

# **HISTORY OF NIGERIAN CONSTITUTIONAL DEVELOPMENT**

Posted on [March 17, 2016](#)[September 15, 2020](#) Written By [Olanrewaju Olamide](#) Posted in [Nigerian Constitutional Law](#) Tagged [1963 Constitution](#), [1979 Constitution](#), [Independence constitution](#), [Lyttleton Constitution](#), [Macpherson Constitution](#), [Richards Constitution](#)

## **HISTORY OF NIGERIAN CONSTITUTIONAL DEVELOPMENT**

### **INTRODUCTION:**

The importance of a constitution in any given society cannot be overemphasized. The constitution, in Nigeria's situation, is the supreme law of the land which all acts of individuals and of parliament must not contravene. It is the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.

It is trite that one of the sources of a constitution is other constitutions. This is the major concern of this present work. The aim of this work is to trace the history of Nigeria's constitution from the 1922 constitution to the 1979 constitution. This will help us to understand better, how previous constitutions have been fashioned for Nigeria and will go a great length in making us understand the source of our present constitution from the looking glass of constitutional history.

### **BACKGROUND:**

After the annexation of Lagos by the British in 1861, a legislative and executive council was constituted for it. In 1862, Lagos and other British territories in the Gold coast, Sierra Leone and Gambia were by a commission dated 19 February 1866, placed under a Governor General based in Sierra Leone. However, they each had separate legislative councils. In 1874, the Gold coast and Lagos were formed into a separate colony with a governor and legislative council based in the Gold coast. In 1886, Lagos became a separate political entity with its own Governor, executive and legislative councils. In 1906, the protectorate of Southern Nigeria and the colony of Lagos were amalgamated and called the colony and protectorate of Southern Nigeria. By Article 4 of the Southern Nigeria Protectorate Order in Council 1906, the Legislative Council of Lagos was empowered to make laws for the protectorate of Southern Nigeria by ordinance.

In 1914, the Colony and Protectorate of Southern Nigeria was merged with the Protectorate of Northern Nigeria and they were referred to as the Colony and protectorate of Nigeria. The legislative council was this time allowed to make law for only the colony. The governor made laws for the protectorates. Lord Lugard said the reason for this was "until communications by railway are greatly extended, the proposition is physically impossible". This was due to the large size of the country.

In place of a legislative council for the country, there was established an advisory body called the Nigerian council. It had 30 members of whom 17 were officials and 13 non-officials. Of the non-officials, four were nominated by the governor to represent commercial, shipping, mining and banking interests. while the Lagos Chamber of Commerce, Calabar chamber of commerce of chamber of mines appointed one member each. The remaining members were Nigerians appointed by the governor.

### **THE 1922 CONSTITUTION**

On assuming office in 1919, Sir Hugh Clifford, the governor, was pressured by the then West African congress, led by Caseley Hayford, to provide constitutions in West African subject states. This led to the making of the Clifford constitution of 1922. It introduced the first electoral system in Nigeria. The first election was conducted into the legislative council with four slots: 3 for Lagos while 1 for Calabar. However, the election was based on limited franchise which restricted the election to those that earned a minimum of 100 pounds annually, which was very expensive for most Nigerians.

It also introduced a legislative council which replaced the Nigerian council. It consisted of 46 members with the governor as the head. Out of the 46, 23 were official members and 19 were unofficial members. The remaining four were elected as previously stated. However, the council could only legislate for the South. The governor legislated for the North via proclamation.

There was also an executive council, however, it had no Nigerians. It consisted of the governor, chief secretary, lieutenant governors, an administrator for Lagos, attorney general, commandant of the Nigerian regiment, director of medical service, Comptroller general and Secretary for native affairs.

After Hugh Clifford, there were two other governors, Cameron and Bernard Boudillion. They didn't do much in terms of constitutional development. However, Boudillion divided Nigeria into East, West and North for administrative purposes. This was the bedrock for future regionalism.

### **THE RICHARDS CONSTITUTION**

Before, the end of 1944, the then governor, Sir Arthur Richards provided a new proposal for constitutional amendment. This was as a result of pressure being mounted on him by the educated elites. They felt that the Clifford Constitution did not represent the indigenous population. Therefore, the governor introduced the constitution which had the following aims:

â€¢ To promote Nigeriaâ€™s unity

â€¢ To provide adequately within that desire for the diverse elements that make up the country

â€¢ To provide greater participation of Africans in the determination of their own affairs.

The constitution provided for a new legislative council, it had: The governor, 16 official members, and 28 unofficial members. Of the 28, two were nominated by the governor while 4 were elected. The North had 11 members, the West had 8 members while the East had 6 members. The elected 4 were from Lagos and Calabar. Also, the constitution made the council legislate for the whole country.

The constitution also provided for regional houses of assembly. The members of the regional assembly were nominated by the native authority. However, they werenâ€™t legislative bodies. They were just grounds for discussing national issues. Also, it was from the house of assembly that members were nominated to the legislative council. The East and West had unicameral legislature while the North, in addition to a house of assembly, had a house of chiefs.

Also, the constitution reduced the amount of the limited franchise from 100 pounds to 50 pounds. This is considered as a plus because more people could vote and be voted for. However, it was still too expensive for most Nigerians.

The executive council in Lagos also had for the first time, Nigerians. they were Sir Adeyemo Alakija and Bankole Rhodes.

Despite all these improvements compared to the Clifford constitution, the constitution still had some defects. First, it limited franchise to only Lagos and Calabar. Also, the money required for the right to vote was still too expensive for most Nigerians. Also, the regional houses of assemblies could not make laws, they were merely grounds for public discussion. The constitution also did not include the elites. This is because those nominated into the regional houses of assembly and the legislative council were nominated by the native authority.

## **MACPHERSON CONSTITUTION**

Due to the above criticism of the Richard constitution, it was felt that a new constitution was needed. The governor, Sir John Macpherson, not wanting to make the mistake his predecessor made, decided to include Nigerian in the constitutional making process. There was wide consultation of Nigerians even to the village levels. Also, there was the Ibadan conference of 1950. The result of all these was that it led to the creation of the Macpherson constitution.

The constitution provided for a federal legislature called the house of representatives. It had 136 elected representatives, 6 ex-officio members and 6 nominated by the governor. 68 members were from the North, 34 from the West and 34 from the East.

It also provided for regional legislatures that could make laws for their regions. The legislatures in the West and North were bi-cameral, each having a house of chiefs alongside the regional legislature. In the East, it was a unicameral legislature. It was also from the regional legislatures that members were nominated to the legislative council.

## **LYTTLETON CONSTITUTION**

Despite, the improvements in the Macpherson constitution, it could not keep Nigerians united. It collapsed soon due to problems from the legislature. In 1953, Anthony Enahoro of the A.G proposed on the floor of the house that Nigeria should be given independence in 1956. The Northerners, who felt they were not ready for independence, opposed this. They proposed that independence should be given â€œas soon as practicableâ€™. This led to been booed in Lagos. This led to a riot in Kano in reaction to what happened in Lagos. Also, the North threatened to secede.

In order to calm things down, the then colonial secretary, Oliver Lyttleton called the leaders for a conference in London. Some issues were discussed during the conference and committees were set up. Their reports were to be considered in the Lagos conference of 1954. It was the conference that led to the Lyttleton constitution.

The constitutional conferences of 1953 and 1954 held in London and Lagos respectively gave birth to the Lyttleton constitution. The constitution fully introduced a federal system, with North, East, West and Southern Cameroons. While the Federal capital territory was in Lagos.

Judicially, the West African court of appeal was abolished. There was a supreme court for Nigeria and individual high courts for the regions. However, the highest court of appeal was the judicial committee of the privy council. The Eastern and Western regions became self-governing in 1957 while the North became self-governing in 1959. Southern Cameroon through a referendum opted out of Nigeria.

## **THE INDEPENDENCE CONSTITUTION**

On 1st October 1960, Nigeria became independent. This meant that Nigeria was a sovereign state independent of colonial influences. However, this was not fully the case. The Queen was still the head of state, although she was represented by a Nigerian in the person of Dr Nnamdi Azikiwe who was the Governor-General while Tafawa Balewa was the Prime minister.

The constitution was like the 1954 constitution but with some changes. There was the inclusion of provisions for acquiring citizenship of the country. There was also included in the constitution provisions for the procedure for amendment of the constitution. Judicially, Judges of the courts were appointed through nomination by the judicial service commission upon the assent of the privy council. The privy council was also the highest court of appeal in the country.

The constitution divided legislative powers between the center and the regional legislature. It made provisions for an exclusive legislative list. It also made provisions for a concurrent list. Items in the exclusive list were to be legislated by only the central legislature. Items in the concurrent list were to be legislated upon by the central legislature and the regional legislatures. Items not included in any of the lists were regarded as residual lists which were within the sole purview of the regional legislature.

It also provided for a dual executive. This meant that we had the Head of State and the Head of Government in two different people. The head of government was Nnamdi Azikiwe while the head of state was Tafawa Balewa. The head of state had only ceremonial functions while the head of government had executive powers. He was responsible for the day to day running of the activities of government.

The constitution also provided for its supremacy. This was in contrast to the convention in a parliamentary system. In a parliamentary system what we have is parliamentary supremacy, not constitutional supremacy. However, due to the heterogeneous nature of Nigeria, the constitution had to be supreme in order to dissuade fears of domination of minority groups.

Although Nigeria was purported to have gained independence from the British, there were still some vestiges of imperialism in the independence constitution. One of them is that the queen was still the head of state, who was represented by a Nigerian. Also, the highest court of appeal was the Judicial committee of the privy council in the house of Lords instead of the Nigerian Supreme court. It was due to these that a new constitution had to be made. This was the 1963 republican constitution.

## **THE 1963 REPUBLICAN CONSTITUTION**

The republican constitution was passed into law by the federal house of representatives on September 19, 1963, and came into force on 1st October 1963. This was after the constitutional conference held in Lagos on July 25 and 26 1963 where issues bordering on the real independence of Nigeria were resolved.

One of the main features was that the queen of England ceased to be the head of state. The head of state was the president who was to be chosen by secret ballot of a joint session of both houses of the national assembly. The president who was Dr. Nnamdi Azikiwe was the commander-in-chief of the armed forces.

The Supreme court rather than the privy council became the highest court of appeal in the country. Also, the judicial Service commission was abolished. The appointment of judges and their promotion was vested in the prime minister. The power of judicial review was vested in the Supreme court. It had the power to declare actions which were contrary to constitutional provisions null and void.

The seats in the senate and house of representatives were increased. The senate was increased from 44 to 56 while the house of representatives was increased from 305 to 312. The reason for this increase was the creation of the mid-western state. Hence, new seats had to be created to accommodate for this.

Despite all these changes in the constitution, there still some criticisms leveled against it. First was that the president was elected by the national assembly instead of the electorates. The national assembly consisted of just a few people in comparison with the whole electorates. This might end up making the president loyal to the legislature instead of the people.

Also, the abolition of the judicial service commission could be said to be a bad move. This is because leaving the regulation of the judiciary which ought to be independent in the hand of the executive compromised the judiciary. Judges would not want to offend the prime minister in order for them to get promoted, thereby circumventing justice.

Due to political crises in the country, the republican constitution did not last. On January 15 1966, there was a coup d'état which removed the politicians. This brought about military rule until 1979.

## **THE PRESIDENTIAL CONSTITUTION OF 1979**

In 1975, General Murtala Muhammed came into power. On coming to power, he promised to bring back civilian rule to Nigeria. Sadly, he could not see this through as he was assassinated. His successor, Obasanjo carried on his vision of ushering in democracy. A 49 member constitutional drafting committee headed by F.R.A Williams was appointed to make a draft constitution. After they were done, a constituent assembly headed by Justice Udo Udoma made final adjustments to the constitution. The constitution was promulgated and it came into force on 1st, October 1979.

The constitution jettisoned the parliamentary system of government and replaced it with a presidential system. The president was both head of state and head of government, commander in chief of the armed forces. The president was chosen by the electorates in a general election. He did not appoint his ministers from the parliament unlike the previous constitution. There was also an executive governor for each state who was the chief executive of the state.

The legislature was bicameral which consisted of senate and house of representatives. The senate had 95 members while the house of representatives had 450 members. The states, on the other hand had a unicameral legislature. The legislature had the power to impeach the president. So also, did the house of assembly have power to impeach the governor.

The judicial service commission was reintroduced. It had the powers to recommend judges for appointment subject to assent by the president and screening by the legislature. The judiciary was also given the power to interpret the constitution and any declare acts that are contrary null and void.

## **CONCLUSION:**

This work has gone to a great extent of tracing the constitutional development of the country from 1922 to the introduction of presidential system of government in 1979. The Clifford constitution was highlighted. It did not ensure effective representation so it was opposed by the elites. It was followed by the Richardâ€™s constitution of 1946 which although was better than the Clifford constitution, did not still ensure adequate representation. The Macpherson constitution succeeded the Richardâ€™s constitution in 1951 but did not last long due to political crises. The Lyttleton constitution replaced Macpherson in 1954. It was replaced by the independence constitution of 1960. This was replaced by the 1963 constitution because it was imperialistic. The 1963 constitution later truncated by a military coup. In 1979, a presidential constitution was then introduced. It is worthy of note that most of the constitutions collapsed due to the activities of politicians.

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