



**POS 112**

**Nigerian Constitutional  
Development**  
Course Manual

**Lafenwa Stephen Akinyemi Ph.D.**

# Nigerian Constitutional Development

POS112



University of Ibadan Distance Learning Centre  
Ibadan Open and Distance Learning Course Series Development  
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# Vice-Chancellor's Message

The Distance Learning Centre is building on a solid tradition of over two decades of service in the provision of External Studies Programme and now Distance Learning Education in Nigeria and beyond. The Distance Learning mode to which we are committed is providing access to many deserving Nigerians in having access to higher education especially those who by the nature of their engagement do not have the luxury of full time education. Recently, it is contributing in no small measure to providing places for teeming Nigerian youths who for one reason or the other could not get admission into the conventional universities.

These course materials have been written by writers specially trained in ODL course delivery. The writers have made great efforts to provide up to date information, knowledge and skills in the different disciplines and ensure that the materials are user-friendly.

In addition to provision of course materials in print and e-format, a lot of Information Technology input has also gone into the deployment of course materials. Most of them can be downloaded from the DLC website and are available in audio format which you can also download into your mobile phones, IPod, MP3 among other devices to allow you listen to the audio study sessions. Some of the study session materials have been scripted and are being broadcast on the university's Diamond Radio FM 101.1, while others have been delivered and captured in audio-visual format in a classroom environment for use by our students. Detailed information on availability and access is available on the website. We will continue in our efforts to provide and review course materials for our courses.

However, for you to take advantage of these formats, you will need to improve on your I.T. skills and develop requisite distance learning Culture. It is well known that, for efficient and effective provision of Distance learning education, availability of appropriate and relevant course materials is a *sine qua non*. So also, is the availability of multiple platform for the convenience of our students. It is in fulfillment of this, that series of course materials are being written to enable our students study at their own pace and convenience.

It is our hope that you will put these course materials to the best use.



Prof. Isaac Adewole

Vice-Chancellor

# Foreword

As part of its vision of providing education for “Liberty and Development” for Nigerians and the International Community, the University of Ibadan, Distance Learning Centre has recently embarked on a vigorous repositioning agenda which aimed at embracing a holistic and all encompassing approach to the delivery of its Open Distance Learning (ODL) programmes. Thus we are committed to global best practices in distance learning provision. Apart from providing an efficient administrative and academic support for our students, we are committed to providing educational resource materials for the use of our students. We are convinced that, without an up-to-date, learner-friendly and distance learning compliant course materials, there cannot be any basis to lay claim to being a provider of distance learning education. Indeed, availability of appropriate course materials in multiple formats is the hub of any distance learning provision worldwide.

In view of the above, we are vigorously pursuing as a matter of priority, the provision of credible, learner-friendly and interactive course materials for all our courses. We commissioned the authoring of, and review of course materials to teams of experts and their outputs were subjected to rigorous peer review to ensure standard. The approach not only emphasizes cognitive knowledge, but also skills and humane values which are at the core of education, even in an ICT age.

The development of the materials which is on-going also had input from experienced editors and illustrators who have ensured that they are accurate, current and learner-friendly. They are specially written with distance learners in mind. This is very important because, distance learning involves non-residential students who can often feel isolated from the community of learners.

It is important to note that, for a distance learner to excel there is the need to source and read relevant materials apart from this course material. Therefore, adequate supplementary reading materials as well as other information sources are suggested in the course materials.

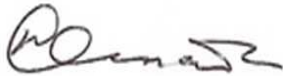
Apart from the responsibility for you to read this course material with others, you are also advised to seek assistance from your course facilitators especially academic advisors during your study even before the interactive session which is by design for revision. Your academic advisors will assist you using convenient technology including Google Hang Out, You Tube, Talk Fusion, etc. but you have to take advantage of these. It is also going to be of immense advantage if you complete assignments as at when due so as to have necessary feedbacks as a guide.

The implication of the above is that, a distance learner has a responsibility to develop requisite distance learning culture which includes diligent and disciplined self-study, seeking available administrative and academic support and acquisition of basic information technology skills. This is why you are encouraged to develop your computer skills by availing yourself the opportunity of training that the Centre’s provide and put these into use.

In conclusion, it is envisaged that the course materials would also be useful for the regular students of tertiary institutions in Nigeria who are faced with a dearth of high quality textbooks. We are therefore, delighted to present these titles to both our distance learning students and the university's regular students. We are confident that the materials will be an invaluable resource to all.

We would like to thank all our authors, reviewers and production staff for the high quality of work.

Best wishes.

A handwritten signature in dark ink, appearing to read 'Okunade', with a stylized flourish at the end.

Professor Bayo Okunade

Director

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# About this course manual

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Nigerian Constitutional Development POS112 has been produced by University of Ibadan Distance Learning Centre. All Political Science course manuals produced by University of Ibadan Distance Learning Centre are structured in the same way, as outlined below.

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## How this course manual is structured

### The course overview

The course overview gives you a general introduction to the course. Information contained in the course overview will help you determine:

- If the course is suitable for you.
- What you will already need to know.
- What you can expect from the course.
- How much time you will need to invest to complete the course.

The overview also provides guidance on:

- Study skills.
- Where to get help.
- Course assessments and assignments.
- Activity icons.
- Study sessions.

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We strongly recommend that you read the overview *carefully* before starting your study.

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### The course content

The course is broken down into study sessions. Each study session comprises:

- An introduction to the study session content.
- Learning outcomes.
- Content of study sessions.
- A study session summary.
- Assessments and/or assignment, as applicable.

## Your comments

After completing this course, Nigerian Constitutional Development, we would appreciate it if you would take a few moments to give us your feedback on any aspect of this course. Your feedback might include comments on:

- Course content and structure.
- Course reading materials and resources.
- Course assessments.
- Course assignments.
- Course duration.
- Course support (assigned tutors, technical help, etc).
- Your general experience with the course provision as a distance learning student.

Your constructive feedback will help us to improve and enhance this course.

## Course overview

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### Welcome to Nigerian Constitutional Development POS112

The course provides a survey and analysis of topical issues and problems in Nigeria's constitutional development, from the creation of Nigerian corporate entity in 1914 through colonial rule to date. It also attempts to carry out a comprehensive assessment of the effects of socio-cultural and economic forces on Nigerian constitutions.

This course manual supplements and complements POS112 UI Mobile Class Activities as an online course. The UI Mobile Class is a virtual learning platform.

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### Nigerian Constitutional Development POS112—is this course for you?

POS112 is a *required* course for students in Political Science B.Sc. programme. The eleven major Study Sessions of the course are constructed around five related main themes. These include: Constitutions and Constitutionalism, The nature of Nigerian society and the historical background of constitutional development in Nigeria, The Pre-Independence Constitutional Development from 1914 to 1960, The Post- Independence Constitutional Development from 1960 to the present and Constitutional changes in Nigeria.

### Course outcomes



Upon a successful completion of Nigerian Constitutional Development POS112 you will be able to:

- *point out* various major issues and challenges associated with Nigeria's constitutional development at different periods.
- *analyse* with concrete examples, the instability of constitutional reforms in Nigeria.

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## Timeframe



How long?

This is a one semester course.

45 hours of formal study time is required.

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## Study skills



As an adult learner your approach to learning will be different to that from your school days: you will choose what you want to study, you will have professional and/or personal motivation for doing so and you will most likely be fitting your study activities around other professional or domestic responsibilities.

Essentially you will be taking control of your learning environment. As a consequence, you will need to consider performance issues related to time management, goal setting, stress management, etc. Perhaps you will also need to reacquaint yourself in areas such as essay planning, coping with exams and using the web as a learning resource.

Your most significant considerations will be *time* and *space* i.e. the time you dedicate to your learning and the environment in which you engage in that learning.

We recommend that you take time now—before starting your self-study—to familiarize yourself with these issues. There are a number of excellent web links & resources on the Course website. Go to “Self-Study Skills” menu in course website.

---

## Need help?



Help

As earlier noted, this course manual complements and supplements POS112at UI Mobile Class as an online course.

You may contact any of the following units for information, learning resources and library services.

**Distance Learning Centre (DLC)**

University of Ibadan, Nigeria

Tel: (+234) 08077593551 – 55

(Student Support Officers)

Email: [ssu@dlc.ui.edu.ng](mailto:ssu@dlc.ui.edu.ng)

**Head Office**

Morohundiya Complex, Ibadan-  
Ilorin Expressway, Idi-Ose,  
Ibadan.



**Information Centre**  
20 Awolowo Road, Bodija,  
Ibadan.

**Lagos Office**  
Speedwriting House, No. 16  
Ajanaku Street, Off Salvation  
Bus Stop, Awuse Estate, Opebi,  
Ikeja, Lagos.

For technical issues (computer problems, web access, and etcetera),  
please send mail to [webmaster@dlc.ui.edu.ng](mailto:webmaster@dlc.ui.edu.ng).

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## Academic Support



A course facilitator is commissioned for this course. You have also been assigned an academic advisor to provide learning support. The contacts of your course facilitator and academic advisor for this course are available at [onlineacademicsupport@dlc.ui.edu.ng](mailto:onlineacademicsupport@dlc.ui.edu.ng)

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## Activities



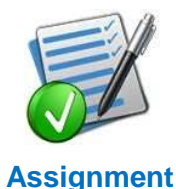
This manual features “Activities”, which may present material that is NOT extensively covered in the Study Sessions. You will be provided with answers to every activity question. Therefore, your emphasis when working the activities should be on understanding your answers. It is more important that you understand why every answer is correct.

There are different forms of activities in this manual, ranging from reading activities, case studies, discussion activities. The use of activities is particularly based on learning outcomes and nature of content. Some Study Sessions comes with discussion topics. You may discuss the Study Sessions at respective discussion boards on course website.

You may see dates for active discussion with tutor on course schedule. This course schedule is available on the course website.

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## Assignment



This manual also comes with tutor marked assignments (TMA). Assignments are expected to be turned-in on course website. You may also receive TMAs as part of online class activities. Feedbacks to TMAs will be provided by your tutor in not more than 2-week expected duration.

Schedule dates for submitting assignments and engaging in course / class activities is available on the course website. Kindly visit your course website often for updates.

---

## Assessments



### Assessments

There are two basic forms of self assessment in this course: in-text questions (ITQs) and self assessment questions (SAQs). Feedbacks to the ITQs are placed immediately after the questions, while the feedbacks to SAQs are at the back of manual. You will receive your TMAs as part of online class activities at the UI Mobile Class. Feedbacks to TMAs will be provided by your tutor in not more than 2-week expected duration.

Schedule dates for submitting assignments and engaging in course / class activities is available on the course website. Kindly visit your course website often for updates.

---

## Bibliography



### Reading






For those interested in learning more on this subject, we provide you with a list of additional resources at the Study Sessions; these may be books, articles or websites.

# Getting around this course manual

## Margin icons

While working through this course manual you will notice the frequent use of margin icons. These icons serve to “signpost” a particular piece of text, a new task or change in activity; they have been included to help you to find your way around this course manual.

A complete icon set is shown below. We suggest that you familiarize yourself with the icons and their meaning before starting your study.

			
Activity	Assessment	Assignment	Case study
			
Discussion	Group Activity	Help	Outcomes
			
Note	Reflection	Reading	Study skills
			
Summary	Terminology	Time	Tip



# Study Session 1

## Constitution and Constitutionalism: Conceptual Clarification

### Introduction

We will commence this Study Session by exploring the concept of constitution and constitutionalism in a bid to clarify these related concepts. In the process we will examine the origin and functions of constitution.

When you have studied this session, you should be able to:

- 1.1 define the term constitution.
- 1.2 discuss the origin of constitution.
- 1.3 analyse the relationship and differences between constitution and constitutionalism.
- 1.4 highlight the sources of the constitution.
- 1.5 show that there is a common pattern among constitutions in spite of many variations in the contents of the constitutions of different countries.
- 1.6 highlight and discuss major areas covered by a typical constitution with examples.



### Learning Outcomes

### 1.1 Meaning of Constitution

**Constitution** A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed..

Let us start our discussion on the meaning of the **constitution** by asking this pertinent question: What is a constitution? The Collins Dictionary defines a constitution as “the fundamental principles on which a state is governed, especially when considered as embodying the rights of subjects”. The Oxford English Dictionary says a constitution is ‘a body of fundamental principles or established precedents according to which a state or organisation is governed’. The Wikipedia International Encyclopedia describes a constitution ‘as a system, often codified as a written document, which establishes the rules and principles by which an organisation, or political entity, is governed’.

Although, the last two definitions emphasize the fact that the concept of constitution is not restricted to a formal political entity often referred to as the state, our definitional focus shall exclude informal political organizations. I must also tell you that the concept of the state as it is used in this course refers to a country and not to the constituent unit of a federated country. In other words, you can talk of the Nigerian state, the American state, the Indian state, etc.

From the above, a country’s constitution is the body of basic laws, principles, conventions, rules and regulations which govern the country. Now, let us consider some of the definitions provided by social scientists.

Kenneth Wheare defines a constitution as “a collection or aggregation of norms, mores, conventions, customs and standards on which a country is governed”. Oyeleye Oyediran states that:

*There are two ways by which we can view a constitution. One is by looking at it as an “ethno-cultural arrangement” which brings together way of life of people. In this sense, a constitution is concerned with establishing a standard by which a people judge themselves and their leaders. In another sense, a constitution can be seen as a simple legal document which defines the power structure and the institutional sources corresponding to such power structure.*

To Zoethout and Boon, a constitution is a collection of rules, establishing and regulating the system of government in a state.

From these definitions, it is clear that every state needs a constitution whether as unwritten laws, taking the form of usage, understandings, customs or conventions as in Britain, or as a detailed written document, as in the United States, Nigeria and most modern states because of its importance. A constitution sets out how all the elements of government are organised and how power is carried up among different political units. It contains rules about what power is wielded, who wields it and over whom it is wielded in the governing of a country.

Moreover, as a kind of ideal or contract between those in power and those who are subjected to this power, a constitution defines the rights and duties of citizens, and the mechanisms that keep those in power in check. The fundamental objective of constitution is to institute order in the community, and not necessarily to protect the divergent and conflicting rights and whims of the people.

## 1.2 Origin of Constitution

In terms of origin, the concept of “constitution” comes from Latin, referring to issuing any important law, usually by the Roman Emperor. The Latin term “*constitutio*” meant the very opposite of what we now understand as “*constitution*”. The very term “constitution” has acquired its modern meaning in English legal terminology. Though the origin of the British constitution is sometimes traced back to the Bill of Rights of 1689 and the Act of Settlement of 1701, or even farther to the Magna Carta (1215), it is more helpful to think of the constitutions as a creation of late 18<sup>th</sup> century. The period was initiated by the promulgation of first “written constitutions”; the US constitution in 1787 and the French Declaration of the Rights of man and the citizen in 1789.

## 1.3 Functions of Constitution

Essentially, a constitution performs these major functions:

- a) It defines the power of government;
- b) it also defines the basic organs of government;
- c) it sets limits to the power of government;

- d) it protects democracy by separating state powers into three: the legislature, the executive and the judiciary.

You should be aware of the fact that the constitution is fundamental if arbitrary, tyrannical and dictatorial rule is to be prevented.

## 1.3 Constitutionalism

Regarding the operation of the state, constitutionalism refers to governance that respects the constitution or a government based on the rule of law or due process. Simply put, the term ‘constitutionalism’ denotes government by the constitution or belief in the idea of a constitutional government. In other words, it means strict adherence to the spirit of the constitution.

In his book *The Constitutional Good: Constitutionalism’s Equivocal Moral Imperative* published in 1993 Walker expresses that:

*Whether purposely or inadvertently, and whether to greater or lesser degree, constitutionalism pries the polity away from the holder of power and makes the constitution itself an object to be reckoned with.*

In essence, constitutionalism is an ideal, often associated with the political theories of John Locke that the conduct of government or the exercise of political power must take place within the framework of constitution or impersonal, legal rules. One may also perceive it as the principle of limiting the power of government in accordance with the provision of the constitution. It emphasizes the rule of law and the protection of citizens from human rights abuse and violation by government officials and private citizens. I need to point out to you that by implication, with the concept of constitutionalism, the limited power of government must not only be recognized and accepted; it must also guarantee the fundamental human rights of the citizens.

More importantly, to achieve constitutionalism, emphasis has been on strict adherence to the principles of separation of powers and checks and balances as well as the respect for the rule of law, toleration of opposition, press freedom as well as continuous existence of an independent judiciary and constitutional courts. While these are categorical imperatives for achieving the Objectives of the state: maintenance of order and promotion of people’s welfare, I must call your attention to the fact that mere existence of a written constitution is no guarantee of constitutionalism. This means that while there may exist a codified body of rules to guide the operations of governmental structures and institutions, in reality political functionaries may not ensure strict adherence to them. To C. J. Friedrich, the goal of constitutionalism is constitutional government.



### Reading Activity

Allow 15 minutes

Read the chapter on “Constitution and Constitutionalism” in Anifowose Remi and Enemuo Francis, (ed.) 2005. *Elements of Politics*. (reprinted) Lagos: Sam Iroanusi Publications.

## 1.4 Sources of Constitutions

Having amply defined **constitution** and **constitutionalism**, and also explained the connection, it is imperative for us to identify major sources of a constitution. I am sure that questions that readily come to your mind now include the following: Who writes a constitution? Who and which groups have been the source of known constitutions? How have such constitutions evolved overtime?

First and foremost, you need to know that there are many sources of constitutions irrespective of the types, forms and the variants of such constitutions (Types, Forms and Variants of constitutions are discussed in the second study session).

These sources include the following:

### 1.4.1 Organic laws

These are laws passed by the legislature that may be regarded as special. Organic laws are more pervasive in the British constitution. They are basically referred to as special legislative rules. Examples include the 1215; Magna Carta, which provided for trial by jury and the due process of law, the 1679 Habeas Corpus Act, confirming the right of citizens to protection against imprisonment without any reasonable cause, the 1689 Bill of Rights and the 1710 Act of Settlement which established the supremacy of the legislature and the independence of the Judges and the Act of Parliament of 1911 and 1949, which limited the power of the House of Lords.

### 1.4.2 Customs and Conventions

These include customary constitutional rules including all those that are regularised, clearly understood and generally accepted and obeyed. Though they have not been written down, they are strictly obeyed in society. While customs of the people are referred to as “established usages” – rules that detail certain procedures for doing certain things, conventions are rules that do not involve the application of legal sanctions. For instance in Britain, the conduct of the constitutional monarch, the Prime Minister and the Cabinet, as well as the procedure in the Parliament is part of the unwritten constitution in Britain.

### 1.4.3 Judicial Precedents/ Decisions

Judicial decisions or judgments passed on very important subjects are also major sources of constitutions. The courts are usually responsible for dealing with many of the controversies over such interpretations and their decisions are generally regarded as legally authoritative. Unlike customs and conventions, the decisions of most courts are written, collected and published and these collections constitute another major source of a country’s constitution. In short, the interpretation given by recognised courts of a country in certain cases popularly referred to as judicial precedents constitute a source of some constitutions.



### 1.4.4 Past Experience

The unique experience of the people is usually a fountain of wisdom on which constitutions are framed and as well amended. Let me draw your attention to the significance of the geographical, historical, political, and economic, as well as socio-religious experiences of a people with this example. Because of the constant military intervention in politics in Nigeria, the framers of 1979 Nigeria constitution included a specific provision which outlawed military take-over of government by means other than those specified in the constitution.

### 1.4.5 Intellectual Works of Philosophers

Ideas borrowed from the works of political thinkers, philosophers, theologians have developed into significant principles that have been adapted in most constitutions. The principles of separation of powers and checks and balances that are included in most constitutions originated from the French philosopher, Baron de Montesquieu. Also, most of the economic doctrines of Karl Marx featured prominently in states some communist the constitution of such principles as consent of the governed, limited government and religious tolerance originally came from the intellectual works of the English philosopher, John Locke.

### 1.4.6 International Laws

Laws and treaties entered into at international fora as the United Nations, African Union, and the European Union among others serve as materials for constitution making in some countries. These treaties and conventions include International Civil Aviation Convention (ICAC), United Nations Convention on Laws of the Sea (UNCLOS).

#### Hint

Most of the constitutions which have **been** promulgated in the history of Nigeria have come from some if not all these sources.

## 1.5 Distinct Features of a Typical Constitution

This section concludes the first part of the Study Session by highlighting some distinct features of a typical constitution irrespective of its type, form and variant. It identifies and discusses a common pattern of constitutions with respect to their detailed provisions. Examples are drawn from the Nigerian constitution and other constitutions to show you the specific features of a typical constitution.

### 1.5.1 Features of a Typical Constitution

Though, you may find many variations in the contents of the constitutions of different countries, most of their provisions fall into some combinations of five major categories. The common pattern of most constitutions often referred to as

- “the scope” or “the substance” of a constitution includes a preamble,
- structure of government,
- procedure for amendment,
- distribution of power, and
- the rights of citizens.

These are the main features of a typical constitution. Let us discuss them one after the other.

### **A Preamble**

In most cases, this is a kind of prelude or an introduction to the constitution. Generally, this introductory statement of ideals is located at the beginning of a written constitution stating the authority by which the constitutions are established and for what purpose. Put differently, a preamble expresses the ideals, purposes and aspirations of the people. For example, the preamble of the constitution of United States of America states :

*We, the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America*

Likewise, the 1999 constitution of the Federal Republic of Nigeria, in its introductory statement proclaims:

*We, the people of the Federal Republic of Nigeria, having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign Nation under God, dedicated to the promotion of inter-African solidarity, world peace, international cooperation and understanding, give to ourselves the following constitution.*

### **Structure of Government**

Most constitutions indicate the major organs or branches of government to carry out the business of states administration. Usually, these organs or branches are three- the legislature, the executive and the judiciary. These constitutions generally indicate what kinds of people shall be eligible to occupy positions in those organs and how those organs will be selected and removed. Many constitutions also specify the institutional structure or organisation of governmental agencies and describe in detail their relationship and purposes. They usually state whether a country adopts a presidential or parliamentary or the dual executive model; unitary or federal or confederal government.

### **Procedures for Constitutional Amendment**

Most constitutions, especially those that are written, specify the way and manner they may be formally amended or changed. These amendment procedures differ from one constitution to another. In some states, the constitution can be fairly easily amended by the same procedure used for the passage of bills into law; while in others, the constitution can only be amended by a complex procedure different from that of passage of bills into law. For instance, the constitutions of New Zealand and Britain as mentioned in the last study session are flexible; this makes them easily amendable unlike American and Nigerian constitutions that are difficult to amend because of their rigidity. The special amendment procedures peculiar to rigid constitutions are there to prevent hasty and selfish

amendment as well as to allow people to express their opinions before changes are effected.

### **Distribution of Power**

The powers and functions of the three organs of government-the legislature, the executive and the judiciary, as well as those of agencies as the Armed Forces, the Police, are clearly spelt out in most constitutions. All federal constitutions distribute powers between the national/federal and governments of the component units-be it regional, state or local. The 1999 constitution of the Federal Republic of Nigeria, for instance, distributes powers between the federal and state governments. Powers belonging to the federal government alone which the National Assembly can legislate on is identified as contained in the Exclusive List. In addition, the constitution specifies items that both national and state assemblies can legislate on under the concurrent list as well as indicating the functions of local governments in its fourth schedule. On the other hand, some federal constitutions have three lists of powers. Power which belong to the federal government are called 'exclusive power'; those powers belonging to the federal and state governments are called the 'concurrent powers', while powers reserved to state governments are on the 'residual list'. Canadian and Indian constitutions fall into this category.

### **Fundamental Rights of Citizens**

All modern constitutions make provision for individual and collective rights of citizens. Constitutional provisions of most constitutions guarantee two main sets of rights. The first set constitutionally guarantees individual freedoms, civil liberties and political, social, legal rights and the right to political participation. The second set is obligations of government which include guarantees of the rights to work, to education and to safety of individuals. The inclusion of these rights in the constitution helps to promote the welfare of the people and ensure that governmental powers are not abused. Bills of individual and collective rights are the most appealing features of modern constitution, which if enforced could guarantee good governance. The rights and liberties of the citizens are provided in two chapters in 1999 constitution in Nigeria. The first chapter is on the Fundamental Objectives and Directive Principles of State Policy and the second chapter is on fundamental rights- freedoms of expression and the press, peaceful assembly and association, right to fair hearing and personal liberty.

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## **Study Session Summary**



### **Summary**

In this study session, we have discussed the concepts of constitution and constitutionalism. You learnt that a country's constitution is the body of basic laws, principles, conventions, rules and regulations which govern the country. It is a document that specifies the limits of and as well as relationship between various branches and agencies of government. The existence of a written/ unwritten constitution does not guarantee constitutionalism which refers to government that respects the

constitution or a government based on the rule of law or due process. Constitutions, irrespective of types or forms are sourced from organic laws, customs and conventions, judicial precedents/ decisions, past experience, intellectual works of philosophers to mention just a few.

We also examined the distinct features of a typical constitution. Specifically, we mentioned that a typical constitution must have a preamble, structure of government, procedures for constitutional amendments, distribution of power and the fundamental rights of citizens.

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## Assessment



Now that you have completed this study session, you can assess how well you have achieved its Learning Outcomes by answering these questions. Write your answers in your Study Diary and discuss them with your Tutor at the next Study Support Meeting. You can check your answers with the Notes on the Self-Assessment Questions at the end of this Manual

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## Study Session 2

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# Types, Forms and Variants of Constitutions

## Introduction

The study session builds on the first study session by identifying the types, forms and variants of constitutions in the world. It examines the distinguishing features, strengths and weaknesses of each of these constitutions. In this study session, I will also give you examples of states that have one constitution or the other. I will try to categorize these constitutions under types, forms and variants to explain the constitutional differences in terms of codification, ease of amendment and institutional structure that a constitution establishes.



### Learning Outcomes

When you have studied this session, you should be able to:

- 2.1 identify the criteria for classification of constitutions according to types, forms and variants.
- 2.2 highlight the features, strengths and weaknesses of each of the identified constitutions.

## 2.1 Classification of Constitutions

There are different ways of classifying constitutions. More fundamental to our discussion is Andrew Heywood's classification criteria which include:

1. the form of a constitution and status of its rule (whether the constitution is written or unwritten, codified or uncoded);
2. the ease with which the constitution can be changed (whether it is rigid or flexible);
3. the degree to which the constitution is observed in practice (whether it is an effective, nominal or a façade constitution); and
4. the content of the constitution and institutional structure that it establishes (whether it is, for example, monarchical or republican, federal or unitary, or presidential or parliamentary).

### 2.1.1 Forms of Constitution

Going by criterion, there are two basic forms of constitution, which are: written and unwritten constitutions. Yet, it is important to note that every constitution is a blend or mixture of written and unwritten rules. It is the balance between these forms of constitutions that varies significantly. Thus, no constitution is entirely written. Few constitutions, for example, indicate the roles of, or even point out, the type of political parties and interest groups. Likewise, no constitution is entirely unwritten in the sense that none of its provisions has any legal substance, all of them being conventions, customs or norms.

## Written Constitution

This is a constitution that is contained and published in a single document. In other words, it is a constitution in which the fundamental laws, conventions, principles, customs, norms, rules and regulations governing a country are codified. The present 1999 constitution of the Federal Republic of Nigeria is a good example of written constitution. Other countries operating this type of constitution include United States of America, Canada, Ghana, India and France among others. It has to be noted that a written constitution is a necessary condition in Federal systems. In most federations, a written constitution helps to define the relationship between the central and the component units. It usually contains a preamble, which states the fundamental principles, philosophy and Objectives of the country and its laws that are legally enforceable.

### Merits of a Written Constitution

1. Easy reference: a written constitution is easy to consult as required.
2. Consciousness of fundamental human rights: citizens are better aware of their fundamental rights when the constitution is written.
3. Prevent Dictatorship: it may guard against the emergence of a dictator and reduce any authoritarian tendencies by leaders since there is a considerable knowledge that the constitution is within the reach of ordinary citizens.
4. Symbol of Nationhood: concrete symbolic values are derivable from a written constitution
5. Political Stability: It also helps to ensure political stability owing to the awareness of its provisions.
6. Minimizes areas of potential conflict: In fact, the uncertainties of political life are reduced to the minimum and areas of potential conflict in terms of citizens-state relationship since powers and functions of the government vis-à-vis the citizens are clearly spelt out.
7. A written constitution often facilitates the study of the fundamental laws of the people as they are documented. Some fundamental provisions of a written constitution are generally considered seriously before constitutional amendments are carried out.

### Demerits of a Written Constitution

The following weaknesses or problems are associated with the written constitution:

1. Frequent litigations: since a written constitution depends largely on interpretation, it is subject to frequent litigation, and by implication, it wastes time and energy in governance.
2. Rigidity: The rigid nature of most written constitutions makes it uneasy to amend them when necessary.
3. Limited Coverage: written constitutions often do not cover all subjects that may be required of a constitution since it is not possible to write down all the constitutional problems of a given country.
4. Problem of Adaptability: a written constitution is not easily adaptable to constantly changing conditions and times.
5. Inadequacy to meet all needs: since a written constitution is a document arrived at after a lot of compromise and bargaining, it

tends not to meet the aspirations of all the component units of a state.

## Unwritten Constitutions

Here, the fundamental principles and powers of a government are not written down or codified in a single formal document. Simply put, an unwritten constitution is one in which the fundamental laws, conventions, principles, customs, rules, norms and regulations governing a country are not written down formally in any single dated document called constitution. Although, Britain and other liberal democracies like Israel and New Zealand together with a handful of non-democratic states, such as Bhutan, Saudi Arabia, and Oman are assumed to have unwritten constitutions but as mentioned to you earlier, this is not totally true. For instance, Britain does not have a written constitution like US and Nigeria, what we today refer to as the British Constitution is derived from different sources including the Magna Carta of 1215, Parliaments Acts of 1911 and 1949 and Bill of Rights among others. Besides, the publication of documents such as Questions on Procedure for Ministers has given detailed formal substance to practices that were previously covered by ill defined conventions in UK. In Israel, the respect for “Torah” the Jewish Holy Book motivated the Israelis to form an autonomous state in 1948 without an authoritative constitutional document. Two years after, the Knesset, Israeli legislature voted to adopt such a constitution by evolution over a period of time. Even the passage in New Zealand of the constitution Act 1986 (that strengthened previously scattered laws and principles) and the adoption in 1990 of a Bill of Rights, has been interpreted by many scholars as indicating that the country should not be considered as having an unwritten constitution. This type of constitution is common to unitary states.



Unwritten Constitutions are those which the fundamental principles and powers of a government are not written down or codified in a single formal document.

### Merits of unwritten constitution

1. Flexibility: the most obvious advantage of an unwritten constitution is its flexibility; it is easy to amend and adaptable to changing situations.
2. Limited areas of dispute: due to its non rigidity, many potential areas of dispute in governance are reduced.
3. Smooth running of the government: its unwritten nature reduces the difficulty of interpretation and thereby incidents of litigation.
4. Adaptation to changing conditions: Because of its nature, unwritten constitutions are responsive to changing circumstances in society.

### Demerits of unwritten constitution

1. Easy manipulation by incumbent government: the government party may easily manipulate the constitution to suit its purposes.
2. Determination of violation: it is not easy to determine when an unwritten constitution is violated; it is even difficult to prove or



defend when provisions in it are violated since there is no written constitution to refer to.

3. Limited Knowledge of citizens' constitutional rights: it is difficult for citizens to know their constitutional rights and duties in a situation where the constitution is unwritten.

### **2.1.2 Types of Constitution as based on Easiness of Change**

Under types of constitutions, we classify constitutions on the basis of the ease with which the constitution can be amended. On the basis of this criterion, we have rigid and flexible constitutions.

#### **Rigid Constitutions**

These are constitutions that are difficult to amend or change. Special procedures/conditions are required for such constitutions to be amended, since normal procedure for passing an ordinary law is not sufficient. I should let you know that these procedures or conditions vary from one country to the other and are usually stated in the constitution itself. In general, federal political systems like United States, Switzerland, and Canada, India, Australia, and Nigeria have rigid constitutions. For example in Nigeria, the suspended 1979 and 1999 constitutions require two-thirds of the members of both National and state legislatures to endorse a bill or motion asking for constitutional amendment. In Switzerland and Australia, the electorates are allowed to participate in the amendment process.

#### **Merits of a Rigid Constitution**

1. Difficult to manipulate: since a rigid constitution is difficult to amend, political leaders are constrained from manipulating it to serve their selfish interests.
2. Prevents emergence of dictators: the difficult and slow procedure for changing a rigid constitution prevents the emergence of a dictator.
3. Orderly political succession: it ensures an orderly change of government and thus promotes political stability.
4. Reduction of ambiguities: because rigid constitutions are usually written down, they facilitate easy reference and reduce ambiguities.

#### **Demerits of a Rigid Constitution**

1. Adaptation: the slow and difficult procedure/condition required for the amendment of a rigid constitution makes the constitution unyielding to changing situations.
2. Much reliance on the Judiciary: provisions of a rigid constitution especially on amendment often require the interpretation of the judiciary, which may result to over-politicization of the judicial arm of government.

#### **Flexible Constitution**

This is the constitution that is easily amendable through an ordinary law making process. In other words, a flexible constitution can be changed without any lengthy or difficult process to revise it. Examples of countries with flexible constitutions include New Zealand, Finland and Britain and Ghana in the First Republic.



### **Merits a Flexible Constitution**

1. Generation of new ideas: since no special procedure is called for before amendment, it facilitates the reflection of new ideas and new circumstances.
2. Reduce constitutional conflicts: the chances of generating constitutional conflicts are minimal because flexible constitutions avoid deadlock.
3. Facilitate quick decision-making flexible constitutions aids, government to take quick decisions.

### **Demerits Flexible Constitution**

1. Minority Rights: the rights and interests of the minority are not always protected under a flexible constitution. These rights are exposed to the oppression of the majority.
2. Breeds Dictatorship: haste in amending the constitution may gradually lead to dictatorship or tyranny.
3. Instability and unrest: incessant and frequent changes/amendments can lead to instability and unrest.

## **2.1.3 Variants of Constitution**

Under variants of constitutions, we consider the constitutional contents, particularly, the institutional structure being established by a constitution. With this criterion, I classify the variants of constitutions into three- Federal, Unitary, and Confederal.

### **Federal Constitutions**

A Federal constitution provides for the sharing of state powers between the central government and the component units of government, variously called regions, states, local governments, provinces, cantons and municipals. Federal constitutions are usually written and rigid and are often adopted by heterogeneous societies like USA, Nigeria, and Switzerland. It provides for bicameral legislature in most cases.

### **Merits a Federal Constitution**

1. Rapid development: when there is division of powers rapid development is easily takes place among the component units.
2. Prevents concentration of power: federal constitutions discourage concentration of powers in a single authority.
3. Promotes local participation and local autonomy: The devolution of power to local authorities is expected to facilitate grassroots participation and local autonomy for the sake of development of local areas.
4. Employment opportunities: duplication of offices under a federal constitution fosters the creation of more employment opportunities.

### **Demerits a Federal constitution**

1. Duplication of levels and organs of government: Unnecessary duplication of offices under a federal constitution increases the cost of governance.
2. Delay in making decisions: federal constitutions demand extensive consultations before major decisions are taken.

3. Tension in the exercise of constitutional powers: there is usually tension in the exercise of powers allocated by the constitution between the central government and the component units.
4. Double allegiance: there is a double allegiance on the part of the citizens regarding sense of belonging to the central government and their states of origin.

### **Unitary Constitution**

This is the constitution that concentrates governmental powers in a single central authority. In short, there is provision for centralisation of power. This single authority may then delegate or de-concentrate power to other subordinate authorities. It often provides for unicameral legislature. Britain, Belgium, France, Sweden, and Italy, to mention just a few, are examples of countries with unitary constitutions.

#### **Merits a Unitary Constitution**

1. Elimination of conflicts of jurisdiction: owing to the absence of component units that could contest constitutional powers with the central government, conflicts of constitutional jurisdiction are eliminated.
2. Stability: Unitary constitutions are usually strong and stable.
3. Reduction of administrative costs: since there is no duplication of offices, the cost of administrative/governance are greatly reduced.
4. No dual allegiance: Citizens in countries that have adopted unitary constitutions owe allegiance to only the central government.

#### **Demerits a Unitary Constitution**

1. Promotes dictatorship: since it concentrates power in a single central authority, unitary constitution may easily promote tyrannical or dictatorial rule.
2. Stifles local participation and development: it lowers local initiatives and hinders local participation and development as a result of lack of autonomy.
3. Domination of minority groups: Majority group often dominates the minorities in societies with unitary constitution.

### **Confederal Constitution**

A confederal constitution provides for a union of states with a very weak and almost powerless central authority, and powerful components, (in most cases, states or regions or municipalities). Simply put, the central government under a confederal constitution is subordinate to the component units. A good example was the constitution of the confederation of Senegambia- made up of Senegal and Gambia before the two entities separated to become independent countries.

#### **Merits of a Confederal Constitution**

1. Retention of individual identities: confederal constitution enables the component states to retain their individual identities.
2. Constitutional right to secession: there is provision for secession under confederal constitution to the effect that any member of the component units cannot be compelled to remain in the confederation.

3. Reduction of the fear of domination: since each autonomous unit is allowed to retain its identity, the fear of domination is reduced.

### Demerits Confederal Constitution

1. Political instability: the component units' right to secede constitutes a source of serious threat to political stability
2. Discourages political unity: Confederal constitutions do not encourage political unity, which is very critical to the security and development of a country.

As mentioned above, using the criterion of institutional structures provided by a constitution, one can classify constitutions as presidential and parliamentary. This will be discussed in detail under Nigerian constitutions.

### Note

As a point of emphasis, in the First Republic, Nigeria adopted parliamentary constitution which was later abandoned for presidential constitution in the Second Republic. The present 1999 Constitution is fashioned to suit presidential system of government.

As regards the degree to which the constitution is observed in practice (i.e. constitutionalism), Karl Lowenstein classified the constitution into three; namely; normative, nominal and semantic.

Normative constitution is a constitution that is not only widely approved by the public as legally valid, but it is also effective in the sense that it regulates political conduct. This type of constitution prevails in the politically advanced western countries. Nominal constitution may be legally valid but it is actually not lived up to. Unlike normative constitution, nominal constitution exists in form but not in reality. Nominal constitutions are to be found in those countries of Asia, Africa and Latin America. Semantic constitution is a constitution that is fully applied and activated but which merely legitimizes the existing locus and exercise of political power. In short, the purpose of a semantic constitution is to provide a constitutional justification for the unregulated exercise of political power by the politically privileged class. Most of the communist constitutions and constitutions of some underdeveloped countries come under the category of semantic constitution.

In all, relating this classificatory scheme to Nigeria, the 1999 Constitution which is presently in operation is not only written; it is also rigid and federal in terms of institutional structure.

## Study Session Summary



### Summary

In this study session, we have discussed types, forms and variants of constitutions. In the process, we stated that according to form, there are written and unwritten constitutions; according to type, there are rigid and flexible constitutions; and according to variants, there are federal and unitary constitutions. The merits and demerits of each of the constitutions so discussed were examined.

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## Study Session 3

### Nature of the Nigerian Society

#### Introduction

A constitution is a product of its environment. That is why any meaningful discussion on Nigerian constitutional development must necessarily begin with an analysis and understanding of the major geographical, social and cultural environment in which Nigerian people live. This analysis will help you to identify why Nigeria and her political leaders have struggled from one constitution to the other with much emphasis on the influence of these environmental factors. In essence therefore, this study session gives a brief examination of the nature of the Nigerian society taking into consideration the influence of its ecology.



#### Learning Outcomes

When you have studied this session, you should be able to:

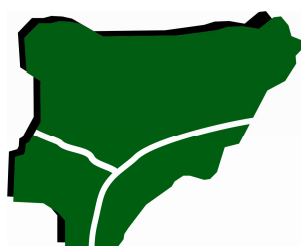
- 3.1 highlight and discuss the major distinguishing features of the Nigerian society.
- 3.2 explain various challenges that the Nigerian society is facing with in spite of these features.



#### Reflection

There is an agreement among scholars that the Nigerian society is complex in nature. This complexity manifests in geographical, cultural and social factors that sometimes create problems in terms of harnessing their potentials into building the country into a great world power.

#### 3.1 Geographical Factors



Map of Nigeria

Nigeria is located in Western Africa on the gulf of Guinea and has an area of 923,768 square kilometres. This size makes it the world's 32nd largest country. The most populous country in Africa, Nigeria accounts for approximately 20% of West Africa's people. Going by the 2006 census figures, Nigerian population is estimated at 140 million.

The country is broadly divided by geographers into two zones; namely, the tropical rain forest area and a savannah zone. The rain forest covers all the three geo-political zones in the southern part of the country and Benue state, as well as parts of Kwara and Adamawa states and the Federal Capital Territory. The savannah zone covers the rest of the country. I need to tell you that some crucial agricultural produce is found exclusively in each zone, which creates complementarities and interdependence between the zones. Also the mineral wealth of the country is also spread throughout the zones. For example, in the rain forest area we have petroleum, coal, salt, limestone, marble and clay. In

the middle belt are found tantalite, tin, coal, uranium and gold in the savannah area. Also, there is a high degree of inter-dependence in the location of the mineral wealth of the country. Nigeria's main rivers are the Niger and the Benue that converge and empty into the Niger delta, one of the world's largest river deltas. These rivers provide ready source of water for irrigation and hydro electric power system. It should be noted that the vast hinterland in the North depends largely on the seaports in the South for the evacuation of their produce.

## 3.2 Cultural Factors

These are discussed with reference to nationality groups which make up Nigeria. Up till now, it is not quite certain how many nationalities or ethnic groups are found in the country, but there are estimates that put the number between a minimum of 250 a maximum of 400. The variety of customs, languages and traditions among these ethnic groups gives the country a rich diversity. The largest ethnic groups are the Hausa, Fulani, Yoruba, Igbo (Ibo), Kanuri, Ijaw, Ibibio and Tiv. The dominant ethnic group in the Northern part of Nigeria is the Hausa-Fulani, most of whom are Muslim. The Yoruba people are predominant in the Southwest. About half of the Yoruba are Christian and half Muslim. The predominantly Catholic Igbo are the largest ethnic group in the Southeast, with the Efik, Ibibio, and Ijaw comprising a substantial segment of the population in that area. Although, the official language in Nigeria is English, Hausa, Yoruba, and Igbo are the most widely used Nigerian languages.

Let me inform you at this point that there have been differences in the perspectives of the various peoples that make up Nigeria. This has resulted in what is now called ethnicity. Because of language differences, some degree of ethnicity has always been displayed in the way people relate to themselves politically, economically and socially. The pre-colonial history of Nigerian society makes it clear that the various ethnic groups did not relate to one another in terms of aggression but generally maintained friendly relations through trade and social interactions except when some misunderstanding led to war.

## 3.3 Social Factors

Emphasis here is on class and social stratification, which distinguish different categories of people existing in Nigerian society. Nigerian society does not divide easily into the bourgeoisie (capitalist) and proletariat (working) classes, according to Marxian perspective because of the admixture of both modernising capitalist system and subsistent economy. It is more meaningful to apply the following attributes in dividing Nigerians into classes:

- a) possessing of knowledge (professional, scientific and technical);
- b) possession of property;
- c) possessing of status not necessarily knowledge or property;
- d) a certain level of general education;
- e) certain types of occupation.

With these attributes, Nigerians can be classified into these rough categories:

1. Traditional rulers, chiefs and others with ascribed status
2. The landed holders and owners
3. Industrial/commercial elite- the core of business owners and employers of labour
4. Intellectual and Military elite including distinguished academics, professionals, senior military officers, senior bureaucrats e.tc.
5. The middle-class or quasi-proletariat including most salaried workers, such as typists, clerical officers and some technicians
6. The masses including workers, peasants, and the unemployed

From the foregoing, it is clear that Nigeria has great potentials in agricultural, human and mineral resources. Most of Nigerian constitutions were designed to positively exploit these resources for improvement of the living standard of Nigerian people. This shall be discussed in detail in subsequent study sessions.

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## Study Session Summary



### Summary

In this study session, we discussed the nature of Nigerian Society. In the process, we mentioned the geographical, cultural and social factors that have contributed to the complexity.

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## Study Session 4

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# Historical Background to Constitutional Development in Nigeria

## Introduction

In this study session, we shall treat some major events prior to the evolution of Nigeria as an entity and the enactment of the first pre-independence constitution. The study session gives the historical background particularly to pre-independence constitutional development in Nigeria. Two historical events that facilitated the introduction of Clifford Constitution in 1922 are discussed. These include the creation of Nigerian Council and the formation of The National Congress of British West Africa (NCBWA).



### Learning Outcomes

When you have studied this session, you should be able to:

- 4.1 discuss events that led to the amalgamation of 1914, which gave birth to Nigeria as an entity and the enactment of the first pre-independence constitution.
- 4.2 give historical account of the two major events that influenced the adoption of Clifford Constitution in 1922.

## 4.1 Transformation Impact of British (Pre-Colonial Nigeria)

Historians agree that the evolution of Nigeria from about 1849 until it attained independence in 1960 was largely the story of the transformational impact of the British on the peoples and cultures of the Niger-Benue area. As early as 1886, when Lagos Colony was separated from the Gold Coast, an Executive Council for the Lagos Colony was established. The power of the council was later reduced to the status of a Legislature.

Prior to 1900 when Lagos colony and the Southern and Northern protectorates- formally, came under the British rule the entity later to be known as Nigeria was ruled by the Royal Niger Company and the British colonial office. The Royal Niger Company controlled much of the Southern Protectorate as one of the three blocks of territory considered by Afigbo and Uya (2004) as “British colonial possessions”. The British Colonial office ruled the colony of Lagos and other parts including the northern protectorate.

Although the move towards administrative union or amalgamation of the existing territories began in 1898 with the appointment, by the British Government, of the so-called Niger Committee led by Lord Selborne, it did not materialise until 1914. Prior to the amalgamation of these territories, specifically on 1<sup>st</sup> May, 1906, the British colonial government merged the colony of Lagos with the Southern Protectorate, which then became known as the Colony and Protectorate of Southern Nigeria with



its headquarters at Lagos. By 1<sup>st</sup> January, 1914, the union of Lagos Colony with Southern Protectorate was amalgamated with the Northern Protectorate to form an entity called Nigeria, with Lord Lugard as its first Governor-General. According to Sir Udo Udoma, the financial consideration superseded other considerations that brought about the amalgamation. The protectorate of Southern Nigeria was financially buoyant compared to its Northern counterpart in spite of the latter's large territory. Let me inform you that the Northern Protectorate depended on grants from the British government.

After the amalgamation, Nigeria was divided into two provinces namely, the Southern Province and the Northern Province. In each of the provinces, a Lieutenant Governor was appointed to administer. Both Lt. Governors were subordinate to the Governor-General who resided in Lagos. A legislative council and an executive council were created for the two provinces as only the Lagos colony had a Legislative Council until the amalgamation of 1914.

Two major events occurred after the merger that laid the foundation for constitutional development in Nigeria. These include the formation of the Nigerian Council and the establishment of the National Council of British West Africa (NCBWA). Let examine them one after the other.

## **4.2 The Nigerian Council**

Though the amalgamation of 1914 offered an opportunity for making changes in the unsatisfactory arrangement, the Governor-General lacked the power to initiate noteworthy changes in this area. Let me remind you that in spite of the amalgamation, there still existed in practice an administrative polarisation between the Northern and the Southern Provinces. The only significant change was the formation of a body known as the Nigerian Council which met once a year to listen to what may be called the address on the state of the Colony and Protectorate of Nigeria. The body had no legislative powers whatsoever.

The Council consisted of a governor, two lieutenant governors, an administrator of the colony and an executive council. It also included 36 members including 24 European officials and 12 non-official members; six were Nigerians while the rest six were Europeans. You need to know that the six European non official members represented business interests, such as commerce, banking, shipping and mining, unlike the six largely illiterates Nigerians which included Sultan of Sokoto, the Alafin of Oyo and the Emir of Kano selected from different communities to represent traditional and chieftaincy interests.

The Nigerian Council was essentially an advisory body because it had no legislative powers. Most traditional rulers could not participate effectively because of their inability to communicate in English. The Council meetings were irregular, attendance unimpressive, and its decisions had no legal power. Despite its unimpressive function and composition, the Nigerian Council was still the first organ constituted to discuss issues affecting the various parts of Nigeria. The nature of the Nigerian Council is best captured in the book titled "History and the Law of the Constitution of Nigeria" written by Udo Udoma:

*Even though the matters to be discussed at the Council might concern the destiny of Nigerians, or indeed the future of Africa, the Council turned out to be a forum for the exchange of information relative to the expansion of European trade. Thus, it became apparent that during the period under review, the Africans who were the wearers of tight shoes had no voice in how the shoes were made or altered. Administrators constituted themselves judges in their own cause: as so call experts they alone thought out problems; formulated projects with a view to the solution of such problems; and all these without reference to the majority of the African population. (Chapter 4 P. 48)*

### 4.3 The National Congress of British West Africa (NCBWA)

Three years after the amalgamation, a small group of intellectuals from the British West African countries of Gold Coast (now Ghana), Sierra-Leone, Gambia, and Nigeria formed NCBWA. The Congress was led by Hayford Caseley a lawyer from Accra, the capital of Gold Coast. Thus, Accras became the headquarters of the Congress. The Congress was dominated by prominent citizens from the headquarters. The main objective of the Congress was to unite nationalists from these countries in their demand for independence.

Some of the major demands presented by delegates who met in Ghana in 1920 to the Secretary of State for the colonies in London included:

1. the creation of a legislative council in each British West African territory with half of the council members being Africans and introduction of an elective principle;
2. that the judiciary be independent of the colonial administration;
3. that West African chiefs be subject to their people in terms of appointment and removal; and
4. that a university be established in West Africa

#### Hint

The delegation was criticised by Lord Miner, the Colonial Secretary of being self seeking and was also accused of pursuing inordinate ambition. However, in spite of the criticism and accusation, the governor in Nigeria, Sir Hugh Clifford in 1922, disbanded the Nigerian Council and introduced a constitution that embraced the election of Nigerians to council as well as some other democratic principles (this development is discussed in the next study session).

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## Study Session Summary



### Summary

In this study session, we have discussed the historical background to constitutional development in Nigeria. In this regard, we traced the evolution of constitution making in Nigeria to the creation of the Nigeria Council in 1914 and the establishment of the National Congress of British West Africa (NCBWA).

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## Study Session 5

### Pre-Independence Constitutions in Nigeria

#### Introduction

Having gone through the theoretical and historical background necessary for us to understand Nigeria's constitutional development, this Study Session will expose you to the pre-independence constitutions in Nigeria: namely, Clifford, Richards, Macpherson and Lyttleton constitutions.

When you have studied this session, you should be able to:



#### Learning Outcomes

- 5.1 identify and discuss the major features, merits and demerits of Clifford Constitution.
- 5.2 highlight and discuss the major features, merits and demerits of Richards Constitutions.
- 5.3 identify and discuss the major features, merits and demerits of Macpherson Constitution.
- 5.4 highlight and discuss the major features, merits and demerits of Lyttelton Constitutions

#### 5.1 The 1922 Clifford Constitution



Sir Hugh Clifford



Tip

Before the inauguration of the first workable constitution in 1922, Nigeria had the Order-in-Council of 1914 as a constitutional instrument. This instrument provided for an Executive Council for the entire country and a 30-member Advisory (deliberative) Council constituted by the Governor who alone possessed the executive powers and acted on his own discretion. This constitutional instrument did not stand the test of time because Nigerians were not involved in the running of their own affairs. This led to serious agitations by the educated elite particularly on the platform of NCBWA, for the inclusion of Nigerians in the administration of their affairs. Indeed, the search for a workable constitution in Nigeria started in 1922 when the Clifford Constitution was enacted.

In 1922, Sir Hugh Clifford became the Governor of Nigeria and he replaced the Order-in Council of 1914 under Lord Lugard with the constitution named after him. The 1922 constitution seemed to be a response to the 1920 NCBWA demand for elective principles in West Africa.

##### 5.1.1 Major Features of Clifford Constitution

The constitution provided for the establishment of two councils; namely, the Legislative Council and the Executive Council. The Legislative Council was made up of 46 members, out of which 27, being British

(including the Governor), were official members and the rest 19 were designated as un-official members out of whom were 10 Nigerians. Of the 19 non-official members, 15 were nominated by the Governor to represent various commercial and mining interests and four were elected African members including three Nigerians to represent Lagos as the capital and a big commercial city and another Nigerian citizen from Calabar. This development led to the introduction of elective principle for the first time in Nigeria. However, only male adults (either British protected people or British subjects) who earned up to 100 pound sterling (£100) per annum and had resided in the area for at least a year could vote during elections.

It was the first time that Black Africans were allowed to elect representatives into the Legislative Council. The Council legislated only for the Southern provinces i.e. the former colony and the protectorate of Southern Nigeria while the Northern provinces were excluded. The Governor continued to make laws for Northern provinces by proclamation. The annual budget for the whole of Nigeria including the Northern protectorate had to be passed by the Council.

The Executive Council established by Clifford Constitution was an advisory body. It consisted of ex-officio members who were principal officials of government, nominated un-officials members and also extraordinary members. There were no Nigerian heads of departments at the time and so the Executive Council comprised only British officials. It was not until 1943 that African un-official members were appointed to the Council. The Council implemented all the decisions and laws of the Legislative Council. The Governor, apart from being granted powers under the Constitution to make laws for the Northern protectorate through proclamation, was also vested with the veto and reserved powers. The Governor also had powers to nominate members of both the Legislative and Executive Councils. Furthermore, the Nigerian Council created by the 1914 Order-in Council was abolished. One of the reasons why powers were concentrated at the office of the Governor was mentioned by Hugh Clifford in his words:

*In a country such as Nigeria which many of its areas have not yet emerged from barbarism, a strong and within limits, an autocratic government is essential.* (see Oyediran, 2007:7)

### **5.1.2 Merits of 1922 Clifford Constitution**

The non-elective Nigerian Council was abolished by the constitution and replaced with the Legislative Council which included elected members. Thus, The Clifford Constitution allowed more Nigerian representatives than there were in the Nigerian Council. It was also the first time that black Africans (in this case Nigerians) were allowed to elect representatives into the Legislative Council. The elective principle introduced by Clifford Constitution stimulated political activities especially among the educated elites. In fact, it aided the formation of political parties in Nigeria, for example, the Nigerian National Democratic Party (NNDP) which was established by Herbert Macaulay, and National Youth Movement (NYM) that was later succeeded by the National Council of Nigerians and Cameroons (NCNC). The 1922

Clifford constitution also facilitated the establishment of newspapers, such as the Lagos Daily News and the West African Pilot that contributed to the push for constitutional development. Above all, as the first constitution, the 1922 Clifford Constitution laid the foundation for successive constitutions in Nigeria.

### 5.1.3 Demerits of the 1922 Clifford Constitution

In spite of the above reforms, a significant improvement on the Nigerian Council of 1914, the 1922 constitution still had some serious weaknesses. Not many people were given the right to vote for the four elected members the constitution allowed. The income qualification of one hundred pounds sterling (£100) per annum was too high for the majority of Nigerians, and thus they were disenfranchised. The Constitution isolated the Northern Nigeria, and thus formalised a north-south dichotomy, which exists till today in Nigeria. The Governor was vested with too many wide-ranging powers; namely: veto powers, reserved power and the power to legislate for the Northern provinces through proclamation. Nigerians were not given representation in the Executive Council. It was wholly monopolised and controlled by British officials, and so the Council was not truly representative of the governed. Even the Legislative Council had a majority of white officials. Also, majority of the members were nominated by white officials. It gave no representation to the North in the Legislative Council. The Governor made laws for the North by proclamation; although, they had a common annual budget. The Executive Council, which had no African representation wielded more power by advising the Governor on policies, appointments to higher positions and on constitutional powers. The business interests of Europeans were adequately represented in the Legislative Council, whereas the North was not.

## 5.2 The Richards Constitution of 1946

Although, Sir Donald Cameron that took over the governorship from Sir Clifford in 1931 carried out some significant political and administrative reforms (e.g. the replacement of Lt. Governor with Chief Commissioner, introduction of separation of powers in colonial Nigeria and substitution of provincial courts with High and Magistrate courts that were under the Supreme courts), not much was achieved by the time he left in 1935. Prior to the end of Second World War in 1945, serious attention was turned to constitutional reforms in Nigeria as pressures were coming from various political associations including the trade unions as well as from Nigerian nationalists.

### Hint

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Two major factors appeared to have influenced constitutional development at the end of 1945 in Nigeria. These include the general strike and the attitude of the Labour Party and trade unions in Britain that called for constitutional reforms in British West African colonies.

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Sir Arthur Richards became the Governor General in 1943 when he replaced Sir Bernard Bourdillon who served as Governor General from 1935 to 1943. Although, Sir Richards made proposals for a new constitution on the 12th of March, 1945, it was his predecessor that prepared ground for the 1946 Richards Constitution that came in to effect





**Sir Arthur Richards** became the Governor General in 1943. The 1946 Constitution under his administration divided Nigeria into three regional assemblies

in 1947. In December 1944, Sir Richards dispatched his proposals to London and outlined his objects as follows:

1. to promote the unity of Nigeria;
2. to evolve a constitution to cover all the parts of the country;
3. to provide adequately within that desire for the diverse elements that made up the country;
4. to divide Nigeria into three regions-north, west and east and create a regional council for each and also to create a legislative council embracing all sections of the country; and
5. to secure greater participation by Africans in the discussion of their own affairs.

### 5.2.1 The Major Features of the 1946 Richards Constitution

Under the 1946 Constitution, there was a central Legislative Council for the whole of Nigeria composed of the Governor as President, 16 minority official members, out of which 13 were ex-officio and three nominated; 28 majority unofficial members, four of whom were elected (3 from Lagos and 1 from Calabar to represent business interest) and 24 nominated or indirectly elected. Out of the 24 nominated members of the legislative council, 9 members were nominated to represent the North, 6 to represent the West and 5 to represent the East. One member for the Colony of Lagos was also appointed by the Governor after due consultation with the native authority of the colony and the three remaining members were appointed by the governor to represent the interests or communities not otherwise adequately represented.

#### Note

The 1946 Richards Constitution divided the country into three; and there were regional assemblies for these regions; namely, Northern, Western and Eastern Nigeria. The North had a House of Chiefs in addition. In other words, while the Western and Eastern parts of the country had a unicameral legislature, the Northern part had a bicameral legislature. Each assembly was empowered to make laws for the peace, order and good governance of Nigeria as a whole while the Governor still retained the power to veto legislation if he considered it expedient in the interest of public order, peace and good government. The House of Assembly in the West and the East was presided over by the Chief Commissioner, while in the North, the Chief Commissioner presided over the House of Chiefs, leaving the Senior Resident to head the House of Assembly.

Majority of the representatives of the regional assemblies were selected from native authorities; the Northern Region had 18 official members and 24 un-official members. The Northern House of Chiefs consisted of all first class chiefs and not less than 16 second class chiefs selected by their order. In the Western Region, there were 13 official members and 19 un-official provincial members and in the Eastern House of Assembly there were 13 official members and 18 un-official provincial members. It is important to inform you that these Regional Houses had no real legislative powers as they were only established to scrutinise both the annual and supplementary estimates and the bills whose terms were applicable to the Region concerned; to forge a link between the native

authorities and the central legislative council in Lagos, and to participate in the selection of the regional representatives from their respective regions to sit in the central legislative council in Lagos. In addition, they considered and advised on any matter which the government referred to them such as any bill which might have particular reference to their regions. They were in fact only deliberative and advisory councils.

More importantly, there was an Executive Council that had the same composition as that of the 1922 constitution, dominated by British officials. However, two Nigerians as against one appointed in 1943 were members of the Executive Council.

### **5.2.2 Significance of the Richards Constitution**

Regarding the merits of the Richards Constitution, the Northern and Southern parts of the country were administratively integrated for the first time since 1914 amalgamation under the Legislative Council in Lagos. It was unique because since 1916 when Lugard that amalgamated the two territories left, the Southern and Northern territories had been administered separately. Another unique aspect of the Richards constitution was its concept of regionalism (the division of the country into three regions) which had no precedent anywhere in West Africa because it prepared the way for a federal constitution in the Nigerian political system. Also, for the first time in the constitutional development of Nigeria, the legislative councils both at the central and regional levels were dominated by un-official majority, while the officials became the minority. Africans were now allowed to secure greater representation in the Legislative Council in Lagos. Efforts were made to see that all interests and sections were adequately represented and catered for by the constitution.

The incorporation of the native authorities and the adoption of bicameral legislature in the North by the constitution were also regarded as a new development. The Richards constitution represented a constitutional advancement; it paved the way for further rapid constitutional developments in the country.

### **5.2.3 Demerits of the Richards Constitution**

In spite of the above merits, many people were angry because the constitution was promulgated with the least possible consultation with the Nigerian people. It is noteworthy that the constitution granted the Governor excessive powers to nominate members, presided over the legislative and executive councils and to override, their decisions when he chose. It was also criticised on the ground that the constitution only increased people's representation, their participation was constitutionally limited in scope.

Moreover, the constitution of the Legislative Council was not democratic as nominees dominated the council and it did not make any advancement in the "*principle of election*". There were four 4 elected members 3 for Lagos and 1 for Calabar) in the Legislative Council as it was under the 1922 Clifford constitution and as such, it has been argued that no progress was made towards ensuring a representative government under the constitution. In fact, only the residents of Lagos and Calabar could



vote. Therefore, majority of Nigerians were disenfranchised as the voting right to the Legislative Council was still dependent upon a given level of income. Regionalism based largely on the ethnic composition of the country paved way for distrust and disunity that lingered on even after independence.

All these made Nigerian nationalists to put pressure on the colonial government for a new constitution. They sent delegation to London in 1947 to protest against the Richards constitution before the Secretary of State for the colonies and demanded among other things, the immediate revision of the constitution. The secretary of state for the colonies, however, told them to give the constitution a trial, in the first instance, before talking about any revision.

## **5.3 Macpherson Constitution**

The appointment of Sir John Macpherson as the Governor of Nigeria marked the beginning of a new era of British colonial policy in Nigeria. The Richards Constitution which was originally meant to work for 9 years was no longer to wait for the stipulated period when Macpherson became the Governor. The new Governor General, who worked to remove the charge of inadequate consultation with the public raised against Richards's constitution, advocated fresh constitutional changes, putting into consideration, the consultation with the public at four stages (regional, village, district and provincial levels) in his new constitutional review methods. According to him, "before any change is made, it is of the uttermost importance to allow adequate time for the expression of public opinion". The draft of the constitution followed the given stages and finally at a general conference held in Ibadan, in January 1950. Of all the 53 delegates that participated in the conference for three weeks, only three were non-Nigerians. The draft of the new constitution was approved by regional assemblies and central Legislative Council in Lagos before its final submission to the Governor. After the approval of the Secretary of State for the colonies in London, the constitution came in to effect in 1951.

### **5.3.1 Main Features of the Macpherson Constitution**

First and foremost, the Ibadan conference did not approve of over-centralisation of power, which was the core of earlier constitutions for Nigeria. The constitution established a central legislature and a central executive for the whole country. The Central Legislative Council renamed as the House of Representatives consisted of: a President, 6 ex-officio members, 136 representative members selected from the regions (68 from the North, 34 each from the West and the East), 6 special members appointed by the Governor to represent interest not adequately represented in the House. The Central Executive, later called Council of Ministers, consisted of the Governor as President, 6 ex-officio or official members, and 12 ministers, four from each region. They were appointed by the Governor on the recommendation of regional legislature, but had no executive responsibilities.

There were regional legislative and Executive councils for the North, the West and the East. The Northern and the Western Legislative Councils consisted of two chambers- the House of Chiefs and the House of Assembly. In the East, there was only one chamber – the House of Assembly. Thus, while there was a bicameral legislature in the North and the West, there was a unicameral legislature in the east. Also, the Legislative Council in Lagos was unicameral the membership of each regional House of Assembly was made up of the following (a) the Northern Region had 90 elected, 4 ex-officio and 10 special members (b) the Western Region had 80 elected, 4 ex-officio and 3 special members and (c) the Eastern Region had 80 elected, 5 ex-officio and 3 special members. The regional executive council consisted of the Lieutenant-Governors as the chairman, five or not more than five expatriate officials not below the rank of permanent secretary and nine or not more than nine Nigerians appointed from among the elected members of the regional House of Assembly. The regional executive council only gave advice on certain prescribed subjects e.g. agriculture, education, local government etc.

The regional legislatures could only legislate on certain prescribed subjects such as agriculture and fisheries, education, town and country planning, native courts, direct taxation other than income tax and company tax, local government, among others. The Central Legislative Council in Lagos could legislate on all subjects and could vote on regional legislations. A Public Services Commission (for the appointment, dismissal and other disciplinary control of public officers was established for Nigeria).

In the 1951 Constitution, there was the predominance of the central government over regional governments and as such the constitution contained elements of a unitary constitution, but the fact that powers were divided between the centre and regional governments shows that the constitution had elements of federalism. It is therefore, better to refer to the 1951 constitution as quasi-Federal constitution because of these elements of unitary and federalism involved. Under the Macpherson constitution a system of revenue allocation between the centre and the regions was initiated and this gave the latter financial autonomy to some extent – it recommended the principle of Derivation, Needs and National Interest. In terms of policy formulation at the centre and the regions, both the Council of Ministers and the Regional Executive Councils played important role and the doctrine of collective responsibility was put in place. There were provisions for direct and indirect elections. However in the North, only the male tax-payers of 25 years or more voted, while in the West and in the East, both sexes voted. I should inform you at this point that general elections were held throughout in Nigeria in December 1951. The Houses were constituted in January 1952 in each of the regions.

### **5.3.2 Merits of the Constitution**

The 1951 Macpherson Constitution was very unique because its draft was discussed at all levels – village, district, provincial and regional-and so it was more democratic than the previous ones. Nigerians fully participated as they were duly consulted in the making of the constitution. Apart from

the dominance of elected Nigerians in the central Legislative House, it was also the first time in the political and constitutional history of the country that Nigerians constituted the majority of both the federal and regional councils. In fact, for the first time, Nigerians were appointed ministers at both the central and regional governments. Besides, councils at both levels equally became the principal instrument of policy making thus paving the way for elected representatives of the people to rule. The constitution granted more powers to the regional Houses of Assembly, which were allowed to make laws and advise on most matters concerning their people.

You should also be informed that by allowing bicameral legislature in the West and the North, the constitution promoted not only the people's participation but also the institution of traditional rulership. A Public Service Commission for the appointment, dismissal and other disciplinary control of officers was also established in Nigeria. In addition, the 1951 Macpherson Constitution reflected the increasing trend towards regionalism as the regions became political entities with both legislative and executive powers as well as the right to share revenue with the central government rather than being administrative units. The constitution furthered the process of federalism by dividing powers between the central and the regional governments and allowing regions much autonomy. It also advanced Nigeria towards responsible self government and spread democracy by giving Nigerians the opportunity to elect their representatives, and it also promoted the evolution of more political parties (for instance, Action Group (AG) and the Northern People's Congress (NPC) came into being under this constitution) and their effective performance.

### 5.3.3 Demerits of the Constitution



**Anthony Enahor in 1953**  
agitated for the attainment  
of self-government for  
Nigeria by 1956

One of the shortcomings of the 1951 Macpherson Constitution was the concentration of too much power in the central legislature with the decisions that emanated from the regional houses were largely subject to the approval of the Central Legislative Council or the Governor. The Governor at the centre also had too much power for he could act without or against the advice of the Executive Council. Also, mass participation was hindered in the North because only male tax payers were allowed to vote. The regional divisions worsened the problems of ethnicity and mutual distrust in Nigerian politics. No country national political party commanded a majority in all the regions of Nigeria. Each of the three regions was controlled and run by the ethnic party of that region. The provision whereby ministers were nominated by their regional legislatures was indeed a great defect because they tended to give their loyalty to their parties and the regions from which they came and as well go against the principle of universal suffrage. Furthermore, since there was no nation-wide party controlling a majority in the House of Representatives, the Council of Ministers could never be sure of support for its policy. The inclusion of ex-officio members in the Executive Council and the governor's reserved powers were also a defect. There was no cabinet with collective responsibility. The coalition government at the centre was made up of the NCNC, the AG and the NPC. Therefore, there was no government and no opposition.

Most importantly, however, some factors eventually led to the breakdown of the Macpherson constitution. These include: the threat of Northern secession by the NPC, inter-regional frictions: for example, the Eastern regional crisis of 1953 within NCNC; crisis over the 1953 motion moved by Anthony Enahoro for self-government in Nigeria by 1956, (the motion asked the House to accept “*as a primary political objective the attainment of self-government for Nigeria in 1956*”) which culminated in the Kano riots in which several people died.

## 5.4 The 1954 Lyttleton Constitution

The major event which led to the breakdown of the Macpherson Constitution of 1951 was the crisis over the self-government motion of 1956, which rendered the central executive that is, the Council of Ministers, constitutionally powerless to perform its basic functions following the resignation of the AG ministers from it. This resignation resulted in conflicts between the North and the South as well as the Kano riots of 1953. Because of the identified defects of the 1951 constitution, the Secretary of State announced that the constitution would be reviewed to provide for greater regional autonomy. The Lyttleton Constitution which emerged from the decisions taken at the 1953 London conference and the 1954 Lagos constitutional conference (at these conferences the 1951 Macpherson constitution was reviewed) was promulgated in October 1954. It is significant to point out that prior to these constitutional conferences, there was a meeting of Northern political leaders in Kaduna where they drew up an eight-point programme of action approved by the two legislative houses in the Northern region. Their demands formed part of the issues that were discussed at the London and the Lagos constitutional conferences.

### 5.4.1 The Main Features of the Lyttleton Constitution

The 1954 Constitution, which named after the Colonial Secretary, Oliver Lyttleton, created a federal constitution: Nigeria became a federation of four component parts including the three existing Regions – North, West and East, and the Federal Territory of Lagos excised from the Western Region. To a certain degree, complete legislative and executive powers were transferred to the regions, except for the reservation of certain exclusive items to the central authorities. The central legislature that is, the federal House of Representatives was enlarged, containing 184 members that were elected directly and independently of the regional legislatures and it continued to have special members. The Federal Parliament comprised 92 representatives from the North, 42 each from the West and the East, 6 from the Southern Cameroons and the rest 2 from Lagos. The constitution made provision for the continuity of the Council of Ministers, consisting of the Governor-General as the president, three officials, three ministers from each region and one minister from the Southern Cameroons appointed by the Governor-General on the advice of each regional executive. All the ministers who were members of the House of Representatives were appointed by the Governor General as suggested by the regional executives.

The constitution also provided for Exclusive Federal List, Con-current List, and Residual List. The **Exclusive List** specified the items on which the Federal Government would legislate e.g. Defence, Foreign Affairs, Internal Affairs, Finance, Mines and Power. While the **Concurrent List** stated the items on which both the authorities at the centre and the regions could legislate, The **Residual List** indicated areas of authorities not in the exclusive legislative list or the con-current list that were within the competence of the regions for example, chieftaincy affairs. However, wherever there was a conflict of law on any item in the concurrent list, it was provided that federal laws would prevail over regional laws e.g. higher education, insurance, national development, etc. By implication, the regions had greater autonomy to formulate policies and execute programmes, while the centre focused on the matters in the exclusive list, including defence, banking and currency, external affairs, customs etc.

In terms of the structure of regional governments, both the Western and the Northern Regions of Nigeria retained their bi-cameral legislature- the House of Chiefs and the House of Assembly – while the Eastern Region retained a unicameral legislature – the House of Assembly. The 1954 Lyttleton Constitution refrained from providing for a uniform country-wide electoral system. It left the legislatures of the regions to make electoral regulations. This led to different laws in the regions. From 1955, members of the Eastern and Western Houses of Assembly were directly elected by universal suffrage, while both direct and indirect elections were used in the North. The Executive Council of each region was to be presided over by the Regional Governor in all its meeting but it could be presided over by the Premier in the absence of both the Governor and the Deputy Governor for the region or with a special permission in writing from the Governor. Lagos became a federal capital territory forming no part of any region, with the right to elect two representatives to the House of Representatives. For the first time, the constitution provided for the offices of the *Speaker and the Deputy Speaker* presiding over each of the Regional legislature (except the Northern Region legislature, which was presided over by a President). The speaker of the House of Assembly was appointed by the Governor from members or non members of the House. Although, the constitution established a position of Premier for each of the regions it did not provide for the position of a Prime Minister at the centre. The leader of the political party holding a majority in the regional assembly became premier of the region. As a result, Sir Ahmadu Bello, Chief Obafemi Awolowo and Nnamdi Azikwe became regional premier in the Northern, Western and Eastern region respectively. There were changes of titles for public officers; for instance, the Governor was to be designated-Governor-General and Lieutenant-Governors as *Governors* of the Regions.

Other specific constitutional developments include:

1. Revenue allocation focused on derivation rather than need and national interest.
2. Both the civil service and the judiciary were regionalised in conformity with the federal government structure. Provision was made for the establishment of federal and regional public service commission whose functions were to advise the Governor on

promotion, transfers, dismissals and other disciplinary matters in the civil service.

3. A Federal Supreme Court and a High Court at the centre, while Regional High Courts were established in the regions including Southern Cameroons and appeals were to be referred from the latter to the former.
4. There was also a constitutional provision for the Southern Cameroons to be separated from the Eastern Region and to be granted its own House of Assembly and thereby enjoying its own autonomy, but the bill to this effect needed the assent of the Commissioner of the Trusteeship Territories.

### **5.4.2 Merits of the Lyttleton Constitution**

Nigeria became a Federation consisting of the Northern, Western and Eastern Regions and the Federal Territory of Lagos. There was a clear division of powers between the regions and the centre so as to prevent any conflict between the regions and the centre. The constitution made provisions for the post of permanent secretaries and permanent secretaries both at the federal and regional levels for the first time. The number of Nigerian ministers in the government was strengthened to comply with the demand for greater regional autonomy. The Regional Executive Council in the West and the East no longer included ex-officio members but those of the North were retrained. The judiciary, the Public Service and the Marketing Boards were regionalised. The post of Premier was created for the regions and these Premiers were Nigerians. There was provision for the Southern Cameroons to have its own House of Assembly.

In addition, the Lyttleton constitution improved upon the former (Macpherson constitution) by making provisions for direct elections to the House of Representatives. It made the beginning of direct elections to both the Federal and regional legislatures. The offices of “Speaker” and “Deputy Speaker” presiding over each of the Nigerian legislatures except the North were created. It was a prelude to self-government for the West and the East in 1957. The Lieutenant-Governor’s status was raised to that of Governor while the Governor became the governor-general. This was in an attempt to maintain a federal government structure in Nigeria.

### **5.4.3 Demerits of the Lyttleton Constitution**

The 1954 Lyttleton Constitution was regarded as a milestone in the constitutional history of Nigeria. ArikpoOkoi described it as “the kernel of all further constitutional changes, which culminated in the establishment of the Federal Republic of Nigeria on October , 1963.” Notwithstanding, the constitution still vested some autocratic powers on the Governor General and Regional Governors. The Council of Ministers still remained in essence a standing committee of the three regions as the council was still presided over by the Governor General. It failed to provide for the second chamber at the centre and in the Eastern region. The constitution did not provide for the office of the Prime Minister (who should be a Nigerian) at the federal level. The Governor-General remained as the President of the Federal Executive Council. The appointments of the members of the House of Representatives were based



on the three major political parties; their appointments were party-based. This was bad because the loyalty of the ministers resided in their regions as it was under the Macpherson constitution.

The constitution also did not institute a common electoral system for the whole country. For example, in constituting the House of Representatives, members were not elected under a uniform franchise as adult suffrage was used in the Eastern region; in the Western region, the voters must have paid income tax or rates for one financial year if he was born in the area; and for two financial years if he was not. Only adult male tax-payers, who satisfied a residency qualification of 12 months, if not locally born, were allowed to vote in the Northern region. Furthermore, it failed to allay the fears of the minorities as the regional structure favoured the major ethnic groups. Thus, there was agitation for more regions. The constitution, in addition, instituted a revenue allocation formula that emphasized on derivation, instead of need and national interest. Thus, the regional structure established by the constitution encouraged regionalism, ethnicity and national disunity.

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## Study Session Summary



### Summary

In this Study Session, we examined the 1922 Clifford Constitution and the 1946 Sir Arthur Richards Constitution. We noted that the 1922 Constitution created the legislative and Executive Councils to replace the Nigerian Council, which was earlier established by Lord Lugard. We also stated that it was the 1922 constitution that brought about party politics in Nigeria through the creation of the elective principle of which 100 was the criterion. Lastly, we focused on the 1946 Sir Arthur Richards constitution. We stated that it was the 1946 constitution that created regionalism in the history of Nigeria. We also noted that one of the central features of the 1946 constitution was the unofficial majority in the Legislative Council in Lagos. We concluded our discussion on pre-independence constitutions with emphasis on the features, merits and demerits of the 1951 Macpherson Constitution and 1954 Lyttleton Constitution.

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## Study Session 6

# The 1960 Independence Constitution and the First Republic in Nigeria

## Introduction

Our last two study sessions were largely devoted to a discussion of pre-independence constitutions in Nigeria with emphasis on their distinctive features, strengths and weaknesses. In this study session, however, we will focus on constitutional developments in the post-independence era in Nigeria. Our discussion will start with highlighting of major political and historical development that led to the adoption of the 1960 Independence Constitution. Also, the major features, merits and shortcomings of the independence constitution will be identified and discussed with reference to the First Republic (1960-1966).

When you have studied this session, you should be able to:



### Learning Outcomes

- 6.1 identify and explain major political and historical developments that preceded the adoption of the 1960 Independence Constitution.
- 6.2 discuss the major features, merits/strengths and demerits/shortcomings of the 1960 Independence Constitution.

## 6.1 Political and Historical Background to the 1960 Independence Constitution

The Lyttleton Constitution, which was supposed to be reviewed in 1956 due to its deficiencies, was challenged by nationalists. The review was put on hold due to the setting up of Foster-Sutton Commission of inquiry into bribery and corruption in the Eastern Region. From 23 May to 26 June 1957, there was a constitutional conference in Lancaster House in London where the following decisions were made:

- The Western and Eastern Regions were granted self-government in 1957 while the North agreed to have her own in 1959. As a result, reserved powers of the Governors were removed. The premier of a region became the Chairman of the Executive Council. To this end, the regions must ensure the independence of the judiciary and public services.
- Provision was made for the post of a Premier. An upper house in the federal legislature, known as the Senate was created. This senate was to be composed of 12 members from each of the three regions and the Southern Cameroon, four members from the Federal Territory of Lagos and four special members to be appointed by the Governor General at his own discretion. Membership of the House

of Representatives was increased to 312 distributed according to the population (a member for a population of 100000) of each area in the country. The Eastern Region was to have a House of Chiefs in addition to the existing House of Assembly.

- A Prime Minister was to head the Federal government.
- The Southern Cameroon was to be raised to the status of a region.
- It was agreed to at the conference that there should be a fair payment and just compensation for property acquired for public purposes.
- Nigeria was to become an independent nation on 1<sup>st</sup> October, 1960. The Fundamental Human Rights which would guarantee the liberties of every individual were to be inserted in the Independence Constitution.
- The problem of minorities: The conference finally agreed to the appointment of a commission of inquiry and to recommend the creation of one or more states. Sir Henry Willinck was appointed to look into the fears of the minority groups in the country.
- Police to continue to be under Federal control.
- The Nigerianisation policy was to be pursued. Key posts in the public service were to be occupied by Nigerians.
- That while adult male suffrage would be used in the North, universal adult suffrage should be used in the East, West, Lagos and the Southern Cameroon to elect members of the federal and regional legislatures.



The implementation of the decisions of the constitutional conference of 1957 led to the adoption of Southern Cameroon as a separate region with its own Premier, the stoppage of all the ex-officio British officials, except the Governor General from being members of the Executive Council and the beginning of self government on 8 August 1957 in Eastern and Western regions. Also, on 2nd September, 1957, Alhaji Abubakar Tafawa Balewa was appointed Nigeria's first Prime Minister, by the Governor General.

Another constitutional conference held in Lagos from 29<sup>th</sup> September – October 27th 1958 agreed on the following:

- It agreed that October 1<sup>st</sup> 1960 be Independence Day for Nigeria.
- The conference accepted the inclusion of a list of fundamental human rights in the constitution to protect the citizens against arbitrary abuse of power by the government.

The conference had 114 delegates and advisers from various political parties were also in attendance. The conference discussed the report of the two special commissions set up in 1957; that is the fiscal allocation committee and that of the fear of the minorities. The chairman of the conference was the Secretary of State for the Colonies, Mr. Allan Lennox – Boyd.

A nationwide general election was held to the federal House of Representatives in December 1959. I should inform you that no party won an overall majority, which prompted the NPC and NCNC to agree to form a coalition government, while the AG became the opposition party.

## 6.2 The Main Features of the 1960 Independence Constitution

The 1960 Independence Constitution retained federalism with the regions having residual powers. The constitution introduced a parliamentary system of government. It made Nigeria a Sovereign nation-state and a constitutional monarchy of three regions – North, West and East. The 1960 Independence Constitution provided for a bicameral legislature at the federal level; namely, the House of Representative (Lower House) consisting of 312 members chosen on the population basis (North 174, East 73, West 62 and Lagos 3) and the Senate (Upper House) consisting of 44 members chosen on the basis of twelve from each of the three Regions, four from Lagos and four appointed by the Prime Minister to represent national interest. The Queen was represented in the house by the Governor-General who assented to Bills to become laws. Decisions on finance and general monetary affairs were within the legislative scope of the Senate. For the regions, the constitution established a bicameral legislature – a House of Assembly and a House of Chiefs. The Governor-General was given power to appoint as a Premier a leader in the House of Assembly, whose party appeared to him to command the majority in the House and other ministers on the advice of the Premier.

Following the decision of the 1958 constitutional conference, fundamental human rights were entrenched in the constitution to safeguard the citizens' rights and liberties. It also provided that elections to the House of Representatives would be by direct election; candidates would be elected on the basis of one member per constituency. The life of the legislatures being referred to as parliaments is 5 years. The Federal Government had power to declare a state of emergency in any part of the country, if there was a threat to good governance and if the federation is at war. In the constitution, there was provision for division of powers between the federal and regional governments. Only the federal government could legislate on those subjects on the Exclusive List. Both the federal and regional governments had jurisdiction on the Concurrent List. Residual subjects were reserved to the regions to legislate upon. However, the constitution stipulated that in the case of conflict between the central and regional legislatures on any item on the Concurrent List, the law of the central legislature would prevail. The constitution also provided for the allocation of revenue between the federal and regional governments based on the principle of need, national interest and balanced development.

Moreover, there was provision for the federal Supreme Court as the highest court in the country while all appeals went to the Privy Council in London. There was to be a Judicial Service Commission to advise on the appointment of the supreme and high court judges. Thus the court system comprised: the Privy Council in London, the Supreme Court, the High Court, the Magistrate Courts and the Customary Courts. As regards the Head of State, the Queen of Great Britain was the constitutional head. The powers vested in her were to be exercised by her directly or personally or by the Governor-General of the federation or Regional Governors who were her accredited representatives. It is important for you to note that the Federal Prime Minister and the Regional Premiers (as

head of government) had executive powers. There was a Federal Executive Council presided over by the Prime Minister who chose other ministers while the regional Executive Council was presided over by their Premiers. A governor could remove the Premier, if the latter lost the confidence of the House.

In addition, provisions were included in the 1960 Independence Constitution for the creation of more regions or states and boundary adjustments of existing ones. Amendments to some important clauses of the constitution required a two-third majority vote in both houses of the Federal Parliament, and of at least two regions.

### **6.3 Merits of the 1960 Independence Constitution**

The constitution was unique because, apart from being drafted by Nigerians, it conferred a “full” independence status on Nigeria with the right to join international organisations as a sovereign state. The name Nigeria replaced “The Colony and Protectorate of Nigeria”. The division of powers between the Head of Government (executive power) and Head of State (political power) was to prevent concentration of powers in a single hand that could lead to dictatorship. Fundamental human rights were entrenched in the constitution to safe-guard citizens’ rights and liberties as well as their duties were clearly spelt out. The federal parliament (House of Representatives) and regional assemblies composed of directly elected members, which resulted into the adoption of a uniform electoral system throughout the country. Electoral Commissions were set up to conduct federal and regional elections.

The judiciary was to be independent as judges were to be appointed by the Governor-General on the advice of the Judicial Service Commission. Let me inform you that such assignment used to be the sole responsibility of the Governor-General. Also, the power of alteration of any section of the constitution that was used to be exercised by the British government was ceded to the regional and federal legislatures. The 1960 Independence Constitution provided for a bi-cameral legislature at regional and federal levels for good and informed legislation and to foster popular participation. The constitution made provisions for the creation of regions (states) and alteration of boundaries, thereby allaying the fears of the minorities. It abrogated the reserved and veto powers of the Governor and Governor-General and under the constitution, official members ceased to be members of the Federal Executive Council and the Northern Region Houses of Assembly and Chiefs.

### **6.4 Demerits of the Independence Constitution**

The Queen of Great Britain was still the constitutional Head of State in the country as the Governor-General was her representative (who could only act on her instructions). Thus, Nigeria attained independence without sovereignty. Even the legislative powers of the Nigerian state were contained in the Act of the British Parliament till 1963 when Nigeria became a republic. The court of last resort for Nigerians was the Judicial Committee of the Privy Council in London to which appeals lay from the Supreme Court of Nigeria. The offices of Governor-General and Governors were vested with the power to remove the Prime-Minister and

Premiers respectively. The exercise of this power could lead to a conflict of power between the political head on one hand, and the executive head on the other, as witnessed in the Western Region in 1962 between the then Governor- Sir Adesoji Aderemi and the regional Premier- Chief Samuel Ladoke Akintola. The revenue allocation formula which was based on the principle of need, national interest and balanced development was faulty as it could not resolve issues on revenue allocation sharing. It should have included derivation.

More importantly, the division of powers between the Head of State and the Head of Government, as provided for under parliamentary model instituted by the 1960 constitution, could lead to conflict in the process of discharging their duties. The constitutional provision that conferred power to declare state of emergency on the federal government could be abused either by the executive or the legislature. This actually happened in 1962 during the Western Region crisis, when the government of Balewa invoked it to punish AG regional government in power and put its favored candidate in power. This particular provision also questioned the trueness of Nigerian federation. Also, rather than promoting socio-economic transformation and national integration, parliamentary constitution adopted in 1960 merely encouraged regionalism as major political parties were ethnically based to the detriment of the country's political stability. The political instability it generated was one of the reasons for the call for a republican constitution.

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## Study Session Summary



### Summary

In this study session, we discussed the major events that preceded the adoption of the independence constitution of 1960 as well as its major provisions, merits and demerits. The 1957 and 1958 constitutional conferences held in London and Lagos respectively contributed significantly to the adoption of major provisions in the independence constitution. Not unlike other pre- independence constitutions, it is significant in that it conferred independence status on Nigeria and was drafted by Nigerians. Nevertheless, it promoted independence without full sovereignty in Nigeria as the Queen of England remained the constitutional ceremonial head under the 1960 constitution. Other weaknesses of the constitution were also mentioned.

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The Independence Constitution of 1960 (National Archives)

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## Study Session7

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### The 1963 Republican Constitution

#### Introduction

This Study Session discusses another significant post-independence constitution, the 1963 Republican Constitution as a constitution. It came into effect to provide for the inadequacies of the 1960 Independence Constitution. More importantly, some major political developments that led to those changes effected in the 1963 Republican Constitution are examined. Let us start our discussion on the 1963 Republican Constitution with some major political developments in Nigeria between 1960 and 1963.

When you have studied this session, you should be able to:



#### Learning Outcomes

- 7.1 highlight political developments in Nigeria between 1960 and 1963 that contributed to the promulgation of the Republican Constitution of 1963.
- 7.2 discuss major provisions, merits/strengths and demerits/shortcomings of the 1963 Republican Constitution.

#### 7.1 Political Development in Nigeria from 1960 to 1963

The period between 1960 and 1963 can be characterised as a turbulent period in the political history of Nigeria. This is because some sections of the country witnessed a series of crises. These crises affected the stability of the country significantly. The major crises include the following:

1. Crises in the Western Region and the Action Group: The most devastating Western Region crisis developed from a personality clash between Chief Obafemi Awolowo, the leader of the AG party and his deputy, Chief S. L. Akintola who later succeeded Chief Awolowo as the Premier of the Region. When Chief Awolowo decided to contest for a legislative seat at the federal level with the aim of becoming the first Prime Minister in Nigeria, he conceded the office of the Regional Premier to Chief Akintola. Awolowo was unable to realise his ambition because his party (AG) did not secure enough seats that could have afforded it the opportunity of forming government at the centre. Trouble started over who was to lead the government in the Western Region, Premier or national leader of AG. As the cold war between the duo degenerated, two factions emerged within AG and when Akintola was expelled from the Party,



at the Jos convention, the crisis escalated. The crisis eventually culminated in the declaration of a state of emergency in the region by the Federal Government.

2. The Creation of Mid-West Region in 1962: One of the consequences of the Western Region crisis was the excise of Mid-Western Region from the Western Region in 1962. The 1963 Republican Constitution gave formal recognition to the Mid-Western Region. I should let you know that creating a new region out of existing ones, or the alteration of their boundaries, required additional approval by the people of the affected areas at a referendum. In the case of Mid-Western Region, 60% of all the registered voters voted in favour.
3. The Census Crises of 1962 and 1963: The first attempt at obtaining a truly national headcount in Nigeria was made between May 13 and 31, 1962. Despite the human and material resources involved, the outcome of the census was rejected by the Federal Government due largely to public outcry. It was alleged that the exercise was bedeviled with inflation and delay of results in some part of the country. Even a new national census conducted from November 5 to 8, 1963 was also condemned. While the government of the North and the West approved the results, the Eastern government and AG party rejected the census figures. There was a protest by the students of the University of Nigeria, Nsukka, against the census result.

Although, Nnamdi Azikwe proposed that Nigeria should adopt a Republican Constitution, the proposal was formally made by the Prime Minister in consultation with the regional Premiers. The proposal was finalised at the constitutional conference held in Lagos on 25<sup>th</sup> and 26<sup>th</sup> July, 1963. The conference was attended by the federal and the regional representatives and all political parties. It was agreed upon by all the parties to renounce a monarchical parliamentary system in favour of a republican parliamentary form whereby allegiance was owed to the people of Nigeria rather than the British Crown. Some of the far reaching decisions agreed to include the following:

1. Nigeria was to become a Republic of Nigeria in the commonwealth on the 1st of October, 1963, and that the President of the Republic of Nigeria would be elected through an electoral college of members of the Senate and House of Representatives and the tenure of office would be for a period of five years.
2. The replacement of the Judicial Committee of the British Privy Council as the final court of appeal for Nigeria with the Supreme Court in the country.
3. The provision of existing constitution in respect of the executive should remain except that a Prime Minister would not be removable from office by the President, before his tenure expired unless as a result of a vote of no confidence in the Government secured on the floor of the House.
4. The legislative powers of Nigerian parliaments should no longer be defined only in Act of the British Parliament. Thus, the Queen of England should cease to be the Nigerian Head of State, represented by the Governor-General in Lagos.
5. The Judicial Service Commission should be abolished. It was decided that judges in the future should be appointed by the



President on the advice of the Prime Minister and the removal of judges would be by presentation to the President of an address by a majority of at least two-thirds of all the members of each House.

### Note

It should be noted that what led to the need to revise the 1960 Independence Constitution was the May 1963 decision of the British Privy Council to reverse the decision of the Federal Supreme Court in Lagos on the premiership suit in the Western region. The federal government's refusal to accept the verdict of the Privy Council led to a retro-active amendment of the Western Region Constitution to support the Federal Government's position on the issue.

## 7.2 Major Features of the 1963 Republican Constitution of Nigeria

The Republican constitution was adopted by the Act No. 20 of 1963, passed into law by the Nigerian Parliament, instead of the British Parliament, on 19<sup>th</sup> September, 1963. The Federation of Nigeria became a Federal Republic on October 1, 1963. The constitution which conferred a republican status on Nigeria also included constitutions of the existing regions that were re-enacted with appropriate modifications. The constitution provided for the position of a Nigerian President who should act as the Head of State and the Commander-In-Chief of the Armed Forces (the Governor-General) to replace the Queen of England. To this effect, Dr. Nnamdi Azikwe, was named as the President, who remained a ceremonial head. The President of the Senate acted in the absence of the President of the Republic. The President could be removed by impeachment conducted in the House of Representatives and Senate. Thus, there was the ceremonial President as Head of State and Commander in Chief of the Armed Forces and the Prime Minister as the Head of Government.

The Mid-West Region created from the Western Region was formally recognised and so the Republic of Nigeria consists of four regions and a federal territory, (Northern, Eastern, Western and Mid-Western). The total membership of the Senate was thus 57 or 56, if the President of the Senate was not counted as a member of the House. The House of Representatives consisted of 313 members or 312, if the Speaker of the House of Representatives was not himself a member of the House. All the main features of federation existed – a double set of governments, division of powers, and supremacy of the constitution as well as the special importance of an independent judiciary.

The constitution established a parliamentary type of government both at the centre and at the regions. The fundamental human rights were guaranteed by the constitution. All appeals formerly made to the Privy Council in London were re-directed to the Supreme Court as it became the Final Court of Appeal in Nigeria. The act establishing the constitution was passed by the Nigerian Parliament but not by the British Order-in-Council. The Federal Supreme Court was empowered to declare any law unconstitutional, if opposed to the constitution. Federal Government's emergency powers were also stated in the constitution. It provided for a bi-cameral parliamentary system, the supremacy of parliament and non-

partisan civil service to which people were appointed on the basis of merit. The constitution also provided for universal adult suffrage. Director of Public Prosecution, who hitherto was independent of political control, was brought under political control. Also, the Judicial Service Commission was abolished and as such appointments of judges were to be done by the President on the advice of the Prime Minister. The constitution declared English as the official language of the Parliament and the legislative Houses of the Western, Mid-western and Eastern Nigeria. The official languages of the Northern Nigeria Legislative House were English and Hausa. The President of Nigeria and the Regional Governors were required to act as nominal heads while the administrative machinery was run by the cabinet both at the centre and the regional governments. The residual powers were vested in the regions. The Nigerian constitution established responsible governments both at the centre and the regions.

### **7.3 Merits of the 1963 Republican Constitution**

The 1963 Republican Constitution was significant in many respects. First, the Act establishing it was enacted by the Nigerian Federal Parliament instead of the British Parliament. Secondly, it removed Nigeria as an independent entity from under the headship of the English monarch. Thirdly, it gave the Supreme Court its due position as the highest court for all cases in Nigeria. It conferred independent status on the country's judiciary. Fourthly, the constitution attempted to protect judicial institutions by abolishing the Judicial Service Commission and gave the power for the appointment of judges to the President, on the advice of the Prime Minister, supported by the legislature.

### **7.4 Demerits of the 1963 Republican Constitution**

As mentioned earlier, the decision to change the monarchical constitution of 1960 to the republican constitution of 1963 was not unrelated to the crises in the Western Region. It is surprising that the constitution did very little to calm the storm brewing in the country that eventually led to the collapse of the republic when the military took over in 1966. The constitution also did not solve the problem of the creation of new states, thus leaving the Northern Region larger in size than the three Southern regions put together. The constitution provided for two separate executive bodies at the center- the Federal Executive Council, headed by the president and the Council of Ministers, presided over by the Prime Minister. There could be conflicts as a result of overlapping functions. The election of the president was by the House of Representatives and not through general elections. The republican constitution, in addition failed to provide for a uniform electoral law. While both the Eastern and the Western Regions adopted universal adult suffrage, only males could contest election into the House of Representatives, in the Northern Region. It made provision for the organisation of Local Government Police Force. Such policemen could be used as an instrument of terror and oppression and they were indeed used for such in the First Republic. Members of the Federal Electoral Commission under the republican constitution were chosen on regional basis. Thus, they were more loyal to their regions instead of the Federation.

## Study Session Summary



### Summary

In this study session, we have discussed the major political developments that led to the adoption of the Republican constitution that came into effect on 1<sup>st</sup> October, 1963. We noted the main features of the constitution as well as the merits and the demerits. We also stated that the constitution is significant in the constitutional history of Nigeria as it conferred republican status on the country and removed the Queen of England as the Head of State represented by Governor-General. It also made the Supreme Court, the final appeal court in Nigeria and not the British Privy Council. Nevertheless, it was criticized on the ground that it did little to resolve regional crises in the West, which later culminated in the demise of the First Republic.

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## Study Session8

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# The 1979 Constitution and the Second Republic in Nigeria

## Introduction

In this Study Session, you will examine the major political and constitutional developments after the demise of the First Republic as well as the subsequently adopted 1979 Constitution. The main features, merits and demerits of the 1979 Constitution that provided the political framework for the Second Republic in Nigeria will also be discussed.

When you have studied this session, you should be able to:



### Learning Outcomes

- 8.1 highlight the political and constitutional developments that attended the demise of the First Republic in Nigeria.
- 8.2 discuss major provisions of the 1979 Constitution of the Federal Republic of Nigeria.
- 8.3 highlight and discuss the merits/strengths and demerits/shortcomings of the constitution.
- 8.4 compare and contrast the 1963 Republican Constitution with 1979 Constitution.

## 8.1 Political and Constitutional Developments in Nigeria before 1979

Prior to 1979, there were some significant political and constitutional developments in the history of Nigeria. Such developments include:

1. The 1964 general election which was the first post-independence election to be held in the country. The political and electoral crises that erupted before the election led to a re-alignment in the body politic, particularly, with regard to the formation of two alliances. These alliances, comprising United Progressive Grand Alliance (UPGA), made up of the NCNC, AG and some other minor parties and the Nigerian National Alliance (NNA), contested the federal election of 1964.
2. The violent crises that trailed the Western Regional election of 1965 and the subsequent seizure of power by the military. Political violence broke out between the NNDP that was acclaimed to have won the election into Western House of Assembly and UPGA, which led to the destruction of lives and properties. Due to the inability of the Federal Government to control the situation even when it was called upon to declare a state of emergency, a group of young army officers, led by Major Kaduna Nzeogwu, plotted a coup and toppled the regime of Alhaji Tafawa Balewa on January 15, 1966. Consequently, some sections of the 1963 Constitution were suspended and all political, cultural, tribal and trade union activities

were banned. Although, the dissident group was overpowered by the troop loyal to the Federal Government, the Acting Head of State, Dr. Nwafor Orizu later handed over to Major General Aguiyi Ironsi as the first military Head of State.

3. The promulgation of the martial law (Suspension and Modification) Decree 1966 (decree No.1). The decree vested the legislative powers in the Federal Military Government and suspended some sections of the Republican constitution and modified some of its provisions and that of the Regions. Section 3(1) of the decree empowered the Federal Military Government to “make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.
4. The adoption of the Unification Decree by the Head of State and the counter coup of July 1966. The Ironsi regime returned the country to a unitary state with the promulgation of Decrees No.5 and No.34 also known as “Unification Decree, the object of which was to restore national unity that had been shattered by tribalism and extreme regionalism in the First Republic.

The decree pronounced Nigeria as “Republic of Nigeria” and removed the federal nomenclature from all existed institutions at the centre. It also abolished regions and substituted them with “Group of Provinces” which was made subject to the general control and direction of a Military Governor appointed by the Head of the Federal Military Government. Attempt was also made to unify the country’s civil service by the establishment via the decree the National Public Service Commission. The Northerners condemned the unification on the ground that it was designed to subject them to Southerners. This ignited several riots in some parts of the North in the months of May and July 1966 (Araba Riot) which led to the killing of many Igbos living in the North. As a way of stopping the military government from implementing the Unification Decree, a group of Northern army officers executed a military coup on 29 July, 1966 and ousted the Ironsi Military regime. The coup eventually led to the emergence of the then Lt. Col Yakubu Gowon, a Northerner, as the country’s second Head of State.

5. Another major event that influenced the constitutional engineering in Nigeria was the civil war that was fought between federal government troops and those of the declared Biafra Republic between 6th July 1967 and 12th January 1970. On 30th May, 1967, the then Lt. Col. Odumegwu Ojukwu declared the East a sovereign independent state of Biafra.

Part of the measures adopted by Gowon to scuttle the Eastern secession was to declare a state of emergency in the country. He also decided to divide the country into twelve states with each of them headed by a military Governor. Besides, the Gowon administration released 22 political prisoners including Chief Obafemi Awolowo and Anthony Enahoro and restored the country to the federal system via Decree No. 59 of 1966, thus abrogating Decree No. 34 of 1966 that established the unitary system. The decree also changed the nomenclature of institutions both at the centre and in the regions, and the public service of each region was reconstituted.

The Head of State also summoned an ad-hoc constitutional conference in September 1966, to look into ways and means of

arriving at a new constitutional arrangement by which the country could be kept together as a single entity. The Ad-hoc Conference could not reach any meaningful conclusion as a result of the withdrawal of the Eastern Delegates from the conference because of the massacre of Igbos resident in the North between September 29 and October 3, 1966. The constitutional conference set up to draft a constitutional programme in Aburi, Ghana in 1967, also failed to stop Nigeria from being plunged into a civil war. (6) There was a strong commitment on the part of government to post war reconstruction. Apart from the 'Nine-Point National Programme and the Four-Year Development Plan (1970-1974), there was a national head count in 1973, the result of which was set aside by Brigadier (later General) Muritala Mohammed that took over from General Gowon in 1975.

When the Muritala regime came in, the regime announced a "five-stage programme" leading to military disengagement from power on October 1, 1979. These include: appointment of a constitution drafting committee in October, 1975, creation of new states and establishment of the newly created states by April 1976; completion of the first draft of the constitution by September 1976, election into Constituent Assembly in October 1977, ratification of the draft constitution by the Constituent Assembly by October 1978, and lifting of the 1966 ban on political parties and the conduct of states and federal elections by 1979. Before Muritala was assassinated on February 13, 1976, machinery had been put in motion to draft another constitution for the country. For instance, a forty-nine member Constitution Drafting Committee (CDC) was established in 1975 under the chairmanship of Chief F.R.A Williams. The constitution was completed in 1976 under Obasanjo military regime, and reviewed by a 230-member Constituent Assembly (CA), established via Decree No. 50 of 1977 and headed by Justice Udo Udoma which worked from 1977 to 1978. The Supreme Military Council (SMC) played the final role by carrying out final amendment and promulgated the new Constitution of the Federal Republic of Nigeria into a Decree to come into effect by October 1, 1979. Also, prior to his assassination, General Muritala had successfully created seven more states in the federation of Nigeria after due enquiry, but Decree No. 12 of 1976 that gave legal backing to this action was signed by his successor, the then Lt. General Olusegun Obasanjo, on 10 March 1976. Section 6 (1) of the Decree provided that:

*"There shall be nineteen states, that is to say, Anambra, Bauchi, Bendel, Benue, Borno, Cross river, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers and Sokoto".*

## 8.2 Main Features of the 1979 Constitution

The adoption of 1979 constitution created a watershed in the history of constitutional development in Nigeria. This is so because there was a radical departure from the parliamentary (Westminster) system to



presidential (Congressional) system. Although there are many provisions in the 1979 constitution which were meant to resolve major constitutional and institutional problems facing the country, Sir Udo Udoma submitted that there are three main characteristic features: the supremacy of the constitution, the fundamental Objectives and directive principles of state policy and fundamental rights. As a matter of fact, there are other fundamental provisions which include the following:

The institution of an executive presidential system of government. In the 1979 Constitution, the Executive President to be elected as the Head of State and commander-in chief of armed forces for a period of four years was not to be younger than 35 years of age. Under the constitution, the President was allowed to hold office for a maximum of two terms. To get elected as a president, a candidate must score not only a majority of votes cast at an election, but also at least one-quarter of the votes cast in each of at least two-thirds of the states of the federation.

Unlike the parliamentary constitution that fused the executive powers with the legislative power, there was a provision for separation of powers among the three main organs of government. Also, mechanisms for checks and balances were constitutionally entrenched.

The constitution for all the state governments and the federal government were written in one formal legal document. This was different from the 1963 Republican Constitution that preceded the constitution of 1979, which retained separate constitutions for each region and the federal government.

Conditions for the election of State Governors were similar to those of the President except that the number of votes cast in each local government in the candidate's state counted. The Governor was regarded as the Chief Executive of the state and as the President and Vice-President must run on the same ticket, so also the Governor and the Deputy Governor must run on the same ticket.

There was provision for federal character principle in the composition of the government-be it federal, state and local- and any of its agencies.

There was provision for removal of the President and Governor with their running mates via impeachment. If any of these chief accounting officers were found guilty of offence considered as gross misconduct, a process of impeachment could be initiated against the officer.

There was provision for a bi-cameral legislature at the federal level i.e. the Senate comprising of 95 members (5 from each state of the federation) and the House of Representatives had 449 members chosen on population basis from all the states. Furthermore, a member must represent Abuja federal constituency, making up the National Assembly. There was a unicameral legislative structure in each of the 19 states of the federation called a House of Assembly. It was stipulated in the constitution that each legislature would meet for at least 181 days annually, and any member who, without a just cause could not be present for at least 100 days, would have his membership terminated.

Local government structure and functions were provided for in the constitution. Arising from the 1976 Local Government Reform, local government councils were for the first time formally regarded as the

third-tier of government in Nigeria. Fundamental Human Rights were also provided for.

Provisions were made for a code of conduct for public officers: a Code of Conduct Bureau and Tribunal and the Public Complaint Commission were established.

It discussed the formation of political parties, their functions and administration. It is important to note that the constitution encouraged multi-party system in which more than one political party was registered. Following the adoption of this system of party organisation, five major political parties were registered in December, 1978 to contest 1979 general elections. These were Great Nigerian Peoples Party (GNPP), National Party of Nigeria (NPN), Nigeria's Peoples Party (NPP), Peoples Redemption Party (PRP) and Unity Party of Nigeria (UPN).

The constitution created a Council of States to advise the president on important issues. Also, there was to be a National Economic Council headed by the Vice President with all State Governors and the Governor of the Central Bank as members.

The judiciary was to interpret the constitution and carry out judicial review. The judiciary was given the power of interpretation of the constitution and its decisions were final. It could therefore declare any policy or action of the executive or legislature unconstitutional and therefore null and void.

The Chief Justice of the Federation was to be appointed by the President, with the Senate's approval. All other justices of the Supreme Court, the Federal Court of Appeal and Federal High Courts were appointed by the Federal Judicial Service Commission with the approval of the Senate.

Secession is constitutionally forbidden and the constitution shared powers into matters on the exclusive list for federal government; matters on the concurrent list for federal and state government and the residual matters were exclusively for the state government.

### **8.3 Strengths of the 1979 Republican Constitution**

The 1979 Constitution was unique in various ways. First and foremost, the process of making it was elaborate to facilitate wider participation and consultation. According to Oyeleye Oyediran, 'in the political history of Nigeria no other process of constitution making has been as elaborate as that of the constitution of the Federal Republic of Nigeria, 1979.' Besides, the constitution, unlike the 1960 Independence Constitution and the 1963 Republican Constitution combined the real and formal authorities in the office of the Executive President or Governor. Thus, the conflict which could ensue from the division of powers under the cabinet system was taken care of. The provision of the constitution that the Executive President and the three Governor of each state be directly elected for a fixed period paved way for the most popular candidate among several contestants to emerge as the winner. It was also a major step in the promotion of responsible democratic governance.

There was a clear definition of functions, powers and interrelationships of the three arms of government. This was meant to promote harmonious



relationship with legal basis for efficient administration of the country among the branches of government. In addition, members of the cabinet were to be individually responsible for their actions to the Executive President or the Governor as the case may be. There was no absolute power for the Executive President or the Governor as there was provision for the application of federal character in the composition of the government and any of its agencies.

Also, the Senate or the House of Assembly must approve the appointments of other unelected political office holders. The powers of the Executive President were also limited over the declaration of state of emergency and could not dissolve the House of Assembly of any State. To address corruption problem in Nigeria, the constitution established some corrective institutions, for example, Code of Conduct Bureau, Public Complaints Commission and Corrupt Practices Tribunal. The constitution forbade a state religion and encouraged secularism due to the heterogeneous nature of the country.

The constitution made provision for the formation of national political parties to correct the mistake of the past whereby parties were organised and operated on ethnic basis. The principle of separation of powers provided the opportunities for each to discharge its constitutional duties without undue interference. To forestall undue harassment and intimidation suffered by people in the hands of local/regional policemen in the First Republic, the constitution unified the country's police force. The last but not the least unique change brought about by the 1979 Constitution was the provision for a pensionable appointment for a person who had held office as president and was not removed from office as a result of impeachment.

## **8.4 Demerits or Weaknesses of the 1979 Republican Constitution**

In spite of the above merits of the 1979 constitution, some weaknesses are discernible. The constitution was not specific enough on the expectations concerning the character and ability for aspirants to leadership positions. It failed to assign any role to the offices of the Vice-President and Deputy-Governor as the President and the Governor were authorized to assign responsibilities to them at their own discretion. In the Second Republic some deputy governors fell out with their governors shortly after swearing-in and taking oath of allegiance and oath of office. This accounted for their redundancy throughout the remaining period of their political tenure. The executive was given wide-ranging powers vis-à-vis other organs; thus, making the executive the most obvious organ that has powers that could quite easily be abused. It is not surprising that in spite of the checks and balances, the Chief Executive still had enough room for dictatorial actions. Likewise, the impeachment clause was abused by the legislature in situations where different parties controlled the legislature and the executive. Although, the Chief Executive was not provided with the atmosphere conducive to function dictatorially, he could still abuse his veto power particularly whenever he was not in good terms with the legislators.

Granting the National Assembly the power to fix the salaries and allowances of the President and those of members their own without any restraint left the Chief Executive at the mercy of the legislators. The federal character principle which featured prominently in the constitution had little or no respect for merit; thus, leaving the country's public service in the hands of those who might not be competent enough to promote efficiency and effectiveness in their various offices. More fundamental is the encouragement of a winner-takes-all situation provided by the constitution, as there was little room for consensus. This led to some bitter rivalries among political actors and was also responsible partly for the demise of the Second Republic.

## 8.5 Significant Differences between the 1963 and the 1979 Constitutions

It is pertinent to identify the major differences between the 1963 and the 1979 republican constitutions because of their significant influence on the Nigeria's constitutional development. These differences are highlighted below.

- The British Parliamentary or Cabinet System or "West Minister Model" was followed in the 1963 constitution while in the 1979 constitution; the "American Presidential System" was adopted.

Ceremonial President as the Head of State and Commander-in-Chief of the Armed Forces was provided for in the 1963 constitution while in the 1979 constitution, authorities were vested in the Executive President.

The President was selected by the joint meeting of both houses of parliament as there was no provision for special election in the 1963 constitution. However, in the 1979 constitution, the President would emerge at a general election.



**Tip**

The 1963 constitution had the executive and the legislature largely combined, while the 1979 constitution clearly separated the two.

- While the 1963 constitution officially recognised an opposition party, the 1979 constitution made no room for opposition; only majority and minority leaders were recognised.
- Unlike the 1979 constitution, which allowed the President to choose ministers from outside the legislature, the 1963 constitution stipulated that ministers should be chosen from among members of parliament.
- A vote of no confidence was the instrument provided in the 1963 constitution for the removal of the Prime Minister or the Premier, while, according to the provision of 1979 constitution, the President or the Governor could be removed by impeachment.
- The 1963 constitution allowed the Prime Minister or the Premier to remain in office for as long as his party controlled majority seats in the parliament. However, the 1979 constitution stipulated a four-

year' tenure for the President and Governor, with a maximum of two terms.

- In the 1963 constitution, a member of parliament appointed minister could combine both positions, while in the 1979 constitution, a legislator appointed minister ceased to be a member of the House.
- While age qualification for the President was 40 years in the 1963 constitution, the 1979 constitution had age qualification for the President reduced to 35 years.
- The 1963 constitution recognised four regions, while the 1979 constitution was made for the 19 states of the federation.

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## Study Session Summary



### Summary

In this study session, we discussed the political and constitution developments that fore-shadowed the 1979 Constitution in Nigeria. Furthermore, we examined the Main features as well as the merits and the demerits of the 1979 Constitution. Lastly, we contrasted the 1979 Constitution with the precedent 1963 Constitution before bringing the study session to a close.

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## Study Session9

# The 1989 Constitution and the Aborted Third Republic

## Introduction

The Second Republic came to an abrupt end when the military took over on 31st December, 1983 with the suspension of some sections of the 1979 Constitution. The almost sixteen uninterrupted years of military rule that followed (between 1984 and 1999) had significant implications for constitutional development in Nigeria. We will therefore examine the events that culminated in the making of 1989 Constitution which was expected to serve as the main political and constitutional framework for the aborted Third Republic in this Study Session.

When you have studied this session, you should be able to:



### Learning Outcomes

- 9.1 identify the major events that culminated in the making of 1989 Constitution.
- 9.2 discuss the significant changes introduced by the constitution in comparison with the 1979 Republican Constitution of the Federal Republic of Nigeria;.
- 9.3 highlight the merits of the constitution.
- 9.4 point out shortcomings of the constitution.

## 9.1 Background to the Making of the 1989 Constitution of the Federal Republic of Nigeria



**Gen Buhari** regime promulgated "Suspension and Modification of Decree 1984", which suspended vital sections of the 1979 constitution and conferred legislative powers on the Supreme Military Council (SMC). His administration was later overthrown on Aug. 27, 1985.

The regime of President Shehu Shagari was overthrown via a military coup led by Brigadier (later General) Sani Abacha on December 31, 1983. This ultimately led to the collapse of the Second Republic. After General Muhammadu Buhari took over government, some vital sections of the 1979 constitution were suspended. Like other military regimes, political activities were also banned and the constitution remained suspended. The Buhari military regime promulgated Suspension and Modification of Decree 1984 and the Federal Military Government (Supremacy and Enforcement Powers) Decree 1984, which suspended certain sections of the 1979 constitution and conferred legislative powers on the Supreme Military Council (SMC). As indicated by Oyediran (2007:51), the military administration of Generals- Buhari and Idiagbon (the Chief of Staff) did not concentrate its attention on the political transition but on economy and injection of social discipline into the fabrics and mentality of Nigerians. On August 27, 1985, the administration was replaced via a palace coup with a politically active military regime led by General Ibrahim Badamasi Babangida.

Under the new regime, the SMC was changed to the Armed Forces Ruling Council (AFRC) and for the first time in the political history of Nigeria, a military regime commander, General Babangida, used the title President instead of Head of State. The suspension of the 1979 Constitution was upheld by the AFRC. President Babangida on January 13, 1986 inaugurated a Political Bureau that consisted of 17 members to “gather, collate and synthesize the contributions of Nigerians in the search for a new political system”. Dr. Samuel J. Cooke, until then the Pro-Chancellor of the University of Benin, was the Chairman of the group while Dr. Abdullahi Rafi Augi acted as the executive secretary. It should be noted that five months after the Bureau started its work, Dr. Ola Balogun resigned as a member of the Political Bureau for personal reasons and it was also reported that Mr. Edwin Madunagwu of the Guardian newspapers left the Bureau.

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The terms of reference of the Political Bureau, according to President Babangida include:

1. Review Nigeria’s political history and identify the basic problems which have led to our failure in the past and suggest ways of resolving and coping with these problems
2. Identify a basic philosophy of government which will determine goals and serve as a guide to the activities of government.
3. Collect relevant information and data for the government as well as identify other political problems that may arise from the debate
4. Gather, collate and evaluate the contributions of Nigerians to the search for a viable political culture and provide guidelines for the attainment of the consensus Objectives
5. Deliberate on other political problems as may be referred to it from time to time.

#### Hint

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On March 27, 1987, the Political Bureau submitted its report to government. In its preface to the Report, Prof. Jerry Gana, the former Chairman of Directorate for social mobilization affirmed that the report of the Bureau was “detailed in logic, profound in research, factual in representation, and impartial in analysis of our historical and political developments, together with recommendations on the way forward”. Olagunju Jinadu and Oyovbaire described the result of the national debate as “a remarkable overview of the problem of governance in the country

since colonial times. Also remarkable were the policy prescriptions and the conditions for political stability and democratic rule which it puts forward". It is significant to note that certain recommendations made by members of the Bureau were accepted by the Federal Military Government.

Another major step in the making of 1989 constitution was taken on September 7, 1987, when a Constitution Review Committee (CRC), comprising 46 members was set up. The CRC was constituted to review the 1963 and 1979 republican constitutions in line with the accepted recommendations which had been made by the Political Bureau. The CRC, after completing its assignment, reported that there was nothing fundamentally wrong with the 1979 constitution. Although the government did not make its position on the CRC report public, the CRC recommended that more local governments should be created but emphasized that the procedure for such creation should be made as stringent as conditions for the creation of states to forestall future demand. The Committee also recommended that the eligibility ages for public elective posts should be increased to allow for maturity and experience and those public officers should henceforth be mandated to declare their assets before assuming office. Other recommendations include the following:

1. that the appointment of the Ministers and Commissioners be subject only to the consultation with the Senate or a House of Assembly, as the case may be, instead of confirmation by those bodies;
2. that one six-year term for the Chief Executives both at the federal and state levels should be provided for;
3. that a mayoralty be created for the Federal Capital Territory (FCT) so as to demonstrate its status as non state in the federation; and
4. that the adjudication of election result disputes be removed from the regular court.

Prior to the promulgation of the 1989 Constitution, a Constituent Assembly (CA) was inaugurated to review and deliberate upon the Draft Amendment Constitution submitted by the CRC in May 1988. Apart from the Chairman and the deputy Chairman, the Constituent Assembly had a total membership of 561 including 450 elected members elected in their federal constituencies and 111 nominated members consisting of some members of the CRC who were to serve as resource persons, some distinguished Nigerians who represented some important and critical interests and traditional rulers, who were to provide guidance. Of important note was the limitation placed on the members of CA as regards the performance of their duties. The President referred to this Assembly as a deliberative body that had no executive powers. Oyeleye Oyediran pointed out that the Assembly was advised not to debate certain issues –popularly known as “no go areas”. After deliberating for almost a year, the CA submitted its report to the Armed Forces Ruling Council, which after amending some portions promulgated the 1989 constitution of Nigeria into a decree.





Gen Babangida

Gen. Babangida (IBB) regime which overthrew Gen. Buhari's administration upheld the suspension of the 1979 Constitution under the auspices of AFRC which replaced SMC. IBB on January 13, 1986 inaugurated a Political Bureau to "gather, collate and synthesize the contributions of Nigerians in the search for a new political system". This regime consequently inaugurated a Constitution Review Committee (CRC) in September 7, 1987. A Constituent Assembly (CA) was inaugurated to review and deliberate upon the Draft Amendment Constitution submitted by the CRC in May 1988 before it was promulgated in 1989.

## 9.2 The Main Features of the 1989 Republican Constitution

Significantly, there were no fundamental changes to the 1979 republican constitution as earlier mentioned except for certain provisions included in the 1989 constitution. In fact, the constitution retained the executive presidential system of government as in the 1979 constitution. Likewise, it included provisions concerning fundamental Objectives and directive principles of state policy, bicameral legislature at the Federal level and unicameral at the state and local levels, a separate judiciary that was generally vested with judicial power and similar court structure. The few changes introduced by the constitution include the following:

1. A two-party system was entrenched in the constitution as against the multi-party system adopted in the Second Republic. In view of this, the government formed two major political parties; namely, the Social Democratic Party (SDP) and the National Republican Convention (NRC) to contest in elections that were supposed to usher in the Third Republic in 1993. It should be pointed out that prior to the imposition of the two political parties; politicians had formed about 11 political associations.
2. For the first time in the history of constitution making in Nigeria, the 1989 constitution stipulates that a person shall not be qualified to be elected as president, governor and legislators "if he has not been educated up to at least school certificate level or its equivalent". Thus, the secondary school certificate became the minimum educational requirement to qualify anybody aspiring to occupy state and national political positions.
3. The number of senate members from each state was reduced from five to three and one to be elected from the FCT, Abuja. The constitution recognizes 21 states including Akwa-Ibom and Katsina states that were created in 1991 and the 19 existing states. The House of Representatives was to have a total membership of 453 including three representatives from the FCT. Twice the number of representatives for each state in the House of Representatives constituted the total membership of each state House of Assembly. It should be pointed out that the constitution clearly stated that the FCT, Abuja would not be given the status of state.
4. Legislators were to be regarded as part-time workers who were all to receive only sitting allowances. Also, there was provision for recall

of any legislator who no longer enjoyed the confidence of the electorate.

5. The constitution accorded greater prominence to the autonomy and democratisation of the local government. For instance, there was an increase in the number of local governments (additional 140 local governments were created), direct election of the Local Government Chairman as the chief executive, his deputy and councillors and direct allocation of revenue to local government from the Federal Consolidated Funds as well as from the state government.
6. The 1989 constitution defined the three forms of Nigerian citizenship; namely, citizenship by birth, citizenship by registration and citizenship by naturalization.
7. To forestall the crisis arising from the 'two-thirds' controversy of the 1979 presidential election, the constitution made provision for fractions arising from the computation of votes to be rounded up to the next whole number.
8. Existing local government areas were enshrined in the 1989 constitution for the first time. States lost their power granted by the 1979 constitution to adjust the number and boundaries of local government areas as such action, according to section 9(3) of the 1989 constitution, requires constitutional amendment. The constitution also established traditional councils.

### **9.3 The Merits of the 1989 Constitution**

The constitution is significant in the sense that it provided the platform on which the partisan politics and the governmental activities (particularly at the state and local levels) were conducted in the Third Republic before it was aborted. For example, based on the provisions of the constitution, elections were conducted by the National Electoral Commission (NEC) under the chairmanship of Professor Eme Awa. State elections on political party basis followed in 1991, and in July 1992, election into the National Assembly was also conducted successfully. The last in the series of the general elections (scheduled as part of the transition programme), the presidential election was conducted but the election result was never announced officially. In short, the June 12 presidential election adjudged to be free and fair was annulled by the military regime of President Babangida.

The two-party system made the choice of the electorate more focused with reduced confusion as it was in the multi-party system. Also, minimum qualifications of age and education for candidates reduced the number of immature and illiterate people that participated in governance. Between 1987 and 1993, several measures were adopted to strengthen local governments in Nigeria due to the greater prominence accorded local governments by the constitution. This also made room for more rapid development at the grassroots level.

### **9.4 The Shortcomings of the 1989 Constitution**

The 1989 constitution was merely promulgated and operated in piecemeal. It did not come into operation at all levels of government due



to the absence of a full democratic governance in the country. In the constitution, there were provisions for the coming into force of some sections from time to time and the whole constitution to come into operation as from October 1, 1992. As it is well known to some of you, while civilians operated as governors at the state level, and the elected national and state legislatures existed in a vacuum (due to lack of real legislative powers), the military held on to power at the federal level. Akinboye and Anifowose (1999) refer to this situation as “a marriage of inconvenience”.

The fundamental Objectives and directive principles of state policy, as set out in sections 14-24 of the constitution, were considered as non-justiceable. No basic principles were laid down as in the 1979 constitution, for the selection of those Objectives and principles regarded as fundamental. Moreover, the part-time status and allowances given to legislators made them to concentrate more on their private business and interests than on law-making before the legislature as a vital institution of democratic governance was suspended. Besides, the two-party system limited the choice of both politicians and the electorate, thus restricting participatory democracy. Let me point out to you at this juncture that the absence of political will on the part of the military class to relinquish power to their civilian counterparts was responsible for the non implementation of the 1989 constitution and the truncation of the transition programmes that was supposed to usher in the Third Republic.

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## Study Session Summary



### Summary

In this Study Session, we discussed the developments that culminated in the 1989 Constitution. We also explored the main features of the constitution as well as its merits and demerits.

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## Study Session 10

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### The 1999 Constitution and the Fourth Republic

#### Introduction

As noted in the previous Study Session, the botched political transition programme initiated by the Babangida military regime put an abrupt end to the Third Republic project that the 1989 constitution was set to serve. The events that followed are significant to the understanding of Nigeria's constitutional development in the post-Babangida era. In this Study Session, you will be exposed to the major events that happened after the aborted Third Republic which culminated in the making as well as the promulgation of the 1999 constitution. You will also explore the 1999 Constitution serves as the legal framework in the current political dispensation in Nigeria popularly referred to as the Fourth Republic.

When you have studied this session, you should be able to:



#### Learning Outcomes

- 10.1 point out the major events that shaped Nigeria's constitutional development particularly after the aborted Third Republic.
- 10.2 highlight significant changes introduced by the 1999 constitution.
- 10.3 discuss some of the merits and demerits of the 1999 Constitution.

#### 10.1 Background to the Making of 1999 Constitution

The political crises that followed the annulment of the June 12 presidential election made Nigeria become ungovernable under the Babangida military administration. This partly explained why the president had to 'step aside' exactly eight years after he came to power on 27 August, 1993. Before President Babangida left office, he instituted an Interim National Government (ING) led by Chief Ernest Shonekan. This government faced a lot of problems as a result of absence of popular support and resistance from the opposition groups that demanded for the actualisation of June 12 presidential election and installation of Chief M.K.O. Abiola, the presumed winner of the election as the President of Nigeria. The legitimacy crisis faced by the regime reached a climax when a Federal High Court in Lagos declared it unconstitutional. After three months of political tumult, another military officer, General Sani Abacha (the Minister of Defence) took over the reins of power and installed himself as the Head of State on November 17, 1993. Immediately, after his military regime was enthroned, General Sanni Abacha started a clampdown on every opposition. This was done to suppress the June 12 insurrection and any move that might lead to his removal as the Head of state.

Though, as mentioned earlier, the 1989 constitution was not allowed to operate, there was an attempt by the Abacha military regime to make another constitution that would usher in another republic. The regime

took the first step at constitution making by instituting the National Constitutional Conference Commission in January 1994, which organised election into the Constitutional Conference. By June 27, 1994, General Sani Abacha inaugurated the conference in spite of the wide criticisms from the Nigerian populace. The conference produced a draft constitution in 1995, which was not debated nor ratified by the representatives of the people. Nevertheless, the constitution provided the bedrock for the political transition programme adopted by the Abacha military regime. Some of the far reaching changes recommended in the 1995 Draft constitution that are still point of reference in the contemporary Nigeria's constitutional history include the following:

1. The division of the country into six geo-political zones for the purpose of power sharing power particularly at the federal level. The six zones include- North Central (NC) with the zonal headquarters at Jos (Plateau state), North East (NE) with zonal headquarters at Maiduguri (Borno state), North West (NW) with zonal headquarters at Kaduna (Kaduna State), South East (SE) Zone with the zonal headquarters at Enugu (Enugu State), South South (SS) Zone with the zonal headquarters at Port-Harcourt (Rivers State) and South West (SW) Zone with the zonal headquarters at Ibadan (Oyo state).
2. The introduction of "rotational power sharing formula" for the offices of the President, Vice-President, the Speaker of the House of Representatives and Senate President, Deputy Speaker and Deputy Senate Leader. In other words, the offices are to be shared and rotated among the six geographical zones. It is significant to point out that this formula upon its adoption was domesticated at both state and local government levels.
3. The establishment of Federal Character Commission and the composition of the federal cabinet in proportion to the votes won by each political party at the polls.

The constitutional conference that made these suggestions attempted to evolve a true federalism. Besides, the conference called for the termination of military rule by 1996; this call garnered much impetus from the people. On the basis of the draft constitution of 1995, Abacha announced a transition programme for the restoration of democratic governance by October 1998. To effect this transition programme, the Abacha military regime put in place two agencies under its supervision. These agencies are: 1. the Transition Implementation Commission, and 2. the National Electoral Commission of Nigeria (NECON). Although elections were conducted into Local Government Councils nationwide and the same happened in respect of state Houses of Assembly as well as National Assembly, none of these bodies was allowed to operate. The wanton desire of General Sani Abacha to succeed himself and the war declared against the opposition groups led to grave violation of human rights and the consequent international sanctions. Nigeria was almost turned into a pariah state as a result of this. For instance, Nigeria was suspended from the British Commonwealth of Nations, and there were series of economic sanctions from different countries of the world.

Before the sudden death of General Abacha on June 8, 1998, his regime created six additional states namely, Bayelsa (SS), Ebonyi (SE), Ekiti (SW), Zamfara (NW), Gombe (NE) and Nassarawa (NC) in 1996. It was

also under his regime that five political parties were formed. It was on the platforms of those parties that elections were conducted. These parties include: United Nigeria Congress Party (UNCP), the Grassroots Democratic Movement (GDM), the Democratic Party of Nigeria (DPN), National Centre Party of Nigeria (NCPN) and Congress of National Consensus (CNC). As I told you earlier, this is a deviation from the Two-party system instituted by the 1989 constitution. These parties were dissolved as soon as the Head of States (the only presidential candidate endorsed by all the parties) died.

As soon as General Abdulsalam Abubakar was sworn in to take over from late General Abacha, he announced a new transitional programme drawn to terminate on May, 29, 1999. As part of its transition programme, the new military administration decided to draw and launch a new constitution, organise free and fair elections, redeem the battered international image of the country and bring out national reconciliation. The Abubakar led administration scrapped the existing political parties referred to as the “five fingers on a leprous hand”, cancelled the controversial local government, state and national assembly elections and released many political detainees. The regime also established a new electoral body, the Independent National Electoral Commission (INEC) headed by Ephraim Akpata. A 23-member Constitution Debate Coordinating Committee (CDCC) headed by Justice Niki Tobi, was inaugurated to debate on the 1995 Draft Constitution. The report of this committee formed the basis on which the 1999 constitution was made in 1998 to usher in the Fourth Republic.

## **10.2 The Major Features of the 1999 Republican Constitution**

This constitution was arranged in sections, parts and chapters. Chapter 1 on general provisions consists of two parts. Part I makes provisions for the Federal Republic of Nigeria, and it has three sections (Sections 1-3), while Part II deals with the powers of the Federation, and it consists of Sections 4-12. In Chapter 2, there are provisions for the fundamental Objectives and directive principles of state policy consisting of 12 sections. The Chapter 3 of the 1999 Constitution deals with the issue of citizenship and is divided into eight Sections. Chapter 4 makes provisions for the fundamental rights of the citizens and has 14 Sections. Chapter 5 of the 1999 Constitution contains provisions on the Legislature; the National and State legislatures.

It is divided into two parts, while Part 1 (Sections 47- 89) deals with composition and staff of the National Assembly, procedure for summoning and dissolution of the Assembly, qualifications for membership of National Assembly and right of attendance, elections into the Assembly and powers and control over public funds, Part III (Sections 90-129) deals with the same issues for the House of Assembly of each state in the Nigerian federation. In Chapter 6, constitutional provisions are made for both the federal executive and the state executive in two parts consisting of 100 sections. The Part I deals with the provisions for the President of the federation, establishment of certain federal executive bodies, public revenue and the public service of the

federation. The Part II makes provisions for the Governor of a state, establishment of certain state executive bodies, and the public service of a state. The Judicature is the title of the seventh chapter of the 1999 Constitution which makes provisions for the federal courts, state courts, and election tribunals as well as supplementary provisions on jurisdiction of state courts in respect of federal causes, enforcement of decisions, appointment and disqualification of certain legal practitioners among others. These provisions run from Section 230 to section 296. Chapter 8 of the constitution is set aside for the Federal Capital Territory, Abuja and general supplementary provisions, and it is divided into four parts and 24 sections (Sections 297-302).

In addition to the 320 sections, there are seven Schedules containing provisions for special items and issues in the 1999 Constitution. The First Schedule contains the list of existing States of the Federation with their respective local government areas and the definition and Area Councils of Federal Capital Authority, Abuja. The Second Schedule has three parts containing exclusive legislative list, concurrent legislative list and supplementary provisions and interpretation. The Third Schedule contains provisions on federal executive bodies, state executive bodies and Federal Capital Territory, Abuja executive body. While the Fourth Schedule provides a list of functions of a Local Government Council, the Fifth Schedule contains Code of Conduct for Public Officers and Public Officers for the purposes of the Code of Conduct. The Sixth Schedule and Seventh Schedule deal with election tribunal and oaths respectively.

As you were told in Study Session Three, the common pattern of most constitutions often referred to as “the scope” or “the substance” of a constitution includes a preamble, structure of government, procedure for amendment, distribution of power, and the rights of citizens. These are the main features of a modern constitution. We are going to examine these features, one after the other with respect to the 1999 constitution.

### **The Preamble**

Although there is no specific section or part for the preamble, as you were told that it is an introductory part of the constitution, it reveals the source and the basic ideals that the constitution rest on. In the 1999 Constitution, the preamble reads thus:

*We, the people of the Federal Republic of Nigeria:*

*Having firmly and solemnly resolved:*

*To live in unity and harmony as one indivisible and indissoluble sovereign Nation under God, dedicated to the promotion of inter-African solidarity, world peace, international cooperation and understanding,:*

*And to provide for a constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the unity of our people:*

*Do hereby make, enact and give to ourselves the following constitution:*

There are lots of negative comments on this preamble, all indicating that it is a blatant lie against the Nigerian people: the constitution was made by those who were selected by the military regime and approved and enacted by a decree promulgated by the Provisional Ruling Council (PRC) under the General Abubakar led military administration as earlier indicated. For example, Chief FRA Williams described the 1999 Constitution as a fraudulent document. (read Oyeleye, 2007: 58)

### **The Structure of Government**

The constitution provides for presidential system of government and a federal structure that recognizes the central, state and local governments. According to Section 2(2) “Nigeria shall be a federation consisting of States and a Federal Capital Territory”. The 36 states that are constitutionally recognised are listed in Section 3 of the constitution. In addition, Section 3(6) recognizes 768 local government areas and six area councils in the FCT. The list of these local and area councils can be respectively found in Part I and Part II of the First Schedule of the constitution. In short, the Nigerian federation under the 1999 constitution has 812 formal governmental units. To further establish the federal structure in Nigeria, Section 318 defines ‘government’ as including the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its behalf.

The constitution provides for a President for the federation who shall be the Head of State, the Chief Executive of the federation and Commander-in-Chief of the Armed Forces of the federation. (See Section 130). In the same vein, section 176 makes provision for each state of the federation a Governor who is regarded as the Chief Executive of the State. The qualification for election, tenure of office and disqualifications of the President and Governor are stipulated in the constitution. Also, the constitution gives recognition to three branches or organs of government- the legislature, the executive and the judiciary.

### **The Distribution of Governmental Powers**

The powers of the Federal Republic of Nigeria, according to the 1999 Constitution, are shared among the three organs of government mentioned above. These organs are established to exercise these constitutional powers at the federal and state levels and implicitly at the local government level. The legislative powers at the federal level are vested in a National Assembly consisting of a Senate and a House of Representatives. Unlike the bicameral legislature at the centre, each state has a House of Assembly vested with the legislative powers at the state level. Mainly, these legislatures are empowered by the constitution among other things to make laws for the peace, order and good government both at the federal and state levels. The executive powers at the federal and state levels are respectively vested in the elected President and Governor. Meanwhile, according to Section 6, the judicial powers are vested in those courts recognised by the constitution.

Not unlike other federal constitutions, there are provisions for legislative powers shared among the federating units in the 1999 constitution. There are two legislative lists- exclusive legislative list and concurrent legislative list. As you were told earlier, the exclusive list contains items on which only federal legislature (in Nigeria for example, the National



Assembly) can legislate; in the 1999 constitution, this list consists of 68 items. These include accounts of the government of the federation, arms, ammunitions and explosives, Defence, currency, coinage and legal tender, customs and excise duties, banks, creation of states, military external affairs, pensions, police and other government security services established e.t.c. The concurrent list includes items that both the federal and state legislatures have the power to legislate on. In case of any inconsistency between the laws made by a State Assembly and National Assembly on any of the items, the federal laws shall by virtue of that inconsistency become valid. The list contains 12 items including archives, antiquities, university/technological and post primary education, industrial, commercial and agricultural development, electoral law and so on. It is important to point out to you that the Nigerian federation is over-centralised going by the power distribution between the major component units of the federation.

### **The Fundamental Rights of the Citizens**

The 1999 Constitution in its chapter four provides for the rights that should be enjoyed by the people and be protected by the Nigerian government. The constitution stipulates that every person has a right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, and right to acquire and own immovable property anywhere in Nigeria. In case of infringement on any of these rights, Section 46 provides for special jurisdiction of High Court and legal aid. In a related manner, the constitution affirms that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice (Section 14). This provision was supposed to galvanize the protection of the above mentioned rights and freedom.

### **Procedure for Amendment**

You were told in Study Session Two of this course that one of the criteria used to classify modern constitutions is the ease with which the constitution can be amended. This, as mentioned earlier, helps us to classify a constitution as either flexible or rigid. The 1999 Constitution, like other precedent constitutions, makes provision for its mode of altering or amending provisions of the constitution. According to Section 9, “the National Assembly may, subject to the provisions of this section, alter any of the provisions of this Constitution”. In spite of the power of amendment given to the federal legislature, the approval of the Act for the alteration of the constitution is not guaranteed unless the proposal is supported by votes of at least 2/3 majority of all the members of each House of National Assembly and approved by resolution of the Houses of Assembly of not less than 2/3 of all the states. This involves a lot of processes and activities that should be initiated and guided by Nigerian legislative houses. Thus, the constitution is rigid in terms of amendment procedures.



## 10.3 The Merits and Demerits of the 1999 Constitution

The 1999 constitution, notwithstanding the observed flaws and criticisms levelled against it and its drafters, provides a legal and constitutional framework in this new political dispensation dubbed as “the Fourth Republic”. With the adoption of the presidential system of government, there is room for individual and not collective responsibility for good or bad deeds done while in office especially by the elected President or Governor. As indicated earlier, the constitution makes provision for amendment which makes it possible for people to demand for constitutional reform. You should know that the ongoing constitutional reform in the country is premised on this provision.

The constitution has been described as lacking in process and content. First and foremost, the 1999 Constitution was imposed by the interim government led by Abubakar, and was an amended version of the previous one, which was made under another military regime. The opinion of many Nigerians was that the constitution was not rooted in the will of the people. It was argued that even if the constitution was legal, it lacked legitimacy, as it failed to take the wishes and aspirations of the people into consideration (Igbuzor, 2002: 17). The constitution was also criticised on the ground that it promoted unitarism in a federal system. For example, the Federal government appoints both federal and state judicial officers. The language in the constitution is gender-biased, and it is written in legal language which is inelegantly drafted, making it hard for ordinary people to understand it, and which further gives room for many devious interpretations. In addition, issues of revenue generation and sharing, as well as secularity are not adequately addressed. The constitution is very weak on the issue of human rights and the guarantee of socio-economic rights. Furthermore, it did not properly address how to put the army under civilian control and the autonomy of the Local Governments are not constitutionally guaranteed. Furthermore, Oyeleye Oyediran (2007:63) adds:

*The structures set out by the (1999) Constitution are strongly criticized. The institution is said to provide the shortest cut to dictatorship. It does not give room for a decentralised state.*

## Study Session Summary



### Summary

In this Study Session we discussed that,

In this study session, we have discussed the events that constituted the background to the 1999 Constitution in Nigeria. We mentioned how the military President, General Badamosi Babangida handed over power ingloriously to the Interim National Government led by Chief Ernest Shonekan. Three months later, General Sanni Abacha took over power from Interim National Government. After Abacha's death on June 1998, Gen. Abdusalam Abubakar replaced him. It was the latter that reviewed and amended the 1995 Draft Constitution. The amended version formed the foundation of the 1999 Constitution

In this study session, we have noted that the 1999 Constitution, promulgated by Gen. Abubakar regime, was written and organised in chapters, parts and sections. The 320 sections and seven schedules of the constitution provided for a preamble, the structure of government, the distribution of powers, fundamental rights and procedures for amendment. It adopts federalism and presidential system of government. One of the merits of the constitution apart from providing a legal/constitutional framework for the present political dispensation is the adoption of the presidential system of government that gives room for individual and not collective responsibility for good or bad deeds done while in office especially by the elected President or Governor. Nevertheless, the 1999 constitution has faced strong criticisms from many sources, including the president, legislators among other officials elected under it. The constitution has also been criticised on the ground of lacking in process and content.

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## Study Session 11

# An Overview of Constitutional Changes in Nigeria

## Introduction

Having gone through the pre-colonial and post-colonial constitutions in Nigeria, it is pertinent to identify some of the major factors that were been responsible for those significant constitutional changes identified in the previous study sessions. In essence, this Study Session will expose you to those factors that affected constitutional development in Nigeria from 1914 to 1999.



### Learning Outcomes

When you have studied this session, you should be able to:

- 11.1 *point out* at least five factors responsible for constitutional changes in Nigeria.
- 11.2 *highlight* contemporary constitutional issues identified for review in Nigeria

## 11.1 Factors Responsible for Constitutional Changes in Nigeria

The main reason for any constitutional review relates to identified flaws or inadequacies of one constitution or the other. Nevertheless, there are several other reasons that can be identified as factors that facilitate major constitutional changes particularly in relation to Nigeria. These are constitutional changes introduced both in the pre and post independence periods. The influential factors are diverse, and they are examined below:

### 11.1.1 Colonial Interests and Experience

One of the factors that influenced the pre-independence constitutional development in Nigeria was colonial interests. All the colonial constitutions, although aimed at uniting the Nigerian societies, were promulgated to promote the interests of the colonial government in Nigeria and colonial office in London. These constitutions promoted centralisation and direct administration that denied the people opportunities to participate in politics and governmental activities. The colonial constitutions were characterised with incremental participation of the people, incremental area coverage and incremental devolution of responsibilities.

The experience of Nigerians in the colonial era was mainly responsible for the agitation for independence constitution and freedom from control of British colonial government. In addition, the colonial experience led to the emergence of many nationalist groups and political parties that

demanding for most constitutional changes that were effected by successive colonial governments, starting from 1922. Some of these major constitutional changes include the introduction of elective principle, increased number of Nigerians as members of both executive and legislative councils, emergence of regionalism and federalism (as administrative and political governing mechanisms), among others. Colonialism resulted in the establishment of Nigeria as a large political unit, encompassing old traditional kingdoms including the Yoruba kingdom, the Hausa-Fulani Empire, the Igbo communities, the Jukun kingdom, among others.

### **11.1.2 Emergence of Nationalist Movements and Political Parties**

Nationalism is another major factor responsible for the significant constitutional changes witnessed in the pre and post independence periods. It is an act of political consciousness or a state of mind primarily concerned with achieving the independence of a people from foreign rule. Nationalism, which was later focused on the eradication of colonialism in Nigeria, started as a reaction of some traditional rulers like Jaja of Opobo, Ovonramwen of Benin, and King Masaba of Nupeland to the usurpation of their authority by the British colonial administration. Generally, it led to constitutional development and, eventually independence for Nigeria. Specifically, Nigerian nationalists (those who imbibed the spirit of nationalism and struggled for Nigeria's independence) formed political parties and associations. They organised strikes and boycotts as powerful instruments to back up their constitutional demands.

Nationalists like Obafemi Awolowo, Nnamdi Azikwe, Ernest Nkoli, Ahmadu Bello and Herbert Macaulay formed political parties that took active part in most constitutional conferences that produced significant constitutional changes most especially before Nigeria got her independence in 1960. Nigerian nationalists in the parliament tabled and voted in favor of motions/policies favourable to the attainment of self rule. They organised rallies, symposia and study sessions to educate the people on how to participate in politics and constitutional reforms. It is important to inform you that the London Constitutional Conference of 1953 was the first one ever in which leaders of political parties and their supporters were invited with the sole purpose of making a constitution for Nigeria. It was at that conference that it was agreed that Nigeria should become a true federation and that there should be a complete disappearance of British officials from the legislative councils as well as other constitutional amendments that were adopted by Lyttleton constitution of 1954.

### **11.1.3 Desire for Unity, Independence and Rapid Socio-Economic Development**

The desire for national unity, independence and rapid socio-economic development informed some of the constitutional changes that were allowed before and after independence in Nigeria. The desire for unity, for instance, led to the amalgamation of 1914, creation of legislative council for the whole of Nigeria (Richards Constitution of 1946), formation of regional councils and assemblies, adoption of federal system

and presidentialism, as well as adoption of uniform system of local government system by 1979 Constitution. It is important to point out that most of the Nigerian constitutions particularly, the 1946 Richards and 1979 Republican Constitutions, had as one of their Objectives, the desire to promote national unity. The integration of Southern and Northern parts of the country administratively by the 1946 constitution was to encourage national unity. The agitation for independence by nationalists before 1960 led to so many constitutional changes like the introduction of direct elections into the federal and regional legislatures and granting of powers to make laws to these legislatures. Even after the independence, Nigerians still saw the need for absolute freedom from British political control. Under the 1963 Constitution, Nigeria changed from a state under a monarch (Queen Elizabeth of England) to a republic with a Nigerian leader appointed as the Head of State and Commander-in-Chief of the Armed Forces. The Republican Constitution as you have been told in one of our previous study sessions gave the Supreme Court its due position as the highest court for cases in Nigeria. One of the reasons for the adoption of federal system of government was to promote rapid and even development in Nigeria. Under the federal arrangement, statutory allocations to each federating units were and are provided for by past and the present constitutions.

#### **11.1.4 Military Rule**

The discussion of Nigerian constitutional development can never be complete without a critical examination of the role of the military and its influence on constitutional development in the country. Apart from all the colonial constitutions, 1960 and 1963 Constitutions, the rest including the present 1999 Constitution were promulgated by the Military. Many Constitutional Drafting Committees (CDCs) were established to give one constitution or the other to Nigerians. The CDC, Constituent Assembly and Supreme Military Council, for instance, played a major role in the drafting and promulgation of 1979 Constitution under the Muritala/Obasanjo military regime. Not deviating from the same constitutional process and procedures that produced the 1979 Constitution, the 1989, 1995 Draft and 1999 Constitutions, were respectively adopted by the military regimes of Babangida, Abacha and Abdulsalam as earlier indicated. Although, most of the constitutional crises that Nigeria had faced with since independence could be traced to successive military rule, the fact remains that some constitutional changes like, the introduction of executive presidential system, uniform local government system, federal character principle, rotational formula, creation of states, creation of federal capital territory, to mention just a few, were creations of part military regimes in Nigeria.

#### **11.1.5 Political Crises and Instability**

The Nigerian history is characterised with diverse political crises. The Kano riot of 1953 between the Hausa-Fulani, on one hand, and the Southern Yoruba and Igbo, on the other hand, was ignited by the motion for self-rule moved by Chief Anthony Enahoro, a Southerner on April 1, 1953. The crisis led to the review of the 1951 Macpherson Constitution to give greater autonomy to each region, and less centralisation. The Action Group crisis of 1962 led to the creation of the Mid-Western Region from the old Western Region in 1963 and the amendment of the Independence

Constitution, preventing Nigerians from appealing to the Privy Council in London. The 1964 federal elections and the 1965 Western Region election crises led to the demise of civilian rule and subsequent taken over by the military in 1966. The military later suspended some parts of the constitution and the legislative organs. More importantly, the civil war prosecuted for more than three years brought about a lot of major constitutional changes including the creation of a 12-state structure and a re-focus on federalism as an integrating device in Nigeria. The establishment of the National Youth Service Corps (NYSC) recognized and provided for by the 1979 Constitution was an attempt to promote national unity after the war.

### **11.1.6 External Influence**

The Atlantic Charter of 1914 that encouraged the right to self determination influenced greatly the demand for greater participation and independence by the Nigerian nationalists. Also, the 1948 UN universal declaration of human rights influenced the decision to amend some constitutions in Nigeria, particularly, the 1979 and subsequent ones to provide for fundamental rights and freedom of the people. The NCBWA as you were told earlier on influenced constitutional development not only in Nigeria but in other British West Africa colonies. The abolition of the Nigerian Council and its replacement by a Legislative Council under the Clifford Constitution of 1922 was influenced by this Congress. It should be noted that Nigeria and Blacks in Diaspora played significant role in bringing about some constitutional changes in Nigeria and in other West African colonies.

### **11.1.7 The Nature of the Nigerian Society**

On this, the present Senate Leader, Senator Teslim Folarin, once stated that “constitutions are reflections of the totality of the states and societies that make, adapt and operate them”. Let me remind you at this point that the geographical, cultural and social factors as earlier pointed out in Chapter Three are responsible for some of the major constitutional changes in Nigeria. In fact, it is well known that the adoption of federal system in Nigeria was related to the heterogeneous nature of the Nigerian society. The cultural, religious, ethnic diversities in Nigerian had necessitated the adoption of federal principles to accommodate these diversities. Most constitutions in Nigeria lay emphasis on equality, equity, social justice, fairness, democracy, tolerance, respect of citizens’ rights as operating principles due to her pluralistic nature.

#### **Note**

These factors are not exhaustive as there are other factors that may likely explain why constitutional amendments were introduced at one point or the other by past regimes in Nigeria. Some constitutional changes were introduced to suit the personal interests of a particular political class or the ruling regime; others were made to maintain the status quo and to promote peace and stability or to institute order in the society. For instance, the adoption of War Against Indiscipline (WAI) by the Buhari/Idiagbon military administration was to maintain orderliness and prevent corrupt practices in Nigeria.



## 11.2 Contemporary Constitutional Issues in Nigeria

As earlier noted, the 1999 Constitution has many flaws and there have been agitations for the amendment of several parts of the constitution. Several attempts have been made to evolve what Oyeleye Oyediran called “the people’s constitution” or what Senator Folarin referred to as “a durable constitution” in Nigeria since the inauguration of the Fourth Republic.

Prior to this time, there were several official and unofficial constitutional reform initiatives. For instance, a presidential panel, set up by the former President Olusegun Obasanjo in 2001 to debate constitutional changes, proposed more than ninety amendments to the 1999 Constitution. Also, a National Political Reform Conference (NPRC), set up in 2005 to chart a new constitutional blueprint for reinforcing the unity, cohesion, stability, security, progress, development and performance of the Nigerian federation’ (see Suberu, 2005) made some recommendations that were not approved for implementation by the National Assembly. The outcome of the conference was jettisoned when the ‘third term agenda’ pursued by the immediate former President was aborted. In fact, the NPRC had problems from the beginning as Suberu noted:

*‘...halfway into its proposed four-month tenure, the NPRC is already embroiled in the contradictions and divisions often associated with the politics of mega-constitutional change in deeply divided societies. Especially palpable is the increasing polarisation of the Conference along a broad geo-political fault-line that pits putative Southern Nigerian constitutional reformers against more pragmatic Northern conservatives’.*

Our preoccupation here is to identify issues in constitutional review in Nigeria. There are a lot of suggestions from eminent scholars and politicians as to areas and sections of the 1999 Constitution that need to be reviewed. According to Oyeleye Oyediran, a renowned constitutionalist and former member of the Constitutional Review Committee set up by Obasanjo military regime:

The Republic’s Constitution should be seen as the People’s Constitution, a symbol and guarantor of free union, a framework for sustained development, rather than as a gift from benevolent autocrats and an iron-cast force for securing an irrevocable union. Its basic principle should underscore the need for full-fledge federalism in which power, responsibility and resources are decentralised and private economic initiative encouraged.

He identified key issues and areas to be address by the constitutional reform. These include the nature of federalism, regulatory institutions, the federal agencies, institutions of government, and restructuring of the military, police, security services, customs, immigration and prisons. (Read the concluding chapter of the book written by Oyediran Oyeleye on *Nigerian Constitutional Development*)

Senator Teslim Folarin, the Senate Leader of the National Assembly in his keynote Address at a day Roundtable held at the University of Ibadan,

on 26 June, 2008, highlighted issues, which he said are personal (i.e. not those of the Senate), that call for reforms. These include:

1. Federalism, including the issue of state creation and powers, local government administration, control of the Police, Revenue allocation, state/federal relations
2. Elections and political representation. This will involve proper constituency delineation. The Senate Leader suggested the adoption of proportional representation as a way of overcoming this problem.
3. Independence of electoral bodies (both at the national and state levels).
4. Presidential Vs Parliamentary systems of government.
5. The Niger Delta and other special areas.
6. The retention or removal of Immunity Clause in the constitution.

John Ayoade, a Professor and former Head of Political Science Department, University of Ibadan, in his own remarks at the Roundtable, recommends a constitution that:

1. empowers the people and government;
2. provides enabling environment for people to participate in the development process;
3. promotes the confidence of those who are being governed; and
4. avoids the mistrust between the governed and the government.

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## Study Session Summary



### Summary

In this study session, we have identified and explained the major factors responsible for major constitutional changes that have been witnessed in Nigeria right from the colonial era. The factors examined include colonial interests and experience, desire for national unity, independence and rapid development, emergence of nationalist movements and political parties, external influence, political crises and the pluralistic nature of the Nigerian society. The list of these factors is by no means exhaustive.

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