

Chapter 12: Constitutional Development in Nigeria IV: The Constitution of the Second Republic of Nigeria (1979)

12.1 BACKGROUND TO THE CONSTITUTION

The 1979 Constitution was borne out of the experience of the first republic (1960 - 66), the military rule and the search for a viable political system.

Nigeria became an independent federal state in 1960 with a parliamentary system of government. She became a republic in 1963, still practising the parliamentary system. That Constitution collapsed in 1966 through a military intervention which first attempted a unitary system and later came to recognise the need for a federal structure. During the military rule, the country was broken into several states and experienced a thirty-month civil war.

The coup of July 1975 brought the Murtala Muhammed /Obasanjo military regime into power. The regime created a 19-state federal structure on February 3, 1976 and decided to hand over political power to the civilians in 1979. To that end on October 18, 1975, the government appointed the Constitution Drafting Committee (CDC) comprising 50 people. However, when Chief Awolowo refused to serve as a member of that Committee, the membership was reduced to 49 persons. The Constitution Drafting Committee had Chief Rotimi Williams as chairman. The report of the CDC was submitted to the Head of State on September 14, 1976. The federal military government threw the Draft Constitution to nationwide public discussion, and later established an elected body of the constituent assembly consisting of 230 members, 40 of whom were appointed by the federal government. On September 20, 1978, the constituent assembly, headed by Justice Udo Udoma, finished its work and submitted its report to the Federal Military Government. Based on the constituent assembly's report, the federal military government promulgated the Constitution of the Federal Republic of Nigeria, 1979 with effect from 1st October, 1979.

The main features of the Constitution are: ***republicanism, federalism, executive presidency***, etc.

12.2 REPUBLICANISM

Under Section 2 of the Constitution, Nigeria was still declared a republic. This implies that under the Constitution, no one could legitimately exercise the political power of the state except through the consent of the people granted during free and fair elections. It means that no one has the birthright to any political office and that the sovereignty of the state resides with the people.

12.3 FEDERALISM

The Constitution established a federal structure of 19 states and a Federal Capital Territory at Abuja. Each state operated a government of its own. Governmental powers were shared therefore between the federal and 19 state governments. The federal government was allotted the powers in the exclusive list such as defence, citizenship, foreign affairs, banking, currency, police, arms, etc. There was the concurrent list which contained subjects which were allotted to both the federal and the state governments to exercise concurrently. These included collection of taxes; electoral laws; electric power supply; industrial, commercial and agricultural development; university, technological and post primary education; etc.

The state governments were allotted exclusively the residual powers (powers and functions not listed in the Constitution) such as powers on primary education, local government, chieftaincy institution, public health, etc. The Federal Capital Territory at Abuja was under the direct control of the federal government which legislated for it. The Constitution, however, recognised the local government as the third tier of government of the federation by listing the local government areas and their functions in the Constitution and providing that the federation accounts be shared between the federal; state and local governments.

12.4 THE PRESIDENT - FEDERAL EXECUTIVE

The 1979 Constitution provided for an executive president who was at the same time, head of state, of government and the commander-in chief of the armed forces. The president was expected to seek direct mandate from the people and to be properly elected. He was expected to have scored at least one-quarter of the votes cast in at least two-thirds of the States of Nigeria in addition to a simple majority. His duration in office was for 4 years.

The Powers and Functions of the President.

The President was vested with all the executive powers of the federal government. He was the commander-in-chief of the armed forces. He was chairman of the National Defence Council of which the military service chiefs were members. He had the power to appoint his ministers as he desired. But these appointments required the approval of the senate. He also had the power to appoint personal aides ('special' advisers). Both the ministers and the special advisers were responsible and accountable to him and he had the power to remove them.

The President was also the head of state. As the head of state he was the father of the nation and symbolised the Nigerian State. The President initiated bills subject to the approval of the National Assembly. He was empowered to give assent to all bills passed by the National Assembly before they could become laws. The President therefore had power to veto bills passed by the National Assembly. He was empowered by the Constitution to convene any joint meeting of the National Assembly or any meeting of either House of the National Assembly, to inform the Assembly on the state of the nation including fiscal measures and crucial policies. It was the exclusive responsibility of the President to prepare the Federal Annual Budget. It was the responsibility of the President to implement the diverse and complex policies and programmes of the federal government. He was solely responsible for the day-to-day running of government and was to make regulations (delegated legislation) which had the force of law. But these could be within the law made by the National Assembly. The president and his ministers were forbidden from being members of the National Assembly.

The President could enter into any treaty on behalf of the federation subject to the approval of the National Assembly. It was the duty of the President to appoint ambassadors and high commissioners to foreign countries. The President was empowered to confer honours and make national awards. The President exercised the prerogative of mercy. The President could declare a state of emergency and war. Finally, the President was empowered to appoint a chief justice, judges of the Supreme Court, the Court of Appeal and the Federal High Court. From the above powers and functions of the President, it is obvious that the 1979 Constitution created for Nigeria for the first time a presidential system of government.

Limitations on the Power of the President

Most of the powers of the President were checked by the powers of the National Assembly, especially the Senate. The President could not appoint ministers to office without the approval of the Senate. Indeed, the appointments were subjected to senatorial screening, confirmation or rejection. If the President acts in violation of the Constitution, he could be impeached by the National Assembly. The Supreme Court could also declare unconstitutional any act of the President.

Tenure of Office of the President

The President was to hold office for 4 years. He could seek a second term. If he misbehaved, he could be impeached before the end of the 4 years. If he died or resigned, his vice-president would complete his term. His term could be extended by the National Assembly during an emergency for six months. The removal of the President was possible if:

- (i) There was an allegation of wrongdoing signed by at least one-third of the members of the National Assembly;
- (ii) A notice had been served on the President and other members of the National Assembly within 7 days;
- (iii) The National Assembly was empowered to decide within 14 days whether or not the allegations should be investigated and this decision must be supported by at least two-thirds of its

- members;
- (iv) The National Assembly resolved to investigate. A committee of 7 would be appointed to investigate, and the President could defend himself;
 - (v) The committee reports to the National Assembly within 3 months;
 - (vi) The report was against the President, and if by, at least, two-thirds of the votes of the National Assembly, the report was adopted, the President was deemed to have been removed.

For reasons of incapacitation, the President could be removed by a resolution of the National Assembly supported by two - thirds of its members.

The Federal Executive Council

The federal executive council consisted of the president and his ministers appointed by him with the support of the Senate. It also included the vice-president who was his running mate during the elections. The ministers must not be members of any of the legislative houses and if they were, they must have resigned their seats before their appointment to ministerial positions. The ministers were responsible to the President who could reassign them or dismiss them. The executive did not require the support of the majority of the members of the legislature in order to be in power. In the system, there was no collective responsibility since any erring minister could be dismissed by the President.

12.5 THE FEDERAL LEGISLATURE

The federal legislature was the National Assembly consisting of the Senate and House of Representatives. The legislature was bicameral. The Senate was the Upper House while The House of Representatives was the Lower House. The life span of the National Assembly was 4 years. The period, however, could be extended for not more than six months at a time if the nation was at war.

Members of the National Assembly sought elections individually although they could not belong to any of the registered political parties. Any member who became appointed as minister lost his seat in the Assembly automatically. If a member resigned from his political party, he lost his seat. The two legislative bodies operated separately except where a joint session was considered necessary and such was allowed by the Constitution. Occasions for joint sessions could be when the President was to address the National Assembly or to deliberate on financial matters. Apart from general sessions, the National Assembly operated by committees.

The Senate

The Senate (the Upper House) was made up of 5 members each from the 19 states of Nigeria. The members were elected in a nationwide election for a four - year term. For the purpose of carrying out of its duties, the Senate had a senate president, a deputy president, a senate leader and also a minority leader. The senate president presided over senate meetings and also acted as chairman of the joint session with the National Assembly. The deputy president only acted when the senate president was absent. The senate leader piloted the business of the House since his political party must have been the party with the most members in the senate. His voice is often the voice. of the majority. The minority leader acted according to his title. He was recognised as the voice of the minority. Voting was by simple majority except where the Constitution otherwise provided. The languages of the National Assembly were English, Hausa, Igbo and Yoruba.

The House of Representatives

The House of Representatives (the Lower House) consisted of 450 members who were elected individually from all over the country. Representation was not on state equality, rather it was strictly based on population. Constituencies were carved out on the basis of a given size of population. Thus, they were relatively equal. The House had the speaker, the deputy speakers and a majority leader. The speaker presided over its deliberations.

Functions and Powers of the National Assembly

The National Assembly was the Senate and the House of Representatives. It was the legislative arm of the federal government empowered to make laws for the whole country on all federal matters. A bill

could start from either of the two Houses but must be passed by both before it could be presented to the President for his assent. This means that the law-making body for the federation was the National Assembly and the President. The president must assent to all bills passed by the National Assembly within 30 days of presenting such bill to him, unless he decided to veto it. If the President, however, withheld his assent, and the bill was passed again in each of the Houses by two-thirds majority, the bill would become law without the president's assent. If he withheld assent and each of the Houses could not re-pass it by two-thirds majority, the bill was vetoed.

The National Assembly was empowered to make laws for the whole federation on any matter in the exclusive and concurrent legislative lists including elections to both Houses. The National Assembly was also empowered to control public funds. It had the power to levy taxes and approve government appropriations. No taxation could be imposed and no money could be drawn from the federal treasury without the approval of the National Assembly. It was also empowered to ensure that expenditures were made in accordance with the legislative will. The Constitution provided that the audited annual accounts of the federal government should be submitted to the National Assembly annually for scrutiny. The[Assembly had the power to set up an inquiry or order an investigation into the conduct of affairs of any person, authority, ministry or government department of the federal government, in order to expose corruption, inefficiency or waste in public administration.

The National Assembly was empowered to supervise and check the executive. First, it had the power to approve the president's appointments, e.g. ministers, ambassadors, etc. Secondly, it had the power to discuss and criticise executive policies and actions. Thirdly, it had the power to remove the president under the due process of impeachment if the president was found guilty of gross misconduct.

The National Assembly was empowered to amend the Constitution under the procedure provided in the Constitution. The - declaration of war and the state of emergency by the president required the approval of the National Assembly. It also had the power to ratify treaties.

Relationship between the Federal Executive and the Legislature

The 1979 Nigerian Constitution provided for separation of powers between the executive and the legislature. The president and his ministers were excluded from being members of the National Assembly, nor could legislators serve as members of the executive. Both were directly elected. The president and his ministers did not depend on the majority support of the National Assembly and could not be removed from office by mere vote of censure. However, complete separation was not possible because the functions of the two bodies overlapped.

The president depended on the National Assembly for approval of most of his actions such as appointments of public officers, and financial matters. The bills passed by the National Assembly could not become law unless assented to by the president. The National Assembly could remove the president by impeachment or extend the term of his office. Thus it could be seen that instead of water-tight separation, the two bodies operated more by compromise and cooperation.

12.6 THE FEDERAL JUDICIARY

The 1979 Constitution provided for the establishment of the Supreme Court of Nigeria, the Federal Court of Appeal and the Federal High Court. These three bodies constituted the judiciary-the third arm of the federal government.

The Supreme Court of Nigeria

Membership: The Supreme Court of Nigeria was the highest court established under the 1979 Constitution. It consisted of a chief justice and 13 justices. Five justices constituted a quorum except that 7 justices must sit when exercising its original jurisdiction.

The chief justice was to be appointed by the president by his discretion except that the appointment must be confirmed by a simple majority of the senate. Other justices of the Supreme Court were to be appointed on the recommendation of the federal judicial service commission which again must be approved by the senate. To qualify for appointment to the Supreme Court bench, the individual must have had at least 15 years of legal practice in Nigeria.

Powers of the Supreme Court

The Supreme Court of Nigeria had the following powers:

- (a) It had original jurisdiction over any dispute between the federal and the state governments or disputes among states.
- (b) It had original jurisdiction over matters in which the National Assembly conferred such jurisdictional power.
- (c) It had appellate jurisdiction on any matter from the Court of Appeal.

The Federal Court of Appeal

The Federal Court of Appeal is composed of a president and at least 15 justices. Three of the 15 justices must be learned in each of Islamic and Customary laws. They are to be appointed by the President of the Federation on the advice of the judicial service commission. To qualify for appointment, an individual must have had at least 12 years' of legal practice in Nigeria. Three justices constitute a court except that matters relating to Sharia or Customary laws must be handled by three justices specialising in such matters.

(i) Powers of the Court of Appeal

- (a) The Court of Appeal was empowered to act as an appellate court to the Federal High Courts, State High Courts, Sharia Court of Appeal or Customary Court of Appeal in all matters (criminal or civil).
- (b) It could hear appeals arising from the decisions of the Code of Conduct Tribunal.
- (c) The National Assembly could confer jurisdiction upon it to handle appeals on any decision of any other court or tribunal established by it.

The Federal High Court

The Federal High Court consisted of a chief judge and other judges appointed by the president on the advice of judicial service commission. To qualify for appointment, the appointee must have had 10 years legal practice in Nigeria.

(i) Powers of the Federal High Court

- (a) It could determine any matter on which the National Assembly has power to make law.
- (b) It could adjudicate on all matters relating to federal revenue.

12.7 STATE LEVEL OF GOVERNMENT

The State Executive

Each of the 19 states of the federation established by the Constitution had its own executive, legislature and judiciary.

The state executive consisted of a governor. The governor was assisted by commissioners appointed by him. It is possible for a governor not to have commissioners as it happened in Kaduna State under Governor Balarabe Musa. The governor was elected in a general election and he was the chief executive of the state. He had power to appoint anybody to the office of commissioner in the state but such appointments must be approved by the state's Assembly. In the case of Kaduna State, the state's Assembly refused approval of Governor Balarabe Musa's nominees as commissioners. The Constitution provided that the governor of a state should contest elections with a running mate who later would become the deputy governor. The term of office was 4 years and he could seek another term of 4 years. The governor, however, was to continue in office until a successor took an oath of office. The governor could also be removed by impeachment. The position of the deputy governor and the commissioners expired with that of the governor. But the deputy governor would continue in office as governor if the office of the governor became vacant by reasons of resignation, death, or removal from office through impeachment.

The executive is responsible for the day-to-day running of the government. The governor could address the State Assembly and he relied on the Assembly's approval for his nominees to offices and his

budget. The governor could appoint special advisers.

The State Legislature

Each of the 19 states of Nigeria had a House of Assembly (a unicameral legislature). This was charged with the responsibility of making laws. The members were elected for a 4-year term. Each Assembly had a speaker and a deputy speaker to preside over its deliberations.

The Assembly could be composed of members of one or more political parties. It elected from among its members the speaker and the deputy speaker. The leader of the party next in size to the majority became the minority leader. There was no question of government party or opposition party.

The Assembly was formed when one-third of the members were present at the Assembly. Bills initiated were to become laws after three readings and when the bill had received the assent of the governor. The governor had the power to withhold assent to any bill. However, bills refused assent by the governor could become law if the Assembly passed the bill by two-thirds majority a second time. Where this failed, the bill was then vetoed.

The Assembly could remove the governor by impeachment in the manner in which the president could be removed.

The State Judiciary

Each state has its own judiciary. The state's judiciary consisted of the High Court, the Magistrate Courts and Customary/Sharia Courts. The appointment of the chief judge of the High Court of the state was made by the governor of the state on the advice of the judicial service commission subject to approval by a simple majority of the State Assembly. The judges of the High Court were appointed by the governor on the advice of the judicial service commission. To qualify for appointment, the individual must have had ten years legal practice in Nigeria.

The High Court had original jurisdiction over all matters-criminal or civil. It was a court of appeal to all courts in the state. A court was duly constituted when a judge presided.

States could establish Customary Courts of Appeal headed by a President, or Sharia Court of Appeal headed by a Grand Khadi. To qualify for appointment to the Sharia Court, the individual must be learned in Islamic laws. The appointment of the judges of these courts was the responsibility of the judicial service commission.

The Magistrate Courts are of different grades depending on the experience of the judge. The judges are variously named Chief Magistrates, Senior Magistrates and Magistrates. They have different jurisdictions according to their status, and they are appointed by the public service commission.

12.8 LOCAL GOVERNMENT

In the 1979 Constitution, local governments constituted the third tier of government. There were 301 local government areas in the whole federation then. These were listed in the Constitution. The system of local government and democratically-elected local government councils were guaranteed by the Constitution. The Constitution, for the first time, listed the functions of local governments under its Fourth Schedule. The Constitution also provided that the federation accounts should be shared among the federal, state and local governments in accordance with the formula to be determined by the National Assembly.

12.9 FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution, for the first time ever in Nigeria, provided for the fundamental objectives and directive principles of the state policy. This stated the fundamental obligations of government. It also stated that the Federal Republic of Nigeria should be a state based on the principles of democracy and social justice, and the sovereignty belongs to the people of Nigeria. It also provided for the principle of federal character. It provided the political, economic and social objectives of government. On the political objectives of government, it is stated that the motto of Nigeria should be unity, peace and progress and

provided measures with which these would be realised. On the economic objectives, it is stated that the state should control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. On the social objectives, it stated that the social order would be founded on the ideals of freedom, equality and justice. However, the Constitution provided that this part of the Constitution (the chapter on Fundamental Objectives and Directive Principles of State Policy) should not be justiciable (i.e. not within the jurisdiction of the courts of law).

Fundamental Human Rights

Under Chapter Four, the Constitution provided the rights to life, dignity of human person, personal liberty, and fair hearing. It also provided rights to private and family life, freedom of expression, freedom of assembly, association, movement, thought, conscience, religion, and freedom from discrimination. It finally provided for the right of property. The Constitution provided limitations and safeguards for these rights. The Constitution, in order to protect this section from easy change, provided a more stringent procedure for its change. It provided that a change in the fundamental rights should require 4/5 majority of all the members of each House of the National Assembly and approved by a resolution of the Houses of Assembly of not less than 2/3 of all the states.

Political Parties

The Constitution provided that no association should function as a political party unless it was registered as provided in the Constitution with the Federal Electoral Commission. It provided that no association, except a political party, should canvas for votes for any candidate at elections and no association should contribute money to a political party. It made membership of any political party in Nigeria open to all Nigerians irrespective of sex, religion, place of origin, and ethnic grouping. It provided that before an association could be registered as a political party, it should reflect the federal character of Nigeria. The Constitution further provided that for a party to reflect a federal character, the members of its executive committee should belong to not less than 2/3 of all the states of Nigeria. The Constitution prohibited political parties from organising, training, equipping and using political thugs. The Constitution put political parties under the control of the Federal Electoral Commission which could withdraw their certificate of registration.

The Federal Capital Territory

The Constitution provided that the Federal Capital Territory should be the capital of the federation and seat of the government of the federation. It provided that all the legislative, executive and judicial powers of the Federal Capital Territory should be vested in the federal government. The Federal Capital Territory was regarded as a senatorial district from which one member of the Senate should be elected and a federal constituency from which at least one member of the House of Representatives should be elected.

Code of Conduct Bureau and Tribunal

The Constitution provided a code of conduct for all public officers and for the declaration of assets by public officers. To ensure the enforcement of these provisions, the Constitution established the Code of Conduct Bureau which would ensure a truthful declaration by public officers. It also established the Code of Conduct Tribunal for the trial and punishment of persons who contravened any code of conduct for public offices.

Entrenchment of Certain Measures (Decrees of the Military Rule)

Four important measures introduced during the military rule by decrees were entrenched into the Constitution under Section 274. These were the National Youth Service Corps Decree 1973, the Public Complaints Decree 1975, the Nigerian Security Organisation Decree 1976 and the Land Use Decree 1978. These formed part of the 1979 Constitution.

12.10 AMENDMENT OF THE CONSTITUTION

The Constitution under Sections 8 and 9 allowed for its amendment under four different provisions for four separate specific cases:

(i) For the Creation of New States

It provided that an Act of the National Assembly for the creation of new states could only be passed when the following conditions were met:

- (a) A request to the National Assembly by at least two-thirds of majority of members representing the area demanding the new state in each of the Senate, House of Representatives, the House of Assembly and the local councils.
- (b) The proposal for the creation of the new state should be approved in a referendum by at least two-thirds majority of the people of the area demanding the new state.
- (c) The result of the referendum should be approved by a simple majority of all states of the federation with a simple majority of members of State Assemblies.
- (d) The proposal should be approved by a resolution passed by two-thirds majority of members of each House of the National Assembly.

(ii) For Boundary Adjustment

It provided that an Act of the National Assembly for the adjustment of the boundary of any state could only be passed when the following conditions were met:

- (a) A request to the National Assembly for boundary adjustment supported by two-thirds majority of members representing the areas demanding the boundary adjustment in each of the Senate, House of Representatives, House of Assembly and the local government council.
- (b) The proposal should be approved by a simple majority of each House of National Assembly and a simple majority of the House of Assembly of the area concerned.

(iii) For Altering Provisions of the Constitution

An Act of the National Assembly for altering the Constitution (apart from creation of states, boundary adjustment, and fundamental human rights) should not be passed unless the proposal was approved by the two-thirds majority of all the members of each House of the National Assembly and a resolution of the House of Assembly not less than two-thirds of all the states.

(iv) For Amendment of Chapter Four: Fundamental Human Rights and Provisions for Amendment in Sections 8 and 9

To make the Constitution more rigid, it provided that any amendment of the provisions for the creation of new states, boundary adjustments, altering the provisions of the Constitution, and Chapter Four on Fundamental Human Rights must be approved by not less than four-fifths majority of all the members of each House of the National Assembly and also approved by a resolution of the House of Assembly of not less than two-thirds of all the states.

12.11 MERITS OF THE 1979 CONSTITUTION

The 1979 Constitution made effective leadership possible because the president could be held responsible for any act of omission or commission. Since he appointed his aides, they were bound to be loyal to him and also this helped to ensure accountability. There was no sharing of powers between the head of state and head of government. This reduced conflicts and tensions. Since all the executive powers were concentrated on one person called the president, it resulted in a strong and forceful government with a unity of purpose. It fostered political stability as the president was not required to depend on the majority support of the legislature in order to be in power. He could not be removed from office by mere veto of censure by the legislature. The president or governor could be removed from office only through the rigorous procedure of impeachment which was not easy. The legislature also could not be dissolved until its tenure expired.

The principle of separation of powers promoted specialisation of functions by each of the three organs of government. It also provided for checks and balances such that no arm of government could violate any aspect of the Constitution without facing the wrath of other arms. For example, the legislature could impeach the executive while the executive must assent to the laws passed by the legislature and the judiciary could restrain these other bodies.

The fact that chief executives - president/governors were directly elected made them more responsive and sensitive to yearnings and feelings of the people. The executive was therefore more

powerful because it had its direct mandate from the people. The provision on political parties tended to foster the growth of national parties.

The notion of official opposition was absent. This provided a smooth atmosphere for discussions without the usual bitterness that characterise the parliamentary system. The recognition of the importance of local government was a right step. Local governments were made more effective and the people could feel the presence of government more than before.

12.12 DEMERITS OF THE CONSTITUTION

The practice of the 1979 Constitution introduced the factor of lobbying into the politics of Nigeria. This led to corruption and abuse of office. It also encouraged dictatorship since the chief executive could get things done once he had brought over possible opposition. There was excessive use of political patronage. The separation of the executive from the legislature tended to breed competition for power, rivalry, conflicts and tension.

The system could lead to stalemates, where the legislature tried to refuse to give approval to the president's/governor's nominees for ministers/commissioners. This happened in Kaduna State in 1979/80 where the NPN used its majority in the Assembly to block Governor Balarabe Musa's policies, and refused to give approval to his nominees for commissioners.

The Constitution also led to a bitter rivalry since it allowed a winner-takes-all sort of politics. Those outside government could therefore hold the government to ransom for flimsy reasons. Moreover, the presidential system provided by the Constitution was an expensive form of government for Nigeria. The wide powers which were concentrated on the president could lead to dictatorship.

12.13 THE 1963 AND THE 1979 CONSTITUTIONS COMPARED

The main difference between the 1963 and the 1979 constitutions can be found in the powers of the executive, the principle of separation of powers, and the position of the local government.

In the 1963 Constitution, the head of state was not the head of government. In fact he was a mere figurehead, a ceremonial head of state who acted on the advice of the head of government - the prime minister. In the 1979 Constitution, the head of state was also the head of government and he was the chief executive of the state.

In 1963, there was a fusion of powers between the legislature and the executive. To be a minister, the person must be a member of the legislature but in 1979, a minister could not be a member of the legislative house. The two bodies were separated by functions and they acted as checks on each other. If the executive collapsed, the legislature could remain. If a minister misbehaved, he could be dispensed with, without any repercussion on other ministers.

In the 1963 Constitution, local governments were not recognised. They were regarded as 'councils', not 'governments'. But the 1979 Constitution recognised local government as the third tier of government of the federation.

Under the 1963 Constitution, the president was chosen by National Parliament while under the 1979 Constitution, the president sought direct mandate from the people. Political parties were not required to register in 1963 but in 1979, to contest any election, the party must have been registered by the Federal Electoral Commission.

Under the 1963 Constitution, the regional legislatures were bicameral while the 1979 Constitution provided for unicameral state legislatures. The 1979 Constitution provided for the judicial service commission but the 1963 Constitution did not provide for it. Moreover, the 1963 Constitution failed to provide for the Fundamental Objectives and Directive Principles of State Policy, Code of Conduct Bureau and Tribunal, the Public Complaints Commission, the Land Use, and the National Youth Service Corps, as provided by the 1979 Constitution.

KEY POINTS

Main Features of the 1979 Constitution

Republicanism

The Constitution again declared Nigeria a Republic.

Federalism

The Constitution established a federal system of 19 states each with a state government, and a federal government at the centre. Government powers were shared between the federal and state governments.

Federal Executive

All executive powers were vested in the president. His powers and functions were as follows:

- (i) He was head of state and head of government.
- (ii) He was commander in chief of the armed forces.
- (iii) He initiated bills subject to the approval of the National Assembly.
- (iv) He gave assent to bills passed by the National Assembly.
- (v) He presented federal budgets.
- (vi) He implemented all federal policies and enforced laws.
- (vii) He made delegated legislations.

The Federal Legislature

The federal legislature was the National Assembly. It was bicameral the Senate with 5 members from each state, and the House of Representatives with a total membership of 450. The functions of the National Assembly included the following:

- (i) It made laws for the federal government.
- (ii) It controlled public funds.
- (iii) It approved executive appointments.
- (iv) It could remove the president through impeachment.
- (v) It criticised the executive.
- (vi) It had powers to amend the Constitution.

The Federal Judiciary

The federal judiciary consisted of

- (i) the Supreme Court, the highest Court of the land.
- (ii) the Federal Court of Appeal.
- (iii) the Federal High Court.

The State Executive

The governor was the state chief executive. He was vested with all the executive powers of the state. He appointed commissioners who assisted him. The commissioners were subordinate to him and they were responsible to him. He could remove them from office.

The State Legislature

The state legislature was unicameral. It legislated for the state in all matters in the concurrent list and residual powers.

The State Judiciary

The state judiciary consisted of:

- (i) the State High Court, the highest court within the state.
- (ii) the Magistrate Court, the lowest modern court.
- (iii) the Sharia/Customary Court for trying Sharia and customary cases.
- (iv) the Sharia/Customary Court of Appeal, the court of appeal for sharia/ customery cases.

Fundamental Objectives and Directive Principles of State Policy

The chapter on this provided the obligations and objectives of the government.

Fundamental Human Rights

Comprehensive fundamental human rights were provided and guaranteed.

Political Parties

Political parties must register under stringent conditions with the Federal Electoral Commission. Unregistered parties could not contest elections.

Local Government

The local government was made a third - tier of government.

Federal Capital Territory

There was a Federal Capital Territory under the control of the federal government. It had one seat each in the senate and in the House of Representatives.

Code of Conduct Bureau

This was responsible for ensuring strict compliance of public officers in Nigeria with the code of conduct for public officers.

Code of Conduct Tribunal

It was responsible for trial of cases arising from contravention of the code of conduct for public officers.

Amendment of the Constitution

The amendment procedure was rigid.

Merits of the Constitution

1. As it concentrated powers on the president, it ensured a strong and dynamic government.
2. It fostered public accountability.
3. It promoted political stability.
4. Separation of powers ensured specialisation of functions by each of the three organs of government.

5. There were checks and balances.

6. The provision on political parties ensured the growth of national political parties.

Demerits of the Constitution

1. Separation of powers tended to breed competition and struggle for power between the executive and the legislature.

2. The presidential system introduced lobbying which brought in corruption. There was negative use of political patronage.

3. The Presidential system was very expensive to operate.

4. The enormous powers of the President could lead to dictatorship.

Differences between the 1963 and 1979 Constitutions

1. The 1963 Constitution was parliamentary while the 1979 one was presidential.

2. In the 1979 Constitution, the local government was recognised as the third tier of government of the federation but in the 1963 Constitution, it was not so recognised.

3. Under the 1963 Constitution, there was no provision for the judicial service commission but the 1979 Constitution provided for it.

4. Political parties were not required to register with the Federal Electoral Commission under the 1963 Constitution, as they were under the 1979 Constitution.

5. The 1963 Constitution did not provide for the Fundamental Objectives and Directive Principles of State Policy, Public Complaints Commission, and the Code of Conduct Bureau. The 1979 Constitution did.

SAMPLE EXAMINATION QUESTIONS

Essay Questions

1. Discuss the status, powers and functions of the president under the 1979 Constitution.
2. Discuss the functions and powers of the National Assembly under the 1979 Constitution.
3. What was the relationship between the State Executive and the State Legislature under the 1979 Constitution?
4. What are the merits of the 1979 Constitution?
5. Discuss the differences between the 1963 and 1979 Constitutions of Nigeria.

Objective Questions

1. The President under the 1979 Constitution

- A. could be removed through a vote of censure.
- B. could form its government without a majority in the legislature.
- C. could not appoint a minister without senatorial consent.
- D. had a fixed tenure of 4 years.
- E. could never be removed from office for any reason.

2. The Fundamental Objective and Directive Principles of State Policy was

- A. justiciable.

- B. non-justiciable.
 - C. to be amended like other sections of the Constitution.
 - D. the same as declaration of Human Rights.
 - E. provided for in both the 1963 and 1979 Constitutions.
3. Which one of the following was provided for in both 1963 and 1979 Constitutions?
- A. Public Complaints Commission
 - B. Presidential System
 - C. Judicial Service Commission
 - D. Parliamentary System
 - E. Bicameral Legislature at the Federal level
4. The 1979 Constitution was both
- A. rigid and parliamentary.
 - B. presidential and flexible.
 - C. federal and rigid.
 - D. presidential and unitary.
 - E. written and monarchical.
5. One of the merits of the 1979 Constitution was
- A. it ensured strong and stable government.
 - B. fusion of powers that bred co-operation.
 - C. it made two-party system of government possible.
 - D. there was no form of opposition at all in the system.
 - E. the obligations and objectives of government in the Constitution were made justiciable.