

# CHAPTER SIX

## THE NIGERIAN CONSTITUTION

### 5.1 THE CONSTITUTION

A constitution is a set of rules and regulations that guides the state and its citizens. In other words, it is a collection of fundamental laws, principles, rules and regulations that show how a particular political entity is governed.

A constitution is the supreme laws, rules, regulations and obligations and rights upon which a country is founded and administered or governed. These laws, rules and regulations are usually contained in a document and can be enforced in court when a breach occurs.

### SOURCES OF CONSTITUTIONS

1. **Historical documents:** Historical documents of antiquity can be sources of constitutions.
2. **Parliamentary statutes or acts of parliament:** Many constitutions originate from laws passed in the parliament.
3. **Constitutional or national conferences:** Constitutional conferences serve as major sources of constitutions. For example, the 1953 London and 1954 Lagos Constitutional Conferences formed parts of the Lyttleton Constitution of 1954 in Nigeria. Again the London Constitutional Conferences of 1957 and 1958 formed parts of the Independence Constitution of 1960 in Nigeria.
4. **International laws and treaties:** The laws, treaties and charters of international organisations like AU, UNO, ECOWAS, Commonwealth etc do serve as sources of constitutions.
5. **Judicial Precedents:** Judicial interpretations of the provisions of a constitution and the decisions of the courts on various cases constitute an important source of law.
6. **Conventions:** Conventions are rules of behaviour universally agreed as being necessary in the working of a constitution.
7. **Delegated Legislation:** Delegated legislation is another source of constitutions. This includes statutory, instruments, orders, directives and bye-laws made by public bodies are sometimes incorporated in to constitutions.
8. Customs and traditions of people.
9. Past constitutions.

### Picture of Nigerian Constitution

### Types of Constitution

For the smooth running of government, there are different types of constitution adopted by different countries. A country may be federal, unitary or confederal entity.

### Federal Constitution

This is the type of constitution where a group of states come together as one country and are ruled by a central government. The federal constitution divides constitutional powers between the states and the federal governments. The constitution states the powers of each unit, in other words, power is shared between the central government (federal) and other component units (states). Federal constitution is practised in Nigeria, Switzerland and USA.

### Unitary Constitution

A Constitution is regarded as unitary when it has one level of governmental power. It is a centralized system of government and power is

highly concentrated at the centre, that is, the central government. In a unitary government, there are no component governments. There is only one main government which is the **“Central government”**. The unitary constitution is practised in Britain, Ghana. France etc.

### **Confederal Constitution**

A confederal constitution is one in which the constitution makes the component states very powerful while the central government becomes weak, to the extent that any member of the component states is allowed to secede, from the confederation, if they so wish. Confederal constitution empowers component states to rule themselves the way as they wish or deem practicable. The confederal constitution is formed to tackle certain specified issues such as foreign affairs, currency and defence.

## **5.2 GOVERNMENT**

Government refers to the structure and procedures of the main organs through which a state functions. Government as an institution of the state may be defined as a machinery established by the state to organise the state, manage its affairs and administer its functions and duties. It is also seen as machinery through which the will of the state is formulated, expressed and realised.

### **FUNCTIONS OF GOVERNMENT**

1. Government is responsible for making laws in a country.
2. Provision of social amenities such as electricity, potable water, health centre.
3. Maintenance of law and order.
4. Defence of the country - The government is responsible for defending the country against external attack.
5. Protection of lives and property.
6. Provision of employment.
7. The government is responsible for the formulation and implementation of policies.
8. The government maintains good relations with other countries.

### **The Arms or Organs of Government**

Structurally government has three organs. These are the legislature, executive and judiciary. They perform different functions and they are also structurally different.

#### **1. The Executive**

The executive arm of government is the organ responsible for policy making and implementation of policies and law. The executive arm of government is the same with administration or cabinet, the president or prime minister of a country, governors of states, ministries, civil service, armed forces, the police etc, belong to the executive arm of government. It is responsible for the day-to-day running of the administration.

#### **Functions of the Executive**

1. Policy formulation and implementation.
2. It supervises the administrative functions and directs the execution of laws.
3. Maintenance of law and order.
4. The executive initiates bills, defends them and makes recommendations on the bill.

5. Signing of the bills into law.
6. Prepares budgets and present them for approval by the legislature.
7. Maintains external relations with other countries.

### **The Legislature**

The legislature is the organ of government that is responsible for making the law. The legislature is often referred to as parliament in UK, National Assembly in Nigeria and Congress in USA.

The legislature can be unicameral or bicameral in structure. It is unicameral when it has only one legislative house like Denmark, New Zealand, Sierra Leone, Spain etc. The legislature is bicameral when it has two legislative chambers, the upper house and the lower house e.g. Nigeria (National Assembly – Senate and House of Representatives) U.S.A., Britain, South Africa etc.

### **Functions of the Legislature**

1. To make laws for good governance.
2. It conducts investigations into government departments to ascertain how funds appropriated by them are spent.
3. It controls the activities of the other branches of government.
4. It has power to impeach the Head of State if he commits a very serious offence.
5. It approves appointment of top government officials such as Ministers, Commissioners and Ambassadors.
6. It is a forum that gives the people opportunities to participate in government.
7. It enlightens the public on the activities of the government through debate in the house.

## **THE JUDICIARY**

Judiciary is the third organ of government. Judiciary is the arm of government that interprets the law of the state and applies the existing law to individual cases. Judiciary is a system of courts or a body of judges and magistrates that has the primary duty of dispensing justice to both citizens and governments.

In Nigeria, for example, the judiciary is made up of a large number of courts, ranging from the Supreme Court, Appeal Courts, High Courts and down to Magistrate and Customary Courts. The Judiciary consists of judges who are honest and impartial with sound legal knowledge.

### **Types of Courts in Nigeria**

#### **The Supreme Court**

The Supreme Court is the highest court in Nigeria. It is the court of last resort and sits in Abuja. It is constituted by at least five justices sitting except when it is hearing a case on a point involving the interpretation of the constitution, then it is constituted with seven justices. The court is headed by the Chief Justice of Nigeria. Justices of the supreme court sit robed.

#### **The Federal Court of Appeal**

This court is constituted by not less than three justices sitting. When it is hearing a case on a point involving the interpretation of the constitution, it is properly constituted by five justices sitting. The Court of Appeal is headed by a President, out of which 3 of the justices shall be learned in Islamic personal law, and another 3 judges learned in customary law, this is however subject to what the Act of the National Assembly may prescribe.

The Federal Court of Appeal has jurisdiction to hear and determine appeals from the Federal High Court, High Court of a State, Sharia Court of

## Appeal of a State and Customary Court of Appeal of a State. **The Federal High Court**

The Federal High Court is a special court because of its jurisdiction. It is constituted by a single judge sitting. The Federal High Court judges are legal practitioners of not less than ten years standing in the profession.

The Federal High Court has jurisdiction in matters connected with, or pertaining to the relevance of the Government of the federation.

### **State High Court**

State High Courts are the highest court in each state, they are traditionally responsible for controlling and supervising the work of inferior courts and tribunals within states. High Courts are constituted by a single judge, except for High Courts in Northern Nigeria that are preceded over by two judges when hearing an appeal from a magistrate court or an upper area court.

### **Sharia Court of Appeal**

The Sharia Court of Appeal of the Northern States hears appeal from the Upper Area Courts in Cases involving Moslem personal law. The Sharia Court of Appeal is headed by the Grand Khadi and such number of Khadis of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the State. The Sharia Court Appeal is duly constituted if it consists of at least 2 Khadis sitting.

### **Customary Court of Appeal**

Customary Courts generally handle matters relating to the customs and traditions of the people in the area. Examples of customary matters include: dissolution of marriage under customary law, the distribution of property of a person who died without a will, custody of children etc. Customary Courts are classified into grades according to the cases they can handle.

It is headed by a President and such number of judges of the Customary Court of appeal as may be prescribed by the House of Assembly of the State.

### **Magistrate Courts**

There are Magistrate Courts in the Southern State of Nigeria. The grades of Magistrates in other Southern States differ from that of Lagos State. Similarly, the jurisdiction of Magistrates in other states to try offences and to impose punishment is also different from that of Lagos.

### **Juvenile Courts**

Juvenile Courts are the Courts established for the Children and Young Persons Law in force in each state and specially constituted for the hearing and determination of cases involving children and young persons. The Court is generally constituted by a Magistrate sitting with such other persons, if any, as the Chief Judge of the state shall appoint to hear and determine charges preferred against children and young persons. However, every Juvenile Court, when dealing with a case involving only children and young persons, is enjoined to sit in a room or building different from those in which regular Courts proceedings are held or on days or at times different from those of the ordinary Court. **Special Courts/Tribunals**

Special Courts/Tribunals e.g. military courts (military courts in Nigeria are established by the Military Courts (Special Powers) Decree No. 23 of 1984).

Special Tribunals have become a regular feature of our courts system as they are constitutionally reorganised. It was within the powers of the Armed Forces Ruling Council (A.F.R.C) to constitute Military Tribunals.

### **Functions of the Judiciary**

1. Judiciary interprets the laws.
2. The judiciary safeguards the rights of citizens.
3. It protects the constitution.

4. It settles disputes between individuals and government.
5. It administers oath of office to all public office holders.
6. Judiciary is the last hope of the common man to obtain justice and safeguard his rights.
7. The judiciary has the power to punish those that have offended the laws of the state.

### 5.3 FEATURES OF CONSTITUTION

1. **The Preamble:** A constitution contains a preamble which declares its aspiration.
2. **Type of Government:** The constitution defines the type of government to be adopted. This can be the presidential or the cabinet system of government.
3. **Human right:** The constitution should contain the fundamental human rights of the citizens.
4. **Party system:** The type of party system to be adopted is stated in the constitution. It can be one, two, multi or zero party system.
5. **Organs of government:** The constitution identifies the various organs of government. These organs are the legislature, executive and judiciary.
6. **Citizenship:** The constitution defines citizenship. It spells out the various ways by which citizenship can be acquired.
7. **Amendment procedure:** The constitution contains the method of its amendment. The amendment process can be rigid or flexible.
8. **Political structure:** The constitution contains the political structure of the state. It states whether the state will adopt a unitary, federal, confederal or monarchical form of government.
9. **Civil service:** The constitution stipulates the administrative structure of the civil service that will operate the machinery of government.
10. **Principles:** The constitution contains the fundamental principles and objectives of the state. The Nigerian constitution contains these principles and objectives. These are political, economic, social, educational and cultural objectives.

### 5.4 FEATURES OF NIGERIAN CONSTITUTION

1. The Preamble .... We the people of the Federal Republic of Nigeria.
2. Supremacy of the Constitution.
3. Provision for States of the Federation and the Federal Capital Territory, Abuja.
4. Provision for Legislative, Executive and Judicial Powers.
5. Provision for fundamental objectives and directive principles of state policy.
6. Provision for citizenship and qualification for citizenship.
7. Provision for fundamental human rights e.g. Right to life, to fair hearing, to dignity of human persons, freedom of expression and the press, right to peaceful assembly and association, to freedom of movement etc.
8. Establishment of National Assembly, Senate, House of Representatives and State House of Assembly.
9. Establishment of Office of the President.

10. Establishment of Federal Executive Bodies e.g. Federal, Commissions, and Councils, State Civil Service.
11. Establishment of Office of Governor.
12. Establishment of Nigeria Police, Establishment of the Armed Force of the Federation.
13. Establishment of the Supreme Court of Nigeria, Federal Courts and State Courts.
14. Establishment of Election Tribunals.

## 5.5 CONSTITUTIONAL DEVELOPMENT

The process of constitutional development: This involves different stages and ways by which a nation or country amend a constitution or develop a new constitution in order to meet the demands of the people.

A constitution is the fundamental law of a country. No matter how good a constitution may be, it must constantly adapt to the changes in its environment if it is to endure. However, the pace at which things change in the environment, especially with regard to the distribution and exercise of power, usually calls for either amendment to a constitution or a new constitution entirely.

Therefore since the political environment is dynamic and human society is complex, there may be need to change some aspects of a country's constitution from time to time to meet the new challenges and changing circumstances.

Nigeria as a country has experienced different processes of constitutional development before independence when a few constitutions were promulgated by the British colonial government to satisfy demands for political and constitutional reforms agitated by Nigerians.

Also several constitutions have been promulgated in Nigeria since independence from 1960 up to date. Some of them are:

- 1960 Independence Constitution
- 1963 Republican Constitution
- 1979 Constitution
- 1989 Constitution
- 1999 Constitution

### The Process of Constitutional Development

1. This takes different forms and there are ways and manners by which people demand or call for amendment to a constitution. People may demand for a complete new constitution depending on the prevailing situations or circumstances in the country.
  2. Where a country is practising a federal system of government whereby the constitution is written. The procedure for amendment may be rigid or difficult. It requires special process or a complicated method before it can be amended or changed. In Nigeria for example. It is important to note that, we are living in a rapidly changing and complex society. Therefore, the process of constitutional development will be a continuous exercise. There will always be need to amend or draft a new constitution in order to meet the needs, objectives, goals and aspirations of different people living in a country.
- ### The Role of Citizens in Constitutional Development

Citizens of a country play a very significant role in process of constitutional development. Some of their roles include:



1. Voting to elect representatives to the National Assembly. Citizens vote to elect their representatives into national assembly and state assembly.
2. Sending memorandum to National Assembly. The citizens send memoranda to National Assembly on aspects of the constitution that they feel should be changed. Also individuals or corporate organisations may send memoranda on public issues.
3. Citizens can also elect their representative to the constitution drafting committees or they can equally be voted for.
4. Citizens can also participate in public debate on national issues at the national or state assembly.
5. Citizens can write their opinions, and views in the newspapers or other mass media.
6. They can monitor and observe the progress and proceedings of the national assembly.
7. Citizens can comment and engage in constructive criticism on matters and issues of public interest.

## **5.6 HISTORY OF CONSTITUTIONAL DEVELOPMENT IN NIGERIA**

### **Reasons for Amalgamation**

- (a) Economic reasons: Britain wanted to save funds.
- (b) Administration: To make effective administration.

### **Clifford Constitution**

#### ***Features of the Constitution***

1. It established a legislative council.
  2. An executive council was created.
  3. The elective principle was introduced.
- Richards Constitution of 1946**

#### ***Features of the Constitution***

1. A new legislative council was established.
2. Regionalism was introduced (North, East and West).
3. Regional councils were established.
4. The governor had reserved powers.
5. Elective principle was also allowed.
6. The native authorities served as electoral colleges.
7. A new executive council was created.

### **Macpherson Constitution of 1951**

#### ***Features of the Constitution***

1. Regional assemblies were given specific powers.
  2. Regional assemblies were enlarged.
  3. Both the northern and western regions had bicameral legislatures.
  4. The central legislature was enlarged.
  5. The central legislature had unlimited powers.
  6. Each region had an executive council.
  7. The central executive was established.
  8. A new electoral system was introduced.
  9. Regionalism was retained.
- The 1953 London Constitutional Conference**

## ***Decisions***

1. Federalism should be adopted in Nigeria.
2. Regional Lt. Governors to become governors while the Governor would be called Governor-general.
3. Lagos was neutralized.
4. Southern Cameroon would become self-governed after Lagos conference of 1954.
5. Self-government would be given to regions in 1956.
6. Governors and governor-general would retain veto power.
7. Direct election would be held in each region.

## **The 1954 London Constitutional Conference** ***Decisions***

1. The public service was regionalized.
2. Derivation became the principle for revenue allocation.
3. The judiciary was regionalized.
4. Southern Cameroon was given regional status.

## ***Features of Lyttleton Constitution***

1. Federalism was adopted.
2. Regionalism was upheld.
3. There was a council of ministers at the centre.
4. The membership of the central legislature was increased.
5. The post regional premiers were created.
6. The northern and western regions had bicameral legislatures.
7. Governors and governor-general were given reserved powers.
8. Lagos was made a federal territory.
9. Public service and judiciary were regionalized.
10. Southern Cameroon became autonomous.
11. Officials were removed from the eastern regional house of assembly.

## ***Features of the Independence Constitution of 1960***

1. Nigeria attained a sovereign status.
2. Human rights were provided for in the constitution.
3. The office of Head of State was allowed.
4. Federalism was still retained in the constitution.
5. The federal legislature was bicameral.
6. The regional legislature was bicameral.
7. The governor-general was in-charge of the federal executive.
8. The premier exercised the regional executive powers.
9. Citizenship was provided for.
10. Judiciary was regionalized.
11. The federal government was given emergency powers.
12. It contained an amendment process.
13. Procedures for states creation stated.
14. Boundary adjustment procedure was offered.
15. Nigerians were conferred common wealth citizenship.

## ***Features of the 1963 Constitution***

1. There was a National Assembly.
2. Each region had a parliament or legislature.



3. The president was the Head of State and Commander-in-Chief of the Armed Forces of Nigeria.
4. The Prime Minister was appointed by the president.
5. The regional governors performed only ceremonial functions while the Premier carried out the executive functions.
6. The Premier headed the regional executive.
7. The Federal Executive Council was headed by the Prime Minister.
8. The Regional Executive was headed by the Premier.
9. It contained the fundamental human rights.
10. Judicial was regionalized.
11. The constitution contained provisions on citizenship.
12. The civil service was "Nigerialized" and regionalized.
13. The Inspector-general of police led the Nigeria police.
14. It contained emergency powers.
15. The amendment process was entrenched.
16. It provided for the control of public finance.

### ***Features of the 1979 Constitution***

1. It provided for the executive presidency.
2. It contained citizenship.
3. Human rights are entrenched.
4. The federal legislature is bicameral.
5. Each state has an Executive Governor.
6. Each state has a House of Assembly.
7. The federal judiciary was provided for.
8. Each state has her own judiciary.
9. It provides for the existence of a Federal Capital Territory.
10. There are Federal Executive Bodies to be established.
11. Nigeria attained republican status.

### ***Features of the 1989 Constitution***

1. The constitution was supreme.
2. It contained fundamental objectives and directive principles of state policy.
3. Citizenship was entrenched in it.
4. It contained human rights.
5. The federal legislature was bicameral.
6. Each state had a unicameral legislature.
7. The president was the Head of State and Commander-in-Chief of the Armed Forces of Nigeria.
8. The governor was the chief executive of the state.
9. It provided for the existence of two parties only.
10. A number of federal courts were established.
11. The states had their own judiciary.
12. It established electoral tribunals.
13. Local government areas were given councils.
14. The Federal Capital Territory had legislative, executive and judicial powers.
15. Code of Conduct was established.

### ***Features of the 1999 Constitution***

1. Federalism: Nigeria remains a Federal Republic of Nigeria.
2. Presidential system of government was provided.
3. National Assembly: Senate and House of Representatives.
4. The Judiciary.
5. Federal Capital Territory, Abuja.
6. Provision of local government system.
7. Constitution provides for multi-party system.
8. Fundamental objectives and directive principles of state policy.
9. Principles of revenue allocation.
10. Immunity clause.
11. Establishment of federal and state executive bodies.
12. Establishment structure of state government.
13. Fundamental human rights. **Exercise**

1. Define a Constitution.
2. Mention four sources of a Constitution.
3. Give examples of three countries that have federal constitution.
4. Explain confederal constitution.
5. What is a Constitution?
6. Mention five sources of a Constitution.
7. List five features of Nigerian Constitution.
8. List four roles of citizens in Constitutional development