legislature from conferring functions or imposing duties on the Governor or other functionaries of the state government without the consent of the state Governor and vice versa (sections 99 and 100). That even though those provisions are not repeated in the 1979 and 1999 constitutions, the prohibition remains still applicable as a necessary implication of the autonomy of the federal and state governments in relation to each other. He cited the case of Attorney-General of Ogun State & Ors. v. Attorney-General of the Federation & Ors. (supra) in support of the application of the implication of the principle of autonomy. He discussed the doctrine of mutual non-interference with the exercise of the power or the management of the affairs of another government. He referred the court to the case of Federal Minister of Internal Affairs & Ors. v. Shugaba (1982) 3 NCLR 915.

He submitted that the ICPC Act raises the question whether the federal government has the power under the constitution to punish corruption, fraud and related offences by the enactment of such a general law and that under the constitution, the creation and punishment of offences is largely a residual matter since it is not assigned to the federal government either in the body of the constitution or in the legislative lists in the second schedule. He argued that the function belongs exclusively to the state governments in that corruption, fraud and allied offences fall within the category of ordinary offences as distinct from technical offences and offences against the Nigerian state or the federal government, public order or public safety etc.

He referred to the sixty-six items enumerated in the exclusive legislative list and that the 68th item on the list which states as follows: *“any matter incidental or supplementary to any matter mentioned elsewhere in this list.”*

That incidental and supplementary matters are defined in part III of the schedule to include the creation of offences. He referred the court to the case of *Balewa v. Doherty* (supra) where the judicial committee of the privy council constructed the phrase incidental or supplementary to some other matter and held that a matter does not become incidental to another matter merely by being closely connected with it, that the latter matter must actually have been enacted or legislated upon before something else, like the creation of offences.

He referred to the case of *R. v. Kidman* (1915) 20 CLR 425 where the High Court of Australia gave a wider construction to incidental or supplementary to that given by the privy council in *Balewa v. Doherty* (supra). It was the view of Professor Nwabueze that the federal government has power to punish corruption and fraud in relation to all matters within its legislative competence and that beyond this the rest of the offences in the ICPC Act are unconstitutional, as being ultra vires the federal government.

On the prosecution, trial and punishment of offences, it was submitted that the division of powers with respect to creation of offences carries the implication that the federal government through its functionary, the Attorney-General of the Federation in whom the power to prosecute is vested, is precluded from instituting or

conducting prosecution in respect of state offences as a state government through its Attorney-General is precluded from prosecuting federal offences.

On item 60(a) on the exclusive legislative list, Professor Nwabueze, SAN contended that it cannot be construed to confer on the federal government power to create and punish offences outside its power to do so under other provisions of the constitution or power to derogate from the autonomy of the state government. B

Chief Afe Babalola, SAN, in his brief as amicus curiae prefaced it with the grave threat corruption poses to the very existence of Nigeria and the views expressed by President Olusegun Obasanjo on it as his inauguration on 29th May, 1999 and on the signing into law of the ICPC Act. He examined the scope and purpose of chapter 11 of the constitution-fundamental objectives and directive principles of state policy with particular reference to sections 13 and 15(5) of the constitution. He referred the court to the case of *Miners of Mills v. Union of India* AIR (1980) SC 1847, where Bhagwati, J. held that directive principles impose an obligation on the state to take positive action for creating socio-economic conditions in which there shall be egalitarian social order and economic justice for all. C D E

On the effect of non-justiciability clause in section 6(6)(c) of the constitution on chapter 11 of the constitution, it was his submission that the duty imposed on the state in section 15(5) of the constitution to abolish corrupt practices and abuse of power carries with it in law, a correlative duty to carry out the duties as it would be absurd to impose a duty on the state and deny it the power to carry out or discharge the duty. That through item 60(a) on the second schedule of the constitution, the National Assembly is vested with the power to make law for the establishment and regulation of authorities for the federation or any part thereof for the promotion and enforcement of the provisions of chapter 11. F G

It was his further contention that by the combined effect of sections 4(2), 15(5) and items 60(a) and 68 on the exclusive legislative list, the National Assembly validly enacted the ICPC Act as it is a legislation for the implementation or effectuation of the provisions of section 15(5) of the constitution. He cited the case of the *Attorney v. Great Eastern Railways App. Cas. 473 HL (1879-1880) 473* and section 10(2) of the Interpretation Act. H

He further submitted that by the combined effect of section 4(3) of the constitution, items 68 of the exclusive legislative list, section 2(a) of part 111 of the second schedule of the constitution and the power of the National Assembly to make law in respect of item 60(a), the National Assembly has the power to create offences such as was done in the ICPC Act and that the act cannot be void or invalid merely because it is passed in furtherance of or in effectuating any of the provisions of the constitution.

Olisa Agbakoba, Esq. SAN, in his brief as amicus curiae submitted that the only power conferred on the National Assembly by item 60(a) of the exclusive legislative list is to establish and regulate authorities to promote and enforce the observance of the fundamental objectives and directive principles and that the meaning of the words establish and regulate are clear enough and requires no further exploration. He urged the court to read item 60(a) together with the relevant sections of chapter 11 (i.e. sections 13 and 15(5) of the constitution). It was his further submission that the ICPC Act contains extraneous matters not contemplated by item 60(a) and for which power to make law has not been granted to the National Assembly. He concluded that the ICPC Act is unconstitutional, null and void for the following reasons:-

- a. *Being a federal law, the act has covered the field in respect of the several offences it created as such the application of the criminal code law of Ondo State to residents of the state has been suspended.*
- b. *The act has usurped the legislative power of Ondo State House of Assembly to make law in respect of the offences created by the act.*
- c. *The Act has taken away the right of the plaintiff to prosecute offences relating to corruption and fraud committed in the territory of Ondo State.*
- d. *The Act has added to the judicial and administrative duties of the Chief Judge of Ondo State to the extent that it requires him to designate courts or judges to hear and determine cases arising under the act to the exclusion of all other cases. The constitution immunises the Ondo State government from being so burdened.*
- e. *The Act has taken away the constitutional independence of the public service of Ondo State from any federal agency in that it empowers the Anti-Corruption Commission to exercise disciplinary*

control, advise, supervise and regulate public officers in Ondo State Civil Service.

f. The Act will in its enforcement grossly violate the fundamental rights guaranteed citizens of Ondo State by the constitution. ”

Before the examination of all the questions raised and canvassed in this case it is essential to set out the various provisions of the constitution relied upon by learned counsel on both sides. These provisions are sections 4(2), (3), (4), 13, 15(5), 174(1)(a), items 60(a), 67 and 68 on the exclusive legislative list and section (paragraph) 2(a) of part III of the second schedule. They provide as follows:

“4(2) the National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the exclusive legislative list shall, save as otherwise provided in this constitution, be to the exclusion of Houses of Assembly of States.

In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say -

(a) any matter in the concurrent legislative list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution. ”

“13. It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this constitution. ”

“15(5) The state shall abolish all corrupt practices and abuse of power. ”

“60. The establishment and regulation of authorities for the federation or any part thereof -(a) to promote and enforce the observance of the fundamental objectives and directive principles contained in this constitution. ”

“67. Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this constitution.

“68. Any matter incidental or supplementary to any matter mentioned elsewhere in this list.”

B In this schedule, references to incidental and supplementary matters include, without prejudice to their generality, references to—
(a) “offences;”

C The central issue in this suit hinges on the construction of the provisions of section 15(5) and item 60(a) on the exclusive legislative list of the constitution. Section 15(5) is contained in chapter 11 of the constitution titled Fundamental Objectives and Directive Principles of State Policy. (See sections 13 to 24 of the constitution). Section 15(5) provides that:

D *“The State shall abolish all corrupt practices and abuse of power.*

E Section 13 imposes the duty and responsibility on all organs of government, and on all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of chapter 11 of the constitution and the abolition of corrupt practices and abuse of power is one of those provisions.

F Olisa Agbakoba, SAN, has argued that section 15(5) is not a grant of power at all but a directive to the federal and state governments as to how to exercise powers already granted to them in the other provisions of the constitution that confer powers. That like all other provisions of chapter 11, they impose duties with respect to how powers are to be exercised but confer no powers. He submitted that the power of the National Assembly is only to establish and empower authorities to perform duties already defined in item 60(a)
G namely to promote and enforce the provisions of sections 13 and 15(5) of the constitution.

H Chief Williams, SAN, also submitted that item 60(a) did no more than empower the National Assembly to make law for the establishment and regulation of the authorities envisaged in the said item 60(a). That section 4(3) of the constitution reaffirms the supremacy of the National Assembly which is subject only to specifically enumerated exceptions within the constitution.

Since item 60(a) confers on the National Assembly exclusive power to establish and regulate the authorities for the federation or

any part of Nigeria to promote and enforce the observance of the fundamental objectives and directive principles contained in chapter 11, the ICPC Act was enacted pursuant to that exclusive power and items 67 and 68 on the exclusive legislative list empower the National Assembly to establish a commission, create offences which make provisions for sanctions against offenders. The said items 67 and 68 have been set out in this judgment and no harm will be done if I reproduced them again while construing their import. They provide as follows:

67. Any other matter with respect to which the National Assembly has power to make laws in accordance with provisions of the constitution.

Any matter incidental or supplementary to any matter mentioned elsewhere in this list”

Item 68 is contained in the exclusive legislative list. The reference to incidental and supplementary matter on the exclusive legislative list underscores the well established principle of law that every grant of power includes by implication all such other powers as are reasonably incidental thereto and not expressly excluded.

This principle of law is recognized in section 10(2) of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990, which states:

“10(2) An enactment which confers power to any act shall be construed as also conferring all such other powers as also reasonably necessary to enable that act to be done or are incidental to the doing of it.”

This principle of law received legislative recognition in section 10(2) of the Interpretation Act and judicial interpretation in the cases of *McCulloch v. Maryland* 4 Wheat. 316 (1819) and *Attorney-General & Or. v. The Directors of The Great Eastern Railway Company* (1880) 5 App. Cas. 473. In the former case which was before the United States Supreme Court it was contended that the creation of a corporation was beyond the power of Congress because it was not expressly mentioned among the enumerated powers assigned to it by the constitution. The court held that the power of Congress, as enumerated in the constitution, imply, as a necessary incident, power to employ all appropriate means for carrying the powers into effect, and that since the creation of a corporation is not a substantive and

independent power, it is so implied in the powers expressly granted.

In the latter case of Attorney-General v. Great Eastern Railway (supra), an act of parliament authorised a company to make a railway to T. and S. There were two other railway companies which were afterwards combined into one and called the Great Eastern Railway Company. The latter entered into a contract with T. and S. Company to supply it with rolling stock upon receiving a certain annual payment and having certain other advantages. The contract was adopted by the shareholders of both companies. An action was brought against the Great Eastern Railway Company and an injunction was asked for, restraining it from executing the contract. One of the Acts relating to the two companies contains clause 14 which was relevant to the decision in that case. It reads as follows:

“Clause 14.

The two companies may enter into agreements with respect to the working, maintenance and management of extension railway (this was the T. and S. railway), or any part thereof, and of the railways of the two companies connected therewith (these were the two companies which had been incorporated under the name of Great Eastern Railway), and with respect to the apportionment of the traffic, and of the tolls, fares, and charges for traffic on the extension railway, and the railways of the two companies, the appointment of joint committee, or any other matters incidental to the carrying out the purpose of this Act.”

It was contended by the plaintiffs that the power conferred by section 14 is merely a power to the two companies to enter into mutual agreements in the event of both or either of them becoming lessees or lessee of the T and S. company. The judicial committee of the privy council held that the language of section 14 expressed no such limitation nor did it warrant the inference that any such limitation was contemplated and that whatever is fairly incidental to those things which the legislature has authorised by an Act of Parliament, ought not (unless expressly prohibited) be held ultra vires.

Coming back to McCulloch v. Maryland (supra), when congress passed the bill creating the First Bank of the United States over the Anti-Federalists’ constitutional objections. President Washington felt it is his duty, before signing the bill into law, to determine whether it was constitutional. Because he was not a lawyer, he sought the opinions

of members of his cabinet, including Hamilton and Jefferson. Hamilton argued that the necessary and proper clause provided ample authority for a national bank. He argued that the constitution granted broad general powers that congress could use to meet national needs. He said:

"If the end be clearly comprehended within any of the specified powers, (and) if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the constitution- it may safely be deemed to come within the compass of the national authority."

Jefferson disagreed, but Washington was persuaded by Hamilton and the Act creating the First Bank of the United States become law. When the matter came before the United States Supreme Court, that court interpreted Article 1, Section 8, of the constitution which provides that:

"The congress shall have power to make laws, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

The Supreme Court per Chief Justice Marshall held that: *Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution are constitutional,"*

Section 4 (2) of the constitution conferred on the National Assembly power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule of the constitution. Section 4 of the constitution recognizes the need for peace, order and good government in relation to Nigeria as a nation just as it recognizes the need for peace, order and good government in relation to each separate state of the federation hence it conferred power on the National Assembly to enact laws to achieve that objective. Corrupt practices and abuse of power can, if not checked threaten the peace, order and good government of the Federation or any part thereof. The endemic nature of corruption and abuse of office in Nigeria is highlighted by Chief Afe Babalola, SAN. In the preamble to his brief where he said as

follows:

It is a notorious fact that one of the ills which have plagued and are still plaguing the Nigerian nation is corruption in all facets of our national life. It is an incontrovertible fact that the present economic morals and or quagmire in which the country finds itself is largely attributable to the notorious virus which is known as corruption. This court is bound to take judicial notice of these facts and is so invited to do so. In foreign countries, Nigerians are regarded and treated as corrupt people. Unlike other Nationals, no bank would allow Nigerians to open a bank account as of right. The Nigerians green passport is synonymous with corruption. Consequently, at foreign airports, Nigerians with green passports are separated from other Nationals.

“...Nigerians are subjected to degrading and inhuman treatments and treated as pariahs on the ground that they are Nigerians who hail from the most corrupt country in the world.”

If these were the only consequences of corruption, it would not have been so threatening. The deadly threat is the effect on the economy of the country with the attendant inflation and lack of control on the monetary and fiscal policies of the government.

The President of the Federal Republic of Nigeria during his inaugural speech on 29th May, 1999, resolved that his government will tackle the menace of corruption and abuse of power and that resolution gave birth to the ICPC Act. On the 13th June, 2000 when he signed the ICPC bill into law, he also stated thus:

“With corruption, there can be no sustainable development, no political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organization. In fact, corruption is literally the antithesis of development and progress.”

The court is conscious of the history of corruption in Nigeria and should not be at liberty to construe the ICPC Act or any Act of the National Assembly by the motives which influenced the legislature, yet when the history of the law and legislation tells the court what the policy and object of the legislature were, the court is to see whether the terms of the acts are such as fairly carry out the policy and objective. See *Holmes v. Guy* (1877) 5 Ch. D 901 at 905, *Knowlton v. Moore* 178 U.S. 41, 205 Ct. 747 at 768. See also *Bronik Motors Ltd. & Or. v. Wema Bank Ltd.* (1985) NCLR Vol.6 I, and *Re: Anti-Inflation Act* (1976) 9 NR 541; 68 DLR (Ed.) 452, where the Supreme Court of

the Dominion of Canada was faced with the test of determining whether the Canadian Anti-Trust Act, 1976, was enacted for the peace, order and good government of the Dominion of Canada and whether it did not, in the circumstances under which it was enacted invade the legislative competence of the provinces. The court in its judgment observed that when an issue is raised that exceptional circumstances underlay resort to a legislative power which might be properly invoked in such circumstances, the court might be asked to consider extrinsic material bearing on the circumstances alleged, both in support and in denial of the lawful exercise of legislative authority. In considering such material and assessing its weight, the court does not examine whether it provided proof of the exceptional circumstances as a matter of fact. The matter concerned social and economic policy and hence governmental and legislative judgment. It might be that the existence of exceptional circumstances is so notorious that the court might, of its own motion, take judicial notice of them without reliance on extrinsic material. Where it is not so evident, the extrinsic material needs go only so far as to persuade the court that there is a rational basis for the legislation which it is attributing to the head of power invoked in support of its validity.

It is my view that where an enactment is in relation to a matter within the enumerated classes of subjects expressly assigned to Parliament (in this case by section 15(5) and item 60(a) on the exclusive legislative list of the constitution), the National Assembly may by that enactment provide for matters which, although within the legislative, or even executive, competence of the states, are necessarily incidental or ancillary to effective legislation by the National Assembly in relation to that enumerated matter. See *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) AC 348 at 359 and 360. The ICPC Acts is an enactment for the peace, order and good government of the Federal Republic of Nigeria. Any legislation on corruption and abuse of power must be of concern to every Nigerian notwithstanding that its operation will affect property and civil rights for citizens in a State. Such an enactment like all enactment of the National Assembly will be of paramount force. See *Munro v National Capital Commission* (1966) SCR 663 at 670, 671, 57 DLR (2d.) 753 at 758, 759 (Can. SC) and *Attorney-General for Ontario v. Attorney-General for the Dominion* supra at 366.

A Constitution is an instrument of government under which laws are made and are not mere Acts or law and the construction which the court will give to a constitutional provision must be such that will serve the interest of the Constitution and best carry out the subject and purpose and give effect to the intention of the framers.

B See *Kalu v. Odili* (1992) 5 NWLR (Pt.240) 130 at 156 and *Kalu v. The State* (1998) 13 NWLR (Pt.583) 531 at 575. See also *Attorney-General of New South Wales v. Brewery Employees Union of South Wales* (1908) 6 CLR 496 at 612 and *Ekeocha v. Civil Service Commission, Imo State & Or.* (1981) 1 NCLR 154 at 165 where
C Oputa, J (as he then was) held that in all cases of interrelation of the Constitution, the courts should adopt such a construction as will promote the general legislative purpose underlying the Constitution, which is to put the Federal Legislature in such a position that it can
D legislate for the general interest of the whole country.

It was conceded that the National Assembly was perfectly in order to have enacted a law establishing the Independent Corrupt Practices And Other Related Offences Commission (the Commission) in line with the provisions of section 15(5) of the Constitution for the
E purpose of abolishing corrupt practices and abuse of power but that power cannot be extended or widened to empower the National Assembly to create offences in relation to corrupt practices in the Federation or any part thereof.

F I have held in this judgment that the National Assembly can exercise the powers which it does possess for the purpose of assisting in carrying out a policy which may affect matters which are directly within its legislative competence. It can also exercise powers, which it does possess for assisting in carrying out a policy, which may affect
G matters not directly within its legislative powers. See *Osborne v. The Commonwealth* (1911) 12 CLR 321 and *Radio Corporation Pty. Ltd. v. The Commonwealth* (1938) 59 CLR 170.

This leads me to the consideration of paragraph 2(a) of Part III of the Second Schedule of the Constitution, which defines incidental
H and supplementary matters. It provides that:

“2. In this Schedule, references to incidental and Supplementary matters include, without prejudice to their generality, references to -

(a) Offences; and the creation of offences in the ICPC Act.”

Professor Nwabueze, SAN had argued in his brief that:

"The question that arises is whether the creation and punishment of offences in relation to the specific matters on the Exclusive Legislative List as well as on the concurrent list exist as an independent power or only as an incidental power."

In the view of the judicial committee of the Privy Council in a celebrated case (*Doherty v. Balewa*) (1963), *"no offence can be created... unless the creation... is incidental or supplementary to some other matter."* It held further, and rightly in this particular regard; that the matter does not become incidental to another matter merely by being closely connected with it; the latter must actually have been acted (sic) or legislated upon before something else, like creation of offences can be said to be incidental to it.

By its nature as defined in the above quoted statement, an incidental power in relation to creation of offence, implies therefore no more than a power to punish violations of or non-compliance with the law. Its express inclusion in the Constitution imports no more than would have been implied without it, since as Chief Justice Griffith said, *"the very notion of law, in the sense of a rule of conduct prescribed by a superior authority, connotes provisions as to which are to follow from its infraction. The imposition of such consequences, commonly spoken of as sanctions, which are generally in the form of penalties, is in the strictest sense of the term incidental to the execution of the power to make the law itself."* *R. v. Kidman* (1915) 2 CLR 425.

He preferred this wider view to that expressed by the Privy Council in *Doherty v. Balewa* supra. It was the further submission of Professor Nwabueze, SAN that the federal government has power to punish corruption and fraud in relation not only to property but also to all matters within its legislative competence and that beyond this, the rest of the offences in the ICPC Act are unconstitutional as being ultra vires the federal government. I entirely agree with the first limb of his submission but not the second for the reasons I have earlier given in this judgment.

He further submitted that the ICPC Act infringed upon the state government's power to prosecute, try and punish offences under State law, that the division of powers with respect to the creation of offences carries the implication that the federal government, through

its functionary, the Attorney-General of the Federation, in whom the power to prosecute federal offences is vested, is precluded from instituting or conducting prosecution in respect of state offences, so also is a State Government, through its Attorney-General, precluded from prosecuting federal offences. It was his submission that the Act
B clearly violates these principles. So also is the direction of a State to designate, by order under his hand, a court or Judge or such numbers of courts or Judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud or other related
C offences arising under the Act or under any other law. I will at this stage consider the issue of prosecution and punishment of offences under the ICPC Act.

Section 174 of the Constitution provides as follows:

*"174. (1) The Attorney-General of the Federation shall have
D power-*

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly;

E (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

*(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or
F any other authority or person.*

(2) The powers conferred upon the Attorney-General of the federation under subsection (1) of this section may be exercised by him in person or through officers of his department.

*(3) In exercising his powers under this section, the Attorney-
G General of the federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.*

The power of the Attorney-General of the federation to institute and undertake proceedings under the section 174 of the Constitution is preserved in section 26(2) of the Act which provides:

H "26(2) Prosecution for an offence under this Act shall be initiated by the Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority, in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja under section 60(3) of the Act;

and every prosecution for an offence under this Act or any other law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General of the Federation.”

It was contended that the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapters II of the Constitution (section 13) is limited by section 6(6)(c) of the Constitution which excludes from the courts any issue or question as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy. This argument in my view is limited to the extent that courts cannot enforce any of the provisions of Chapter II of the Constitution until the National Assembly has enacted specific laws for their enforcement as has been done in respect of section 15(5) of the Constitution by the enactment of the ICPC Act.

For all the reasons I have given and the fuller reasons contained in the leading judgment of my learned brother the Chief Justice of Nigeria which I had the privilege of reading before now, I answer questions 1, 2 and 3 submitted by the plaintiff in the affirmative. I also agree with his reasoning and conclusions as to whether the following provisions of the ICPC Act, namely, sections 6(a), 26(3), 28, 29, 35 and 37 are unconstitutional and invalid.

Chief Williams, SAN in paragraph 5 of the plaintiff's brief identified sections 6(a), 26(3), 28, 29, 35 and 37 for striking down as unconstitutional and void. I will therefore answer question 4 as follows:

Section 6(a): This provision imposes general duties on the Commission to receive, investigate complaint and prosecute offenders. It is valid.

Section 26(3): This subsection stipulates that a prosecution for an offence be concluded and judgment delivered within 90 working days of its commencement. This provision is unconstitutional and invalid. See *Unongo v. Aper Aku*. (1983) 2 SCNLR 332.

Sections 28 and 29: The power to examine persons and summon suspects for the purpose of being examined in relation to complaint is constitutional. They complement the power of the police and not a usurpation of police powers under section 214 of the Constitution or Police Act Cap. 359, Laws of the Federation, 1990.

Section 35: Power to arrest and detain until the person complies with the summons is definitely in contravention of section 35 of the Constitution which guarantees right to personal liberty. It is unconstitutional and void.

B Section 37: Seizure of movable or immovable property in the course of investigation of an offence which property is the subject-matter of an offence. There is nothing wrong with this section. It is constitutional and valid. The entire Act cannot be declared invalid as claimed by the plaintiff. This is a proper case where the blue pencil rule should apply. Accordingly sections 26 (3) and 35 are invalid.
C Both are declared null and void.

I will not conclude this judgment without expressing my profound gratitude to all the learned counsel who filed briefs and made oral submissions and particularly, Professor B. O. Nwabueze, D SAN, Chief Afe Babalola, SAN and Olisa Agbakoba, Esq., SAN, (amici curiae). Their submissions are of great assistance to the court. I must also point out that all Nigerians except perhaps those who benefit from it are unhappy with the level of corruption in the country. The main opposition to the ICPC Act is, I believe, borne out of fear and E suspicion. These will be allayed if appointment to the membership of the Commission is devoid of political considerations and members allowed to discharge their duties freely without interference.

F

MOHAMMED JSC

I have had the advantage of reading the judgment of my learned brother, Uwais, the Chief Justice of Nigeria, in draft, and I agree with him that the plaintiff's action has failed. I also agree that G sections 26(3) and 35 are unconstitutional and therefore null and void. I have little to contribute after going through the judgment of my Lord the Chief Justice. The questions identified by Chief Williams, SAN, for the determination of the plaintiff's action are as follows:

H *“(i) Whether the Corrupt Practices and Other Related Offences Act, 2000, is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution of the Federal Republic of Nigeria*

(ii) Further and in the alternative to question (1), whether the

National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices and Other Related Offences Act, 2000.

(iii) *Whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices And Other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo state in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices And Other Related Offences Act, 2000.* ^B

(iv) *Whether all the powers conferred on the Independent Corrupt Practices And Other Related Offences commission or on other C*
functionaries or agencies of the Federal Government by the Corrupt Practices And Other Related Offences Act, 2000, are exercise in Ondo State in relation to the activities of any person in that state (including D
any public officer or functionary or officer or servant of the government of Ondo state)."

The main question raised in opposition to the plaintiff's action is whether or not the National Assembly can competently make law in furtherance or effectuation of section 15(5) of 1999 Constitution ^E
by virtue of item 60(a) of Part I of the Exclusive Legislative List, in the second schedule to the 1999 Constitution. Under section 4(2) of the Constitution it has been provided that the National Assembly shall have power to make laws for peace, order and good government of ^F
the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution. The bone of contention is whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the ^G
criminal offences contained in the Corrupt Practices and Other Related Offences Act, 2000.

The final submission of the plaintiff on this action is that the National Assembly has no power to enact the corrupt Practices and Other Related Offences Act, 2000. Secondly, neither the Attorney- ^H
General of the Federation nor the Independent Corrupt Practices and Other Related Offences Commission have power to initiate criminal proceedings in Ondo State for Criminal Offences created by the Act. Thirdly, because so many provisions of the Corrupt Practices

etc. Act are unconstitutional and void the entire enactment has become invalid.

All the parties agree that the Government of the Federation hinged its power to establish the Corrupt Practices and Other Related Offences Act, 2000, through the combined effect of sections 4(2) and 15 (5) of the Constitution and items 60(a) 67 and 68 in Part 1 of the second schedule. The enactment is also said to have obtained its validity through the provision of section 2(a) of Part III of the second schedule to the Constitution.

In Chapter II of the Constitution viz; Fundamental objectives and Directive Principles of State Policy, under section 15 (5) it has been provided that the State shall abolish all corrupt practices and abuse of power and under item 60(a) of the Exclusive Legislative List it has been provided as follows:

“The establishment and regulation of authorities for the Federation or any part thereof:

(a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution”.

Chief Williams in his argument submitted that under the provisions of item 60(a) above, it is the authority (or authorities) to be established by a law enacted by the National Assembly and not the National Assembly itself that is vested with the duty to promote and enforce the observance of the Directive Principles. But with respect to the learned Senior Advocate, the authority cannot enact a law providing offences, the jurisdiction, powers, practice and procedure of courts of law as is provided in Part II, section 2(a) and (b) of the second schedule. That being the case if the Government of the Federation wants the Independent Corrupt Practices and Other Related Offences Commission to function it must provide a law which would be used to enforce the Fundamental Objectives and Directive Principles.

In elaborating on the nature and obligations imposed on the state by the Fundamental Objectives and Directives Principles of State Policy Chief Afe Babalola, SAN, referred to an Indian case of *Miners v. Union of India (AIR) (1980) SC 1847* and submitted that in effect chapter II of the Constitution gives the Nigerian Nation a sense of direction and purpose and spells out in detail the rights of citizens and the duties and obligations of the government that flow from these

rights. In *Hinds and Other v. R* (1975) 24 WLR 326 at 330 Lord Diplock said:

“A Constitution is the organic law of a country. It sets the parameters within which the country shall be governed. It establishes the institutional structures of government and either expressly or by necessary implication their inter-relationship, and spells out the basic rights of citizens and the obligations of the executive.” ^B

It is quite plain that the issue of corruption in Nigerian society has gone beyond our borders. It is no more a local affair. It is a national malaise, which must be tackled by the Government of the Federal Republic. The disastrous consequences of the evil practice of corruption has taken this nation into the list of the most corrupt nations on earth. In *Re-anti-Inflation Act* (1976) 9 NR 541; 68 DLR G (3d) 452 the Supreme court of Canada saw no reason why the “emergency” principle enunciated in Japanese-Canadian’s case could not apply to a situation created by highly exceptional economic conditions prevailing in times of peace. In the opinion of the Supreme Court of Canada it was observed that an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces and thus presenting an emergency which can only be effectively dealt with by parliament in the exercise of the powers conferred upon it by section 91 of the British North American Act, 1867 “to make laws for the peace, order, and good government of Canada.” ^C

Coming back home it is abundantly clear that the intendment of the framers of the Constitution on in providing that the State shall abolish all corrupt practices and abuse of power is not to use the information media only to discourage corrupt practices. It also cannot be said that only State governments and Local government are to enforce this Fundamental Objectives. How then can the Nation tackle this evil practice? The answer is clear; a criminal law has to be promulgated providing that every person shall be liable to punishment for every act or omission contrary to the Corrupt Practices etc. Act, 2000, which he shall be found guilty of committing. This is the only way the evil of corruption can be tackled nationally. The States and Local government shall also enforce the, observance of the Fundamental Objectives through similar legislation. Professor Nwabueze, learned Senior Advocate, referred to the decision of Privy ^D ^E ^F ^G ^H

Council in the case of *Balewa v. Doherty* (1936) 1 WLR 949 at 961 and made the following observations on that decision:

“*The view of the judicial Committee of the Privy council that ‘no offence can be created’ in relation to the specific matters in the exclusive and concurrent legislative lists ‘unless the creation ... is incidental or supplementary to a matter on the lists seems unduly narrow. Many federal offences on these matters are created, not as penalties for violations of the provisions of a law on them, but separately and independently as a way of regulating such matters. The creation of these offences is explicable only on the view, as decided by the High Court of Australia. That a power to make law with respect to a given matter is wide enough to embrace the creation of offence in relation thereto as a separate and independent exercise (R. v. Kidman (1915). This wider view of the matter is certainly, preferable to that of the Judicial Committee of the Privy Council, as otherwise it would mean that the creation of the offences in the Criminal Code (or Penal Code) categorized as federal offences is unconstitutional. Except for offences against the Nigerian State or the Federal Government as well as offences against public safety and public order generally and perhaps a few others”*

The learned Professor argued that the federal offences in the Criminal Code or Penal Code relate mostly to smuggling, other custom offences, infringement to copyright, counterfeiting currency or revenue stamps or postage stamps, stopping mails, intercepting telegrams or postal matter, misdelivery or retarding delivery of postal matter, unlawful franking of letters etc. The learned Professor agreed that the classification of offences under the Criminal Code into Federal or State offences is not of course free from difficulty but the wider view of the power to make laws “with respect to” given matters has significant implication in relation to the power of the Federal Republic to punish for corruption, fraud and allied offences. He referred to Australian case of *R. v. Kidman* (1915) 20 CLR 425 at 433.

Learned Professor Nwabueze concluded his argument with a submission, which seems, with respect, to be contrary to his view that the ICPC is unconstitutional. He said that in view of his submission the 1st defendant has power to punish for corruption and fraud in relation not only to its property but also to all matters within its legislative competence. He further pointed out that that was the farthest

extent of its power. Beyond that, the rest of the offences in the Corrupt Practices and Related Offences Act, 2000, are unconstitutional, as being ultra vires the Federal Government.

With due respect, the learned Professor is blowing hot and cold in the above submission. If the Federal Republic of Nigeria has power to enact a law against corruption and' provide punishment for the same is it not a lame argument to say that promulgation of ICPC is not within the competence of the Federal Government? If one reads the analysis of the learned Professor on the decision of the Privy Council in the case of *Balewa v. Doherty* (supra). One can easily conclude that the learned Professor had difficulty in his stand that the enactment of ICPC is ultra vires the Federal Legislature. Chief Williams in his oral submission during the hearing of this case agreed with the analysis made by Professor Nwabueze on the case of *Balewa v. Doherty*.

The offences listed in the submission of Professor Nwabueze as federal laws are made for the peace, order and good government of Nigeria. They are criminal offences. I cannot see how such offence could be distinguished from offences of corruption. Anti-corruption law has been passed by the National Assembly for reasons which I have disclosed above. The State has been directed in Chapter II of the Constitution to abolish all corrupt practices and abuse of power. Section 15(5). A legislation enforcing such Fundamental Objectives and Directive Principles will be for the peace, order and good government of this nation. I will refer to a case, which was tried in Kano. The case of *Akwule v. The Queen* (1963) All NLR 191 at page 197, (1963) 1 SCNLR 385. The 1st appellant was convicted and sentenced together with 10 others for criminal breach of trust contrary to section 315 of the Penal Code. On appeal learned counsel for the 1st appellant, Mr. Fiberesima, made a point that as banking was a subject on which Federal Parliament only could legislate, S. 315 of the Penal Code which provided for a term of 14 years imprisonment in a case of a banker committing Criminal Breach of trust, was unconstitutional. The Federal Supreme Court, per Ademola, C.J.F. held:

"We are of the opinion that section 315 of the Penal code is constitutionally valid in so far as it includes bankers in the category of persons liable to heavier punishment for Criminal breach of Trust.

We are of the view that this is not legislation in respect to Banks and banking but merely an incidental provision in penal legislation enacted for the peace and good government of Northern Nigeria. We therefore reject the submission of bankers and that it is null and void."

It is plain that the National Assembly, in the case in hand, has
 B enacted ICPC for the peace, order and good government of Nigeria.
 I do agree that sections 26(3) and 35 of the Act are unconstitutional.
 My Lord the Chief Justice has identified those sections in his judgment
 and I agree with him entirely. But, that notwithstanding I hold the
 C view that the Act is valid. I also agree that the Attorney-General of
 the Federation or any person authorised by him can lawfully initiate
 legal proceedings in any court of law in Ondo State in respect of any
 criminal offences created by any of the provisions of the Corrupt
 Practices and Other Related Offences Act, 2000. See section 174(1)
 D (a) of 1999 Constitution.

In conclusion, the action succeeds only in getting sections 26(3)
 and 35 of the Act declared unconstitutional. They are hereby struck
 out. I also make no order as to costs.

E

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of
 my Lord Uwais CJN. I agree with it. I only wish to add a few
 F observations of my own.

The National Assembly enacted the Corrupt Practices and Other
 Related Offences Act No. 2000 (hereinafter referred to simply as 'the
 Act'). The Act came into force on 13 June, 2000. The Act has a
 broad objective to prohibit and prescribe punishment for corrupt
 G practices and other related offences throughout the Federal Republic
 of Nigeria. To implement its aims the Independent Corrupt Practices
 and Other Related Offences Commission (hereinafter referred to as
 ICPC) was set up. The ICPC was formally inaugurated on 29
 September, 2000.

H The plaintiff Ondo State Government has brought this action
 to challenge the constitutionality of the Act. The claims of the Ondo
 State Government in this action are based upon the fact that the Act
 contains provisions concerning several matters with respect to which
 it is the House of Assembly of a State and not the National Assembly

which is vested with the power to make laws. Provisions of the Act include the following:

- (i) The establishment of the Commission and its powers and duties (sections 3, 5 and 6).
- (ii) Offences and penalties (sections 8-26).
- (iii) Investigation, search, seizure and arrest (sections 27-42). B
- (iv) Special powers of the Chairman of Commission (sections 43-53).
- (v) Evidence (sections 53-60) ..
- (vi) Prosecution and trial of offences (sections 61-64) and C
- (vii) Miscellaneous provisions.

In this action the plaintiff claims the following six reliefs:

(a) A determination of the question whether or not the Corrupt Practices and Other Related Offences Act, 2000 is valid and in force in every State of the Federal Republic of Nigeria (including Ondo State). D

(b) A determination of the question whether or not the Attorney General of the Federation (1st defendant) or any person authorised by him can lawfully initiate legal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Act 2000 E

(c) A declaration that the Corrupt Practices and Other Related Offences Act, 2000 is not in force as law in Ondo State. F

(d) A declaration that it is not lawful for the Attorney-General of the Federation (1st defendant) or any person authorised by him to initiate legal proceedings in any court of law in Ondo State in respect of the criminal offences purported to be created by the provisions of the Corrupt Practices and Other Related Offences Act, 2000. G

(e) An order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Independent Corrupt Practices and Other Related Offences Commission) or howsoever from executing or applying or enforcing the provisions of the Corrupt Practices and Other Related Offences Act, 2000 in Ondo State whether by interfering with the activities of any person in Ondo State (including any public officer or functionary or officer or servant of the Government of Ondo State) in exercise of H

powers purported to be conferred by or under the provisions of the said Act or otherwise howsoever.

(f) An order of perpetual injunction restraining the Attorney-General of the Federation including his officers, servants and agents whomsoever or howsoever from exercising any of the powers vested in him by the Constitution of the Federal Republic of Nigeria 1999 or by any other law in respect of any of the criminal offences created by any of the provisions contained in the Corrupt Practices and Other Related Offences Act, 2000.

In its brief of argument, the plaintiff set down the following questions for determination:

“(i) Whether the Corrupt Practices and Other Related Offences Act, 2000, is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution of the Federal Republic of Nigeria.

(ii) Further and in the alternative to question (i), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices and Other Related Offences Act, 2000. Whether the Attorney General of the Federation or any person authorised by the Independent Corrupt Practices and Other Related Offences Act, 2000.

(iii) Whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.

(iv) Whether all the powers conferred on the Independent Corrupt Practices and Other Related Offences Commission or on other functionaries or agencies of the Federal Government by the Corrupt Practices and Other Related Offences Act, 2000, are exercisable in Ondo State in relation to the activities of any person in that State (including any public officer or functionary or officer or servant of the Government of Ondo State).

The 1st defendant on the other hand submitted three issues as follows:

“(a) Whether the National Assembly has power to enact the Anti-corruption Practices and Other Related Offences Act, 2000.

(b) Whether the National Assembly has power to enact laws for the peace, order and good government of the Federal Republic of Nigeria.

(c) Whether the Federal Attorney-General is competent constitutionally to initiate criminal prosecution in any court in Nigeria pursuant to an enactment of the National Assembly.” B

On plaintiff's issue No.1 Chief Williams, SAN, began by stating that the plaintiff is aware that the case of the Federal Government is that the power of the National Assembly to enact the Act is derived from the combined effect of sections 4(2), 15(5) of the Constitution of the Federal Republic of Nigeria, 1999, Items 60(a), 67, 68 of the Exclusive Legislative List in Part I of the Second Schedule to the 1999 Constitution and paragraph 2(a) of Part III of the Second Schedule. Chief Williams, SAN, however submitted with reference to Item 60 (a) in the Exclusive Legislative List that the item does no more than empower the National Assembly to make law for the establishment and regulation of authorities for the purpose of promoting and enforcing the observance of the Fundamental Objectives and Directive Principles contained in Chapter II of the 1999 Constitution. That Item 60(a) does not vest the National Assembly with the duty to promote and enforce the observance of the fundamental objectives and Directive Principles. Similarly that Item 60(a) does not confer on the National Assembly the power to create offences generally on corrupt practices and related offences by any or every person. He submitted further that it cannot have been the intention of the 1999 Constitution to confer exclusive power on the National Assembly with respect to corrupt practices and related offences. It was his argument that if this were intended section 15(5) of the 1999 Constitution would not read: *“The State shall abolish all corrupt practices and abuse of power.”* C D E F G

Learned Senior Advocate referred to the expression “The State” in section 15 (5) and submitted that it is not limited to the Federal Government. This is because the 1999 Constitution defines the word “State” in section 318 as including “Government” whilst the word “Government” as including *“the Government of the Federation, or of any State, or of a local government councilor any person who exercises power or authority on its behalf.”* H

Learned Senior Advocate also made references to the provisions of section 4(2), 13, 15, (5), items 60(a), 67 of the Exclusive Legislative List and paragraph 2(a), of Part III of the Second Schedule of the 1999 Constitution and cited federalism in Nigeria under the Presidential Constitution, 1983 p. 95 by Professor B. O. Nwabueze and the case of *Balewa v. Doherty* (1963) 1 WLR 949 to urge upon the court to hold that the answer to question (i) is in the affirmative, that is, that the Act is not a law with respect to a matter or matters upon which the National Assembly can make laws or in the alternative to hold that Question (ii) should be answered in the negative, that is, that the National Assembly has no power to make laws with respect to the criminal offences contained in the Act.

With respect to question (iii) learned Senior Advocate submitted that the Attorney-General of the Federation or any person authorized by ICPC can only initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by the provisions of the Act if it is validly enacted. It was urged upon us to answer questions (iii) in the negative.

On question No. (iv), it was submitted that not all the powers and functions conferred on the ICPC under the Act are constitutional and valid. Learned counsel referred to sections 6(a), 26(3), 28, 29, 35 and 37 of the Act and argued as follows:

“Section 6(a) of the Act imposes on ICPC a duty to receive and investigate and prosecute any person for offences under the Act. Sections 28 and 29 confer on ICPC powers exercisable over any person whether or not such person is exercising governmental functions. Section 35 of the Act is clearly an abuse of legislative power coupled with usurpation of judicial power. Section 37 of the Act is unconstitutional and void because it is ancillary to creation of offences which the National Assembly has no power to create.” In conclusion, Chief Williams, SAN, contended that the entire Act ought to be invalidated.

Chief Kumuyi, Ag. Director of Civil Litigation on behalf of the 1st defendant submitted that by the combined effect of sections 4(2) (3) and (4), 15(5), Items 60(a), 67 and 68 of the Second Schedule Part I of the 1999 Constitution the National Assembly has power to enact the Act. He contended that although the Exclusive Legislative List is silent on corruption, the 1999 Constitution provides for “cor-

ruption” under item 68 of the Exclusive Legislative List which provides for “Any matter incidental or supplementary to any matter mentioned elsewhere in this list.” Therefore, by virtue of section 10 of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria 1990 the National Assembly is vested with the necessary powers to eradicate corruption or to do anything incidental to stopping it. B

In addition to the powers vested in the National Assembly by section 4 of the Constitution, section 15(5) of the Constitution enjoins the State to abolish all corrupt practices and abuse of power. This, it was said is in consonance with the Fundamental Objectives and Directive Principles of State Policy. It was also pointed out that by virtue of the provisions of section 88(2)(a)(b) of the 1999 Constitution the National Assembly has power to make laws with respect to any matter within its legislative competence for the purpose of exposing corruption. It was further contended that by virtue of section 2 of Part III of the Second Schedule to the 1999 Constitution which named “offences” as one of the incidental and supplementary matters” the National Assembly can legislate upon, the National Assembly was perfectly in order and acted intra vires in enacting the Act. Learned counsel argued that by the provisions of item 60(a) of the Exclusive C
Legislative List, the National Assembly is empowered to make law for the establishment and regulation of authorities to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the 1999 Constitution. He D
contended that when Item 60(a) is read together with section 4 subsection (2) of the Constitution, they not only impose a duty on the Federal Government to abolish all corrupt practices and abuse of power but also impose the duty of making law through the National Assembly for the said purpose. E
F
G

Next, learned Ag. Director of Civil Litigation argued that the word “State” in section 14 and 15(5) of 1999 Constitution means, in the light of section 318(1) of the Constitution, the Federal Republic of Nigeria. Alternatively it means Federal, State and Local Governments. That being so, the National Assembly acted intra vires H
its powers when it enacted the Act to combat corruption. On the powers of the Attorney-General of the Federation, reference was made to the provisions of section 174 subsection 1(a) of the Constitution. It was on that basis he submitted that the Attorney-General of the fed-

eration is competent to prosecute any criminal offence created by or under any Act of the National Assembly. The Act under consideration is an Act of the National Assembly; a fortiori the Attorney-General of the Federation can initiate and prosecute any offence created under the Act. Finally it was submitted for the 1st defendant that the provisions of sections 6(a), 26(3), 28, 29 and 35 of the Act are valid having been enacted pursuant to powers conferred on the National Assembly by the relevant provisions of the 1999 Constitution.

Some of the defendants have filed briefs in support of the plaintiff's claim. Others have supported the case of the 1st defendant. Their submissions have been reviewed by my Lord Uwais CJN in the leading judgment.

Professor B. O. Nwabueze, SAN, Afe Babalola, SAN and Olisa Agbakoba, SAN, were invited as amici curiae. Each of them filed a brief of argument in which very interesting and helpful submissions were made. I find it impossible to discuss them fully in this judgment but I shall refer to relevant aspects of their submissions where necessary in the course of this judgment. Moreover the CJN has similarly reviewed the submissions of the Amici curiae in the leading judgment.

Before I begin a consideration of the arguments presented on behalf of the parties, I think it appropriate at this stage to reproduce the various provisions of the Constitution relied on in almost all the briefs of argument. They are sections 4 subsections (2)-(4), 13, 14(1), 15(5) and 174(1) (a) of the 1999 Constitution, items 60(a), 67 and 68 of Part 1 and paragraph 2 (a) of Part III of the Second Schedule. They read thus:

"4(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a senate and a House of representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation with respect to any matter included in the exclusive Legislative List set out in Part I of the Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) *In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say -*

(a) *any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and* B

(b) *any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.*

13. *It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution .* C

14(1) *The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.* D

15(5) *The State shall abolish all corrupt practices and abuse of power.*

174(1) *The Attorney-General of the Federation shall have power...*

(a) *to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly."* E

PART I

Exclusive Legislative List

F

"60 *The establishment and regulation of authorities for the Federation or any part thereof -(a) to promote and enforce the observance of the fundamental Objectives and Directive Principles contained in this Constitution;* G

67. *Any other matter with respect to which the National Assembly has power to make laws in accordance with provisions of this Constitution.*

68. *Any matter incidental or supplementary to any matter mentioned elsewhere in this list.* H

PART III

Supplemental and Interpretation

"2. *In this Schedule, references to incidental and supplementary matters include, without prejudice to their generality, references*

to -

(a) offences;

The starting point is section 4(2) of the Constitution. It provides that the National Assembly has power to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List. Matters in the Exclusive legislative List are set out in Part 1 of the Second Schedule to the 1999 Constitution. Item 60(a) which I have already set out comes under the Exclusive Legislative List. It follows that the National Assembly has power to legislate under item 60 (a) for the purpose of establishing and regulating the ICPC for the Federation.

The ICPC is, by the provisions of item 60 (a), to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution. The Fundamental Objectives and Directive Principles of State Policy comes under Chapter II of the Constitution. The ICPC was established to enforce the observance of the Directive Principles set out in section 15 subsection (5) of Chapter II which provides that:

“the State shall abolish all corrupt practices and abuse of power.”

The question is: how can the ICPC enforce the observance? To talk of enforcing the observance of the Fundamental Objectives and Directive Principles suggests that there is a law in place. I think it is to be expected that the State shall abolish corruption and abuse of power through legislation. Or how else will the citizens of this country know what constitutes corruption or corrupt practices? This can only be effectively spelt out in a law with sanctions. Now the body with power to make laws for the Government of the Federation is the National Assembly under 4 subsection 2 of the Constitution.

It is also my view that item 60(a) of the Exclusive Legislative List read together with section 4(2) of the 1999 Constitution not only impose duty on the Federal Government to abolish all corrupt practices and abuse of power but also impose a duty of making a law through the National Assembly for that purpose. In addition item 68 of the Exclusive Legislative List give the National Assembly power to make laws on any matter incidental or supplementary to any matter mentioned elsewhere in the Exclusive List. It has been stressed by the plaintiff that it must refer to any matter incidental or supplementary to item 60(a). In other words some connection must be shown be-

tween the two matters. Following that it was submitted that none of the offences created by sections 8-26 of the Act are incidental or supplemental to item 60(a). Mr. Olisa Agbakoba, SAN, in his brief submitted as follows:

The only power conferred on the National Assembly by Item 60(a) of the Exclusive List is to establish and regulate authorities to promote and enforce the observance of the Fundamental Objectives and Directive Principles. The meaning of the word “establish” is clear enough and requires no further exploration. It is however imperative to construe the expressions “regulate”, “promote” and “enforce” to determine their functions in Item 60(a).

To regulate means to control, govern and direct the affairs of the authorities set up by the National Assembly to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in Chapter II. See Black’s Law Dictionary (Supra) at page 1286.

To promote means such laws as will advance, further and contribute to the enlargement, growth and enlargement of the Fundamental Objectives and Directive Principles. See Black’s Law Dictionary at page 1214. To enforce means to execute, make effective and compel obedience to the fundamental objectives and directive principles. See Black’s Law Dictionary at page 528.

Professor Ben Nwabueze submitted as follows:

“Item 60(a) of the Exclusive List must also draw its meaning and effect from the character and purpose of the Fundamental Objectives and Directive Principles of State Policy. Construed in that light, it does not, nor is it intended to, confer on the federal government power to create and punish offences outside its power to do so under other provisions of the Constitution or power to derogate from the autonomy of the state governments. The words of the item make this clear. They seem clear enough that the only power conferred on the federal government by item 60(a) is power to establish and regulate authorities, but not power to prescribe the functions of any authorities so established, these being already prescribed and delimited by item 60(a) itself, viz “to promote and enforce the observance of the Fundamental Objective and Directive Principles”. The term “establishment” or to establish raises no difficulty of interpretation. To regulate an authority within the meaning of item 60(a) certainly does

not, by any canon of interpretation, enable the National Assembly to confer upon the authority powers which the assembly itself does not otherwise possess. To regulate an authority within the meaning of item 60(a) means simply to prescribe its membership, quorum, procedure, finances and such other matters, but not its powers and functions, which are already defined in item 60(a) itself. Whatever else the word regulate may mean in the context, it does not enable the National Assembly to create offences outside the power in that behalf conferred upon it in other provisions of the Constitution or to empower an authority to try, convict and punish persons for such offences, as is done by the Corrupt Practices and Related Offences Act, 2000. 30. Item 60(a) of the Exclusive List not only defines the powers and functions of authorities to be established by the federal government, but also delimits those powers and functions. The authorities, if and when established, are only “to promote and enforce the observance of the fundamental Objectives and Directive Principles”.

I am unable to accept these contentions. The matter upon which the National Assembly seeks to enact a law must be a matter that is incidental or supplementary to any matter mentioned elsewhere in this list. Although item 60(a) does not directly mention corruption practices and abuse of power, it has succeeded in doing so by implication. Let me explain. The function of ICPC under Item 60(a) is to enforce the observance of the Fundamental Objectives and Directive Principles mentioned in section 15(5) of the Constitution, that is, the abolition of all corrupt practices and abuse of power. This is so because section 15(5) comes under the Fundamental Objectives and Directive Principles of State Policy of Chapter II of the Constitution. Besides the offences created by sections 8-26 of the Act are another name for corrupt practices and abuse of power. Since the subject of promoting and enforcing the observance comes under the Exclusive Legislative List, the provisions of Item 68 read together with section 15(5) of the Constitution confer power on the National Assembly to enact the Act. I agree with the Hon. CJN that to hold otherwise is to render the provisions of item 60(a) idle and leave the ICPC with no authority whatsoever. The implication is of course obvious. The Federal Republic of Nigeria cannot and will not be in a position to discharge its duty of abolishing all corrupt practices and abuse of power. That

cannot be the intention of the framers of the Constitution. I agree entirely with Chief Afe Babalola SAN where he said:

“the National Assembly can set up the anti-corruption Panel (which is an authority envisaged by item 60 on the Exclusive Legislative List) and create offences on corrupt practices by virtue of item 68 of the Exclusive Legislative List.” B

I am not unaware of the submissions on behalf of the plaintiff with regard to the duties and responsibilities stipulated by section 13, that the duties and responsibilities are not to be exercised by every Nigerian or all organs of government, or authorities. C

Section 13 reads:

“13. It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution”. D

The plaintiff’s brief in this connection states: *“As will be demonstrated or argued hereafter, private persons who are not exercising governmental powers are not included among those upon whom the duties and responsibilities to ‘conform to, observe and apply inconceivable that offences committed by such persons can possibly be claimed or alleged to be ‘incidental’ to a law with respect to ‘the establishment and regulation of authorities’ which are to promote and enforce the Directive Principles. The point which the plaintiff herein seeks to urge on the court in this regard will become clearer when the principles for determining whether or not the creation of an offence pursuant to the exercise of the incidental power of the National Assembly is clearly examined”.* E F

Later in the brief the learned Senior Advocate states further as follows: G

“It has already been demonstrated that the duties and responsibilities set out in the Directive Principles are meant to be conformed to, observed and applied by ‘all organs of government’ and ‘all authorities and persons, exercising legislative, executive and judicial powers.’ It must logically follow therefore that it is on those organs of government and those functionaries exercising governmental powers, that the authority mentioned in item 60(a) of the Exclusive Legislative List must focus its to promote and enforce the Directive Principles. The said authority has no business to direct its activities H

towards individuals or persons who are not acting for or on behalf of any governmental organs or who are not exercising governmental powers under the Constitution,”

Professor Nwabueze, SAN is in complete support of Chief Williams’ submission. In his Amicus curiae brief he states as follows:

B *“Item 60(a) of the Exclusive List not only defines the powers and functions of authorities to be established by the Federal Government, but also delimits those powers and functions. The authorities, if and when established, are only to promote and enforce*
C *the observance of the Fundamental Objectives and Directive Principles.”*

The word “observance” is determinative. As’ the duty “to conform to, observe and apply” the declared objectives and principles is laid only on “all organs of government and all authorities and
D persons exercising legislative executive or judicial powers” (section 13) any authorities established pursuant to item 60(a) cannot enforce against private persons ‘observance” of the Fundamental Objectives and Directive Principles. Insofar, therefore as the offences created by
E the corrupt Practices and Related Offences Act are enforceable against private persons, they are ultra vires the powers of the National Assembly under item 60(a), even assuming the item to authorise the assembly to create and punish offences outside its power to do so under other provisions of the Constitution.”

F Mr. Agbakoba, SAN in his submission on the effect of section 13, says:

4.10 I submit that section 13 does not create or confer powers on the authorities and persons that will observe and apply the provisions of the chapter. These authorities already exist and they
G have their powers already defined by the Constitution. The provision indeed adds nothing to the powers of the defendants, as they are merely directive. This conclusion is inescapable when section 13 is read together with other provisions of the constitution.

11.11 The authorities exercising legislative powers are the
H National Assembly, consisting of the Senate and House of Representatives, and the States Houses of Assembly and their powers are already set out in section 4 of the Constitution. The authorities exercising executive powers are the President in the case of the federation and the Governors in the case of States. Section 5 of the

Constitution provides for the executive powers of the President and Governors. Section 6 of the Constitution vests the judicial powers of the Federation and the States on the courts.

11.12 Section 13 lays down duties and responsibilities that the authorities and persons mentioned in section 4, 5, and 6 are to observe, conform to and apply in the course of exercising the legislative, executive and judicial powers already conferred on them respectively by the Constitution. The duties and responsibilities stipulated by section 13 are not to be exercised by every Nigerian or all organs of government or authorities. Only those who exercise legislative, executive and judicial powers are affected. One of the duties is to abolish all corrupt practices and abuse of power contained in section 15(5).

These submissions, in my view, overlook the reality of the situation. Corrupt practices and abuse of power spread across and eat into every segment of the society. These vices are not limited only to certain sections of the society. It is lame argument to say that private individuals or persons do not corrupt officials or get them to abuse their power. It is good sense that everyone involved in corrupt practices and abuse of power should be made to face the law in our effort to eradicate this cankerworm. This I believe is the intention of the framers of our Constitution.

I come now to the question whether the Attorney-General of the Federation or any person authorised by the ICPC can lawfully initiate or authorise the initiation of criminal proceedings in any court in Ondo State in respect of any of the offences created by the Act. Section 174 provides as follows:

“174(1) The Attorney-General of the Federation shall have power-

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly.

(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers conferred upon the Attorney General of the Federation under subsection (1) of this section may be exercised by him in person or through officers of his department.

(3) In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

The provisions of S.174 are clear and unambiguous. It can be seen clearly that section 174 of the 1999 Constitution confers powers on the Attorney-General of the Federation to institute and undertake criminal proceedings against any person before any court of law in Nigeria. As I stated at the beginning of this judgment, I entirely agree with the lead judgment of my Lord Uwais, C.J.N. For the foregoing and the reasons given by him I also come to the conclusion that the plaintiff's action succeeds only in part as indicated in respect of sections 26(3) and 35 of the Act. I too make no order as to costs.

UWAIFO JSC

I have had the opportunity of reading in advance the judgment of my learned brother Uwais CJN and entirely agree with it for the reasons he has given. In view of the several arguments canvassed before us and the importance of this matter, I intend in support of the judgment to express my opinion on all the issues raised.

The Corrupt Practices and Other Related Offences Act No.5 of 2000 (the Act) enacted by the National Assembly, seeks to prohibit and prescribe punishment for corrupt practices and other related offences throughout the Federal Republic of Nigeria. It contains seventy-one sections. Section 66 provides that when an offence under the Act is committed in any place outside Nigeria by any citizen or person granted permanent residence in Nigeria, he may be dealt with in respect of such offence as if it was committed at any place within Nigeria. The Act came into force on 13 June, 2000, the day the Bill was assented to, and to implement its aims, an Independent Corrupt Practices and Other Related Offences Commission (hereinafter referred to as ICPC as appropriate), with a Chairman being a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria, and twelve other members, was set up. The ICPC was formally inaugurated on 29 September,

2000, by Mr. President, Chief Olusegun Obasanjo, GCFR. On the day of signing the Bill into Law, the President said:

"With corruption, there can be no sustainable development, nor political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organization. In fact, corruption is literally the antithesis of development and progress." B

He had earlier promised on the day of his inauguration into office that corruption would be tackled head on. The duties and powers of the ICPC are stated in section 6 of the Act as follows:

"6. It shall be the duty of the Commission -

(a) where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders; D

(b) to examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them; E

(c) to instruct, advise and assist any officer, agency or parastatal on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;

(d) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;

(e) to educate the public on and against bribery, corruption and related offences; and

(f) to enlist and foster public support in combating corruption." G

The Act then creates in sections 8 to 26 nineteen specific offences relating to corrupt practices and abuse of power, including those incidental to ICPC's work namely section 15 (deliberate frustration of investigation by the ICPC) and section 25 (making false or misleading statements to the ICPC). Among other things, matters of procedure regarding investigation, seizure, arrest, evidence, prosecution and trial of offences, and the Chairman's authority to act on F behalf of the ICPC as well as his powers to make rules for giving H

effect to the provisions of the Act, are contained in the Act. In addition, the Act provides that the ICPC may establish one or more branch offices in each State of the Federation and the Federal Capital Territory, Abuja to carry out its functions under the Act, and may appoint a Resident Anti-Corruption Commissioner in each of those places. The

B ICPC has since launched itself on its duties.

By an originating summons filed in this court on 16 July, 2001, for adjudication in its original jurisdiction under section 232(1) of the 1999 Constitution, the plaintiff sued the 1st defendant (i.e. Attorney-General of the Federation), and joined the 2nd -36th defendants as parties whose rights may be affected by the action, and asked for the following six reliefs:

C “1. *A determination of the question whether or not the Corrupt Practices and Other Related Offences Act, 2000, is valid and in force as a law enacted by National Federal Republic of Nigeria (including Ondo State).*

D 2. *A determination of the question whether or not the Attorney-General of the Federation (1st defendant) or initiate legal proceedings in any court of law in Ondo State in respect any of the criminal offences created by of the provisions the said Corrupt Practices and Other Related Offences Act. 2000.*

E 3. *A determination that the Corrupt Practices and Other Related Offences Act. 2000 is not in force as law in Ondo State.*

F 4. *A declaration that it is not lawful for the Attorney General of the Federation (1st defendant) or any person authorised by him to initiate legal proceedings in any criminal offences purported to be created by the provisions of the Corrupt Practices and Other Related Offences Act 2000.*

G 5. *An order of perpetual injunction restraining the Federal Government, its functionaries or agencies whomsoever (including the Independent Corrupt Practices and Other Related Offences Commission or howsoever from executing or applying or enforcing the provisions of the Corrupt Practices and Other Related Offences Act. 2000, in Ondo State whether interfering with the activities of any person Ondo State (including any public officer or functionary or officer servant of the Government of Ondo State) in exercise of powers purported to be conferred by or under the provisions of the said Act or otherwise howsoever.*

6. *An order of perpetual injunction restraining the Federation including his officers, servants and agents whosoever or howsoever from exercising powers vested in him by Constitution of the Federal Republic of Nigeria 1999 or by any other law in respect of any of the criminal offences created by any of the provisions contained the Corrupt Practices and Other Related Offences Act, 2000.*" B

As it is, the contest is strictly between the Attorney-General of Ondo State as plaintiff and the Attorney-General of the Federation as defendant. Joined as parties whose rights may be affected were the 35 States as other defendants, 16 of whom filed briefs of argument. C Among them, the following eight states consider the Act unconstitutional: Abia, Akwa Ibom, Ebonyi, Imo, Lagos, Ogun, Oyo and Rivers. On the other hand, eight States argue that it is. They are: Bayelsa, Benue, Delta, Ekiti, Kaduna, Kogi, Niger and Plateau. Total of nineteen States did not participate. Six of them, though represented D by counsel, filed no brief of argument: Adamawa, Cross River, Kano, Katsina, Taraba and Zamfara. The remaining thirteen States neither filed briefs of argument nor were represented by counsel: Anambra, Bauchi, Borno, Edo, Enugu, Gombe, Jigawa, Kebbi, Kwara, Nasarawa, Osun, Sokoto and Yobe. Three amici curiae kindly rendered E assistance to the court, two arguing against the Act, namely Professor Ben Nwabueze SAN and Mr. Olisa Agbakoba SAN. The third amicus, Chief Afe Babalola SAN, argued in favour. I wish to express my profound thanks for their immeasurable help not only F for the materials supplied and the alluring arguments proffered, but also for their willingness to be of service to the cause of the Constitution.

The arguments in the briefs filed by the parties as well as those by the amici curiae are, generally, very comprehensive. It is impossible G to discuss them fully in this judgment without rendering it tedious and unwieldy. I shall begin by drawing attention to the questions for determination raised by the plaintiff and those by the 1st defendant who are regarded as the main contestants. In its brief of argument, the plaintiff set down the following questions: H

"(i) Whether the Corrupt Practices And Other Related Offences Act, 2000, is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution of the

Federal Republic of Nigeria.

(ii) Further and in the alternative to Question (i), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the *Corrupt Practices and Other Related Offences Act, 2000*.

(iii) Whether the Attorney-General of the Federation or any person authorised by the *Independent Corrupt Practices And Other Related Offences Commission* can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said *Corrupt Practices And Other Related Offences Act 2000*.

(iv) Whether all the powers conferred on the *Independent Corrupt Practices And Other Related Offences Commission* or on other functionaries or agencies of the Federal Government by the *Corrupt Practices And Other Related Offences Act, 2000* are exercisable in Ondo State in relation to the activities of any person in that State (including any public officer or functionary or officer or servant of the Government of Ondo State). ”

The 1st defendant reduced them to three issues as follows:

“(a) Whether the National Assembly has power to enact the *Anti-corruption Practices and Other Related Offences Act, 2000*.

(b) Whether the National Assembly has power to enact laws for the peace, order and good government of the Federal Republic of Nigeria.

(c) Whether the Federal Attorney-General is competent constitutionally to initiate criminal prosecution in any court in Nigeria pursuant to an enactment of the National Assembly.”

In its brief of argument, the first defendant ended by summarizing its argument, urging the court to dismiss the plaintiff’s action and to hold that the Act was validly enacted by the National Assembly under the Exclusive Legislative List by virtue of the combined effect of sections 4 and 15(5) of the Constitution, and items 60(a) and 68 of the Exclusive Legislative List. It further said that both the Attorney-General of the Federation and the ICPC can initiate proceedings in the High Court of Ondo State with respect to offences created by the Act. Particular attention was drawn to sections 6(a), 26(3), 28, 29 and 35 of the Act and the court was urged to hold that

they are constitutionally valid.

The conclusions reached by the plaintiff can be summarized thus: (1) The Act is not in respect of a matter or matters either in the Exclusive Legislative List or the Concurrent Legislative List and therefore unconstitutional. (2) The National Assembly has no power to make laws with respect to the criminal offences contained in the Act. (3) The Attorney-General of the Federation or any person authorized by the ICPC can only initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by the Act only if that enactment is valid. (4) Sections 26(3) and 35 of the Act constitute a usurpation of judicial functions, as well as section 35 being an abuse of legislative power, by the National Assembly and are therefore unconstitutional and void. (5) Sections 28 and 29 of the Act confers on the ICPC powers exercisable over any person whether or not such person is performing governmental functions and are accordingly void. (6) Section 37 of the Act is unconstitutional and void because it is ancillary to the creation of offences which the National Assembly has no power to create. (7) Section 6(b) of the Act constitutes a possible intrusion into the functions of States and their public bodies.

It is of paramount importance to appreciate the first and strongest challenge posed by the plaintiff's action. It is that the National Assembly has no power to enact the Act in question and that item 60(a) of part I of the second schedule to the 1999 Constitution does not give it sufficient or any leeway for it to do so. If that argument succeeds, that puts an end to the matter before this court. If, however, item 60(a), read alone or in conjunction with other provisions of the Constitution, reasonably satisfies this court as suggesting a conferment of power on the National Assembly to enact the Act, then there is the next challenge. It is whether the Act can be defended in view of the objections raised against some of its sections and the manner it has been argued that its direction and thrust constitute a threat to the notion of true federalism. In closing his oral address per argumentum ab inconvenienti, Professor Nwabueze even urged that in our consideration of the effect of the Act upon our polity, we should bear in mind that we could cope better with corruption which had long been with us rather than shift away from our federal system because such a tendency had the potential of putting this country in grave

political danger. I imagine that shows the level of his concerns for the need to maintain our Federal Constitution rather than distort it with improper legislative interventions.

It has been argued with much criticisms that several sections of the Act are invalid and that this makes the severability of the valid ones from the invalid impossible to give the Act any credibility, assuming it to be constitutionally enacted. If the validity of the Act cannot be defended in the face of those criticisms, this court has been urged to declare the Act void. Professor Nwabueze in his oral submission summarized his approach as follows: (1) Any law made by the National Assembly outside its powers under the Constitution is null and void. The power to create and punish corrupt practices and related offences is outside the purview of the Legislative authority of the National Assembly. Therefore those offences created are null and void except those offences that involve the money, property and affairs of the Federal Government, or as they relate to the federal Capital Territory. The prosecution of offenders for those offences is also outside the powers of the Federal Attorney-General with the exceptions indicated. Section 15(5) of the Constitution and item 60(a) of the Exclusive Legislative List do not bring the offences in the Act within the powers of the National Assembly. (2) Any law made by the National Assembly in exercise of its undoubted powers under the division of powers in the Constitution is invalid in so far as it confers powers and functions or imposes duties, obligations, restrictions, liabilities etc on the Governor or other functionaries of a State Government. (3) Any law made by the National Assembly in the exercise of its undoubted powers under the division of powers in the Constitution is invalid insofar as in its practical effect the law impedes, burdens, prevents, suppresses or otherwise interferes with the exercise by a State Government of its essential functions and powers. The concept in (2) and (3) is called the doctrine of implied prohibition or mutual non-interference. (4) The good and the bad parts of the Act are so interwoven as to make it virtually impracticable or inexpedient to sever one from the other. The Act is therefore invalid in its entirety.

Before proceeding to consider further arguments presented to this court, I think it is pertinent at this stage to refer to and recite the various provisions of the Constitution which were relied on in almost all the briefs of argument. They are sections 4(1), (2), (3) and (4),

13, 14(1), 15(5) and 174(1)(a) of the 1999 Constitution; items 60(a), 67 and 68 of part 1, and paragraph 2(a) of part 111 of the second schedule to the Constitution. They provide as follows:

“4. - (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives. B

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution. C

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States. D

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say - E

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution. F

13. It shall be the duty and responsibility of all of organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to observe and apply the provisions of this Chapter of this Constitution. G

14.-(1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

15.-(5) The State shall abolish all corrupt practices and abuse of power.

174.-(1) The Attorney-General of the Federation shall have power - H

(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National

Assembly.”

PART I

Exclusive Legislative List

“60. The establishment and regulation of authorities for the Federation or any part thereof -

B *(a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution;*

67. Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution.

C *68. Any matter incidental or supplementary to any matter mentioned elsewhere in this list.”*

PART III

Supplemental and Interpretation

D *“2. In this Schedule, references to incidental and supplementary matters include, without prejudice to their generality, references to - (a) offences;”*

Chief Williams SAN for the plaintiff submits that item 60(a) merely empowers the National Assembly to make law for “the
E establishment and regulation of authorities “to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.” He says it is the authority or authorities to’ be established by law enacted by the National Assembly and not
F the National Assembly itself that is (or are) vested with the duty to promote. and enforce the observance of the Directive Principles. Let me here quickly accept the validity of that submission but, by way of observation, say that the Act in question has sought to vest the ICPC
G with the duty to promote and enforce the fight against corrupt practices and abuse of power, and not the National Assembly. It is Chief Williams’ further contention that the validity of the Act depends upon whether or not it is a law with respect to the establishment and regulation of the authority or authorities envisaged under item 60(a). Likewise, the validity of any provision in the Act which creates an
H offence depends upon whether or not that offence is incidental to (i.e. connected with or arises from or pertains to) the establishment and regulation of the said authority or authorities. He concludes argument on that point by saying that item 60(a) does not confer on the National Assembly the power to create offences generally on

corrupt practices and related offences based on section 15(5) by any or every person otherwise such power would have been conferred simply by inserting a separate item in the Exclusive Legislative List on corruption such as: “The avoidance of Corrupt Practices and Related Offences.” And if that had been done there would be no necessity to rely on the incidental power aspect. B

It is in addition submitted that section 13 makes it clear that the duties and responsibilities set out in the Directive Principles are meant to be conformed to, observed and applied by “all organs of government” and “all authorities and persons, exercising legislative, executive and Judicial powers. From that premise, Chief Williams contends that it is only on those organs of government and those functionaries exercising governmental powers that the authority established by virtue of item 60(a) must focus its activities to promote and enforce the Directive Principles, and not on individuals or persons who are not acting for or on behalf of any governmental organ, or who are not exercising governmental powers under the Constitution; that is to say, not private individuals or persons. C D

The above arguments were adopted by the learned Attorneys-General of Abia State (Mr. Awa U. Kalu SAN), Ebonyi State (Chief Jossy C. Eze), Imo State (Mr. J.T.U. Nnodum), Lagos State (Professor O. Osinbajo), Ogun State (Chief O. Oyebolu), Oyo State (Mr. A.A. Lawal), Rivers State (Mrs. A.R. Cookey-Gam) and learned counsel for Akwa-Ibom State (Mr. I.E.U Kanna, Deputy F Director of Civil Litigation), apart from making their own submissions. Mr. Kalu, for instance says, in reliance on *Emelogu v. The* (sic) g corrupt practices among all persons and throughout Nigeria; that Chapter II of the Constitution confers no additional power on any legislature and that the provisions of that chapter are merely to give the general purpose for which legislative powers already conferred elsewhere should be used. Chief Oyebolu submits that the National Assembly cannot hide under the combined effect of sections 4(2) and 15(5), items 60(a), 67 and 68 of part I, of the Exclusive Legislative List, and para. 2(a) of part III (2nd schedule) to prescribe specific offences for matters not in the Exclusive Legislative List. Mr. Lawal says that incidental or supplementary powers are not conferred on the National Assembly as substantive powers and they cannot be exploited or interpreted as such. Mrs. Cookey-Gam makes, the point that matters relating to the E F G H

criminal code and the control of offences covered thereby are within the legislative competence of the State Houses of Assembly, citing *Sele v. The State* (1993) 1 NWLR (Pt.269) 276 at 291 as authority for saying that armed robbery is a State offence.

Let me now also review the submissions of learned counsel for the 1st defendant, Mr. O. Kumuyi, and of those on his side. I shall in a sense limit the review to the suggestion as to what section 15(5) and item 60(a) empower the National Assembly to do. He submits that item 60(a) expects the National Assembly to establish and regulate an authority with power to promote and enforce the abolishment of all corrupt practices and abuse of power as stipulated in section 15(5) of the Constitution. He says to be able to enforce, there must be a law which should be put into effect in a way to compel obedience to abolish corrupt practices and abuse of power. In that regard, his contention is that item 60(a) read together with section 4(2) not only imposes a duty on the Federal Government of Nigeria to abolish all corrupt practices and abuse of power but goes further to make it its duty to enact a law through the National Assembly for that purpose.

In support, Mr. S.C. Egede for Benue State submits that the offences created under the Act are for the purpose of promoting and enforcing the observance of the fundamental objectives and directive principles as they concern the abolition of corrupt practices and abuse of power. Professor A.A. Utuama, learned Attorney-General of Delta State submits that sections 4(2), 13, 15(5) and item 60(a) enable the National Assembly to enact the Act and create criminal offences. Mr. O. Adewale, learned Attorney-General of Ekiti State also submits that item 60(a) enables the National Assembly to; establish the ICPC by law and the combined effect of items 67 and 68, and para. 2(a) of part 111 of the second schedule empowers it to create offences and sanctions relating to corrupt practices and abuse of power. The learned Attorney-General of Kaduna State, Mr. M.S. Aminu, learned counsel for Kogi State, Mr. O.S.A. Obayomi and learned counsel for Niger State, Mr. Paul Usoro, argue to the same end.

Finally, Mr. Falana while submitting that the National Assembly has the authority to enact a law establishing the ICPC "for the purpose of abolishing, corrupt practices and abuse of power in line with the provisions of section 15(5) of the Constitution" also says that the power of the National Assembly to establish the Commission can be

extended or widened to empower the National Assembly to create offences in relation to corrupt practices in the federation or any part thereof although he accepts that some of the sections of the Act may be invalid he says not to the extent affecting the constitutionality of the Act or making the severability of the good from the bad unachievable. Each of the three eminent Senior Advocates of Nigeria who address the court as *amicus curiae* filed a most challenging brief of argument in which very interesting and helpful submissions were made. I shall refer and make use of relevant aspects of their submissions as and when becomes necessary in the course of this judgment.

Nigeria is a federation comprising the Federal Government and as today thirty-six States and the Federal Capital Territory. Apart from the periods of military interregnum during which a somewhat unitary system administration was practiced because of the command structure of the military, Nigeria has always been a federation even before it became an independent country by The Nigeria (Constitution) Order in Council, 1960, No. 1652. That gave birth to the Federal Constitution of 1960 under parliamentary system where each of the Regions (then three) had its own Constitution. That was what our Founding Fathers negotiated and settled for, and there can be no wonder if any action which tends to undermine federalism as our system of government, particularly in a civilian regime, causes understandable anxiety. The Republican Constitution of 1963 retained this pattern, the Regions having increased to four. It was the 1979 Constitution which introduced a presidential system that did away with separate Constitutions for the then existing 19 States created by the Military Government out of the then Regions but the federal system was retained by and large. Since then, more States have been created, also by the Military Government, whereof under the 1999 Constitution there are now thirty-six States as already said.

I think it must be remembered that the present action is not about the validity of any provision of the 1999 Constitution. It could hardly have been. The action is essentially to determine what is the scope of section 15(5) and item 60(a) besides other provisions that come in incidentally for consideration. The arguments against the Act seem largely to suggest that 'those provisions in no way give the National Assembly power to make a law on corrupt practices and

abuse of power whereby it creates offences purportedly to observe their abolition. Or, at any rate, the provisions are not so clear in that direction. Arguments in favour of the Act have made effort to resort to other provisions of their Constitution for assistance, such as items 67 and 68, and para.2(a) of part III of the second schedule. Reference
 B was also made to sections 4,13,14 and 318(1). It would appear, therefore, that if item 60(a) is at best or at worst ambiguous, this court must find a construction suitable for resolving such a constitutional provision. But before coming to that let me first, consider section 13
 C standing alone which Chief Williams, Professor Nwabueze, Chief Babalola and Mr. Agbakoba have drawn our attention to and dealt with in their respective briefs of argument. Section 13 has already been set out earlier in this judgment but I shall do so here again for effect. It reads:

D *“13. It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.”*

In reaction to this provision, Chief Williams says in the plaintiffs
 E brief of argument:

*“As will be demonstrated or argued hereafter, private persons who are not exercising governmental powers are not included among those upon whom the duties and responsibilities to ‘conform to, observe and apply’ the Directive Principles are imposed. It is therefore
 F inconceivable that offences committed by such persons “Item 60(a) of the Exclusive List not only defines the powers and functions of authorities to be established by the federal government, but also delimits those powers and functions. The authorities, if and when
 G established, are only ‘to promote and enforce the observance of the Fundamental Objectives and Directive Principles’. The word ‘observance’ is determinative. As the duty ‘to conform to, observe and apply’ the declared objectives and principles is laid only on ‘all organs of government and all authorities and persons exercising can
 H possibly be claimed or alleged to be ‘incidental’ to a law with respect to ‘the establishment and regulation of authorities’ which are to promote and enforce the Directive Principles. The point which the plaintiff herein seeks to urge on the court in this regard will become clearer when the principle for determining whether or not the creation*

of an offence pursuant to the exercise of the incidental power of the National Assembly is closely examined."

Later in the brief, the learned Senior Advocate says further (to emphasize that whatever item 60(a) provides was not meant to have private individuals or persons in contemplation) as follows:

"It has already been demonstrated that the duties and responsibilities set out in the Directive Principles are meant to be conformed to, observed and applied by 'all organs of government' and 'all authorities and persons, exercising legislative, executive and judicial powers'. It must logically follow therefore that it is on those organs of government and those functionaries exercising governmental powers, that the authority mentioned in item 60(a) of the Exclusive Legislative List must focus its activities to promote and enforce the Directive Principles. The said authority has no business to direct its activities towards individuals or persons who are not acting for or on behalf of any governmental organ or who are not exercising governmental powers under the Constitution."

This line of thought is vigorously supported by Professor Nwabueze when he explains in his amicus curiae brief of argument that: legislative, executive or judicial powers' (section 13), any authorities established pursuant to item 60(a) cannot enforce against private persons 'observance' of the Fundamental Objectives and Directive Principles. Insofar, therefore as the offences created by the Corrupt Practices and Related Offences Act are enforceable against private persons, they are ultra vires the powers of the national assembly under item 60(a), even assuming the item to authorise the assembly to create and punish offences outside its power to do so under other provisions of the Constitution.

Mr. Agbakoba in his submission on the effect of section 13, says:

"4.10. I submit that Section 13 does not create or confer powers on the authorities and persons that will observe and apply the provisions of the Chapter. These authorities already exist and they have their powers already defined by the Constitution. The provision indeed adds nothing to the powers of the defendants as they are merely directive. This conclusion is inescapable when Section 13 is read together with other provisions of the Constitution."

4.11. The authorities exercising legislative powers are The

National Assembly, consisting of the Senate and House of Representatives, and the States Houses of Assembly and their powers already set out in Section 4 of the Constitution. The authorities exercising executive powers are the President in the case of the Federation and the Governors in the case of States. Section 5 of the Constitution provides for the executive powers of the President and Governors. Section 6 of the Constitution vests the judicial powers of the Federation and the States on the courts.

4.12. Section 13 lays down duties and responsibilities that the authorities and persons mentioned in Sections 4, 5 and 6 are to observe, conform to and apply in the course of exercising the legislative, executive and judicial powers already conferred on them respectively by the Constitution.

The duties and responsibilities stipulated by Section 13 are not to be exercised by every Nigerian or all organs of government or authorities. Only those who exercise legislative, executive and judicial powers are affected. One of these duties is to abolish all corrupt practices and abuse of power contained in Section 15(5)."

Before I refer to Chief Babalola's submission on this, I have to say that there can be no doubt that these are powerful and persuasive arguments. I cannot also help saying, with all due respect, that the contention that section 13 limits the duty and responsibility to conform to, observe and apply the provisions of Chapter II only to organs of government and authorities and persons exercising legislative, executive or judicial powers, does not take account of the undeniable fact that those organs do not operate entirely within their official cocoons, if I may use that phrase for want of more appropriate expression. They do not in the performance of their duties act in isolation of the public. It is true those organs have to bear the primary duty and responsibility, but they would be of no use to society if they possibly succeeded in performing their official duties without interacting with the public. That cannot represent the situation. They exist to serve the public and in the course of that they come in contact with private individuals and persons. Their duty and responsibility to conform to, observe and apply the provisions of Chapter II, for instance in regard to section 15(5), will include ensuring that they do not breach that provision against, or on account or for the benefit of, any individuals or persons. If therefore an enactment creating offences

for breach was validly made, I would be surprised if private individuals or persons involved in corrupting officials or getting them to abuse their power were, by some alchemy of ‘chance, to escape criminal liability, or not to be punished because no provision was made or supposed to be made to define their culpability.

Chief Babalola did not make any direct submission on this point. But he did submit that Chapter II represents a charter between the government and the society, and quoted a passage from Commentary on the Constitution of India by Basu on the Fundamental Objectives and Directive Principles where the learned author differentiated Directive Principles from fundamental Rights and said inter alia that the Directives are not enforceable in the courts and do not create any justiciable rights in favour of individuals; and that they require to be implemented by legislation, and so long as there is no law carrying out the policy laid down in a Directive, neither the State nor an individual can violate any existing law or legal right under colour of following and abiding by a Directive.

As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy in Chapter II of our Constitution, section (6)(c) says so. While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of State organs if they acted in clear disregard of them, the nature of the consequences of which having to depend on the aspect of the infringement and in some cases the political will of those in power to redress the situation. But the Directive Principles (or some of them) can be made justiciable by legislation. This is the point Chief Babalola seemed to have elaborated upon when he said that the Fundamental Objectives and Directives Principles had lain dormant in our Constitution since 1979 and that the Act was the first effort to activate just one aspect of them in order that there may be good and transparent government throughout the Federation of Nigeria. That is what he submits item 60(a) of the Exclusive Legislative List in part I of the second schedule to the Constitution seeks to achieve. He relies on section 4(2) of the Constitution which provides that:

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

List set out in Part I of the Second Schedule to this Constitution.”

The said item 60(a) under the Exclusive Legislative List gives the power to the National Assembly to legislate for the establishment and regulation of authorities for the Federation or any part thereof to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in the Constitution. It cannot be disputed that a country with less corrupt practices stands a chance of good government. What should be the proper approach to the interpretation of the relevant provisions of the Constitution with which we are confronted in this case? It must be remembered that they are tersely worded and invariably in declaratory form as most constitutional provisions usually are. The true purpose of item 60(a) of the Exclusive Legislative List has received divergent understanding. There is no doubt the item bears a measure of ambiguity. In a situation like that the approach which has been accepted by this court is that in order not to defeat the principles behind such provisions, technical rules of interpretation should be avoided; and that where the Constitution has used an expression in the broader or narrower sense, this court should lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution: see *Nafiu Rabiu v. The State* (1980) 12 NSCC 291 at 300-301 per Udoma JSC where he cited with approval what was said by the Privy Council in *Attorney-General for the Province of Cantaria v. Attorney General for the Dominion of Canada* (1912) A.C. 571 at pp.583-584 inter alia that:

“In the interpretation of a completely self-governing Constitution upon a written organic instrument if the text is explicit the text is conclusive alike in what it directs and what it forbids. When the text is ambiguous recourse must be had to the context and scheme of the [Constitution].” See also, *Director S.S.S. v. Agbakoba* (1999) 3 SC at 77; (1999) 3 NWLR (pt.595) 314 at p.357; *James v. Commonwealth of Australia* (1936) AC 578 at p.614.

I am of the view that a situation whereby section 15(5) which seeks for the abolition of corrupt practices and abuse of power has been incorporated into the Exclusive Legislative List by item 60(a), deserves to be given a very liberal interpretation so as to achieve the purpose of the Constitution in that regard and support the enactment

to back it up. I think the intention to give effect to the State policy on corruption and abuse of power underlying the provision of section 15(5) can be sufficiently made manifest by viewing the introduction of it through item 60(a) as a call on the National Assembly to legislate on that aspect of the Directive Principles to give legal backing to that policy as rightly suggested and reasoned by the learned author Basu B in his Commentary on the Constitution of India.

It must be admitted that not every section under Chapter II is suitable for legislation which would carry sanctions, whether penal or compensatory for its breach as the Act has done in respect of section 15(5). In fact, some of the sections may look as if they H cannot take the course the Act has taken without fundamentally jeopardizing the principle of federalism. I think that was why Professor Osinbajo, the learned Attorney-General of Lagos State, while arguing against the Act, drew attention to section 14(2)(b) as an example. He argued D that if the provision therein which says “the security and welfare of the people shall be the primary purpose of government” were meant for the exclusive legislation by the National Assembly, it would overwhelm and upstage the States, and their functions substantially taken over by the Federal authorities. I think there is some substance E in that argument if that provision is taken literally. This supports the view I have expressed that not all the provisions of Chapter II can be legislated upon to achieve a similar purpose of the Act, the subject-matter of these proceedings. However, a broader approach is, F perhaps, to take “security” in that context in terms of overall responsibility to provide internal and external security and protection for the Federal Republic of Nigeria; and in that sense it is the National Assembly that is in the best position to enact a law for that purpose. Similarly, “welfare” will have to be taken in its proper connotation of G the “general welfare of Nigeria” demanding appropriate enabling legislation on social, economic or political matters (on a macro scale) where it is not practicable for individual States to legislate to cover particular situations. I shall later illustrate with a few cases.

Again, that section 14(2)(b) can be legislated upon under item H 60(a) for other variety of circumstances in which coordinated of fort under national guidance would warrant it is not difficult for me to accept. Such a circumstance could be a state of emergency of national importance, such as of real necessity or of natural disaster: see

Attorney-General for Ontario v. Canada Temperance Federation (1946) A.C. 193; or of war when it would become imperative for the Federal Republic to be protected or defended: see Co-operative Committee on Japanese Canadians v. Attorney-General for Canada (1947) A.C. 87; or the care and protection of the people require to be centrally motivated: see Russell v. The Queen (1882) A.C. 396. 1 must however point out that those circumstances are adequately directly provided for under subsections (1) and (3) of section 11 of the Constitution as follows:

“11- (1) The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services...”

(3) During any period when the Federation is at war the National Assembly may make such laws for the peace, order and good government of the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List as may appear to it to be necessary or expedient for the defence of the Federation.”

My respectful view is that even without the above provisions, the National Assembly would have been able to make laws for national emergency, disaster or a state of war by virtue of section 14(2)(b) which is brought under the Exclusive Legislative List by item 60(a). But there are other provisions of Chapter II, apart from section 15(5) such as section 15(2) and section 16(2)(d), among others, to which I shall return later, which can be made, enforceable by legislation. It all depends whether any or which of the provisions of Chapter II demands urgent and pressing national attention, and can be practicalized by legislation. The National Assembly can be trusted in their collective wisdom to recognize what is in the best interest of the polity.

Section 15(5) which calls on the State to abolish all corrupt practices and abuse of power would seem to have appealed to the present Administration and received the support of the National Assembly. The need and urgency for the Federal Republic of Nigeria to show its concern and act in line with section 15(5) was aptly represented and captured in two passages in the amicus curiae brief of Chief Afe Babalola. First, he said in the preamble to the brief:

“In the last 20 years, the pervasiveness of corruption in all its ramifications has assumed renewed dimensions of cancerous proportions in Nigeria, to the extent that the Germany-based Transparency International, a respected independent, universal, non-governmental organization, ranked Nigeria in the unenviable position of being the most corrupt nation in the world for a consecutive period of more than 7 years. The unpleasant news was published in all national newspapers in Nigeria. B

In foreign countries, Nigerians are regarded and treated as corrupt people. Unlike other nationals, no bank would allow Nigerians to open a bank account as of right. The Nigerian Green Passport is synonymous with corruption. Consequently, at foreign airports, Nigerians with green passports are separated from other nationals. While others are allowed to go freely, Nigerians are subjected to degrading and inhuman treatments and treated as pariahs on the ground that they are Nigerians who hail from the most corrupt country in the world. C D

National newspapers are filled with stories of looted money stashed in foreign banks. The stolen resources, lost by Nigeria through endemic corruption and abuse of office have had inimical effect on the economy of the country. First, is the issue of inflation and its pressuring effect on the economy as a result of irregular distortions in economic indices and lack of control on monetary and fiscal policy engendered by the availability of slush funds of massive proportions outside normal economic activity. Secondly the inflationary trends had effect of lowering living standards to stupendous proportions such that what is known as the ‘Middle Class’ was virtually wiped out, so that what hitherto were basic necessities of life became luxuries. E F

It is a notorious fact whilst in 1979 the US Dollar exchanged with the Nigerian Naira at the rate of US\$1 to N0.85k, it has plummeted to the commercial rate of US\$1 to N142 in 2002. In the corresponding period, whilst inflation rate in the United States rose by about 15% in real terms in 23 years, it has risen by about 2000% in Nigeria. G H

All these stark statistics are induced by all means in no small measure, by illicit capital flight engendered by corruption. The crisis which endemic corruption has triggered off in Nigeria, certainly poses exceptional peril to the economic, social and political stability, the

National interest and integrity of the Nigerian Nation. This, no doubt, goes beyond local and state concern. The eradication of corruption is therefore a National one, as the perilous effect touches and affects every Nigerian regardless of tribe, religion and state of origin. Indeed, a Nigerian is not known or linked to a state of origin outside Nigeria.”

B The learned Senior Advocate later drew attention to the March 1997 Edition of Transparency International Newsletter where it was recorded that the United Nations Economic and Social Council adopted a resolution in which it called on “all governments to fight corruption more decidedly.” He then stressed that there was a global concerted effort to ensure that the issue of corruption was addressed and tackled universally. There is an international body based in Berlin, Germany, hosting several member countries poised to combat bribery, which is known as the Organisation for Economic Co-operation and Development (OECD). Chief Babalola quoted from the Supplement to Transparency International Newsletter of September, 1994 as follows:

“OECD governments today (Paris, 27th May 1994) agreed to take collective action to tackle the problem of bribery in international business transactions. The OECD recommendation on Bribery in International Business Transactions is the first multilateral agreement among governments to combat the bribery of foreign officials and represents a breakthrough in a difficult area. While nearly all countries have laws against the bribery of their own officials, most do not provide legal sanctions for the bribery of foreign officials by their nationals or their domestic enterprises.

Bribery presents moral and political challenges and, in addition, exacts a heavy economic cost, hindering the development of international trade and investment by raising transaction costs and distorting the operation of free markets. It is especially damaging to developing countries since it diverts needed assistance and increases the cost of that assistance. The recommendation calls on Member countries to take effective measures to deter, prevent and combat bribery of foreign public officials. Such measures include reviewing their criminal, civil and administrative laws and regulations and taking ‘concrete and meaningful steps’ to meet this goal, as well as strengthening international co-operation. The recommendation appeals to non-Member countries to join with OECD Members in

their efforts to eliminate bribery in international business transactions. It also provides for a follow-up mechanism to monitor implementation.

The OECD believes that this initiative could act as a catalyst for global action and could help companies refuse to engage in such practices in host countries by setting standards of behaviour to which they could refer. Combating bribery through firm and joint actions by Member countries can also strengthen the multilateral system for trade and investment by ensuring equitable competitive conditions. The recommendation will also help to promote good governance.” C

The angst about corruption has shown even in the United Nations (UN) where it is said that that body has signalled its intention to take on the battle against corruption in international business transactions. The UN Secretary-General Mr. Kofi Annan was reported to have declared: I encourage the governments of Africa to undertake the necessary changes in economic development. This implies good governance, competent elites and, above all, the disappearance of corruption.” The UNEconomic and Social Council has by consensus adopted a resolution in which it calls on all governments to fight corruption more decidedly and that the UN Secretary-General should report on actions pursued within the UN and by member states to curb corruption: see Transparency International Newsletter, March 1977, page 7. Chief Babalola argues that only a centrally co-ordinated approach to the fight against Corruption in view of the shape it has taken and the international pressure for meaningful action can have the desired result. I am in total agreement with him. F

The first defendant in its brief of argument predicated his defence of the Act on what is generally the perception about the way corruption has adversely affected this country. Reference was made to a paper titled: Legal and Institutional Frame work for Combating Corruption in Nigeria, presented by Taiwo Osipitan and Oyewo, published in a document called UNILAG READINGS LAW, where the following was expressed: G

“Corruption is evidently Nigeria’s greatest problem. Since the attainment of independence, corruption and abuse of office have enjoyed steady growth. They have Consequently become cankerworms reaching the dimension of epidemic in our body politic. While admission and examination scandals are examples of corruption H

in our educational institutions, payment of salaries to ghost workers, over invoicing of goods and services, and the raising of fictitious local purchase orders, are examples of corruption in our private and public sections. It suffices to state that a nation where corruption is an accepted norm is bound to suffer economic backwardness and isolation. We therefore support the view that lawless and unaccountable government not only guarantees economic backwardness, it insures societal breakdown."

India and other jurisdictions (e.g. Eire - i.e. Republic of Ireland China, former U.S.S.R and Germany) have had inserted in their Constitutions one form of Directive Principles or another. It is acknowledged in all of them that Directive Principles are non-justiciable; that is to say, they are not enforceable by any judicial process. Nevertheless, it has been said that the courts cannot altogether ignore the existence of the Directives in the body of the Constitution, and that -

"Under the Irish Constitution, it has been suggested that the courts, in deciding cases relating to the subject-matter of the declarations, are bound to take cognisance of the general tendency of these declarations, even while legislative effect has not yet been given to them."

See Commentary on the Constitution of India by Basu, 5th edn. Vol.2. page 312. The emphasized phrase shows that in appropriate circumstances, legislative effect can be given to Directive Principles. It is certain that the Directive Principles have their own usefulness as being fundamental in the governance of a country, and this may become more obvious if their origin is known. As has been explained by Dr. Ambedkar, although the idea was got from the Constitution of Eire, the precedent under the Government of India Act, 1935, of issuing Instruments of Instructions to the Governor-General also influenced the incorporation of the Directives in the Constitution. He said:

"The Directive Principles are like the Instruments of Instructions which were issued to the Governor-General and the Governors of Colonies, and to those of India by the British Government under the 1935 Government of India Act. What is called 'Directive Principles' is merely another name for the Instrument of Instructions. The only difference is that they are instructions to the legislature and the

executive. Whoever captures power will not be free to do what he likes with it. In the exercise of it he will have to respect these instruments of instructions which are called Directive Principles."

He later said further:

"In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country."

See Commentary on the Constitution of India (supra) at pages 311-312. Basu himself has expressed the view in regard to the Directives that in the exercise of the legislative power conferred by each subject in the Legislative Lists, the Legislature has unfettered regulatory power, except in so far as it is controlled or limited by the fundamental rights guaranteed under the Constitution. He cited the observation of Sastri C.J. in *State of West Bengal v. Subodh Gopal* (1954) S.C.A. 65 to the effect that the regulatory power of the State of India pervades the entire legislative field as an implied power under each item in the legislative lists when the learned Chief Justice said:

"But the power of social control and regulation of private rights and freedoms for the common good being an essential attribute of a social and political organisation, otherwise called a State, and pervading as it does, the entire legislative field, was not specifically provided for under any of the Entries [i.e. subjects] in the Legislative List and was left to be exercised, whenever desired, as part of the appropriate legislative power."

Commenting further, Basu argues that in the matter of initiating social control legislation for the purpose of implementing the Directives, the State shall not be lacking in power owing to the absence of any specific provision conferring such regulatory power. He says it can assume that power within the ambit of the legislative entry to which the legislative measure relates; that the Legislature should try to seek the objects referred to in the Directives but as the Directives per se do

not confer any legislative power upon the Legislature -

“Legislative competence must be sought from the Legislative Lists and the Articles which specifically confer legislative power”

And comparing Fundamental Rights with Directive Principles, Basu makes reference to the Indian Supreme Court case of State of
B Madras v. Champakam (1951) S.C.R. 525 at 531 where it was said:

*“The Directive Principles of State Policy have to conform to and run subsidiary to the Chapter on Fundamental Rights. That is the correct way in which the provisions found in Parts III and IV have to be understood. However, so long as there is no infringement of
C any Fundamental Rights, to the extent conferred by the provisions in Part III, there can be no objection to the State acting in accordance with the Directive Principles set out in Part IV, but subject again to the Legislative and Executive powers and limitation conferred on the State
D under different provisions of the Constitution.”*

What I have managed to say from the foregoing shows that every effort is made from the Indian perspective to ensure that the Directive Principles are not a dead letter. Whatever is necessary is done to see that they are observed as much as practicable so as to
E give cognisance to the general tendency of the Directives. It is necessary therefore to say that our own situation is of peculiar significance. We do not need to seek uncertain ways of giving effect to the Directive Principles in Chapter II of our Constitution. The Constitution itself
F has placed the entire Chapter II under the Exclusive Legislative List. By this, it simply means that all the Directive Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together, to give expression to anyone of them through appropriate enactment as occasion may demand. I believe
G this is what has been done in respect of section 15(5) by the present Act.

Upon the foregoing background, I now proceed to consider whether the National Assembly can enact a law aimed at abolishing corrupt practices and abuse of power. Section 15(5) of the 1999
H Constitution which I here again reproduce, provides:

“The State shall abolish all corrupt practices and abuse of power.” What does “The State” represent in the context? It has been argued by some that it means the Federal, State and Local Governments. That may well be so, but I think, with due respect, that

argument misses the point and is clearly irrelevant in the context of whether the National Assembly is the proper organ to legislate to activate section 15(5) the way it has done. That takes me straight to section 14(1) which provides that -

“The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.” B

It is plain that it is the Federal Republic of Nigeria, as a State, that is looked upon under the Constitution to take steps, or perhaps to spearhead the policy, to abolish all corrupt practices and abuse of power. The significance of this shall, I hope be made clear in the course of this judgment. Now, section 4 subsection (1) says that the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation. It must be clearly noted that the said legislative powers are not of the Federal Government but of the Federal Republic of Nigeria, and that the National Assembly may enact laws for the Federation and not solely for the Federal Government. The reason is that there are certain items upon which the National Assembly legislates to cover the entire Federation. This is a universal feature of federalism. Subsections (2) and (3) of section 4 provide that the National Assembly shall have power to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List, and this shall be to the exclusion of the Houses of Assembly, save as otherwise provided in the Constitution. C D E

Matters concerning the Fundamental Objectives and Directive Principles of State Policy in Chapter II of the Constitution are placed under item 60(a) of the Exclusive Legislative List. It may be argued, as has indeed been done, that that is very wide or perhaps unrealistic. But it cannot be argued that that is what the Constitution has done. The Constitution must be followed. It is the implementation that should be done with due circumspection. And it is in that regard the propositions of Professor Nwabueze will need to be applied as far as is practicable and expedient so as to protect and preserve the fundamental tenets of our federal system of government. I may at this stage reiterate that some of those propositions are classified as the doctrines of “implied prohibition” and “mutual non-interference” which are said to be erected on the basis that the Federal Authority is prohibited from infringing on State residual powers (and vice versa) F G H

but must respect State Authority so that both Authorities are acknowledged to be endowed with governmental instrumentalities on either side. Without meaning to discount these doctrines which indeed, may be useful reminders when the application of an Act may appear to be a blatant invasion of or interference with the affairs of a State, I have
 B to say, however, that it has been held that what decides ultimately is the effect of the distribution of powers under the Constitution. As the High Court of Australia observed in *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd.* (1920) 28 C.L.R. 129 at 155
 C per Isaac J:

“The doctrine of ‘implied prohibition’ finds no place where the ordinary principles of construction are applied so as to discover in the actual terms of the instrument their expressed or necessarily implied meaning.”

D It is the true construction of the constitutional provisions under which powers are allocated to the different governments that determines whether an Act of the federal or national government has gone beyond limits to interfere with the affairs of a State in matters reserved to it under the Constitution. It will certainly be a wrong
 E approach, in my respectful view, to the interpretation of constitutional provisions allocating powers, to project those doctrines as a way of determining the limits of those powers. To do that would be tantamount to introducing a novel canon of construction to slant the
 F meaning of constitutional provisions. But the doctrines may be kept at the back of the mind and recognized as a healthy political theory which in some circumstances, as appropriate, may be applied to analyze what the court has interpreted. And in other circumstances may help to justify the reason for the autonomy granted to the States
 G under the Constitution within the Federation. Indeed, both the Federation and the States are preserved by the Constitution and must remain separate and indestructible one by the other, for as observed by Chief Justice Chase of the United States Supreme Court in *Texas v. White* 19 L.Ed.227 (1869) at p.237.

H *“Not only... can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union*

and the maintenance of the National government. The Constitution, in all its provisions looks to an indestructible Union, composed of indestructible States.”

On that basis and understanding, it must be said quite clearly that it is not open to the Federal Republic of Nigeria to take steps, or enact any legislation, deliberately or by necessary consequence, that will undermine the legislative powers and authority of the States if it cannot be ascertained from the Constitution that the action of the Federal Republic was inevitable in the overall interest of the nation, and was constitutional. I may now have to say that one cannot run away from the reality that the National Assembly has the sole power to legislate for the establishment and regulation of authorities for the Federation or any part thereof so as to promote and enforce the observance of the nation’s responsibility to abolish all corrupt practices and abuse of power (which falls under the Fundamental Objectives and Principles of State Policy in section 15(5)). It is to all intents and purposes now a subject-matter coming within item 60(a) in the form of Abolition of all Corrupt Practices and Abuse of Power which, although not expressly so spelt out to meet Chief Williams’ criticism, by necessary implication may be taken to have that effect or the general tendency. It is an aspect of good government of the Federation that there should be no corrupt practices and abuse of power; and that is a central element of the power conferred on the National Assembly under section 4(2) and (3) of the Constitution to make laws for the peace, order and good government of the Federation with respect to any matter, included in the Exclusive Legislative List. In addition, under section 4(4)(b), the National Assembly is given power to make laws-with respect to “any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.” The issue of corruption and abuse of power has become international. It is a declared State Policy in Nigeria to combat it and so it has assume a national issue of high priority which is considered best suited for the National Assembly to be addressed through a federal agency like the ICPC.

I have considered the argument of Mr. Agbakoba in regard to item 60(a) of Exclusive Legislative List that (a) an independent body, commission or authority will have to ensure that the relevant government organs or authorities conform to and observe the

directive principle to abolish corruption; (b) the power of the National Assembly is only to establish and empower authorities to perform the duties already defined in item 60(a); (c) the power of the authority is limited to the provision and enforcement of the provisions of sections 13 and 15(5) under Chapter II; (d) the power of the authority cannot be extended by the National Assembly to the enforcement of provisions not contained in Chapter II; (e) the cardinal rule of construction is that under a Constitution conferring specific powers, a particular power must be granted or else it cannot be exercised. The learned Senior Advocate goes further to say that the Act has properly established the ICPC but has provisions or contains extraneous matters not contemplated by item 60(a) and for which power to make law has not been granted to the National Assembly. As I understand the submission, the ICPC has been properly created as an authority. But its power must be limited to the promotion and enforcement of section 15(5) by ensuring that the relevant government organs or authorities conform to and observe the directive principle to abolish corruption.

Persuasive as this submission may be, it has not included any suggestion as to how the ICPC will ensure enforcement of the directive to abolish corrupt practices if the National Assembly does not at the same time make provisions for sanctions in case of non-observance. I think Professor Nwabueze has made a very useful submission relevant to this point when he says in his amicus curiae brief, in reaction to the view expressed by the Privy Council in regard to the exercise of incidental power in *Balewa v. Doherty* (1963) 1 WLR 949 at p.961. The learned Senior Advocate said:

"The view of the Judicial Committee of the Privy Council that 'no offence can be created' in relation to the specific matters in the exclusive and concurrent legislative lists 'unless the creation is incidental or supplementary to' a matter on the lists seems unduly narrow. Many federal offences on these matters are created, not as penalties for violations of the provisions of a law on them, but separately and independently as a way of regulating such matters. The creation of these offences is explicable only on the view, as decided by the High Court of Australia, that a power to make law with respect to a given matter is wide enough to embrace the creation of offences in relation thereto as a separate and independent exercise (R. v. Kidman (1915))."

This wider view of the matter is certainly preferable to that of the Judicial Committee of the Privy Council, as otherwise it would mean that the creation of the offences in the Criminal Code (or Penal Code) categorized as federal offences is unconstitutional, except for offences against the Nigerian State or the federal government as well as offences against public safety and public order generally and perhaps a few others.” B

Chief Williams in his oral submission before this court, conceded the observation made by Professor Nwabueze on *Balewa v. Doherty*. The case of *R v. Kidman* (1915) 20 C.L.R. 425 is instructive. In the Australian Constitution, section 51 gives to the Federal Parliament the power to make laws for the Commonwealth (of Australia in respect of) thirty-nine items, including matters incidental to the execution of any power vested in the Parliament etc. The question was whether a law that was enacted to punish any person who conspires with any other person “to defraud the Commonwealth” was in pursuance of such “matters incidental to the execution of any power vested in the Parliament” etc. I shall quote the relevant observation of Higgins, J. of the High Court of Australia at pp.448451 inter alia as follows: E

Now, there is not in our Constitution, as there is in the British North America Act (sec.91), any power to make laws as to ‘the criminal law.’ But our Constitution confers on the Federal Parliament power to make laws for the peace, order and good government of the Commonwealth ‘with respect to’ a number of subjects specified; including (at the end of the list) ‘matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.’ The chief part of the argument has been addressed to this last placitum; but I am by no means prepared to admit that, apart from it, Parliament has no power to make disobedience to any of its laws an offence punishable criminally. A power to make laws with respect to’ a given subject - say, ‘taxation’ very wide in scope. It appears to me to be wider even than a power to levy and collect taxes, as in the United States Constitution. Under the latter phrase there is more room for the contention that the Act in question must be aimed more directly at the object, taxation; and it was therefore H

expedient to add the 'necessary and proper' clause - the power 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.' Under a power to make laws 'with respect to' taxation, on the other hand, one would infer that the law in question may be aimed at the things necessarily attendant on taxation, as well as at taxation itself... Even if we adopt a much less liberal construction of the powers conferred, (than was done by Marshall C.J. in *M Culloch v. Maryland* 17 U.S. (4 Wheat) 316 (1819) at 437), it seems clear that all power to make laws 'with respect to' taxation must enable Parliament to make false returns for purposes of taxation punishable by penalty or otherwise. So too an Act making a conspiracy to defraud the Commonwealth a criminal offence may fairly be treated as an Act made 'with respect to' each and all of the subjects of legislation mentioned in the first thirty-eight placita of sec.51; for a fraud on the Commonwealth affects its finances, and to cripple the finances tends to cripple, more or less, the exercise of all the legislative powers, and the execution of all the laws.

But placitum xxxix of sec.51 seems to me to put beyond doubt the power of the Parliament to make laws as to frauds on the Commonwealth and for punishment of those who have been guilty of such frauds or have conspired to commit them. It gives the Parliament power to, legislate with respect to 'matters incidental to the execution of any power vested by this Constitution in the Parliament or the Government of the Commonwealth...

To carry out its powers under (he Constitution, the Government must have money and property; and to legislate so as to make criminal and punishable any frauds which reduce that money or property, is to 'make laws with respect to matters incidental to the execution' of the powers 'vested by this Constitution in the Government' as well as of the powers vested in the Parliament. If the frauds, and conspiracies to defraud, which are incidental to the administration of the government, as well as to all big financial undertakings, have not been criminal and punishable before, Parliament can make them criminal and punishable - whether they were committed before, or are committed after, Parliament legislates on the subject.

The above observation is absolutely germane to the present case. I draw attention, in particular to the emphasized portions. We are faced with a desire to abolish. all corrupt practices and abuse of

power. Very gory details, perhaps with some measure of cynicism, of corrupt practices involving Nigerians and of the perception in which Nigeria is held in the international community on matters of corruption have been recorded. Our image in that regard, as said by Chief Afe Babalola, is on the level of a pariah status. In those circumstances, an Act has been enacted by the National Assembly to give effect to section 15(5) of the Constitution. The Act does not state under which of the constitutional provisions the National Assembly promulgated it. I suppose it does not have to so state so long as the Act can be defended as being within the powers of the National Assembly. Arguments have been canvassed by those in support of the Act that the National Assembly was empowered, by virtue of section 4(1), (2) and (3) to rely on items 60(a), 67 and 68 of the Exclusive Legislative List and para. 2(a) of Part III of the Second Schedule to the Constitution. In my opinion, upon a liberal view, that can be supported.

There is also a strong alternative reason why the powers of the National Assembly to enact the Act was validly exercised. Those against the Act have argued that no offence can be created by the National Assembly unless the creation is incidental or supplementary to some other matter; that is to say, some connection must be shown between a matter on which the National Assembly can legislate and an offence thus created and when shown, it must be examined to see whether the offence is sufficiently close to the matter to be regarded as incidental or supplementary to it. That was a major submission made on behalf of the plaintiff. It was in that regard *Balewa v. Doherty* (supra) was cited, and where the observation made therein, which is in line with the argument stated above, was relied on. As I earlier said Professor Nwabueze has pointed out that that is a narrow view preferring a broader view; Chief Williams agrees, as I also do. A broader view has been eloquently expressed by Higgins, J. in *R v. Kidman* (supra) as recited above.

We ought to recognize that the Act is about corrupt practices and abuse of power for which offences have been created. We must realize also that there is hardly any of the items in the Exclusive Legislative List (except, ironically, items 60(4), 67 and 68) relating to a relevant subject-matter, of which offences of corruption and abuse of power cannot justifiably be created or found to be incidental or supplementary whether or not the National Assembly has already legislated

on the subject-matter. It cannot be doubted that when corrupt practices and abuse of power are introduced into any of those items, it is bound to affect the proper execution of the programme of Government in respect of them. The National Assembly has duty to legislate to criminalize such activity. That was exactly what Higgins J. said upon

B a broad or liberal interpretation that (if I may repeat)-

C *“an Act making a conspiracy to defraud the Commonwealth a criminal offence may fairly be treated as an Act made ‘with respect to’ each and all of the subjects of legislation mentioned in the first thirty-eight placita of sec.51 (comparable to the items in the Exclusive Legislative List of the Nigerian Constitution); for a fraud on the Commonwealth affects its finances, and to cripple the finances tends to cripple, more or less, the exercise of all the legislative powers, and all the execution of all the law.”*

D The learned Justice went further to say:

E *“If the frauds, and conspiracies to defraud, which are incidental to the administration of the government, as well as to all big financial undertakings have not been criminal and punishable before, Parliament can make them criminal and punishable - whether they were committed before, or are committed after, Parliament legislates on the subject.”*

I need to stress a point further about item 60(a). It is quite tenable, in my view, to consider item 60(a) in regard to section 15(5) of the Constitution as having placed directly as a subject in the F Exclusive Legislative List, the abolition of all corrupt practices and abuse of office, in the terms that item is stated. Under that circumstance, the National Assembly may, in the exercise of the substantive powers given by section 4 of the Constitution in relation to item 60(a), make G all laws which are directed to the end of those powers and which are reasonably and necessarily incidental to their absolute and entire fulfillment. It will then be seen that the National Assembly is empowered (1) to establish and regulate an authority, and (2) to give power to the said authority to promote and enforce the observance of the abolition H of corrupt practices and abuse of power. The authority it has established and regulated, by law is the ICPC. That body cannot give itself power to promote and enforce the said observance. It needs the power to do so and this can be given only by the organ that created it, namely the National Assembly. That creation was by section

3 of the Act. The provisions of section 6(a) imposes on the ICPC the duty to investigate allegations of corrupt practices and abuse of power, while those, of section 6(b)-(f) enable it to promote the procedure for the abolition of corrupt practices and abuse of power. Sections 8 to 26 of the Act create offences which make it possible to put into practice the power of the ICPC, to enforce the observance of that abolition. B

Chief Williams has made two separate submissions on Item 60(a) and section 15(5). I believe I have dealt with them, or at least partially. Let me address them here in case I have not sufficiently C done so. He submits on Item 60(a):

“By the provisions of the said item 60(a), it is the authority (or authorities) to be established by a law enacted by the National Assembly and not the National Assembly itself that is (or are) vested with the duty to promote and enforce the observance of the Directive D Principles. The constitutional validity of the Corrupt Practices etc Act therefore depends upon the answer to the question whether it is a law with respect to ‘the establishment and regulation’ of the authority or authorities envisaged under the aforesaid item 60(a). Furthermore, E the constitutional validity of any provision in that Act which creates an offence depends likewise on the answer to the question whether that offence is ‘incidental’ (i.e. is connected with or arises from or pertains) to ‘the establishment and regulation’ of the authority or authorities envisaged under the said item. This means that item 60(a) F of the Exclusive Legislative List does not confer on the National Assembly the power to create offences generally on corrupt practices and related offences by any or every person. If this had been the intention of the Constitution it would have been easy for it to add the following separate item to the Exclusive Legislative List. G

The avoidance of Corrupt Practices and Related Offences.

Such an item will make it unnecessary to rely on the incidental power. However, since it will confer exclusive legislative powers on the National Assembly an item of this nature seriously detracts from the quantum of residual powers exercisable by the States. It means H that States have no legislative or executive power whatsoever to deal with corrupt practices and related offences within the States.”

The Learned Senior Advocate further submits that to make the position clear, if it was the intention to vest the National Assembly

with legislative powers over corrupt practices and related offences as part of the exercise of its incidental powers, a new item would have been inserted on the Exclusive Legislative List thus -

B *“The regulation of the conduct of persons employed in the Public Service of the Federation or of any State or by any private employer.”*

C He then submits that if such an item had been on the Exclusive Legislative List, no one ‘Can doubt that as part of its incidental powers it would have been lawful for the National Assembly to make provisions for corrupt practices and related offences generally. My view is that it depends on how liberally one is prepared to interpret the relevant provisions as they stand in the Constitution; and that it is a legitimate and fair interpretation that item 60(a) has incorporated into the Exclusive Legislative List the intendment of section 15(5); and it does not appear to matter in all the circumstances that this was not done by inserting a separate item. The framers of the Constitution obviously used terse words to incorporate, as it were, the declarations in Chapter II into the Exclusive Legislative List as subject sub-items but all brought under item 60(a). It is for the National Assembly to select, from time to time, those sub-items’, that are suitable subjects for legislation as it has done in regard to section 15(5). On whether the States have been deprived of their residual powers to legislate, or the executive power whatsoever to deal with corrupt practices and related offences within the States, I can only draw attention to section 61(2) of the Act which provides:

G *“Without prejudice to any other laws prohibiting bribery, corruption, fraud or any other related offences by Public officers or other persons, a public officer or any other person may be prosecuted by the appropriate authority for an offence of bribery, corruption, fraud or any other related offences committed by such public officer or other person contrary to any laws in force before or after the coming into effect of this Act and nothing in this Act shall be construed to derogate from or undermine the right or authority of any persons or authority to prosecute offenders under any other laws.”*

H The second submission is on section 15(5) itself. I shall also recite it from the brief of argument. It reads:

“It is submitted that it cannot have been the intention of the Constitution to confer exclusive power on the National Assembly with

respect to corrupt practices and related offences. If this were intended then Section 15(5) of the Constitution will not read -

*‘The state shall abolish all corrupt practices and abuse of power’
It will read-*

*‘The Federal Government shall abolish all corrupt practices and
abuse of power’.* B

*It is obvious that the expression ‘The State’ in Section 15 (5) is
not limited to the Federal Government.”*

As I said earlier, section 14(1) equates the State with the Federal Republic of Nigeria not with the Federal Government. Therefore by section 15(5), it is the Federal Republic of Nigeria that is to abolish all corrupt practices and the abuse of power. Now, the organ that legislates on behalf of the Federal Republic of Nigeria and not the Federal Government, is the National Assembly by virtue of section 4. It is therefore on behalf of the Federal Republic of Nigeria that the Act has been enacted and was assented to by Mr. President not on behalf of the Federal Government, he being the President of the Federal Republic of Nigeria not of the Federal Government. He cannot help but be concerned with the overall well-being of the Federation. He need not concern himself with the affairs of individual States operating within their own rights in the Federation. Each of those States has its organs of government with the Governor as the chief executive whose responsibility it is to bother about his State. That is the nature of federalism. Speaking of the federal system of government in *Gibbons v. Ogden* 9 Wheat I (1824) at p.70; 22 U.S. 1 (1824) at 195, Mr. Chief Justice Marshall observed as follows: C D E F

“The genius and character of the whole government seem to be, that its action is to be applied to all external concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of its general powers of the government.” G

This type of Act which is made to have effect throughout the Federation is not without precedent in some other jurisdictions. The scheme of the Act is about corrupt practices and abuse of power which spill across the States of the Federation of Nigeria and even through the Nigerian borders. ‘In the United States of America, such H

pervasive schemes have been introduced in matters of (I) Social Security and (2) Civil Liberties, just to Mention two. The Social Security Act 1935 was passed by Congress. It was scheme of old age benefits providing for the payment of the said benefits and authorizing future appropriations to an account to be set up by the Treasury for such purpose, sufficient to provide for the contemplated benefits. There was a provision in the Act for taxation of employees' income and an excise tax on employers. The excise tax on the employer was to be paid "with respect to having individuals, in his employ" 8 or more in number, and like the tax by employees this was to be collected by the employer by deducting the amount from wages as and when paid.

Under Article I of the U.S. Constitution, section 8(1), it is provided that: "The Congress shall have power to lay and collect Taxes, Duties, Imports and Excises, to pay the debts and provide for the common defence and general welfare of the United States." A suit was brought by a shareholder of a corporation in Boston to restrain the corporation from making the deductions for the purposes of the Act. It was held by the Circuit Court of Appeals that the provisions in the Act backing the deductions were void as an invasion of powers reserved by the U.S. Constitution to the States. The U.S. Supreme Court held otherwise in the case, *Helvering v. Davis* 301 US 619 (1937), that Congress may spend money in aid of the "general welfare" and that the concept of the general welfare was not static. The general welfare of old people was considered sufficiently proximate to the general welfare of the United States" as provided in the Constitution. Mr. Justice Cardozo who delivered the opinion of the court said inter alia (at 643-644):

"A recent study of the Social Security Board informs us that one-fifth of the aged in the United States were receiving old-age assistance, emergency relief, institutional care, employment under the works program, or some other form of aid from public or private funds; two-fifths to one-half were dependent on friends and relatives; one-eighth had some income from earnings; and possibly one-sixth had some savings or property. Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support..."

The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively.

Congress at least had the basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged. Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbours or competitors... B

A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another... Only a power that is national can serve the interests of all."

The reason *Helvering v. Davis* is relevant and why I reproduced Mr. Justice Cardozo's observation is because it illustrates that in our own situation taking the issue of corruption and abuse of power nationally will best serve the interests of all and the general welfare of Nigeria, both nationally and internationally. Corrupt practices have become an overwhelming malaise for Nigeria. It cannot be left totally to individual States. The other matter for consideration on civil liberties. The Civil Rights Act 1964 prohibits discrimination based upon race, religion, national origin, and sex. In *Heart of Atlanta Motel v. United States* 379 US 241 (1964), appellant owned and operated in the State of Georgia, the Heart of Atlanta Motel which had 216 rooms available to transient guests, with about 75% of its registered guests from out of the State. Prior to the passage of the Act the motel had followed a practice of refusing to rent rooms to Negroes (as they were then known), and it alleged that it intended to continue to do so. As a result, the appellant brought the suit in question to challenge the Act. It contended that Congress in passing the Act exceeded its power to regulate commerce, and that the Act violated the Fifth Amendment (to the Constitution) because the appellant was deprived of right to choose its customers and operate its business as wished. G

In delivering the opinion of the court, Mr. Justice Clark said *inter alia* (at 254-258):

"The power of Congress to deal with these obstructions depends on the meaning of the Commerce Clause. Its meaning was first enunciated 140 years ago by the great Chief Justice John Marshall in Gibbons v. Ogden 9 Wheat. 1, 6 L.Ed.23 (1824)

In short, the determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity

sought to be regulated is ‘commerce which concerns more States than one’ and has a real and substantial relation to the national interest...

The same interest in protecting interstate commerce which led Congress to deal with segregation in interstate carriers and the white-slave traffic has prompted it to extend the exercise of its power to gambling to criminal enterprises ... to deceptive practices in the sale of products ... to fraudulent security transactions ... to misbranding of drugs and to racial discrimination by owners and managers of terminal restaurants. That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power, Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong.

It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, ‘(if) it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze,’ *Mfg. Ass’n*, 336 U.S. 460, 464 ... As Chief Justice Stone put it in *United States v. Darby*, *supra*: ‘The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities interstate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legislative end, the exercise of the granted power of Congress to regulate interstate commerce...

Thus the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may - as it has - prohibit racial discrimination by motels serving travelers, however ‘local’ their operations may appear.”

Again, the above shows how matters which have “real and

substantial relation to the national interest” are dealt with at national level by legislation, even when it may amount to interference with activities within a State or, States, or inter se, so long as it is to the attainment of a legitimate end - such as the enactment in our own situation against corrupt practices and abuse of power. As *Helvering v. Davis* (supra) and *Heart of Atlanta Motel v. United States* (supra) aptly demonstrate, there may be occasion, and probably always would, when what appears a local problem assumes such a proportion as, to become a matter of concern to a federal country as a whole. In such a case it may turn out to be inevitable to regard the matter as affecting the peace, order and good government of the country which ought to be so addressed by means of a uniform law. The separate components of the federation may feel or be deemed able to pass laws to deal with the problem within their jurisdiction. In effect however, that may be very unsatisfactory. That was what happened in regard to intoxicating liquors in Canada which led to the enactment of the Canada Temperance Act, 1878 by the Dominion Parliament. This was challenged on territorial grounds in *Russell v. The Queen* (1882) A. C. 829. There is no need to state the facts of the case where at pages 840-841, the Privy Council observed as follows:

“Their Lordships understand the contention to be that at least in the absence of a general law of the Parliament of Canada the provinces might have passed a local law of a like kind, each for its own province, and that, as the prohibitory and penal parts of the Act in question were to come into force in those counties and cities only in which it was adopted in the manner prescribed, or, as it was said, ‘by local option,’ the legislation was in effect, and on its face, upon a matter of a merely local nature. The judgment of Allen, C.J., delivered in the Supreme Court of the Province of New Brunswick in the case of Barker v. City of Fredericton 3 Pugs. & Burb. Sup. Ct. New Br. Rep. 139, which was adverse to the validity of the Act in question, appears to have been founded upon this view of its enactments.

The learned Chief Justice says:-

‘Had this Act prohibited the sale of liquor, instead of merely restricting and regulating it, I should have had no doubt about the power of the Parliament to pass such an Act; but I think an Act, which in effect authorizes the inhabitants of each town or parish to regulate the sale of liquor, and to direct for whom, for what purposes, and

under what conditions spirituous liquors may be sold therein, deals with matters of a merely local nature, which, by the terms of the 16 sub-section of sect. 92 of the British North America Act, are within the exclusive control of the local Legislature.'

Their Lordships cannot concur in this view. The declared object of Parliament in passing the Act is that there should be uniform legislation in all the provinces respecting the traffic in intoxicating liquors, with a view to promote temperance in the Dominion. Parliament does not treat the promotion of temperance as desirable in one province more than in another, but as desirable everywhere throughout the Dominion. The Act as soon as it was passed became a law for the whole Dominion, and the enactments of the first part, relating to machinery for bringing the second part into force, took effect and might be put in motion at once and everywhere within it. It is true that the prohibitory and penal parts of the Act are only to come into force in any county or city upon the adoption of a petition to that effect by a majority of electors, but this Conditional application of these parts of the Act does not convert the Act itself into legislation in relation to a merely local matter. The objects and scope of the legislation are still general, viz., to promote temperance by means of a uniform law throughout the Dominion.

The manner of bringing the prohibitions and penalties of the Act into force, which Parliament has thought fit to adopt, does not alter its general and uniform character; Parliament deals with the subject as one of general concern to the Dominion, upon which uniformity of legislation is desirable, and the Parliament alone can so deal with it. There is no ground or pretence for saying that the evil or vice struck at by the Act in question is local or exists only in one province, and that Parliament, under colour of general legislation, is dealing with a provincial matter only."

I must explain that I have attempted to justify the inclusion of the spirit of the Fundamental Objectives and Directive Principles of State Policy within the Exclusive Legislative List 'under item 60(a) to show by and large that they can in letter be turned into enactments within the competence of the National Assembly as far as practicable when the need should arise. Where it is a matter of emergency which calls for legislation, that by itself can hardly raise much objection; it is the nature of the enactment itself, and not the existence of emergency

although that could play a part, that must determine whether it is valid or not. But it is important first, to ascertain that a particular enactment falls within the powers of the National Assembly. That is a matter of the distribution of power. Second, if the enactment seems to impinge or trench on the affairs of the component States, then what the enactment is meant to achieve nationally must be given due consideration. That is to say, if there is a matter of real national concern, the need to find a meaningful solution to it must be given dominant focus over the interests of the States. In *Toronto Electric Commissioners v. Snider* (1925) AC 396 at 412, Lord D Haldane said:

"...if the subject matter falls within any of the numerated heads in s.92, such legislation belongs exclusively to Provincial competency. No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive provincial competency. Such cases may be dealt with under the words at the commencement of s.91, conferring general powers in relation to peace, order and good government simply because such cases are not otherwise provided for."

Referring to *Russell v. The Queen* as to the national effect of alcohol, the learned Law Lord said further:

"...the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analogous."

Adding to the above, Viscount Simon observed in *Attorney-General for Ontario v. Canada Temperance Federation* (1946) AC 193 at 205:

"In their Lordships' opinion, the true test must be found in the real subject matter of legislation: if it is such that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole then it will fall within the competence of the Dominion Parliament as a matter affecting the peace, order and good government of Canada, though it may in another aspect touch on matters specially reserved to the provincial

legislatures. War and pestilence, no doubt, are instances; so, too, may be the drink or drug traffic, or the carrying of arms."

In our situation, there is the power now available to the National Assembly under item 60 (a) as has been discussed in this judgment. There is also to be taken into consideration, the serious and embarrassing menace of corrupt practices which ought to be confronted through national effort. I have already made reference to section 11 (1) and (3) of the Constitution which concerns disaster and war. The cases discussed above show also that the National Assembly can well legislate if in its wisdom it considers it necessary to activate section 15(2), for instance, so that "*national integration shall be actively encouraged, Whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.*"

In fact a similar enactment can possibly be made in regard to section 16(2)(d) [and some other sections I earlier referred to] to ensure "*that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.*" See the Constitutional Court of South Africa case, Cape Metropolitan Council and Anor. v. Irene Grootboom and Ors. (2001) 1 CRR 261, published by an organization known as "Access to Justice." In my view, therefore, there is nothing strange or that can be said to be wholly unattainable by expressly placing the entire Chapter II of the Constitution under the Exclusive Legislative List.

In the Canadian Constitution, sections 91 and 92 deal with three matters relevant to our present discussion. First, the general power to make laws for the peace, order and good government of Canada conferred on the Parliament of Canada by the first part of section 91. Second, the classes of subjects enumerated in the latter part of section 91 as being within the exclusive legislative authority of the Parliament of the Dominion. Third, the classes of subjects enumerated in section 92 as being within the exclusive legislative authority of the provincial legislatures. In *Attorney-General for Canada v. Attorney-General for British Columbia* (1930) AC 111 at 118, Lord Tomlin, delivering the judgment of the Privy Council, stated the following propositions:

“(1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s.91, is of paramount authority, even though it trenches upon matters assigned to the provincial legislatures by s.92: see Tennant v. Union Bank of Canada (1894) A.C. 31.

(2) The general power of legislation conferred upon the Parliament of the Dominion by s.91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s.92 as within the scope of provincial legislation, unless these’ matters have attained such dimensions as to affect the body politic of the Dominion: see Attorney-General for Ontario v. Attorney-General for the Dominion (1896) A.C. 348.

(3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in s.91: see Attorney-General of Ontario v. Attorney-General for the Dominion (1894) A.C. 189; and Attorney-General for Ontario v. Attorney-General for the Dominion (supra).”

Notice ought to be taken of propositions (2) and (3) particularly as they reflect on matters for legislation which have attained such dimensions as to affect the body politic of the nation, and also matters which are necessarily incidental to effective legislation by the nation’s Parliament. Obviously, there are certain matters which are of such utmost national concerns as they affect the polity that legislation intended to meet the challenges is ensured to coast through passage in the legislature, and is implemented even if it trenches on some subjects or powers allocated to other authorities. The issue of corrupt practices and abuse of power in Nigeria is of such dimension.

It seems to me that the placing of Chapter II declarations under item 60(a) as matters that the National Assembly could legislate on exclusively is not to be regarded as impracticable altogether. The National Assembly will of course have to pick and choose which is suitable and practicable for legislation as and when circumstances dictate. As to the appropriateness and timeliness of the present Act to

deal with corrupt practices and abuse of power, I do not have any doubt at all. There are before this court some write-ups and submissions suggesting and labeling Nigeria to be in the nadir of the miasma of corrupt practices. Nothing contrary has been placed before us. It is not unlikely that similar materials were before the National Assembly which could not simply be ignored. In the Canadian case of Reference re Anti-Inflation Act (1976) 68 DLR (Ed) 452, a reference was made to the Supreme Court of Canada concerning, inter alia, the validity of the Anti-Inflation Act, 1974-75, establishing wage, profit and price controls administered by a board throughout Canada. A question arose as to what materials may legitimately be taken into account as extrinsic evidence and the assistance to be derived from judicial notice of the existence of certain exceptional circumstances. Laskin, C.J of Canada, at pages 495 -496 made the following observations inter alia:

“When an issue is raised that exceptional circumstances underlie resort to a legislative power which may properly be invoked in such circumstances, the court may be asked to consider extrinsic material bearing on the circumstances alleged, both in support of and in denial of the lawful exercise of legislative authority.

In considering such material and assessing its weight, the court does not look at its terms of whether it provides proof of the exceptional circumstances as a matter of fact. The matter concerns social and economic policy and hence governmental and legislative judgment. It may be that the existence of exceptional circumstances is so notorious as to enable the court, of its own motion, to take judicial notice of them without reliance on extrinsic material to inform it. Where this is not so evident, the extrinsic material need go only so far as to persuade the court that there is a rational basis for the legislation which it was attributing to the head of power invoked in support of its validity.”

It can reasonably be said that the abundant extrinsic materials and information kindly brought to our knowledge in this case by Babalola SAN in his amicus curiae brief need not be examined beyond accepting that they are such that if true would be enough to galvanize the National Assembly into providing a legal weapon against the scourge of our unacceptable international image. In pressing his argument that it is the States that have jurisdiction to legislate on

criminal law, the learned Attorney-General of Abia State, Mr. Kalu cited *Emelogu v. The State* (1988) 2 NWLR (Pt. 78) 524 where this court decided that armed robbery is a State crime; and contended therefore that any matter not mentioned in either exclusive or concurrent legislative list was deemed to be residual. The learned Attorney-General of Rivers State, Mrs. Cookey-Gam relying on *Sele v. The State* (1993) 1 NWLR (Pt.269) 26 I also contended that matters relating to the criminal code and the control of offences covered thereby were within the legislative competence of Houses of Assembly. The two cases cited are on the offence of armed robbery. During the military regime, armed robbery was dealt with as a federal offence by virtue of the fact that the military government passed the Robbery and Firearms (Special Provisions) Decree No. 47 of 1970 in an attempt to stem the menace of armed robbery all over the country. Other such Decrees on Robbery and Firearms followed. At the exit of the military the Decree became known as an Act and deemed to be an Act of the National Assembly as if armed robbery remained a federal offence although the Attorney-General of a State was authorized to prosecute. But the 1979 Constitution did not place criminal law under either the Exclusive or Concurrent Legislative List.

It was therefore a residual matter within the competence of the Houses of Assembly to legislate on. The full court considered the issues raised in *Emelogu v. The State* (supra), the first of which was whether offences under the Robbery and Firearms (Special Provisions) Act No.47 of 1970 are Federal offences or not. The second issue was whether if they are Federal offences, the State Attorney General had the locus standi to prosecute without the express delegation of powers by the Federal Attorney-General.

It would appear to me that the majority decision on those two issues represented by *Eso JSC* is that (1) as at 1st October, 1979, Decree No. 47 of 1970 as amended became a Law deemed made by a State House of Assembly and "Robbery" per se became a residual matter: see p.538; (2) the said Decree as amended, though a Federal Legislation, is to be regarded as a legislation made to operate in each State of the Federation which by virtue of section 191 of the 1979 Constitution, the power to institute and undertake proceedings of armed robbery is in the State Attorney-General. In *Sele v. The State* (supra), the issues considered in *Emelogu v. The State* did not directly

arise. But Karibi-Whyte JSC observed at page 291 that armed robbery fell properly within the legislative competence of the State Houses of Assembly.

Having said the above I cannot see, with respect, how whatever was decided in those two cases has any relevance to the issue in the present case, namely the significance of the provisions of the 1999 Constitution which I earlier set out in this judgment in regard to the legislative competence of the National Assembly to create offences bordering on corrupt practices and abuse of power. The issue is not whether the National Assembly can now take charge of the criminal code or core criminal law jurisdiction generally under which armed robbery falls. I do not think we should lose focus on that although if armed robbery were to be regarded by the National Assembly as a national security emergency, nothing can prevent it, in my view, from so dealing with it in reliance on section 14(2)(b) of the Constitution via item 60(a). What the National Assembly has done was to legislate under the powers conferred on it, having regard to all relevant provisions of the Constitution I have discussed, to address the issue of corrupt practices and abuse of power. In my respectful view, nothing said or decided in *Emelogu v. The State* (supra) and *Sele v. The State* (supra) is a challenge to the powers which the National Assembly exercised in enacting the Act in question. We were addressed by Professor Nwabueze on mutual non-interference which prohibits one government in a federal set-up from exercising its power in a manner that practically and effectively interferes with the running of the affairs of another government. I have earlier made some comments on the doctrine. The learned Senior Advocate, gave two examples by citing *New York v. United States* 326 U.S. 572 (1946) and *R v. Commonwealth Court of Conciliation and Arbitration, Exparte Victoria* (1942) 66 C.L.R. 488. In the former case, the issue was the federal taxing power over State-owned businesses or State's activities from which it earns income. It was held that the State of New York, in selling bottled mineral waters taken from springs owned by the State, was not immune from non-discriminatory federal excise tax on soft drinks. Mr. Chief Justice Stone and three other Justices (Mr. Justice Reed, Mr. Justice Murphy and Mr. Justice Burton in their joint concurring judgment with that of Mr. Justice Frankfurter who announced the judgment of the court, observed at 587):

“A State may, like a private individual own real property and receive income. But in view of our former decisions we could hardly say that a general non-discriminatory real estate tax (apportioned), or an income tax laid upon citizens and States alike could be constitutionally applied to the State’s capitol, its State house, its public school houses, public parks, or its revenues from taxes or school lands, even though all real Property and all income of the citizen is taxed.” B

This was what Professor Nwabueze recited in his amicus curiae brief, quite rightly I think, to demonstrate what could amount to unconstitutional interference by, exercise of federal power with a state government qua government, for example, in taxation. Incidentally, if I may so point out, the observation contained in that passage from the judgment in that case was just an illustration. That sort of interference did not happen. The judgment indeed held that the excise tax in question which was actually imposed was proper and not considered to be an interference with the affairs of the State. The other case referred to by Professor Nwabueze was the Ex parte Victoria case (supra). In that case, there was a form of discontentment by some public servants of Victoria State of Australia about the pay they were given for working on public holidays. It was during the second world war. The Commonwealth Parliament had passed the National Security Act 1939-40. Under the Act, Statutory Rules 1942 (Nos. 407 and 422) were made to extend the Act to Victoria State in order to address the so-called industrial unrest of public servants in Victoria State, whereby an Arbitration was set up. The Victoria State applied to prohibit the Arbitration on the ground that it amounted to an interference by the Commonwealth in the affairs of the State of Victoria public service; and that the said Statutory Rules, 1942 could not be validly applied to Victoria State public servants. The High Court of Australia accordingly upheld the Victoria State’s contention. At page 505 of the judgment, Lattern C.J. observed: C D E F G

“It has not been argued that the Commonwealth Parliament has power to make laws with respect to State servants as such. The Commonwealth Parliament possesses the powers conferred upon it by the Constitution and no other powers. The Commonwealth Parliament has full power to legislate with respect to the public service of the Commonwealth and has no power to legislate with respect to the public service of a State - for the simple reason that no provision H

of the Constitution contained in sec. 51 or elsewhere confers such a power upon it. The Constitutions of the States are, subject to the Commonwealth Constitution, preserved by sec. 106. The State Parliaments therefore, by virtue of the Constitutions of their own States expressly preserved by the Commonwealth Constitution, have full
 B *power to legislate for their respective public services. They have no power to legislate with respect to the Commonwealth public service.*

But, though the Commonwealth cannot take control of State public services, it may affect such services by laws passed under powers
 C *which do not directly relate to services but which are such that the exercise of the Commonwealth powers affects State services. Thus I can see no reason to doubt the Commonwealth power to make laws which apply to State servants engaged in war for the Commonwealth - but such laws are justified because it is clear that they relate to defence*
 D *and to State servants only so far as they are connected with defence."*

It is clear that it is the provisions of the Constitutions of both the Commonwealth and the States that were at play in the case. It can be seen from the passage in regard to the emphasized portions of the observation that it is a recognized constitutional event that the
 E Commonwealth may pass laws which may indirectly affect State services on appropriate occasions. I have no doubt that if such a matter were to arise in this country under similar circumstances, the decision would be the same. For example, see: Attorney-General of
 F Ogun State v. Attorney-General of the Federation (1982) 3 NCLR 166. However, since labour matters including industrial disputes, industrial arbitration etc are in the Exclusive Legislative List (item 34) of our Constitution, the occasion to complain of similar interference will hardly arise. But it is well to recall here the case of Amalgamated
 G Society of Engineers v. Adelaide Steamship Co. Ltd. (1920) 28 C.L.R. 129 decided by the High Court of Australia. The validity and rationale of that case were recognized in the: Ex parte Victoria case. There, the Commonwealth legislated with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending
 H beyond the limits of anyone State. No one State had any such power; it was beyond the limit of the constitutional powers of the States. The Commonwealth thus has exclusive power in respect of that particular subject-matter where the industrial dispute in one State has spilled over to or affects another State. Accordingly, it was held that, necessarily

and by reason of the subject-matter, the Commonwealth had power which applied to all parties, States as well as persons, engaged in industrial disputes extending beyond the limits of anyone State.

It would seem right to conclude that where a subject-matter in its on manifestation spreads across the States and even over the borders of Nigeria and is such that is best suited for legislation by the National Assembly upon a liberal construction of all relevant provisions of the Constitution, a legislation thus made cannot be said to be an interference with the affairs of the States just because it is made applicable all over the Federation. The purpose and mission of the Act are clear. The Act is meant to make justiciable by legislation a declared State Policy to abolish corrupt practices of and abuse power; it is to hearken to national and international concerns over corruption; it is to give a national leadership and impetus to the crusade while not standing in the way of the States; it seeks, among other things, to deal with and punish specific offences on corrupt practices even including those committed outside Nigeria by citizens and persons granted permanent residence in Nigeria: see section 66. It is not in any way an attempt to embark on a general criminal law legislative jurisdiction. The eradication of corrupt practices and abuse of power will enure to the good government of Nigeria. I therefore answer questions (i) and (ii) set down by the plaintiff in its brief of argument in the affirmative.

Issue (iii) is whether the Attorney-General of the Federation or any authorised by the Commission can lawfully initiate or authorize the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the Act. The plaintiff has given a very short answer in its brief of argument. It says that if the Act was validly enacted, the answer is in the affirmative. Section 174 of the 1999 Constitution confers powers on the Attorney-General of the Federation (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court martial, in respect of any offence created by or under any Act of the National Assembly; (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and (c) to discontinue at any stage before judgment is delivered any such criminal proceedings, instituted or undertaken by him or any other authority or person. It is further provided that the powers so conferred can be

exercised by the Attorney-General himself or through officers of his department. In the exercise of his said powers, the Attorney-General shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.

- The provisions of section 174 are clear and unambiguous. They
 B require no interpretation necessitating unusual canon of construction. They must be read in their plain and ordinary words which best give their meaning: see *Ifezue v. Mbadugha* (1984) 1 SCNLR 427; *Gibbons v. Ogden* 22 U.S. (Wheat) 1 (1824); *Attorney-General for Onatario v. Attorney-General for Canada* (1912) A.C. 571; *James v.*
 C *Commonwealth of Australia* (1936) AC 578 at p.614. Section 286 (1)(b) of the Constitution makes it clear that any court of a State which is by the law of that State given jurisdiction to try persons accused of offences against the Laws of the State, shall have like
 D jurisdiction with respect to Federal offences. It must be recognized that our Constitution is an organic instrument which confer powers and also creates rights and limitations. It is the supreme law in which certain first principles of fundamental nature are established. Once the powers, rights and limitations under the Constitution are identified
 E as having been created, their existence cannot be disputed in a court of law. But their extent and implications may be sought to be interpreted and explained by the court in cases properly brought before it. All agencies of government are organs of initiative whose
 F powers are derived either directly from the Constitution or from laws enacted thereunder. They therefore stand in relationship to the Constitution as it permits of their existence and functions. The Attorney-General of the Federation derives his powers under section 174 of the Constitution as an agency of the Federal Government.
 G The law is well established that the court cannot control the manner he exercises his powers so conferred: see *The State v. Ilori* (1983) 1 SCNLR 94. Nor can he be prevented from exercising his functions on the grounds that his jurisdiction does not extend to any particular State in Nigeria. Section 174 of the Constitution does not impose
 H any such limitation. Section 6 of the Act says inter alia that it shall be the duty of the ICPC to prosecute offenders. However, section 26(2) of the Act provides inter alia that every prosecution for an offence under the Act shall be deemed to be initiated by the Attorney-General of the Federation. It follows that having answered issues (i) and (ii) in

the affirmative, I must answer issue (iii) in the affirmative as well.

Under issue (iv), the plaintiff has specifically identified as unconstitutional and therefore void, sections 6(a), 26(3) 28, 29, 35 and 37 of the Act. I think the proper approach to the issue of unconstitutionality so raised is to confine it to the plaintiff's claim and resolve it only in respect of the sections of the Act identified by it. This is because a court cannot go beyond a plaintiff's claim. The argument canvassed in respect of the complaint against section 6(a) is that if the Act is void, the provision of the said section 6(a) which gives power to the ICPC to receive and investigate any report of conspiracy to commit, attempt to commit or the commission of the offence of corruption, and to prosecute the offender, is inoperative. Since the Act has been held to be valid, this complaint fails. B
C

Section 26(3) says that "A prosecution for an offence shall be concluded and judgment delivered within ninety (90) working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where good grounds exists (sic) for a delay." The argument here is that this is a usurpation of judicial power (or an attempt to control how the judiciary shall go about its functions) and is accordingly void. This argument has merit because this is a direct interference with the judiciary by the National Assembly as to when the court should conclude particularly matters. It is unconstitutional: see *Unongo v. Aku* (1983) 2 SCNLR 332 where this court held in regard to similar provision (1) that they constituted an unjustifiable interference with the judicial functions of the courts and was breach of the entrenched doctrine of separation of powers in the Constitution; (2) that the period necessary to complete hearing in a case having regard to the nature of that case, the preparations and research necessary before judgment is given is a matter within judicial control with which the legislature cannot and ought not to interfere; (3) that the impugned provisions were contrary to the stipulated discretion given to the courts in section 258 of the 1979 Constitution (now section 294 of the 1999 Constitution). D
E
F
G

Sections 28 and 29 are criticized on the basis that they confer powers on the ICPC exercisable by it over any person whether or not such person is performing governmental functions. Section 28 confers powers to examine persons the ICPC believes will be of assistance in its investigation of an offence under the Act; while section H

29 enables the ICPC to issue summons to bring affected persons before it to facilitate the investigation of a complaint. I can see nothing unconstitutional about this. The Act does not discriminate between public officers and private persons. If it did the purpose it was meant to fight corruption would be defeated.

B Section 35 provides that: “Where the Commission is satisfied that a summons directed to a person complained against or any person has been served and that person does not appear at the time and place appointed in the summons, the Commission shall have power to arrest and detain any such person until the person complies with the summons.” The complaint here is that the provision is an abuse of legislative power coupled with the usurpation of judicial power. It is plain that the provision as a whole violates section 35 of the Constitution. Under the blue pencil rule, the said provision is struck down.

D Section 37 empowers the ICPC to take custody of any movable or immovable property if it has reasonable ground to suspect that it is the subject matter or evidence of an offence committed under the Act. There is nothing unconstitutional in this. As always, if there is an improper seizure or taking of custody of any such property, that may be a matter for contention, as appropriate, to be decided by judicial process.

E I have come to the conclusion too that the plaintiff only partially succeeds as indicated in respect of sections 26(3) and 35 of the Act. F Accordingly, regard to relief 1, it is determined that the Act is valid and in force in every State of the Federal Republic of Nigeria, including Ondo State. Reliefs 2 and 4: it is determined that the Attorney-General of the Federation or any person authorized by him can lawfully initiate G legal proceedings in any court of law in Ondo State in respect of any criminal offences created by the provisions of the Act. Relief 3: it is determined that the Act is in force in Ondo State. Reliefs 5 and 6 are dismissed. There shall be no order as to costs.

H

EJIWUNMI JSC

I have had the privilege of reading before now, the judgment of my Lord, Uwais CJN. In that judgment, the facts and the issue raised thereon have been carefully considered and I agree with the

reasoning that led to the conclusion reached and with which I also agree. I wish also to add some of my own reasons for supporting the said judgment.

As the plaintiff to this action, sequel to the enactment of the Corrupt Practices and Other Related Offences Act, 2000 by the National Assembly felt that the National Assembly had no legal right under the Constitution to enact the Act, commenced this proceeding in this court. The action was initiated under the provisions of Order 3 rule 2 (2) of the Supreme Court Act, 1985, which permits civil proceedings in the original jurisdiction of this court by the filing of an originating summons. Order 3 rule 6 (1) of the Supreme Court Rules, 1985 (as amended) also permits any party claiming any legal or equitable right, the determination of which depends on the construction of the Constitution or any other enactment, to begin proceedings by causing to issue. Accordingly, the plaintiff acting on behalf of the government of Ondo State brought this action against the Attorney-General of the Federation and the Attorneys-General of 35 States comprising the Federating States of Federal Republic of Nigeria.

The plaintiff by this claim is asking for the determination of the following questions:-

“1. A determination of the question whether or not the Corrupt Practices and Other Related Offences Act, 2000, is valid and as a law enacted by the National Assembly and in force in every State of the Federal Republic of Nigeria (including Ondo State).

2. A determination of the question whether or not the Attorney-General of the Federation (1st defendant) or any person authorised by him can lawfully initiate legal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.

3. A declaration that the Corrupt Practices and Other Related Offences Act, 2000, is not in force as law in Ondo State.

4. A declaration that it is not lawful for the Attorney-General of the Federation (1st defendant) or any person authorised by him to initiate legal proceedings in any court of law in Ondo State in respect of the criminal offences purported to be created by the provisions of the Corrupt Practices and Other Related Offences Act, 2000.

5. An order of perpetual injunction restraining the Federal Government, its functionaries or agents whomsoever (including the Independent: Corrupt Practices and Other Related Offences Commission) or howsoever from executing or applying or enforcing the provisions of the Corrupt Practices and Other Related Offences Act, 2000, in Ondo State (including any public officer or functionary or officer or servant of the Government of Ondo State) in exercise of powers purported to be conferred by or under, the provisions of the said Act or otherwise howsoever.

6. An order of perpetual injunction restraining the Attorney-General of the Federation including his officers, servants and agents whomsoever or howsoever from exercising any of the powers vested in him by the Constitution of the Federal Republic of Nigeria, 1999 or by any other law in respect of any of the criminal offences created by any of the provisions contained in the Corrupt Practices and Other Related Offences Act, 2000.”

In the plaintiff’s brief, some of the provisions of the said Act were highlighted thus:

“(i) The establishment of the Commission and its powers and duties (sections 3, 5 and 6).

(ii) Offences and penalties (sections 8-26).

(iii) Investigation, search, seizure and arrest (sections 27 - 42).

(iv) Special powers of the Chairman of the Commission (sections 43-53)

(v) Evidence (sections 53-60)

(vi) Prosecution and trial of offences sections (61-64)

(vii) Miscellaneous.”

It is also instructive to set down the explanatory memorandum annexed to the said Act. It reads as follows:-

“The Act seeks to prohibit and prescribe punishment for Corrupt Practices and Other Related Offences it establishes an Independent Corrupt Practices and Other Related Offences Commission vesting it with the responsibility for investigation and prosecution of offenders thereof. Provisions has also been made for the protection of anybody who gives information to the Commission in respect of an offence committed or likely to be committed by any other person.”

As I have already noted the plaintiff filed a brief which

comprehensively set out the reasons, for wanting to have the case determined in its favour. Learned Attorneys-General who responded to the claim of the plaintiff also filed copious briefs which were most useful. These briefs were expatiated upon by lengthy submissions during the hearing. I think that it is only fair that I should reproduce what I consider to be the substance of the arguments in their briefs and their submissions to this court. The plaintiff in its brief settled by Chief F.R.A. Williams, SAN, had following questions set down for the determination of the case. These are:-

“(i) Whether the Corrupt Practices and Other Related Offences Act, 2000 is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution of the Federal Republic of Nigeria.

“(ii) Further and in the alternative to question (i), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices and Other Related Offences Act, 2000.

“(iii) Whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Other Related Offences Commission can lawfully, initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.

“(iv) Whether all the powers, conferred on the Independent Corrupt Practices and Other Related Offences Commission or on other functionaries or agencies of Federal Government by the Corrupt Practices and Other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in that State (including any public officer or functionary or officer or servant of the Government of Ondo State).”

In the brief of the plaintiff filed by Chief F.R.A. Williams, SAN in support of its case, the Corrupt Practices and Other Related Offences Act, 2000 would be referred to as “the said Act.

“It would appear that the plaintiff is aware that the power of the National Assembly to enact the said Act is derived from and can be sustained by the combined effect of the following provisions of

the 1999 Constitution, to wit: Sections 4(2), 15(5); items 60(a), 67 & 68 in Part 1 of the Second Schedule and Sec. 2(a) of Part III of the Second Schedule. He however submits that item 60(a) does no more than empower the National Assembly to make law for “the establishment and regulation” of authorities for the Federation or any part thereof to perform the function clearly spelt out therein this to say:

“to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.”

And then reasoned that by the provisions of the said item 60 (a), it is the authority (or authorities) to be established by a law enacted by the National Assembly and not the National Assembly itself that is vested with the duty to promote and enforce the observance of Directive Principles. Upon that submission, it is further argued that the constitutional validity of the said Act therefore depends upon the answer to the question “whether it is a law with respect” to the establishment and regulation” of the authority or authorities envisaged under the aforesaid item 60 (a). Submits further that the constitutional validity of any provision in that Act which creates an offence depends likewise on the answer to the question whether that offence is “incidental (i.e. is connected with or arises from or pertains) to “the establishment and regulation” of the authority or authorities envisaged under the said item. Then concluded that the above means that item 60 (a) of the Exclusive Legislative List does not confer on the National Assembly the power to create offences generally on corrupt practices and related offences by any or every person. If this had been the intention of the Constitution, he argued, it would have been easy for it to add the following separate item to the Exclusive Legislative List.

The Avoidance of Corrupt Practices and Related Offences.

Whether the power is incidental, as at present, or the said Act drafted in such a way to vest the National Assembly legislative powers over corrupt practices and related offences, by inserting the following as one of the items on the Exclusive Legislative List,

“The regulation of the conduct of persons employed in the Public Service of the Federation or of any State or by any private employer.”

That it cannot be the intention of the Constitution to confer exclusive power on the National Assembly with respect to corrupt practices and related offences. If this were intended, the section 15

(5) of the Constitution will not read:

“The State shall abolish all corrupt practices and abuse of power.”

It would have been - The Federal Government. ...

Bear in mind that “The State” in section 15(5) is not limited to the Federal Government - S.318(1) of the Constitution where the word Government is defined as including Government of the Federation or of any State or of a Local Government Council. Therefore, if the Constitution had intended that it is only the FG that should legislate, it would not have directed the State Government or Local Government under section 15(5) of the Constitution to do what they have no competence to do.

Section 4 (2) and item 60 (a) of the Exclusive Legislative List. Unconstitutionality of the Criminal Offences created under Corrupt Practices Act, 2000. For this purpose, it is necessary to discuss the power of the National Assembly generally in relation to enactment creating criminal offences. In this connection, it is to be noted that item 68 of the Exclusive Legislative List empowers the National Assembly to make laws with respect to -

“ Any matter incidental or supplementary to any matter mentioned in this list. ”

Furthermore, section 2 (9) of Part III of the Second Schedule to the Constitution provides that in that schedule (which includes the Exclusive Legislative List)” references to incidental and supplementary include, without prejudice to their generality, references to-

(a) offences

Effect of provision to create criminal offences under the incidental legislative power of the National Assembly.

After referring to the questions posed by Prof. B.O. Nwabueze arising from a consideration of the meaning of the provisions relating to the power of the National Assembly to create criminal offences at p.95 of his *Federalism in Nigeria under the Presidential Constitution*, Chief Williams then says that for the purposes of this case, the pertinent question is whether a provision creating a criminal offence under the Act is incidental or supplemental to some other matter [e.g. item 60(a) of the Exclusive Legislative List. Then he submits that, none of offences created by the said Act can be said to be incidental to item 60(a) in the Exclusive Legislative List. In other words, none of those

offences can be said to arise from or to pertain to or to be connected with “the establishment and regulation of authorities” mentioned in the item.

By this line of reasoning, it is contended for the plaintiff that private persons who are not exercising governmental powers are not included among those upon whom the duties and responsibilities to conform, to observe and apply” the Directive Principles are imposed. It is therefore inconceivable that offences committed by such persons can possibly be claimed or alleged to be “incidental” to a law with respect to “the establishment and regulation of authorities” which are to promote and enforce the Directive Principles. The Supreme Court is respectfully urged to accept the decision in *Balewa v. Doherty* (1963) 1 W.L.R. 949 at p. 961.

Conclusion: For reasons given in this part of this brief, the Supreme Court is respectfully urged to hold that the answer to question (i) is in the affirmative i.e. that the said Act is not a law with respect to a matter or matters. Further and in the alternative, the Supreme Court is urged to hold that question (ii) should be answered in the negative i.e. that the National Assembly has no power to make laws with respect to the criminal offences contained in the said Act.

Prosecution for Criminal Offences

Whether the Attorney-General of the Federation or any person authorized by the Independent Corrupt Practices and Other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences, created by any of the provisions of the said Corrupt Practices And Other Related Offences Act, 2000. Submits that the answer to this question is very simple and very short. In his view, it is obvious that the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Related Offences Commission can only initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by the provisions of the said Act only if that enactment is valid. Accordingly it is submitted that if the Supreme Court upholds the submission made by the plaintiff herein, the answer to question (iii) must be in the negative.

Powers of the Independent Corrupt Practices and Related Offences Commissions

Whether all the powers conferred on the Independent Corrupt Practices and Other Related Offences Commission or on other functionaries or agencies of the Federal Government by the Corrupt Practices and Other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in that State (including any public officer or functionary or officer or servant of the Government of Ondo State). B

In respect of this issue, the plaintiff respectfully submits that not all the powers and functions conferred on the Commission under the said Act are constitutional and valid. Those powers which are clearly unconstitutional and void will be examined very briefly. Section 6 (a) of the Act imposes on the Commission a duty to receive and investigate and prosecute any person for offences under the Act. It is obvious that if the Act is void, then this provision is inoperative. C

Section 26 (3) is a usurpation of judicial functions/power by the National Assembly and the provision is accordingly void. Sections 28 and 29 confer on the Commission powers exercisable over any person whether or not such person is exercising governmental functions. The provisions are accordingly void and inoperative. Section 35 of the Act is clearly an abuse of legislative power coupled with usurpation of judicial power. The provision is unconstitutional and void. D

Section 37 of the Act is unconstitutional and void because it is ancillary to creation of offences, which the National Assembly has no power to create. By reason of the foregoing and other provisions of the Act, it is submitted that what is left after the unconstitutional provisions have been struck out and cannot be treated as operative. In the premises the entire Act ought to be invalidated. For the 1st defendant, that is, the Attorney-General of the Federation, three issues were raised in the brief filed by the A.-G., three issues were raised as calling for the determination of this matter. They read thus:- E

“(a) Whether the National Assembly has power to enact the Anti-Corruption Practices and Other Related Offences Act, 2000.

(b) Whether the National Assembly has power to enact laws for the peace, order and good government of the Federal Republic of Nigeria. F

(c) Whether the Federal Attorney-General is competent constitutionally to initiate criminal prosecution in any court in Nigeria

pursuant to an enactment of the National Assembly.”

On the first issue, it is the contention of the 1st defendant that by virtue of the combined provisions of sections 4 (2) and (4), 15 (5), items 60 (a), 67 and 68 of the 2nd Schedule (Part 5) of the 1999 Constitution, the question posed in the said issue must be answered B in the affirmative. In support of this assertion, it is argued that although the Exclusive Legislative List is silent on corruption, the Constitution allows the National Assembly to legislate on this matter under the heading “Incidental Powers” by virtue of the provisions of Item 68 in C the Exclusive Legislative List. This right, argued the 1st defendant is made possible by virtue of section 10 (2) of the Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990. Reference was made in this respect to Ibrahim v. Judicial Service Committee Kaduna State (1998) 14 NWLR. (Pt.584) 1. Addressing the question as to D Whether the National Assembly can properly enact the law, acting under the incidental powers granted to it by the provisions of the Constitution, the submission of the 1st defendant is that in addition to the powers vested in the National Assembly by sec. 15(5) of the Constitution enjoins the State to abolish all corrupt practices and abuse E of power. This, it was argued is in consonance with the fundamental objectives and directive principles of state policy. Reference was also made in the brief prepared for the 1st defendant that sec. 88 (2) (a) and (b) of the Constitution also empowered the National Assembly F to make laws with respect to any, matter within its legislative competence, for the purpose of exposing corruption etc, and correcting any defect in existing laws.

It was further argued for the 1st defendant that a close reading of sec. 2 (Pt. III) of the 2nd Schedule of the 1999 Constitution G included interests reference to this incidental and supplementary matters to include legislation with regard to:

- (a) offences
- (b) the jurisdiction, powers, practice and procedure of courts of law, and
- H (c) the acquisition and tenure of land.

It is further contended that in so far as offences had not been included under “incidental and supplementary matters”, the National Assembly can therefore enact such laws as were enacted in the said Act to include offences. With regard to Item 60 (a) of the Exclusive

Legislative List, it is the submission of the 1st defendant that the provisions of Item 60(a) should be read with sec. 4(2) of the 1999 Constitution. By reading them together, it will be seen that the Federal Government of Nigeria is obliged to abolish all corrupt practices and abuse of power and for that reason, the National Assembly is further invested with the power of making such laws as would abolish all corrupt practices and abuse of power. In support of this proposition, reference was made to Black's Law Dictionary, 6th Edition, for the meaning of the word "establishment" and "regulation" used in the opening paragraph of item 60(a) of the Exclusive Legislative List.

In another argument designed to show that the National Assembly cannot be limited in the circumstances, it was argued for the 1st defendant that even where it has shown that the laws enacted in the said Act are laws which are in existence in any of the states the doctrine of covering the field would apply. In support of that submission, reference was made to the case of *The Military Governor of Ondo State & Anor v. Victor Adegoke Adewumi* (1988) 3 NWLR (Pt.82) page 280 at 283. Also *Director of SSS v. Agbokoba* (1999) 3 SC 18 at 38. In the view of the learned counsel appearing for the 1st defendant, courts are enjoined to apply the ordinary meaning to any word or expression when interpreting any statute.

That probably cannot be made to apply to the provisions of the Constitution. In support of that argument, reference was made to the following cases. *Nafiu Rabi v. The State* (1981) 2 NCLR 239; *Tinubu v. I.M.B. Securities* (2001) 8 NWLR (Pt.740) 670, (2001) 9-10 SC 49 at page 57. In conclusion, learned counsel for the 1st defendant urged this court to invoke the principles of liberal and broad interpretation, as postulated in the case referred to above in construing the provisions of sees. 4 and 15 (5) Item 60 (a) and 68 of Part I of the 2nd Schedule of the Constitution. The court is therefore invited to hold that the said Act is constitutionally valid and were properly enacted by the National Assembly in the exercise of its legislative powers contained in the Constitution of the Federal Republic of Nigeria, 1999.

On Issue B, which is, whether the National Assembly has power to enact law, for the peace, order and good government of the Federal Republic of Nigeria, it is argued for the 1st defendant that the National Assembly by the provisions of sees. 4, 2 and 3 of the 1999 Constitution

is properly vested with power to legislate and combat corruption in our society and the promotion of peace, order and good government.

On Issue C, which is, whether the Federal Attorney-General is competent constitutionally to initiate criminal prosecution in any State in Nigeria pursuant to an Act of the National Assembly, the attention of the court was drawn to the provisions of sec. 174 (1) (a) of the Constitution of Nigeria. It is then argued that by virtue of this constitutional provision, the Federal Attorney-General is constitutionally competent to prosecute criminal offences created by, the said Act and a fortiori the Attorney-General of the Federation can also initiate and prosecute any offence created under the Act.

14TH DEFENDANT - EKITI STATE

In the brief filed on behalf of the 14th defendant by the Attorney-General of Ekiti State, the view taken by the Attorney-General is that the main issue for determination in the case is whether or not, the National Assembly had the competence to enact the said Act. In answer to that question, the learned, Attorney-General referred to sees. 4 (2), 44 (a), 14 (1) and item 60, (a), 67, 68 of the Exclusive Legislative List and section 2 (a) of Part III of the 2nd Schedule of the 1999 Constitution. He then submitted that it is a misconception of the, constitutional provisions to limit what is incidental or supplementary to item 60 (a) of the Exclusive Legislative List alone, when there are 68 specific matters on the legislative list which the National Assembly has absolute powers to legislate on. He then thereafter invited the court to hold that the said Act is consistent with the aim of the Constitution and that the National Assembly is empowered under the Constitution to legislate on corrupt practices as was shown in the said Act. He therefore urged this court to dismiss the plaintiff's case and to hold that the Act is valid and consistent with the provisions of the Constitution.

8TH DEFENDANT - BENUE STATE

In the brief filed for the 8th defendant, the submission made thereon is that by the combined effect of the provisions of sec.4 (2) and item 60 (a.) and 68 of Part 1 of the 2nd Schedule of the Constitution, the National Assembly has power to make law establishing the Corrupt Practices and Other Related Offences Act, 2000 and to create offences thereon. He went on to argue that it is moreso as all

the offences created under the Act are to promote and enforce the observance of the fundamental objectives and directive principles contained in the Constitution. The argument of the plaintiff to the contrary are with due respect misconstrued. The 8th defendant also adopted the arguments in the brief of the learned Attorney-General of the Federation on the issue as set down in the brief of the 1st defendant. It was further contended for the 8th defendant that the expression “the state” in sec.15 (5) of the Constitution includes the Federal Government and power in line with sec. 318 (1) of the Constitution defines “state” as including “government” and the word “government” is defined as including the “Government of the Federation.”

The 8th defendant in its brief submitted two questions as arising from the determination of this action. They are as follows:

(a) Whether the Corrupt Practices and Other Related Offences Act, 2000 is a law in respect of a matter upon which the National Assembly is empowered to make laws?

(b) Whether the powers conferred on the Independent Corrupt Practices and Other Related Offences Commission and, its functionaries under the Corrupt Practices and Other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in that State?

The answer to the 1st question is consequently, in the affirmative. On the 2nd question the, submission made for the 8th defendant is that since it is argued earlier that the National Assembly has power to pass the said Act, it follows that if the law was validly enacted, it must be enforced in all parts of the country including Ondo State. Accordingly, it is submitted that if this court upholds the submission made by the 8th defendant in respect of the 1st question, then the answer to the 2nd question ought also to be in the affirmative. It is therefore the submission of the 8th defendant that it is not in doubt that the Constitution granted the power to the Government of the Federation to abolish all corrupt practices Consequently, the National Assembly has power to enact the said Act in the provisions of the Constitution.

25TH DEFENDANT LAGOS STATE

In the brief filed on its behalf by the learned Attorney-General for the State, he adopted the issues raised in the plaintiff’s brief as he

agrees with them.

Issues (I) & (II) were then argued together:-

(i) Whether the Corrupt Practices and Other Related Offences Act, 2000 is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution of the Federal Republic of Nigeria.

(ii) Further and in the alternative to question (i), whether the National Assembly has power to make laws for the peace, order and good government of the Federal Republic of Nigeria with respect to the criminal offences contained in the Corrupt Practices and Other Related Offences Act, 2000.

The primary position taken by the 25th defendant with regard to the two issues is that the National Assembly is incompetent to enact the said law. It was then submitted that the extent of the powers to make law on criminal offences can only be determined by reference to the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999.

The provisions of section 4(2) and 3, and section 4(7) of the Constitution were referred to for the following submissions. It is his submission that by the provisions of section 4(2) and (3), the National Assembly is empowered exclusively to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of Schedule 2 to the Constitution. The National Assembly in addition also has power to make laws with respect to any matter in the Concurrent Legislative List set out in the 1st column of Part II of Schedule 2 to the Constitution, to the extent prescribed in the 2nd Column opposite thereto.

And he therefore argued that by this scheme of enumeration and having regard to the provisions of section 4 (7) of the Constitution, any matter which is not included on the Exclusive Legislative List and not reserved to the National Assembly on the Concurrent List, is necessarily within the legislative competence of the State Houses of Assembly. And it was further argued that the State Houses of Assembly have competence to make laws in respect of those matters that are reserved for the States on the Concurrent List. They also have competence to legislate exclusively on matters that are neither on the

Concurrent List, and these are called residual matters. In support of that argument, reference was made to A.-G. Ogun State v. Aberugba (1985) 1 NWLR (Pt.3) 395, (2000) Vol. WRN 52 at 77. It is therefore argued for the 25th defendant that as the general power to create and punish offences is a residual matter, the National Assembly has no competence to legislate over such matters. And for support for this view the learned Attorney-General of Lagos State, cited the opinion of Professor B.O. Nwabueze, SAN in his book, Federalism in Nigeria under the Presidential Constitution, Sweet & Maxwell (London) 1983 p.87.

Flowing from the above contention, it is submitted for the 25th defendant, that the creation of general offences and prescription for punishment must inhere in one legislative authority (not as an incidental power) but as a substantive power. By this submission, the learned Attorney-General accepted the view of Prof. B.O. Nwabueze, SAN in his book (supra) where the learned author said at pp. 87-88, thus: -

“Now, a power at any time and for whatever reason to punish any act or omission as the State pleases must, by its very nature, exist on its own as a separate and main power, and not as a by-product or incident of other matters being regulated by the State”

We are then invited to the position taken by the Australian Courts, in construing the constitutional provisions of Australia, which it is claimed are similar to that of our country on this question. The Australian Courts, according to the learned Attorney General, have consistently held that the Commonwealth (Federal) Parliament had no legislative authority to deal with general matters of Criminal Law, and cited the following cases McArthur v. Williams (1963) 55 CLR 324 at 339; R v. Kidman (1915) 20 CLR 425 at p.448 and R v. G Bernasconi (1915) 19 CLR 629 at PP 634-635; and also to the Privy Council decision in Attorney-General for the Commonwealth v. Colonial Sugar Refining Co. (1914) A.C. 237. Based on the above authorities, it is also argued that Item 68 of the Exclusive Legislative List of the 1999 Constitution does not vest jurisdiction in the National Assembly to enact laws with regard to offences, in spite of the provisions in Item 68. For that contention, the case of Doherty v. Balewa (1961) 1 W.L.R. 949 was cited.

With regard to item 60 (a) on the Exclusive Legislative List of

the 1999 Constitution, the contention made for the 25th defendant is that the provisions of that item only empowers the National Assembly to enact law for the establishment and regulation of authorities to promote and enforce the Fundamental Objectives and Directive Principles contained in the Constitution. Hence the National
 B Assembly can create the Anti-Corruption Commission with the objective of promoting and enforcing the Fundamental Objectives and Principles of State Polity. It is that Commission, argued the learned Attorney-General, not the National Assembly which is then enjoined
 C by item 60 (a) to promote and enforce the fundamental objectives of abolishing corrupt practices. He went on to submit that the creation of general offences relating to corrupt practices is not necessarily incidental to the establishment and the regulation of the Independent Corrupt Practices and Other Related Offences Commission.

D In the course of his submission, we were referred to the principle of statutory interpretation propounded by U.P. Sarathi, *Interpretation of Statutes*, 3rd ed. Eastman Book Company (1986). It reads:-

*"In the exposition of statutes, the intention of the legislature is to be gathered from the whole of the statute and every part of it
 E taken and compared with other parts. We must not take one section only and see what its meaning is. This principle is also stated thus: - That every Statute must be interpreted ex viscleribus actus (within the four corners of the Act)."*

F Placing reliance on this principle, learned Attorney-General then submitted that of the 71 sections of the Act, only 5 (sections 3-7) deal directly with the establishment of the Independent Corrupt Practices for this submission that the main purpose of the Act is to create the various crimes described therein.

G Finally on this issue, the learned Attorney-General submitted that the correct position is, that the, National Assembly is not competent to enact the said Act and it is therefore invalid and unconstitutional.

Issue III

H The question raised in respect of this issue is whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Other Related Offences Commission can lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt

Practices and Other Related Offences Act, 2000. In respect of this issue, the learned Attorney-General for the 25th defendant examined specifically sec. 26(2) of the Act which states that the:

“prosecution of an offence under this Act shall be initiated by the Attorney-General of the Federation or any person or authority to who he shall delegate his authority, in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja under sec.60(3) of this Act; and every prosecution for an offence under this Act or any other law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General of the Federation.”

He then argued that under sec. 174 (2) of the Constitution, the powers conferred upon the Attorney-General of the Federation to institute and maintain public prosecutions can only be exercised by him in person or through officers of his department. He contended that sec.26 (2) of the Act is unconstitutional and void to the extent that adds to the express powers conferred on the Attorney-General by the Constitution. By that extension which enables the Attorney-General of the Federation to delegate his powers to any person or authority which includes the State Attorneys-General. He also contends that the provisions of sec.26 (2) of the Act also empowers the Attorney-General of the Federation to institute and undertake criminal prosecutions against any person, before any court of law in Nigeria in respect of any Corrupt Practices and Other Related Offences created by law (including those made by the House of Assembly of a State), is in direct collision with sec. 211 (1) (a) of the Constitution which vests the power in the State Attorney-General. He goes on to refer to sec.61 (3) of the Act which provides that

“The Chief Judge of a State or the Federal Capital Territory, Abuja shall, by order under his hand, designate a court or Judge or such number of courts or Judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud, Or other related offences arising under this Act or any other law prohibiting fraud, bribery or corruption; a court or Judge so designated shall not while being so designated, hear or determine any other cases...”

He therefore contends that this provision abridges the plenitude of jurisdiction conferred on a State High Court by sec.272 of the

1999 Constitution. He says that nowhere in the Constitution is the National Assembly empowered to legislate on procedure of the State High Court. Rather sec. 274 of the Constitution provides that subject to any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State. He further argues that the National Assembly does not have the constitutional powers to enact the provisions of the Act to the extent, that those provisions purport to apply to states of the federation and criminal jurisdiction of the state legislature. Hence, as the provisions of the Act are couched in such terms as to apply to everyone, they must be declared invalid altogether there being no practical way of separating the good from the bad.

He therefore urges the court to hold that the Attorney-General of the Federation or any other person authorised by the Independent Corrupt Practices and other Related Offences Commission cannot lawfully initiate or authorise the initiation of criminal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the Act.

Issue IV

Whether all the powers conferred on the Independent Corrupt Practices and other Related Offences Commission or on other functionaries or agencies of the Federal Government by the Corrupt Practices and Other Related Offences Act, 2000 are exercisable in Ondo State in relation to the activities of any person in that State (including any public Officer or functionary or officer or servant of the Government of Ondo State).

It is again contended for the 25th defendant that the National Assembly has no jurisdiction to impose obligations on state functionaries as provided for by sec.61 (3) of the said Act. In the view of the learned Attorney-General, the provisions made to enable the Attorney-General to prosecute crimes such as laws, prohibiting bribery, corruption, fraud or any related offences is in direct confrontation with the statutory authority of the State Attorneys-Generals. It is also contended for the 25th defendant that secs. 27-36 of the said Act, which confers on the Commission general powers of investigation, search, seizure and arrest are not within the competence of the National Assembly. It is submitted that those provisions of the Act are

clearly unconstitutional and the general Act is made invalid by virtue of those authorised provisions to which attention has been drawn in the brief of the Attorney-General. In support of these several contentions, reliance was placed on the judgments of this court in the case of Attorney-General Ogun State v. Attorney-General of Federation (1982) 3 NCLR 166, (1982) NSCC 1 at 12. He also made reference to the case of Brig. Gen. A. K. Togun (rtd) v. Hon Justice Chukwudifu Oputa (rtd.) & Ors. (No.2) (2001) 16 NWLR (Pt.740) 597, (2001) 49 WRN 1.

23RD DEFENDANT - KOGI STATE

In respect of the 23rd defendant in the brief filed on behalf of this defendant, three issues were identified for the determination of the case. They read thus:-

“(a) Whether the enactment of the Corrupt Practices and Other Related Offences Act, 2000 by the National Assembly is within their legislative competence i.e. whether the issues of Corrupt and Other Related Offences are within the Exclusive Legislative List under the 1999 Constitution of the Federal Republic of Nigeria.

(b) Whether the Corrupt Practices and Other Related Offences Act, 2000 is valid and in force as a law enacted by the National Assembly and in force in every State of the Federal Republic of Nigeria including Ondo State. (c) Whether the 1st defendant (Attorney-General of the Federation) or any person authorised by him can lawfully initiate legal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000.”

In respect of the 1st issue, the learned counsel took the view that for a proper understanding of this all important constitutional question, it is imperative to have recourse to the following provisions of the 1999 Constitution namely: - Sec. 1(1), sec 42, sec.14 (1), sec.15 (5) of the Constitution and paragraphs 60 (a) Part I of Second Schedule of the 1999 Constitution. In the view of learned counsel, it is submitted that when secs. 14 (1), 15(1) (2) and 3(a-d), 4 and 5 are read together, it is very clear that the word “state” as used in sec. 15 (5) means the Federal Republic of Nigeria. It is therefore his submission that the establishment of the Corrupt Practices and Other Related Offences Commission and the enactment of the Corrupt Practices and Other Related Offences Act, 2000 are designed to achieve

the constitutional purpose contained in sec. 15 (5) of the said Constitution. He then went on to submit that when sec. 15 (5) is read together with paragraph 60(a) of Part I to the 2nd Schedule of the Constitution, it becomes crystal clear that the intention of the Constitution is that the National Assembly is vested with the power to put in
B place necessary legal framework for the purpose of abolishing corrupt practices and abuse of powers in Nigeria.

But abolishing corrupt practices and abuse of power in Nigeria will require a federal law and since the said matter is in the exclusive
C legislative list by virtue of paragraph 60(a) of the 1999 Constitution, the National Assembly is competent to have enacted the Act. It is his view that the issue relating to the abolition of corrupt practices and abuse of power is not contained in the Concurrent Legislative List or in the residual powers of the State Houses of Assembly. He then
D argued that if it was the intention of makers of the Constitution that the matter should be dealt with by the State Houses of Assembly, the Constitution would have so stated. In support of this contention, he referred to the maxim in law the express meaning of a thing is the
E exclusion of other things not mentioned (*expressio unius personae vel rei est exclusio alterius*). In support of this contention, he also invited the court to apply the principle of law which enable the provisions of the said Act and another particularly the Constitution that there is need to read all these provisions together and give the
F words their ordinary meanings to save where this will lead to absurdity. In support of these contentions, reference was made to cases of *Bola Tinubu v. I.M.B. Securities PLC* (2001) 16 NWLR (Pt.740) 670, (2001) 10 SCNJ 1 at 11; *Miscellaneous Offences Tribunal & Anor. v Nwammiri Ekpe Okoroafor & Anor* (2001) 18 NWLR (Pt.745) 295,
G (2001) 10 SCNJ 68 at 92.

Issue No.2

The question raised under this issue is whether the said Act is valid and in force as a law enacted by the National Assembly and in force in every State of the Federal Republic of Nigeria (including Ondo
H State). The learned counsel in respect of this issue adopted the argument used in respect of issue 1. He then submitted that any law enacted by the National Assembly on any matter in the Exclusive Legislative List as in the instant case has general application throughout the Federal Republic of Nigeria including Ondo State.

Issue No.3

In respect of the 3rd issue which is whether the 1st defendant or any person authorised by him can lawfully initiate legal proceedings in any court of law in Ondo State in respect of any of the criminal offences created by any of the provisions of the said Corrupt Practices and Other Related Offences Act, 2000. The view of the learned counsel which settled this brief is that sec. 174 (1) of the Constitution is the answer to that question. He therefore urges the court to give effect to the meaning of the words used in the said sec. 174 (1) and hold that the 1st defendant can legally initiate proceedings in respect of criminal offences created under the Corrupt Practices and Other Related Offences Act, 2000 in any part of the Federal Republic of Nigeria. He also submitted that while the Corrupt Practices and other Related Offences Commission relates to the establishment of the body to achieve the purpose of sec. 15(5), the Corrupt Practices and Other Related Offences Act, 2000 relates to the promotion and enforcement of sec.15(5) of the 1999 Constitution for the ultimate goal of sec.4 (2) of the same Constitution. He took the view with the case of *Doherty v. Balewa* (supra) is distinguishable from the instant case. He argued that in the present case the National Assembly, is empowered by sec. 4 (2) of the 1999 Constitution to make laws including criminal laws, but the case of *Doherty v. Balewa* (supra) is not the interpretation of a similar provision in the 1963 Constitution. The learned counsel also in his brief invited this Court to note that the plaintiff did not formulate any issue for determination in respect of the powers and functions of the Corrupt Practices and Other Related Offences Commission. This court is urged to discountenance the submissions of counsel on pgs. 15 and 16 of his brief of argument and the question raised above. Learned counsel submitted that secs. 6 (a), 26 (3), 28, 39, 35 and 37 of the said Act are invalid and constitutional as none of the aforementioned sections contravene the 1999 Constitution and they were properly enacted by the National Assembly.

27TH DEFENDANT - NIGER STATE

In the brief filed on its behalf, the 27th defendant adopted the issues as framed by the plaintiff for the determination of this case. Learned counsel for the 27th defendant then argued issues (1) & (2) together. Basically, these two issues question whether the National

Assembly is empowered to make laws for the peace, order and good government of Nigeria under the 1999 Constitution, and whether in particular, the National Assembly has the power to make laws with regard to the criminal offences contained in the said Act.

B It is the submission of learned counsel that the National Assembly has the capacity and competence to enact the Corrupt Practices Act pursuant to its general constitutional powers “to make laws for the peace, order and good government of Nigeria” under the 1999 Constitution. The primary capacity of the National Assembly to
C enact the said Act derives from item 60 (a) in Part 1 of the Second Schedule to the 1999 Constitution which confers on the National Assembly the exclusive competence to legislate on

“*The establishment and regulation of authorities for the Federation or any part thereof to promote and enforce observance
D of the Fundamental Objectives and Directive Principles contained in this Constitution.*”

Following from the above position of the 27th defendant, it is further submitted that the National Assembly within its exclusive legislative mandate under the 1999 Constitution in enacting the Act
E to the extent that the said Act seeks to establish and organize an authority, to wit, the Corrupt Practices Commission, for the abolition of all corrupt practices and abuse of power in the Nigerian State.

As to whether the criminal offences under the Corrupt Practices
F Act were validly made, the learned counsel for the 27th defendant, framed the question thus: “*Does the legislative competence of the National Assembly to establish and regulate the Corrupt Practices Commission pursuant to item 60 (a) in Part 1 of the Second Schedule to the 1999 Constitution confer on it the constitutional capacity and
G power to create criminal offences under the Commissions enabling legislation, to wit, the Corrupt Practices, Act?*”

Responding to this question, learned counsel for the 27th defendant proceeded to answer in the affirmative. But in so doing, it is his first submission that the Corrupt Practices Commission is not at
H all constitutionally empowered to create offences. He however next argued that as it is trite that criminal offences can only be created by law and cited the following authorities; section 36 (12) of the 1999 Constitution. *Aoko v. Fagbemi* (1961) 1 All NLR 400; *Udokwu v. Onugba* (1963) 7 ENRI there has to be a body that is empowered to

make laws. It is for this purpose that section 4 of the 1999 Constitution vests exclusive legislative powers in the National Assembly, in the case of Federal legislation, and in the Houses of Assembly, in the case of State legislation. This means that only the National Assembly or the Houses of Assembly of a State that can make laws that create criminal offences. B

Now, it is the contention of learned counsel for the 27th defendant that ancillary if not directly related to the Directive Principles in section 14 (5) of the 1999 Constitution, i.e. the abolition of “*all corrupt practices and abuse of power*” in the Nigerian State, is the criminalizing of acts or creation of offences relating to such “*corrupt practices and abuse of power*”. And that as it is only through the imposition of criminal sanctions that the State can work at and towards the abolition of these “*corrupt practices and abuse of power*”. C

This position is in his view supported by items 67, 68 in Part 1 D of the Second Schedule to the 1999 Constitution and section 2(9) of Part III of the 2nd Schedule to the Constitution.

28TH DEFENDANT - OGUN STATE

In the brief filed on behalf, of the State by the learned Attorney-General, two issues were identified for the determination of this case. E These are:-

“1. *Whether the Corrupt Practices and Other Related Offences Act (No.5 of 2000), was validly made by the National Assembly, having regard to the subject-matter of the Act and the provisions of the 1999 Constitution clearly delimiting the executive and Legislative powers of each tier of Government in the Federation.* F

2. *In the event that the answer to the first issues is in the affirmative, then “whether certain provisions of the Corrupt Practices and Other Related Offences Act, 2000 are constitutional, valid and operative.” G*

On the 1st issue, it would appear from the brief of argument filed for the 28th defendant that the contention made for the 28th defendant is that the National Assembly is limited to the enactment of laws on matters in the concurrent legislative list in Part 2 of the 2nd Schedule of the 1999 Constitution. He goes on to submit that a deeper study of Parts 1& 2 of the 2nd Schedule of the Constitution would resolve that:- H

“(a) of the 66 specific items and 2 general items on the Exclusive

Legislative List, and

(b) the 12 major heads sub-divided into 30 paragraphs on the Concurrent List, none confers any power on the National Assembly to make laws on crimes in general or corrupt practices in particular.”

B It is further submitted that the absence of such power was deliberate in order to continue, the National Assembly was empowered to make laws pertaining to crimes generally and corrupt practices. It is also argued for the 28th defendant that though the power of the National Assembly to enact the said Act is derived from the combined effect of sec 4(2) and 15 (5), items 60 (a), 67 and. 68 of the Exclusive Legislative List Part 2 and section 2 (a) of Part 3 of the Second Schedule to the 1999 Constitution, the National Assembly in so far as they were not vested with specific power to prescribe specific offences which cannot be extended to allow the National Assembly to create offences under the incidental powers stated in item 68 of the Constitution. The 28th defendant therefore in summary adopted the pleas made for the plaintiff as contained in the plaintiff’s brief in respect of this issue.

E Next, it was argued for the 28th defendant that it is only the Houses of Assembly of the State that are vested by the Constitution with the power to make laws on residual matters. In support of this submission, reference is made to the book written by Prof. B.O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution* (1983) 87 and also to the case of *Knight Frank and Rutley (Nig.) Ltd v. A.-G., Kano State* (1998) 7 NWLR (Pt. 556) 1 at 19. It is also contended for the 28th defendant that the principle of covering the field does not apply in the instant case and so far as the residual power of the State Houses of Assembly to legislate on general crime is exclusive and not meant to be shared with the National Assembly, it follows therefore that the National Assembly will not be able to avail itself of that principle. He went further to contend that in the circumstances, the said Act being an act made ultra vires the powers of the National Assembly, cannot cover, as it has purported to do, the field of legislation over corrupt practices. At best, what the National Assembly can do is to legislate, if at all., on State matters to cover the Federal Capital Territory only. It is however for all the reasons given above urged that the court should hold that the Corrupt Practices

and Other Related Offences Act, 2000 is unconstitutional null and void and of no effect. And urged that the Court should hold:

“(a) that the Act, being invalid, has no operational validity within the territory of any of the States of the Federation, including Ogun State, and

(b) that the Act being invalid, cannot lawfully impose duties on any public officer, functionary or servant of the Ogun State government.”

On the 2nd issue the 28th defendant is contending:

“(a) that several provisions of the Act are unconstitutional and invalid

(b) that if all these unconstitutional provisions are removed from the Act, the Act itself will remain bereft of substance as it will largely be vacuous, and

(c) that in the circumstance, a declaration by this honourable court that these specified provisions are invalid will make the Act itself invalid as it cannot stand without them”

The 28th defendant then adopted the submission of the plaintiff in respect of sections 6 (a), 26(3), 28, 29,35 and 37 of the Act, as stated at pages 15-16 of the plaintiff’s brief. In addition, the 28th defendant urges this court to hold that the following sections of the Act are also unconstitutional and void for the reasons stated against each of them -

(a) Sections 8-26 are generally void as the penal provisions contained therein are the subject-matters of residual State powers over which the National Assembly has no jurisdiction.

(d) Section 26(2) is a clear contravention of the provisions of section 211 of the 1999 Constitution which confers on the State Attorney-General exclusive power to institute, undertake, take over and continue with criminal proceedings against any person, before any court of law in Nigeria and in respect of any offence created by or under any law of the House of Assembly.

(c) Sections 5, 27(3), 34, 36 and 38 are void and unconstitutional, being usurpations of powers conferred on the Nigeria Police Force by virtue of the provisions of section 214 of the 1999 Constitution and sections 4, 23, 24, 25, 28, 29 and 30 of the Police Act, Cap. 359, Laws of the Federation, 1990.

(d) Sections 8(2)(c) and 9 2(c) are void and unconstitutional,

being qualifications of the constitutional presumption of innocence enshrined in section 36(5) of the 1999 Constitution.

In conclusion, the 28th defendant urged the court for the reasons given above to declare the entire Act invalid.

30th Defendant - Oyo State

B For the 30th defendant, 3 issues were identified for the determination of this case in the brief filed by the learned Attorney-General of the State. They are:

C *“(1) Whether the National Assembly could invoke the doctrine of covering the field to enact Anti-corruption Act for the whole of the Federation of Nigeria contrary to the provisions of the Constitution.*

D *(2) Whether the powers conferred on the Attorney-General of a State under section 211 of the Constitution have not been eroded by coming into a force of Anti Corruption Act contrary to the provisions of the Constitution.*

(3) Whether the powers conferred on the Governor of a State under section 212 of the Constitution have not been circumscribed by the anti-corruption Act contrary to the provisions of the Constitution.”

E The submission made on behalf of the 30th defendant on Issue (1) may be put thus:

F It is argued that by Section 2(1) and 2(2) of the 1999 Constitution, Nigeria is a Federal Republic operating a Federal System of Government with the Federal Government at the centre and the States and the Federal Capital Territory, Abuja as Federating units. And if reference to the provisions of section 4 of the Constitution Which identify the competence of the Federal Government to legislate exclusive on matters in the Exclusive Legislative List in Part 1 of the G 2nd Schedule of the Constitution and also the effects that by virtue of Sec. 4(4), the National Assembly and the State Houses of Assembly are empowered to make laws with respect to matters in the Concurrent Legislative List set out in Part 2 of the 2nd Schedule of the Constitution. He then contended for the 30th defendant that outside H the Exclusive Legislative List and Concurrent List, the National Assembly is not empowered to make any law. It is the further submission of learned Attorney General that though the doctrine of covering the field is recognized in our jurisprudence, that doctrine in the view of the 30th defendant cannot be made to apply in respect

of issues raised in this case.

Therefore, where as in this case, the National Assembly had enacted in the said Act, laws on crimes and corrupt practices and other related offences without relating it to any of the items listed under the Exclusive Legislative List to make it applicable to the whole of the federation of Nigeria, the Act as passed should be considered void. Such provisions so made should be declared void and unconstitutional.

Learned Attorney-General for the 30th defendant in the course of his argument also adverted to item 68 of Part 1 of the 2nd Schedule of the Constitution and also to par. 2(a) of Part 3 of the 2nd Schedule to the Constitution. He then contended that the incidental and supplementary powers in the sections above did not confer on the National Assembly substantive powers and cannot be exploited or interpreted as such. In his view, incidental powers cannot be exercised in isolation or independently or, in vacuo without relating it to substantive powers. It must be related or connected with matters for which the National Assembly has the powers to make law. And went on to say that that is why offences are created under Insurance Decree No.2 of 1997. Reference was also made to Black's Law Dictionary which distinguishes on page 762 "incidental" as *"depending upon or appertaining to something else as primary, something necessary, appertaining to or depending upon another which is termed the principal; something incidental to the main purpose."*

Flowing from this argument, learned Attorney-General submitted from the foregoing that the powers to legislative on matters and corrupt practices generally are within the legislate competence of the House of Assembly of a State. He further contends that the powers exercised by the Houses of Assembly of State are classified as the residual powers of the State, which is recognized under sec.4(7) of the 1999 Constitution. In so far as the States of the Federation pursuant to the foregoing provisions have legislated on crime, corrupt practices and other related matters in the Criminal Code or Penal Code of the state. The National Assembly cannot hide under the cloak of the doctrine of covering the field to enact similar laws as has been done in the said Act.

Issue 2

Under this issue, the question raised is whether the powers

conferred on the Attorney-General of a State with respect to matters concerning the State under Sec. 211 of the Constitution have not been eroded by the provisions of the Anti-corruption Act. This is the contention of the Attorney-General of the 30th defendant that it was the intention of the provisions made in the Constitution in secs. 174
 B and 211 of the Constitution that the duties of the Attorney-General of the Federation and the Attorney-General of a State having been clearly set out in the said sections of the Constitution, it is invalid for the powers given to the Attorney-General of the Federation in the
 C said Act functions and duties of the Attorneys-General of the States is unconstitutional and illegal. In effect, it is argued that the National Assembly or Federal Government cannot impose duties and responsibility on the functionaries of a state without the consent and approval of the Chief Executive of the State. In support of this
 D contention, the case of Attorney-General of Ogun State v. Attorney-General of Federation (1982) 12 SC 13; (1982) 3 NCLR 166; Prof. B.O. Nwabueze's book *Federalism in Nigeria under the Presidential Constitution*" (supra); Balewa v. Doherty (1963) 1 WLR 941; Attorney-General Ogun State v. Attorney-General Federation and Ors.
 E (1982) 3 NCLR 166 and Abacha v. Fawehinmi (2000) 6 NWLR (Pt.660) page 228 at pages 315-316.

Issue 3

By this issue the 30th defendant is contending whether the powers of the Governor of a State under sec. 212 of the Constitution
 F have not been circumscribed by the Anti-corruption Act. It is contended for the 30th defendant that the said provisions of the Constitution had been circumscribed having regard to the provisions in that regard under the Anti-corruption Act. It is therefore urged that the issues
 G raised by the 30th defendant be resolved in favour of the plaintiff.

31ST DEFENDANT - PLATEAU STATE

In the brief filed for the 31st defendant, the issue identified in the plaintiff's brief for the determination of the case were adopted by the 31st defendant. However Issues 1 and 2 were argued together in
 H the brief filed on behalf of the 31st defendant. In respect of these issues, the first submission made on behalf of the 31st defendant is to the effect that the plaintiff was right when he submitted that the combined effect of sec.4(2), 15(5), items 60(a), 67 and 68 in Part 1 and sec. 2(a) of Part 3 of the 2nd Schedule of the 1999 Constitution

is that the National Assembly is empowered to make laws for the peace, order and good government of Nigeria. The power so vested in the National Assembly also enabled it to enact the Act in question in this case. As part of his arguments, the learned Attorney-General specifically urged that by virtue of sec. 4 (2) and item 60 (a) of the 2nd Schedule of the Constitution, the intendment of the makers of the Constitution is that any authority that will regulate the observance of the Fundamental Objectives and Directive Principles contained in the Constitution may be established by the National Assembly.

Next, it was argued for the 31st defendant that sec.15 (1-5) of the Constitution should be read conjunctively and if so read, the reference to “State” is a reference to the Nigerian State and not to the individual State in the Federation. In support of this contention, attention was also drawn to the provisions of sec. 318 and 14 (1), 15 (5) of the Constitution. A combined reading of all the above provisions in the view of learned counsel for the 31st defendant distinguishes the National Assembly to make provisions for corrupt practices and other related offences as part of the incidental powers granted to it by the Constitution. However support is drawn from this conclusion by item 60(a) of the Exclusive Legislative List and items 67 and 68 of Part 1 and sec. 2(a) of Part 3 of the 2nd Schedule of the 1999 Constitution.

Learned counsel for the 31st defendant went on however to argue that the provisions of items 67 and 68 of the Constitution when read with sec. 2 (a) sufficiently vested the power on the National Assembly to create criminal offence and he then argued that the unfettered power of the National Assembly to so legislate cannot be limited only to incidental and supplementary issues. He then urged the court to distinguish this case from the position of this court in *Balewa v. Doherty* (supra) and that the court should go on to hold that the said Act is a law with respect to a matter or matters upon which the National Assembly is empowered to make laws for the peace, order and good government, of Nigeria under the 1999 Constitution.

On the 3rd issue argued for the 31st defendant is whether the Attorney-General of the Federation or any person authorised by the Independent Corrupt Practices and Other Related Offences

Commission can lawfully initiate or authorise the initiation of criminal proceedings in Ondo State in respect of any other criminal offences created by any of the provisions of the said Act. Learned counsel for the 31st defendant urged that this question be answered in the affirmative. And finally he invited the court to hold that as the powers and functions conferred on the commission under the Act are constitutional and valid, all provisions made therein are valid including secs. 6(a) 26, 30, 28, 29, 35 and 37.

32ND DEFENDANT - RIVERS STATE

In the brief filed on behalf of this defendant by the Attorney-General of the State the issues identified for the determination of the case proffered by the plaintiff were adopted in its entirety. The learned Attorney-General then associated herself fully with the plaintiff's argument in support of the question that determination as posited by the plaintiff. The 32nd defendant also placed equal reliance on the authorities cited by the plaintiff to buttress the case for invalidating the said Act. Hence it is submitted and in further support of the plaintiff's case that under the 1999 Constitution, matters relating to the Criminal Code and the trial of offences covered thereby are within the competence of the State Houses of Assembly; *Sele v. State* (1993) 1 NWLR (Pt. 269) 276 at 291.

Finally, it is the submission of the 32nd defendant that this court has the power to invalidate any legislation which, as in the instant case is inconsistent with the Constitution of the Federal Republic of Nigeria, 1999. And in support of this submission, reference was made to the following authorities: *Peenoks Investments Ltd. v. Hotel Presidential* (1982) 12 SC 1 at 31, (1983) 4 NCLR 122; *Attorney-General Ogun State v. Aberuagba* (1985) 1 NWLR (Pt. 3) 395 at 428.

In Conclusion, the 32nd defendant prayed that the plaintiff's claim as contained in his originating summons be granted in its entirety. The court is therefore urged to discountenance any argument by the 1st defendant or any other defendant to the contrary, in respect of the plaintiff's claim. The court also received briefs from Professor Ben Nwabueze, SAN; Chief Afe Babalola, SAN and Olisa Agbakoba, SAN who were invited by the court as amici curiae. AMICUS CURIAE - Mr. Olisa Agbakoba, SAN

After a review of the facts and the issues raised in this case, the

learned senior counsel observed thus

“This is the crux of the case. If the court holds that the Anti-corruption Act is a law made for the peace order and good government of the federation or any part thereof or made for the regulation and establishment of an authority for the federation to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria, then the validity of the Act must be upheld. If the court holds the contrary then the Act is invalid and must be struck down.”

And he went on to take the view that in order to resolve this issue, the court will be invited to interpret secs. 4, 131 15(5), item 60(a) in Part 1 and item 2(a) in Part III of the Second Schedule to the 1999 Constitution as they affect the power of the National Assembly to enact the Corrupt Practices and Other Related Offences Act, No.5 of 2000.

After the above preface to his argument, learned senior counsel then suggested that two broad issues arise for the determination of the case. They are:

“(1) Does the National Assembly have the legislative power under the Constitution to enact the Corrupt Practices and Other Related Offences Act 2000? If yes, what is the extent of the legislative power?”

“(2) Does the provisions of the Act impede, encroach or remove the constitutional rights of the plaintiff and if so, are those provisions in conflict with the Constitution and therefore unconstitutional and void?”

The learned Senior Advocate in order to answer the questions raised in issue 1 started by considering the legislative powers of the National Assembly. He then submitted that the legislative powers of the National Assembly are with respect to matters included in the Legislative Lists (secs. 4(2)(3) and 4(a) and any other matter not included in the Legislative Lists but which the National Assembly is empowered to make law under any other part of the Constitution (sec. 4(4)(b)). And in the context of the question of issue in this case, the relevant provision is item 60(a). After considering whether sec.60(a) be read conjunctively or disjunctively, he resolved that it be read together and in conjunction with secs. 13 and 15(5) of the 1999

Constitution. And based upon these sections of the Constitution, he submitted that:-

“(a) The power of the National Assembly is only to establish and empower authorities to perform the duties already defined in item 60(a).

B *(b) The power of the authority is limited to the promotion and enforcement of the provisions of sections 13 and 15 (5) under Chapter II. The powers of the authority cannot be extended by the National Assembly to the enforcement of provisions not contained in Chapter*
 C *II. The cardinal rule of construction is that under a Constitution conferring specific powers, a particular power must be granted or it cannot be exercised.”*

He thereafter submitted that the Act while properly establishing the Anti-corruption Commission, contains extraneous matters not
 D contemplated by item 60 (a) and for which power to make law has not been granted to the National Assembly. Learned Senior Advocate next considered whether resort could be had to item 68 of the Exclusive Legislative List to give the National Assembly power to make
 E laws on any matter mentioned elsewhere in the Exclusive List. But after due consideration of this provision, it is the view of learned Senior Advocate that the matter must refer to any matter incidental or supplementary to item 60 (a) that provides for the establishment and regulation of authorities for the Federation or any part thereof to
 F promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in section 15(5) of chapter II of the Constitution. And placing reliance on some of the pronouncements made in respect of the exercise of incidental powers by the Privy Council in *Balewa v. Doherty* (1963) 1 WLR 949 at 961 to submit
 G that none of the offences created by sections 8-26 in the Corrupt Practices and Other Related Offences Act, 2000 are incidental or supplemental to item 60 (a). In other words, it is the contention of the learned counsel that none of the offences created in the said Act can be said to arise from or pertain to or be connected with the
 H establishment and regulation of the Anti-corruption Commission he then submitted that to allow the offences to stand would be to make them federal offences and by the doctrine of covering the field the States would be excluded from legislating on them. It is his further submission that it cannot be that it was not intended by the framers

of the Constitution to confer exclusive power on the National Assembly with respect to corrupt practices and related offences. If it were so intended, the Constitution would have been framed to make such a provision under the Exclusive List. In support of his contention that to hold that the National Assembly can create the offences under sections 8-26 (supra) is to defeat the purpose of Chapter II provisions and bring item 2(a) in conflict with section 4 of the Constitution that makes corruption and crime residual matters. For the proposition that the provisions of item 60 (a) and item 2 (a) be read subject to section 4, the case of *Egolum v. Obasanjo* (1999) 7 NWLR (Pt.611) 355 at 412D-413A was cited. B
C

In his final submission on this issue, learned Senior Advocate stated that as section 1(1) of the 1999 Constitution is supreme, its provisions are binding on all authority and persons throughout the Federal Republic of Nigeria. And by its section 1 (3) which stipulates that if any law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of its inconsistency, be void. The Corrupt Practices and Other Related Offences Act, 2000, must be declared unconstitutional, null and void to the extent of its inconsistency with the provision of the Constitution. D
E

Issue 2

In respect of this issue, the contention of learned Senior Advocate is that several provisions of the Anti-corruption Act contains several provisions that encroach and impede on the legal rights of the plaintiff protected in the Constitution. To that extent, it is submitted that the constitutional rights of the plaintiff have been affected. In this context references were made to secs. 26 (2) and 6 (1) of the Act and to secs. 6 (2), 195, 169, 206, 211, 271 of the 1999 Constitution to show how the provisions of the Act violate the provisions of the Constitution. Learned senior counsel then further submitted that the effect of secs. 26(2) and 61(3) is that the Federal Government is directing, imposing its will and adding to the judicial and administrative responsibilities of Ondo State without recourse to the Governor of the State. He therefore contended that the Federal Government has no power to demand that the Chief Judge of Ondo designate courts or Judges to hear only Anti-corruption cases, or in any way whatsoever burden, charge and impose liabilities, duties and responsibilities on the courts and judicial officers of the State. See Attorney-General F
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Ogun State v. Attorney-General of the Federation (1982) 3 NCLR 166, (1982) NSCS 1 at 12.

AMICUS CURIAE - Prof Ben Nwabueze, SAN. In the brief filed by Prof. Ben Nwabueze, SAN he recognized that the determination of the constitutional validity of the Corrupt Practices and Other
 B Related Offences Act, 2000 is a most challenging one. This is because it is the contention that the issue impinges on the cardinal principles of Nigeria's federal system. The position taken by the learned Senior Advocate of Nigeria is that the principle of autonomy in a federal
 C system implies that neither the central government nor our regional ones can confer functions or impose duties on the functionaries of the other without the consent of its chief executive. This principle he invited us to note, was expressly enacted in the 1963 Constitution but then repeated in the 1979 and 1999 Constitutions. But he took
 D the view that the prohibition still remains applicable as a necessary implication of the autonomy of the federal and state governments in relation to each other. For support of this submission, he referred to the Supreme Court decision in Attorney-General of Ogun State & Ors. v. Attorney-General of the Federation & Ors (1982) 3 NCLR
 E 166, (1982) 12 NSCC; Federal Ministry of Internal Affairs & Ors v. Shugaba (1982) 3 NCLR 915. The learned Senior Advocate of Nigeria also referred us to the Australian case of Melbourne Corporation v. Commonwealth (1947) 74 CLR 31,82 - 831; R. v. Commonwealth of Conciliation and Arbitration Ex p. Victoria (1942) 66 CLR
 F 488; R. v. Kidman (1915) 20 CLR 425. In this regard also, he referred us to the book authored by the learned Senior Advocate of Nigeria, Federalism in Nigerian under the Presidential Constitution (1983) pp. 3-17. With his position on this question on federalism, he
 G therefore submits thus:

*"it suffice for our present purposes to say that the doctrine operates to invalidate a general law enacted by the federal legislature within its constitutional power but which, in its practical effect, impedes, prevents or suppresses the exercise of an essential function of the
 H state governments."*

And he went on to submit as follows:

"in a federation constituted by federal and several state governments as autonomous partners, each equal in status as a government with the others, nothing could be more derogatory of

the autonomy of a State Government, it co-equality with the Federal Government or the doctrine of mutual non-interference than for the Federal Government by the force of its law

(i) to subject the Governor of a State to investigation for corruption, fraud or related offences involving the money or property of the State by an independent counsel authorised in that behalf by a national functionary, the Chief Justice of Nigeria;

(ii) to subject the functionaries of the State Government (other than the Governor) to prosecution by a federal commission or other federal authority for corruption, fraud, or related offences involving the money or property of the State;

(iii) to control or interfere with the management of the state's money or property by its Governor and other functionaries; or

(iv) to direct the chief Judge of the State to designate, by order under his hand, a court or Judge or such number of courts or Judges as he shall deem appropriate to hear and determine all cases of bribery, corruption, fraud or related offences arising under the Act or under any other law" a court or Judge so designated shall not, while the designating order subsists, hear any other cases."

With regard to whether offences identified above can be properly enacted as the National Assembly had done in the said Act, the position from the submission made by the learned Senior Advocate is that the National Assembly is not vested with the powers to create the offences created under the Act. In his view, the correction and punishment of the offences is under the Constitution a largely residual matter since it is not assigned to the Federal Government either in the body of the Constitution or under the legislative list in the 2nd Schedule. He therefore submits that the function belongs exclusively to the State Government. The learned Senior Advocate then considered whether the National Assembly could have created the offences in the said Act by virtue of item 68 of the Exclusive Legislative List. For the purposes of his position in respect of this question, he referred to the case of *Balewa v. Doherty* (1963) 1 WLR 949 and *R. v. Kidman* (1915) (supra). It is the submission of the learned Senior Advocate of Nigeria that the federal government has power to punish corruption and fraud in relation not only to its property but also to all matters within its legislative competence. That in his view, is the farthest extent of its power. Beyond these, the rest

of the offence in the Corrupt Practices and Other Related Offences Act, 2000 are unconstitutional, as being ultra vires the federal government. The Act is unconstitutional he argued, with regard to the control and punishment of offenders. He therefore submits that the Act is unconstitutional and void, being subversive of the cardinal principles of federalism enshrined in our Constitution, viz the autonomy of the State Governments vis-a-vis the Federal Government and the division of powers between them. The Act in its entirety in his view, is void since the good and bad parts of it are so interwoven as to make it practically impracticable or inexpedient to sever one from the other.

It is also his submission that sec. 15(5) and item 60(a) of the exclusive list of the 1999 Constitution do not justify the contention made that the National Assembly had the necessary power to pass the Act. It is his submission that the word "state" under sec. 15(5) refers not to the Federal Government alone but to both States and Federal Governments and also having, regard to the provisions of sec. 318 of the Constitution. Therefore, it is argued that the division of powers between the Federal and State Governments under the Constitution has to be read into sec. 15 (5). He also argued that item 60 (a) of the Exclusive Legislative List must also draw its meaning and effect from the character and purpose of the Fundamental Objectives and Directive Principles of State Policy. Construed in that law he submits, that it is not, nor is it intended to, confer on the federal government power to create and punish offences outside its power to do so under other provisions of the Constitution or power to derogate from the autonomy of the State Governments. It is his view that the only power conferred on the Federal Government by item 60(a) is power to establish and regulate authorities, but not power to prescribe the functions of any authorities so established. In that view argues the learned Senior Advocate of Nigeria sec. 15(5) and item 60(a) of the Constitution would resort in a distortion of the whole purpose of the inclusion of chapter 2 in its proper place in the scheme of the Constitution.

Even on the misconceived assumption that the Corrupt Practices and Other Related Offences Act, 2000 is within the power of the federal government to enact under item 60(a), it will be unconstitutional and void as being an attempt to exercise power in a

manner calculated in its practical effect, to impede, burden or interfere with the management of the affairs of the State Government.

AMICUS CURIAE - CHIEF AFE BABALOLA, SAN. Chief Afe Babalola, SAN in his brief filed as an amicus curiae raises three issue for the determination of this case. They read thus:

“1. Whether or not the National Assembly has the legislative competence to enact the Corrupt Practices and Other Related Offences Act, 2000.

2. Whether or not the enactment of the Act violates the principle of autonomy of State which governs the exercise of legislative powers between the Federal Government and the States under a Federal system of government and thus renders the Act unconstitutional, null and void?

3. Whether or not the Attorney-General of the Federation can initiate prosecution in any court in Nigeria in a matter relating to a federal offence?”

In his brief, the learned Senior Advocate of Nigeria took the position that the issues raised in the case are largely one of the interpretation of the Constitution. To that note he referred to several cases both decided in foreign courts and in our courts wherein the principles applicable to Constitution interpretation were discussed. Before setting out his arguments in respect of Issue 1, learned Senior Advocate of Nigeria observed that the way the plaintiff has framed the question for determination in this case clearly suggests that the plaintiff is not quarrelling with the competence of the National Assembly to enact the Act rather, the plaintiff’s quarrel is that the Act is not and cannot be valid in Ondo State.

For the purposes of his argument, he concedes that under the Nigerian federal system, which is founded on the principles of constitutional democracy, every exercise of power by any organ of the Government at the Federal, State or Local Government level must be predicated on a specific grant of power in the Constitution or any other law. For his submission that the power of the National Assembly to make laws for the peace, order and good government of the federation or any part thereof, he invited the attention of the court to Sec. 4 (2) (3) and (4) of the 1999 Constitution and also Parts I and III of the 2nd Schedule to the 1999 Constitution to submit that the Corrupt Practices and Other Related Offences Act, 2000 is

made pursuant to the exclusive powers of the National Assembly. He also referred in his brief to items 67 and 68 of the exclusive legislative list (2nd Schedule, Part 1). It is his submission that items 67 and 68 empower the National Assembly to enact the Act by establishing a commission creating offences and providing for sanctions against offenders. In support of this submission, he referred to the English case of Attorney-General v. Great Eastern Railway (1879-1880) 5 App. Cases 473 HL where he referred to this quotation

“whatever is fairly incidental to the object established in a statute will, unless expressly prohibited, be ‘intra vires’.”

And also to Black’s Law Dictionary for the definition of incidental power. In the definition of implied power, he referred to the case of In International Sho Co. v. Pinkins 278 US 261, 73 L.ed. 495 Ct 108 Learned Senior Advocate therefore submitted that the National Assembly can set up the corrupt practices commission envisaged by item 60(a) on the exclusive legislative list and create offences on corrupt practices by virtue of item 68 on the Exclusive Legislative List. It is therefore submitted that the view of the Judicial Committee of the Privy Council in Balewa v. Doherty (1963) (supra) that no offence can be created under the item relating to incidental power on the Exclusive Legislative List unless the creation is incidental or supplementary to some other matter which matter must have in existence does not apply to the present case. In the case not any offence created under the Act were made pursuant to item 60(a) of the Exclusive Legislative List, he therefore further submitted that the power to, make law with respect to a given matter is wide enough to embrace the creation of offences in relation thereto as a separate and independent exercise. See R. v. Kidman (1915) (supra). It is submitted that it will be startling and sterile to grant power to the National Assembly to make law on a matter without the power to create offences.

With regard to sec. 15 (5) of the Constitution, he submitted that that provision should be interpreted to mean that the state referred to is not referred to the federal government but it is considered that the interpretation of this section means governments at the State and Local Government levels that would only mean that the Federal, State and Local Governments all have concurrent powers to legislate on corrupt practices and abuse of power. But them submits that it

should be borne in mind, that in such a situation, the federal government (National Assembly in this case) can competently legislate to cover the whole field as nothing prohibits it either expressly or by necessary implication from doing so in the Constitution. Whether the State or Local Government Legislation on Corrupt Practices such laws will be subject to the condition that they will remain in abeyance in the face of the federal law and the doctrine of covering the field. B

Issue 2

On issue 2 it is the submission of learned Senior Advocate of Nigeria fully agrees with the well established principle that under a federal system, the federal government cannot exercise its legislative power in a manner that would interfere or infringe with the autonomy of the State Government. Reference to such cases as *Attorney-General of Ogun State v. Attorney-General of Federation* (supra); *Federal Minister of Internal Affairs v. Shugaba* (supra). Then he goes on to submit that notwithstanding the general principle of state autonomy, it remains settled law that the Federal Constitution can either expressly or by necessary implication permit derogation from the principle and withdraw any such power from the State. In this respect, he cites the following American cases: *Twinning v. New Jersey* 211 U.S. 78; 53 C Led. 29 S. Ct.; *Hurtado v. California* 110 U.S. 516 28 L.ed 4 S.C. 11. Then he made this further submission that the power of the National Assembly to make laws with respect to any matter included in the Exclusive Legislative List is except as otherwise provided in the Constitution, to the exclusion of the State House of Assembly. See F sec. 4(3) of the Constitution. He went on further to contend that there is no item on the Concurrent List enabling the House of Assembly to make law for the establishment and regulation of authorities to promote and enforce the observance of the Fundamental Objectives G and Directive Principles contained in the Constitution or to make law in respect of the Code of Conduct. Furthermore, the Concurrent List does not contain any item with, reference to incidental or supplementary matters. Accordingly, he argued, Part II of Schedule III of the Constitution is not applicable to the House of Assembly. He H therefore argued that the Federal Government cannot be accused of interfering with a non-existent State power or function. The Act has not conferred any powers or duties on any State functionary so as to bring him within the investigatory or scrutinizing powers of the National

Assembly. Accordingly, he submits, the fact of the case of Attorney-General of Ogun State & Ors. v. Attorney-General of the Federation & Ors. (supra) are distinguishable from the facts of the present case. Issue 3 It is the submission of learned Senior Advocate of Nigeria that if issues I & II are resolved as argued by him, then it follows a fortiori that by virtue of sec.174 (1) (a) of the 1999 Constitution, the Attorney-General of the Federation can initiate prosecution in respect of any federal offence in any court in Nigeria. A careful review of the various arguments proffered by the defendants to this action would be clear they are classified broadly in terms of whether they are in support of the claims of the plaintiff or in support of the 1st defendant. On that basis, it is I think clear that the 2nd, 4th, 12th 17th, 25th, 28th, 30th and 32nd defendants proffered the contention of the plaintiff. What this means is that with the plaintiff, they are urging that the court should uphold the claim of the plaintiff. It must be borne in mind that the plaintiff has argued that each of the objectives and principles set out in Chapter 2 of the Constitution are expected to be conformed to, observed and applied” by the appropriate organs of all tiers of Government (including the National Assembly) when exercising the various powers conferred on them by the Constitution. It is therefore argued that the statement of the said objectives and principles (including the objective of the abolition of corruption and abuse of power) is not meant to be a statement of any (additional) powers (legislative, executive or judicial) conferred on any of the organs of Government. He then added that it is only meant to lay down the ends or purposes to which powers conferred on those organs, when exercised, are to be directed. Hence, it is further argued that section 13 of the Constitution refers to “duties and responsibilities” rather than “power or functions”.

Chief F.R.A. Williams, SAN for all the reasons in the plaintiff’s brief, then urged the court to hold that the answer to question (i) is in the affirmative, i.e. that the Corrupt Practices and Other Related Act, 2000 is not a law with respect to a matter or matters. Further and in the alternative, he invited the court to hold that question (ii) be answered in the negative i.e. that the National Assembly has no power to make laws with respect to the criminal offences contained in the said Act.

On the other hand, the 1st defendant and the other defendants

whose views coincide with that of the 1st defendant have argued that the National Assembly has competence to enact and enforce the criminal offences in the said Act, i.e. the Corrupt Practices and Other Related Offences Act, 2000.

Before I go on to the consideration of the differing positions of the parties stated above, I need to send down the various provisions of the 1999 Constitution that are germane to the questions raised. These are:-

“S.4(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make law with respect to the following matters, that is to say

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.

13. It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, G executive or judicial powers, to observe and apply the provisions of this chapter of this Constitution.

15(5) The State shall abolish all corrupt practices and abuse of power.

Item 60 The establishment and regulation of authorities for H the Federation or any part thereof

(a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

67. Any other matter with respect to which the National

Assembly has power to make laws in accordance with the provisions of this Constitution.

68. *Any matter incidental or supplementary to any matter mentioned elsewhere in this list.*

B 2. *In this Schedule, references to incidental and supplementary matters include, without prejudice in their generality to, references to (a) offences;"*

C It is manifest from the contents of the briefs filed in this matter and even more importantly, the claims of the plaintiff that the resolution of the questions raised upon them is a direct invitation to interpret the provisions of the Constitution. In my view, it is in that exercise that the validity or invalidity of the said Act would be determined. For this purpose, I intend to refer to such principles as have been laid down for construing the provisions of a Constitution in some decided D cases. In this context, may I refer to the case Senator Adesanya v. President of Nigeria (1981) 2 NCLR 358 at 374, Fatayi Williams, CJN, quoted with approval the dictum of Barwick, C.J. in Attorney-General v. Commonwealth of Australia (1975) 135 CLR page 1 at page 17 which reads:-

E *"The only true guide and the only course which can produce stability in constitutional law is to read the language of the Constitution itself, no doubt generously and not pedantically but as a whole."*

F Also the observation of Sir Udoma U. Udoma, JSC in Nabiu v. The State (1980) 8-11 SC 130 at pages 148 -149, (1982) 2 NCLR 293 was quoted thus:-

G *"... the function of the Constitution is to establish a framework and principles of government, broad and general in terms intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or in H the narrower sense, in my view this court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text, or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.*

My Lord it is also my view that the approach of this court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat I do not conceive it to be duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another Constitution equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends.” B

Thereafter, Fatayi Williams CJN, then added his own words of wisdom when he said: C

“I only need to add that I am also strongly of the view that when interpreting the provisions of our 1979 Constitution, not only should the courts look at the Constitution as a whole, but should also construe its Provisions in such a way as to justify the hopes and aspirations of those who have made the strenuous effort to provide us with a Constitution for the purpose of promoting persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people.” D

Consistent with he view expressed with regard to constitutional interpretation, may I refer humbly to what I said in the case of Ekpenkhio v. Egbadon (1993) 7 NWLR (Pt.308) 717 at 727 E

“A constitutional document must not only be given liberal and broad interpretation, it must also be construed without the usual technical inhibition of ordinary statutes. It is not the duty of the court to defeat the obvious end of Constitution. The court must construe the provisions of the Constitution in such a way as to justify the hope and aspirations of those who have made strenous effort to provide the Constitution for the purpose of good governance and welfare of persons in the country.” F

Now, having regard to the principles enunciated above with regard to the interpretation of a Constitution, it is necessary to observe that what has to be construed is the constitutional document wherein all the provisions for the governance of the nation, Nigeria have been set out. In other words, it is the Constitution of Nigeria, 1999, that is under scrutiny in this matter. It is certainly not the Constitution of any other country, no matter how desirable and perfect that Constitution may be. We as Nigerians have to live and abide with all the provisions H

of the Constitution which have been fashioned for us by those whose fate was ordained to fashion the Constitution for the governance of the people of Nigeria.

Be that as it may, it is necessary to be reminded that the Constitution of 1954 established the Federation of Nigeria out of the three regions of Nigeria, Northern, Western and Eastern and the Federal Territory of Lagos. As a result of the ever-changing views on how many States ought to constitute the federating units of the country to make for governance, the three regions no longer exist. They have been changed into States and they are now 36 by virtue of the Constitution of Nigeria, 1999. The Federal Capital of Lagos was expanded and it metamorphosed into Lagos State and the Federal Capital, Abuja also came into being.

By the 1954 Constitution, the Federal Legislature was given complete power in the Federal Territory of Lagos, but in the regions the legislative power was divided between the Federal Legislature and the Legislatures of the Regions. The Constitution specified two Legislative Lists, one called the Exclusive and the other the Concurrent. The Federal legislature alone could legislate with respect to any matter on the Exclusive List. Both the Federal and the appropriate Regional legislature could legislate on any matter on the Concurrent List. The Regional legislature alone could legislate on matters not specified on either list. This arrangement of the structure of the Constitution with regard to the powers given to the Federal legislature and the Regional legislatures led the Supreme Court, per the judgment of the then Chief Justice of Nigeria, the Chief justice of Eastern Nigeria and Unsworth F.J., in the case of *Balewa v. Doherty* (1963) 1 WLR 949 to say of that Constitution of 1954, thus “*the Nigerian Constitution is a truly Federal Constitution in which the residual powers are vested in regional government.*”

Though new Constitutions had been promulgated for Nigeria since the 1954 Constitution, the division of legislative powers between the Federal Legislature and the State Legislatures were maintained into those Constitutions and also in the 1999 Constitution. This means that the Federal legislature, namely, the National Assembly was given complete power in the Federal Capital Territory, Abuja, but in the States, the legislative power was divided between the National Assembly and the Houses of Assembly of the States. The Constitution

specified two Legislative Lists, one called the Exclusive and the other the Concurrent. The National Assembly alone could legislate with respect to any matter on the Exclusive List. Both the National Assembly and the appropriate State Assembly could legislate on any matter on the Concurrent List. The State Assembly alone could legislate on matters not specified on either list. The detailed provisions of the above are to be found in section 4 of the 1999 Constitution. After the consideration of the questions raised in this matter in the light of the provisions of this Constitution, it would be intriguing to know whether what was said in respect of the 1954 Constitution - viz, that it is a *“truly Federal Constitution in which the residual powers are vested in the regional government”* can be said of the Constitution of Nigeria, 1999.

In order to deal with the questions posed in this matter, it is my respectful view that the case of *Balewa v. Doherty* (supra), which nearly all the parties in this suit had cited in the course of their submissions ought to be considered. In the process, the decision of the Privy Council in England in that case and the process of reasoning that led to some of the decisions taken by that court would perhaps assist in the resolution of some of the questions raised in this matter.

One of the questions that was determined was, whether or not the Commissions and Tribunals of Inquiry Act, 1961, is within the competence of the legislative powers of the Federal Parliament in so far as the said Act purports to have effect in relation to matters and things within Federal competence within the Federation. In the course of delivering the judgment of their Lordships of the Privy Council, Lord Devlin said in the *Balewa v. Doherty* (supra) at pp. 952 953, thus:

“The 1960 Constitution by section 64 retains with some alterations the Exclusive and Concurrent Lists and the division of legislative powers initiated by section 51 of the 1954 Constitution. But the 1960 Constitution also gives power directly to Parliament, that is, the Federal legislature, to make laws on a number of matters specified in separate and independent sections. These additional powers are categorized in two different ways. Some of them are gathered together in the independent sections enumerated in Item 43 of the Exclusive List. The effect of this is the same as if they were each made an independent item in the list. One of these is Banks and

Banking, in respect of which Parliament is directly empowered by section 72 of the Constitution to make laws. The rest are gathered together in section 64(3) of the Constitution where they are described as “matters not included in the legislative lists” and a general power to Parliament to make laws on such matters is conferred or repeated by that subsection. This second category, which their Lordships will term the section 64(3) category, contains such matters as emergency powers, implementation of treaties, administration of trusts and estates, film censorship and evidence.

The Schedule to the 1960 Constitution is headed “The legislative lists” and is divided into three parts - The Exclusive List, the Concurrent List and a third part headed “Interpretation” which is common to both. The interpretation is concerned entirely with the amplification of the general and incidental item, which concludes each list.

Item 44, the last item on the Exclusive List, is in the following terms:

*“44. Any matter that is incidental or supplementary -
 (a) to any matter referred to elsewhere in this list; or
 (b) to the discharge by the Government of the Federation... of any function conferred by this Constitution. ‘*

Article 1 of Part III (Interpretation) is in the following terms:

‘1. In this Schedule references to incidental and supplementary matters include, without prejudice to their generality

(a) offences;

(b) the jurisdiction, powers, practice and procedure of courts of law;

(c) the compulsory, acquisition and tenure of land; and

(d) the establishment and regulation of tribunals of inquiry’

Since banking is a subject within Item 43 of the Exclusive List, it must be beyond doubt that Parliament has power to provide for an inquiry in some form into banking.”

The principle emerging from that view of the Privy Council is clearly to the effect that since Banking is a subject within Item 43 of the Exclusive List, it must be beyond doubt that Parliament has power to provide for an inquiry in some form into banking. Reverting to the case in hand, I have hitherto set out the relevant provisions of the Constitution relied upon by the 1st defendant and other defendant who share the view that the said Act be declared as validly enacted by the National Assembly. The position of the plaintiff on the other

hand is that the National Assembly has no power to enact the said Act. But after a careful reading of the oral submission and the argument in the plaintiff's brief, the plaintiff does appear to recognize that the National Assembly has the necessary legislative power to create a Commission to supervise the duties and responsibilities set out in the Directive Principles by virtue of item 60(a) in Part 1 of the Second Schedule to the 1999 Constitution which confer on the National Assembly the exclusive competence to legislate on -

"The establishment and regulation of authorities for the Federation or any part thereof .. to promote and enforce the observance of the Fundamental Objectives and Directives Principles contained in this Constitution."

That is the extent of the power of the National Assembly as it is the firm submission of the plaintiff that the National Assembly has no legislative competence to create offences as was purportedly done in the Corrupt Practices and Other Related Offences Act, 2000.

Leaving aside the submission that the National Assembly has legislative competence to create offences, I will examine first the submission of the 1st defendant with regard to the legislative competence of the National Assembly. Now, it is not in doubt that by virtue of section 4 (2), (3) & (4) of the Constitution, the National Assembly is vested with the power to make laws for the peace, order and good, government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution. In addition and without prejudice to the powers conferred by subsection (2) of this section., the National Assembly shall have power to the following matters:

*"(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution."*

The above provisions of the Constitution clearly show the powers vested in the National Assembly to make laws for the peace, order and good government of the Federation or any part thereof. But in view of the Act which is under consideration in this matter that is, Anti-Corruption Practices and Other Related Offences Act, 2000,

the question that has dominated this action is whether the enactment of the Act is within the competence of the National Assembly. There is the argument that all the provisions in Chapter II of the Constitution with the heading - "Fundamental Objectives and Directive Principles of State Policy" are not justiciable, and cannot therefore be subject of any enactment or law. It is under this Part II of the Constitution s.15 (5), thereof is found the provision that "*The State shall abolish all corrupt practices and abuse of power.*"

It has been further argued that all the several provisions in Part II of the Constitution stand alone in the Constitution and should not thereof be read with other provisions of the Constitution. Weighty as that submission may be, it must be rejected having regard to the principles of constitutional interpretation which I have referred to earlier in this judgment. To accede to that submission is to fly in the face of the settled principle of constitutional interpretation that the duty of the court is to read and construe together all the provisions of the Constitution, unless there is a very clear reason that a particular provision of the Constitution should not be read together, It is of course germane to have it borne in mind the object of the Constitution in enacting the provisions contained therein. For the above reasons, I must state that s.15(5) of the Constitution must be read together with item 60 (a) of the Second Schedule of the Constitution, the provisions of which I have set out above, When these two provisions of the Constitution are read together, the clear conclusion that must be reached is that the National Assembly has the legislative power to make laws, in the words of item 60 for "*The establishment and regulation of authorities for the Federation or any part thereof,*"

(a) to promote and defend the Fundamental Objectives and Directive Principles contained in this Constitution,"

The next argument that falls to be considered is whether the National Assembly in the context of the above provisions is limited to enacting a Commission such as the Corrupt Practices Commission, In other word the National Assembly has no legislative competence to enact offences, which were purportedly created in the said Act. That argument and with due respect must be considered in the light of the provisions of items 67 and 68 of Part I of the Second Schedule to the Constitution. Though I have set them out before, I must for ease of reference set them down again.

“Item 67 - Any other matter with respect to which the National Assembly has power to make laws in accordance with the provision of this Constitution,”

Item 68 - Any matter incidental or supplementary to any matter mentioned elsewhere in this list. A plain reading of item 67 clearly enables the National Assembly to enact laws in connection with matters in which the National Assembly has powers to make laws in accordance with the provisions of the Constitution, With the view already held by me that the National Assembly has legislative competence to enact laws to promote and enforce the Fundamental Objectives and Directive Principles contained in this Constitution which in this case is section 15 (5), which provides that the State shall abolish all corrupt practices and abuse of power, the National Assembly by the provision of item 67 is vested with the power to enact laws accordingly which are in accordance with the provisions of the Constitution. But it is to item 68 that in my respectful view that falls to be considered to determine whether the National Assembly has vested powers to enact criminal offences. In the determination of this question, reference must also be made to section 2 (a) Part III of the Second Schedule to the Constitution which reads:

“In this schedule, references to incidental and supplementary matters include without prejudice to their generality, references to offences.”

It is manifest from the provisions of section 2 (a) Part III of the Second Schedule to the Constitution that it was enacted in order to expand the effect and the extent of the provisions of item 68. It is by virtue of this provision that offences may be enacted by the National Assembly if it is shown that such offences as may be created is incidental and supplementary to matters in which the National Assembly is vested to enact laws. The submission of the plaintiff in this regard is that none of the offences created in the said Act can be said to be incidental to item 60 (a) of the Exclusive Legislative List. Nor can it be said that those offences arise from ‘Or pertain to or to be connected with “the establishment and regulation of authorities mentioned in the item.”’ In support of this submission, the case of *Balewa v. Doherty* (supra) was cited.

I must with the greatest respect to the learned senior counsel for the plaintiff reject the contention that offences were invalidly created

in the said Act. It must be remembered that the Act created in the Independent Corrupt Practices and Other Related Offences Commission which has obviously no power to legislate but having regard to the fact that the Independent Corrupt Practices and Other Related Offences Commission is charged with the power to implement the Fundamental Objectives and Directive Principles of State Policy by virtue of the provisions of item 60 (a), it is necessary for the Independent Corrupt Practices and Other Related Offences Commission to be equipped with what would be required to enforce the said Directive Principles. It is in that circumstances that the National Assembly could enact laws and offences under and by virtue of item 68 of which I have earlier referred to.

At this point, I will adopt the view of my Lord Uwais CJN in his judgment where he said thus:

"The Constitution of India has similar provision to ours on Directive Principles of State Policy in Part I thereof. In the Indian case of Mangru v. Commissioner of Budge Municipality (1951) 87 C.L.J. 369, it was held that the Directive Principles require to be implemented by legislation, and so long as there is no law carrying out the policy laid down in a Directive neither the State nor an individual can violate any existing law or legal right under colour of following a Directive. See also the Shorter Constitution of India 12th Edition by Dr. D.D. Basu at pages 296 - 297."

For the above reasons, I must hold that no objection can be taken that the criminal offences that were enacted in the said Act to enable the Independent Corrupt Practices and Other Related Offences Commission function properly. It has also been argued that several of the offences enacted in the said Act are also state offences. That may well be so but the provisions of s. 4 (5) of the Constitution which says:

"If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void."

I ought to comment briefly on the contention that it is unconstitutional for the State High Court to be used as a venue for the prosecution of cases initiated by the Commission. The contention here has been that, it is a violation of state rights, which is unacceptable.

Having regard to the federal nature of our Constitution in putting forward this contention, cognisance was not taken with regards to sec. 286 (1) of the Constitution which reads:

“286(1) Subject to the provisions of this Constitution -

(b) where by the Law of a State jurisdiction is conferred upon any court for the investigation; inquiry into, or trial of persons accused of offences against the Laws of the State and with respect to the hearing and determination of appeals arising out of any such trial or out of any proceedings connected therewith, the court shall have like jurisdiction with respect to the investigation, inquiry into, or trial of persons for federal offences and hearing and determination of appeals arising out of the trial or proceedings.”

“Federal offence” means an offence contrary to the provisions of an Act of the National Assembly or any law having effect as if so enacted.”

Therefore I would say that there is no difficulty in recognizing that laws validly made by the National Assembly shall prevail over laws enacted by the House of Assembly of a State if it is inconsistent with that of the National Assembly. It is also the contention of the plaintiff that not all the powers conferred upon the Independent Corrupt Practices and Other Related Offences Commission or other functionaries and agencies of the Federal Government are excisable in Ondo State in relation to the activities of persons in that State including any public officer or functionary of the government of Ondo State. It is therefore submitted that secs. 6(a), 26 (3), 28, 29, 35 & 37 of the Act are unconstitutional and invalid. The sections read as follows:

“6(a) Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or, any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders.

26(3) A prosecution for an offence shall be concluded and judgment delivered within ninety (90) working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where good grounds exists for a delay.

28(1) An officer of the Commission investigating an offence under this Act may -

(a) order any person to attend before him for the purpose of being examined in relation to any matter which may, in his opinion, assist in the investigation of the offence;

B *(b) order any person to produce before him any book, document or any certified copy thereof, or any other article which may, in his opinion, assist in the investigation of the offence; or*

C *(c) by written notice require any person to furnish a statement in writing made under oath or affirmation setting out therein all such information required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation of the offence.*

D *(2) Subsection (1) (b) shall not apply to banker's books save in accordance with the provisions of the Evidence Act.*

(3) A person to whom an order under subsection (1) (a) has been given shall -

E *(a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and*

(b) during such examination disclose all information which is within his knowledge.

F *(4) A person to whom an order has been given under subsection (1) (1) shall not conceal, destroy, remove from Nigeria, or mutilate, expend or dispose of any book, document, or article specified in the order or relevant to the investigation, or alter or deface any entry in such book or document or cause such act to be done, or assist or conspire to do such act.*

G *(5) A person to whom a written notice has been given under subsection (1) (c) shall, in his statement, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him.*

H *(6) A person to whom an order or a notice is given under subsection (1) shall comply with such order or notice and with subsections (3), (4) and (5).*

(7) Where any person discloses any information or produces any book, document or article pursuant to subsections (1), (3) and (5), neither the first-mentioned person, nor any other person on

whose behalf or direction or as whose agent or employee the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution, except a prosecution for an offence relating to the violation of section 1 or for any offence under or by virtue of any written law, or to any proceeding or claim by any person under or by virtue of any law or under or by virtue of ^B
any contract, agreement or arrangement, or otherwise.

(8) An officer of the Commission examining a person under section 26 of this Act, shall record in writing any statement made by the person and the statement so recorded shall be read over to the maker who on being satisfied that it is a true record of his statement shall sign same before a superior officer of the Commission; and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reasons therefore, if any, stated by the person examined; and any person who shall write ^C
for a person who is an illiterate shall also write on such document his own name and address as the writer of the document. ^D

(9) The record of an examination under section 26, a written statement on oath or affirmation made pursuant to or any book, document or article produced under section 26, or otherwise in the course of an examination under section under a written statement on oath or affirmation pursuant to sections 26 and 27 shall notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court - ^E

(a) for an offence under this Act; or ^F

(b) for the forfeiture of any property pursuant to section 46 or 47 notwithstanding that such proceedings are against the person who was examined, or who produced the book, document or article, or who made the written statement on oath or affirmation, or against ^G
any other person.

(10) Any person who contravenes this section shall be guilty of an offence punishable with a term of imprisonment not exceeding 3 months.

29. Subject to the provisions of sections 29 to 34 of this Act ^H
the Commission may issue a summons directed to a person complained against or any other person to attend before the Commission for the purpose of being examined in relation to the complaint or in relation to any other matter which may aid or facilitate the investigation of

the complaint; and a summons so issued shall state the substance of the complaint, and the time and place at which the inquiry is to be held.

B 35. *Where the Commission is satisfied that a summons directed to a person complained against or any other person has been served and that person does not appear at the time and place appointed in the summons, the Commission shall have power to arrest and detain any such person, until the person complies with the summons.*

C 37(1) *If in the course of an investigation into an offence under this Act any officer of the Commission has reasonable grounds, to suspect that any movable or immovable property is the subject-matter of an offence of evidence relating to the offence he shall seize such property."*

D After due consideration of whether the provisions of these sections of the Act violate the provisions of the 1999 Constitution, my answer with regard to Issue No.4 are as follows:

"s.6(a) - this power is excisable in Ondo State in view of the provisions of section 4 subsections (2) and (3) of the Constitution.

E *s.26 (3) - the provisions therein infringe on the principle of separation of powers and the subsection is unconstitutional, null and void - see Unongo v. Aku (1983) 2 SCNLR 322.*

F *s.28- the powers of the ICPC are co-extensive with those of the Police under the Police Act, Cap. 359 and do not usurp the police power under section 214 of the Constitution. The power is exercisable on a person not exercising government function.*

s.29 - the power is not unconstitutional since it is exercisable on persons not exercising government function.

G *s.35 - the power of the ICPC to arrest and detain persons indefinitely, that is, until the person complies with the summons, violates the provisions of section 35 of the Constitution which guarantees the fundamental right to personal liberty. The provision is therefore unconstitutional, null and void.*

H *s.37 - the power of the ICPC is constitutional. The National Assembly, as shown earlier, has the right under the Constitution to create the offence."*

Having come to the conclusion that sections 26 (3) and 35 of the Act are unconstitutional, I will apply the blue pencil rule to strike

them out from the Act. As the severance of those sections has not in my view affected the rest of the Act, I have no justifiable reason to uphold the power of the plaintiff that the whole of the Act be invalidated. In the result, from what I have said above, the plaintiff's action succeeds only in part. Now that I have reached the concluding part of this judgment, I need to return to the judgment of the court in *Balewa v. Doherty* (supra) wherein the 1954 Constitution was described as a truly Federal Constitution. From all I have said above and a close reading of the 1999 Constitution, I do not think it can be said that it is a truly Federal Constitution. In my humble view, it is a hybrid of a Federal and a Unitary system of constitutional government.

Be that as it may, for the above reasons and the fuller reasons given in the judgment of my Lord Uwais, CJN, I make the following orders:-

(1) Section 26 (3) of the Act is unconstitutional and it is hereby declared null and void.

(2) Section 35 of the Act is unconstitutional and it is hereby declared null and void.

(3) Each party shall bear its costs.

Claims granted in part.

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