

Chapter 11: Constitutional Development in Nigeria III: The Independence and Republican Constitutions

11.1 THE INDEPENDENCE CONSTITUTION OF 1960

Background

The Nigerian Constitution that preceded the Independence Constitution was the 1954 Constitution, otherwise known as the Lyttleton Constitution. The most significant provision of that Constitution was the establishment of a federal system of government for Nigeria. But the greatest weakness of that constitution was the absence of the post of the Prime Minister. Furthermore, there were other issues of minorities and the creation of more regions, the formula for revenue allocation, self-government for Northern region, decision on a definite date for Nigeria's Independence, and others. The Constitutional Conferences - the 1957 and the 1958 London Constitutional Conferences were held to resolve these and other issues.

The London Constitutional Conference of 1957

The Conference was held in Lancaster House in London from May 23 to June 26, 1957. It was presided over by the then Colonial Secretary, Mr Lennox-Boyd. The Conference, after serious discussion of the issues brought before it, reached the following agreements:

- (i) The office of the Prime Minister of the Federal Government was to be created.
- (ii) House of Chiefs were to be created for Eastern Region and Southern Cameroons.
- (iii) The police should continue to be a federal subject and not be regionalised.
- (iv) There should be an independent civil service commission whose responsibility should be to appoint, promote, and discipline civil servants.
- (v) The Southern Cameroon should be constituted into a separate region with its own Premier and Legislative Assembly. However, the Governor-General should continue to exercise ultimate responsibility over it as a trust territory.
- (vi) The Federal Legislature should be made bicameral with the creation of the Senate after the existing House of Representatives was dissolved in October 1959 and elections were conducted in December 1959. The Senate was then created for the first time in January 1960.
- (vii) The House of Representatives would be enlarged to consist of 320 members. These would be elected from 320 singlemember constituencies of the federation on the basis of one member per approximately 100,000 of the population. The election would be by universal adult suffrage in the West, East and Southern Cameroon, but by adult male suffrage in the North.
- (viii) A permanent electoral commission which would conduct all federal elections should be established.
- (ix) A commission of inquiry should be established to look into the fears of the minority and examine the possibility of creating more regions.
- (x) A fiscal commission should be established to make recommendations on the most equitable revenue allocation formula for Nigeria.

The London Constitutional Conference of 1958

The resumed conference of 1958 was convened primarily to consider the reports of the minorities and fiscal commissions which the 1957 Conference appointed, and outstanding matters such as the request for Nigeria's independence, the police and so on. The Conference, consisting of 106 delegates, took place in London from September 29 to October 27, 1958. It was also presided over by the Colonial Secretary, Mr Lennox-Boyd. The Conference discussed all the issues brought to it and reached the following agreements:

- (i) A comprehensive list of fundamental rights should be incorporated in the Nigerian Constitution to be enjoyed by all Nigerian citizens.
- (ii) Northern Nigeria was to be granted the right to self government with effect from March 1959.

- (iii) The police force should be regionalised. It should be exclusively federal under an inspector general of police who would be responsible to the federal government.
- (iv) The Conference considered the report of the minorities commission headed by Sir Henry Willink, a former British Minister of health, and accepted the report after five days of heated arguments. It adopted the commission's recommendation that there should be no immediate creation of new regions.
- (v) The Chairman and the members of the Federal Electoral Commission, after independence, should be appointed by the Governor-General in his own discretion after consultation with the new Prime Minister.
- (vi) The report of the fiscal commission headed by Sir Jeremy Raisman was hotly debated and finally accepted. The commission provided the formula for sharing revenue between the federal and regional governments.
- (vii) The new Nigerian Parliament, early in 1960, should pass a resolution asking for full independence for Nigeria. When this was done, the British government would introduce a bill which would enable Nigeria to gain her independence on October 1, 1960.

Effects of the London Constitutional Conferences of 1957 and 1958

The London Constitutional Conferences of 1957 and 1958 produced many remarkable effects in the constitutional and political development of Nigeria. The most important among these are the following:

- (i) Northern Region became self-governing in March 1959 in keeping with the decision of the London Conference of 1958. Eastern and Western Regions gained their own self-governing status on August 8, 1957.
- (ii) On September 2, 1957, the Deputy Leader of the NPC and Minister of Transport in the Federal House of Representatives, Sir Abubakar Tafawa Balewa was appointed the first Prime Minister of Nigeria. This was in keeping with the decision of the 1957 Constitutional Conference.
- (iii) In January 1960 (after the December general elections into the House of Representatives), the Senate (the Upper Chamber) was inaugurated with Dr Nnamdi Azikiwe as the first president of the Senate. Thus, the federal legislature, for the first time, became a bicameral legislature in January 1960.
- (iv) The London Constitutional Conference of 1960: The Conference was held in London at Church House from May 10 -19. The then Colonial Secretary, Mr Ian Macleod presided over the Conference. This was the final Nigerian Constitutional Conference in London. The Conference was held in keeping with the decision of the 1958 Conference. The 1958 Conference decided that after a new federal government had been formed in January 1960, the final discussions on the Nigerian Constitution between the Nigerian government and the colonial secretary would be held in London. The purpose of the conference was to assist in drafting the Independence Bill to be presented to the British Parliament.

The main agreements of the Conference were:

- (a) Nigeria should remain in the Commonwealth and she would become a full member of it on October 1, 1960.
- (b) The federal Legislature of independent Nigeria would be known as parliament.
- (c) The right of appeal to the Privy Council in London as the final court of appeal should be retained after independence.
- (d) There would be a defense agreement between Nigeria and Britain for mutual defense assistance which would be ratified by both Nigerian and British Parliaments after independence. It is important to note that this defense pact was abrogated after Nigerian Independence as a result of widespread criticisms by Nigerians.

- (e) The agreements of the various constitutional conferences would be incorporated in the Nigerian Independence Constitution. The Nigerian Independence Bill was prepared in accordance with the decisions of the Conference of 1960 and presented to the British Parliament which passed it into an Act. Consequently, Nigeria became independent on October 1, 1960 under the Independence Constitution.

The Main Features of the Independence Constitution of 1960

The main features of the 1960 Independence Constitution were as follows:

- (i) **Independence Status:** The 1960 Constitution conferred the status of independence and sovereignty on Nigeria with effect from October 1, 1960. By this status, Nigerians could then conduct their affairs without the control and interference of Britain. Nigeria could enter into any form of agreement or relationship with any nation of the world on the principle of equality of nation.
- (ii) **Federation:** The Constitution shared governmental functions and powers between the federal and regional governments. The functions and powers were classified into three categories: exclusive list, concurrent list and residual functions and powers. The federal government had exclusive powers over the items on the exclusive list while the regional governments had exclusive power over residual functions (functions which were not contained in either the exclusive or concurrent lists). Both the federal and regional governments had the powers to legislate on the items on the concurrent list. The Constitution provided that whenever a conflict occurred between the federal and regional law concerning items on the concurrent list, the federal law would prevail. The Supreme Court was empowered by the Constitution to settle conflicts between the federal and regional governments.
- (iii) **The Head of State:** The nominal Head of State was the Queen of England. Consequently, under the 1960 Constitution, Nigeria was a monarchy. However, the Queen of England was represented in Nigeria by a governor-general at the federal level and governors at the regional levels who were empowered to perform her functions as Head of State on her behalf. Just as the Queen was a ceremonial Head of State, so was the governor-general. The governor-general did not exercise most of the powers vested in the Head of State directly since the monarch was not an absolute one. Most of these powers were exercised by the elected Prime Minister and his ministers at the federal level; and the premier and his ministers at the regional level.
- (iv) **The Federal Executive:** The federal executive authority was nominally vested in the Queen who was represented by the Nigerian governor-general. But, in practice, the executive powers of the federal government were exercised by the federal cabinet consisting of the prime minister and his ministers. The governor-general was empowered to appoint the prime minister. The appointment, however, should be of a member of the House of Representatives who appeared to him to command the majority support of the House; The appointment of the federal ministers were also to be made by the governor-general from the House but on the advice of the prime minister. The prime minister and the ministers must be elected members of the federal legislature and they should continue in power as long as they secured the majority support of the parliament. The prime minister and the ministers in the exercise of their executive powers were collectively responsible to the legislature. Thus, the Constitution provided for a parliamentary executive.
- (v) **The Regional Executive:** The executive authority of the region was nominally vested in the governor as the Queen's representative in the region. But in practice, the executive authority of the regional government was exercised by the regional cabinet, the premier and his ministers. The premier should be appointed by the governor from the regional assembly. He must be a member who appeared to command the majority support of the members of the assembly. The governor was also empowered to appoint the ministers but on the advice of the regional premier. The members of the regional cabinet must be members of the regional legislature. They were collectively responsible to the legislature in the exercise of their executive powers.
- (vi) **The Federal Legislature:** The Constitution established the Federal Parliament which comprised the Queen represented by the governor-general, the Senate and the House of Representatives. The Senate, which was the upper chamber, consisted of 44 members (this excluded 12 senators from Southern Cameroon). The House of representatives which was the lower house comprised

312 elected members. The prime minister and ministers were to be elected members of the legislature. The Federal Parliament was empowered to legislate on subjects or items in the exclusive and concurrent list.

- (vii) **The Regional Legislature:** The regional legislature was a bicameral legislature. It comprised the Queen represented by the governor, the House of Chiefs (Upper Chamber) and the House of Assembly (Lower Chamber). It was established for each of the three regions - Northern, Western and Eastern Regions. The premier and his ministers were members of the regional assembly. The regional assembly legislated on the residual and concurrent subjects.
- (viii) **The Judiciary:** The judiciary was regionalised. Each regional government had its own judiciary system. The federal and regional governments had a judiciary service commission each which advised the executive in the appointment, promotion and discipline of judges. The judicial service commission was a quasi-autonomous body established to guarantee the independence of the judiciary. Judges had security of tenure and could not be removed from office except for gross *misconduct*. Appeals from the Regional High Courts were made to the Federal Supreme Court. Appeals could also be made from the Federal Supreme Court to the Judicial Committee of the Privy Council in Britain which was the highest court for Nigeria under this Constitution.
- (ix) **Fundamental Human Rights:** In keeping with the decision of the 1958 London Constitutional Conference, the Constitution made a detailed provision of fundamental human rights. These include right to life, right to personal liberty, right to privacy, right to freedom of expression, assembly and association, right of property, right to free movement, right to freedom of conscience, and so on. The Constitution provided certain limitations to these rights. This provision followed the pattern laid down by the United Nations Universal Declaration of Human Rights of 1948.
- (x) **Citizenship:** The Independence Constitution made elaborate provisions for Nigerian citizenship. These provisions can be summarized as follows:
 - (a) Any person who was born in Nigeria and was a citizen of the United Kingdom and the colonies or a British protected person on the 30th of September, 1960 was a Nigerian citizen.
 - (b) Any person who was born outside Nigeria on the 30th of September, 1960, a citizen of British and her colonies or a British - protected person with a condition that his father must be born inside Nigeria was a Nigerian citizen.
 - (c) Any person born inside Nigeria after so" September, 1960 became a Nigerian citizen automatically, provided either of his parents was a citizen of Nigeria.
 - (d) Any person born outside Nigeria after September, 1960 whose father was a Nigerian citizen at the date of his birth was a Nigerian citizen.
 - (e) A certain category of aliens could become Nigerian citizens through registration after fulfilling certain conditions e.g. a wife or widow of a Nigerian citizen.
- (xi) **Commonwealth Citizenship:** The Independence constitution conferred the status of commonwealth citizenship on every Nigerian citizen.
- (xii) **The Police Force:** The Constitution established a single police force for the entire federation under an inspector general. The police force within each region would be under the control of a police commissioner who would be responsible to the inspector-general of police. The inspector general of police was, in turn, responsible to the federal government.
- (xiii) **State of Emergency Powers:** The Constitution, under Section 65, empowered the Federal Parliament to declare a state of emergency in any region in the whole federation. The state of emergency would be declared by parliament in any of these *three* situations:
 - (a) During a period in which the federation was at war. In this case, the state of emergency could be declared by ordinary simple majority.
 - (b) Where the Federal Parliament was satisfied that democratic institutions were threatened by subversion. In this case, the state of emergency could only be declared by not less than a two-third majority of all members of each House of Parliament.
 - (c) Where the federal legislature was satisfied that the executive authority of a region or Southern Cameroon had been or was being exercised so as to impede or prejudice the

exercise of the executive authority of the federation or to endanger the continuance of federal government in Nigeria. This case like (b) above, required not less than a two-third majority of all members of each House of Parliament to pass the resolution of state of emergency.

The Constitution empowered the Federal Parliament to make laws during the period of emergency for any region or regions, or for the whole federation of Nigeria. These laws could be made on any matter whatsoever irrespective of whether the matter was included in the federal legislative lists or not. The laws would be made by Parliament for the purpose of dealing with the situation prevailing during the emergency period.

This emergency power was for the first time invoked in 1962 when the federal government declared a state of emergency in the Western Region of Nigeria. This was during the Action Group crisis which was as a result of a disagreement between the leader of the Action Group, Chief Obafemi Awolowo and his deputy, Chief S.L. Akintola, who was the premier of Western Nigeria. When the state of emergency was declared, the Western Regional Legislature and Executive were suspended. In their place, a sole administrator for the region, Dr. M.A. Majekodunmi was appointed, who administered the region on behalf of the federal government for 6 months.

(xiv) Constitutional Amendment: Before the Nigerian Independence Constitution, the British government had the powers for amending the Nigerian Constitution. But the Independence Constitution, for the first time, provided the procedure for amending its provisions. The Constitution made provisions for five different types of amendments as follows:

- (a) *Amendment of Ordinary Provisions of the Federal Constitution:* This type of provision could be altered by at least a majority of two-thirds of all members of each House of the Federal Parliament.
- (b) *Amendment of Ordinary Provisions of the Regional Constitution:* This class of provision could be altered by majority of not less than two-thirds of all the members of each of the legislative House of the region concerned.
- (c) *Amendment of Entrenched Provision:* The alteration of certain entrenched sections of the Constitution could be made by a majority of not less than two thirds of all members of each House of parliament. But such amendment could not be made unless each legislative House of at least two regions had passed a resolution by at least two-thirds majority of all its members supporting the amendment.
- (d) *Creation of a State:* The procedure is as follows: The request was to be submitted to the two Houses of Federal Parliament. This must be approved in a resolution by at least two-thirds of all members of each House of Parliament. Then the proposal would be submitted to all regional legislative Houses. The proposal must be approved by a resolution of each legislative House of at least two regions. The two regions should include the region from which a part of the new region would be created. It also provided for a referendum on whether the new region would be created or not to be held in the areas of the federation that would make up the new region. At least three fifths (60%) of all the persons qualified to vote in the referendum must vote in support of the new region before an Act creating the new region could be passed.
- (e) *Alteration of the Boundaries of a Region:* The procedure is as follows: The request for the alteration of the boundaries of a region must be submitted to each House of Parliament. This should be approved in a resolution by at least two-thirds of all members of each House of Parliament. This proposal would then be submitted to all the Regional Legislative Houses for consideration. This proposal must be approved by a resolution of each legislative House of at least a majority of all the regions including the regions, whose territories would be affected in the alterations of boundaries of the region.

It is also required that a referendum must be conducted in all the areas of the country that would be transferred from one region to another to determine the wishes of the people of the area. Before an Act of Parliament could authorise the alteration of the boundaries of a region, at least three-fifths (60%) of all the people qualified to vote in the referendum must

vote in favour of the boundaries' alteration. The Constitution provided that an area of not more than 100 square miles and inhabitants by a population of not more than 100,000 persons could be transferred from one region to other regions in such boundary alterations.

Merits of the Independence Constitution

The Independence Constitution of 1960 had the following merits:

Independence Status:

- i. The 1960 Constitution provided for an independence status for Nigeria. Nigeria, for the first time, attained the status of statehood. She became a sovereign state capable of managing her own affairs by her citizens without any foreign interference.
- ii. **The Fundamental Human Rights:** The Constitution provided detailed list of human rights which was intended to protect the citizens from arbitrary treatment by the government. The fundamental human rights sought to safe guard the rights of the minorities. It was also intended to promote the principle of the rule of law.
- iii. **Rigid Constitution:** The Constitution, for the first time, provided for a procedure through which Nigerians could change their Constitution. Prior to 1960, the British government or its agents in Nigeria could effect a change in the Nigerian Constitution at any time. Not only that the Constitution provided for a definite and clear procedure for its amendment, the procedure is also rigid. The rigidity of the Constitution tended to protect the rights of the minorities and checked domination and oppression by any group. It also ensured that adequate considerations were made before any Constitutional amendment.
- iv. **Judicial Service Commission:** The judicial service commission was provided. This guaranteed the independence of the judiciary from executive and legislative control. This sought to secure the impartiality of the judiciary in the dispensation of justice.
- v. **Federalism:** The federal system which was provided by the Constitution ensured unity in diversity. It was the best arrangement for a country like Nigeria which is large in population, extensive in geographical area, diverse and complex in cultural pattern. It provided regional autonomy as well as a united Nigeria at the same time. Adequate powers were given to regional governments.

Demerits

The demerits of the Independence Constitution are as follows:

- (i) **The Monarchical Status:** The greatest weakness of the 1960 constitution is that the Queen was the Head of the Nigerian state. In effect, Nigeria was a monarchy and was not completely free from Britain.
- (ii) **The Judicial Committee of Privy Council:** Under the Constitution, the Supreme Court was not the highest court. The highest court of appeal for Nigeria was the British Judicial Committee of Privy Council in London. This further made independence of Nigeria to be incomplete as British judges had a final say on appeals to the judicial committee of the Privy council.
- (iii) **Absence of Separation of Powers:** As a result of the parliamentary system, cabinets were members of the legislature. This tended to increase the powers of the executive.
- (iv) **Much Powers were Given to the Region:** Under the Constitution, much powers were vested in the regional government which exercised these powers at the expense of the central government. It therefore gave effect to centrifugal forces. It created problems of national integration and unity.
- (v) **Imbalance of the Federal Structure:** There existed marked inequality among the regions of the federation. Northern Region was so large in population and geographical area that it was larger than the rest of the regions combined. It had predominant influences in legislation on account of its large representation in the federal legislature. In effect, Northern Region vied in strength with the rest of the regions combined.
- (vi) **Bicameralism at the Region:** The Constitution provided bicameral legislature at both the regions and the centre. Bicameral legislature at the federal level was justified as the upper chamber represented the interest of the states. -But bicameral legislature at the state level amounted to waste of public funds.

- (vii) **Disfranchisement of Women in the Northern Region:** Women in northern region were not allowed to vote. They did not participate in both the regional and federal elections. Women in the north were therefore disenfranchised thereby rendering the system not truly democratic.

11.2 THE REPUBLICAN CONSTITUTION OF 1963

Background

The major weakness of the 1960 Constitution was that it recognised the Queen as the Head of State. Furthermore, the Constitution recognised the Judicial Committee of the Privy Council in Britain as the highest appeal court for Nigeria. These two provisions tended to neutralise Nigeria's independence. In other words, Nigeria was not completely independent, and she was a monarchy. The 1963 Republican Constitution was primarily aimed at removing from Nigeria the remnants of colonialism.



Dr Nnamdi Azikiwe

Fig. 11.1 : The first President of Nigeria

The move started in November 1961 when Dr Nnamdi Azikiwe suggested the idea of Nigeria becoming a republic. This was supported by the Prime Minister, Sir Abubakar Tafawa Balewa. On 29th June, 1963, the prime minister and the three regional premiers discussed at Jos, where there was a unanimous agreement on the issue. Then on July 25 and 26, 1963 a two-day meeting of representatives of the federal and regional governments and all political parties was held to discuss the Republican Constitution. The agreement of the conference gave effect to a *White Paper* which was presented to the Nigerian Parliament as the Republican Constitution Bill on August 7, 1963. The Republican Constitution proposal was approved between 9th and 10th August, 1963. It was then enacted into an Act of Parliament. Consequently, the Constitution came into force on the 1st of October, 1963. Dr. Nnamdi Azikiwe was sworn in on that day by the Chief Justice of the Federation, Sir Adetokunbo Ademola, as the first president of the Nigeria Republic.

The Main Features

The 1963 Republican Constitution had the following features:

- (i) **Separate Constitutions for Federal and Regional Governments:** The Constitution comprised five distinct constitutions for the four regions and the federal government. These were the Constitution of the Federation, the Constitution of Northern Nigeria Law 1963, the Constitution of Western Nigeria Law 1963, the Constitution of Eastern Nigeria Law 1963, and the Constitution of the Mid-Western Nigeria Law 1964. This arrangement tried to manifest the federal principle to autonomy of the constituent units of the federation.
- (ii) **Republican Status:** The Constitution scrapped the status of monarchy as the Queen ceased to be the Head of State. She also ceased to be vested with the executive authority of the federal and regional governments. She also ceased to be part of the federal and regional legislatures. The people of Nigeria through their elected representatives, were then vested with the supreme power of the state. The head of state - the president - gained political authority through indirect election by the people. Thus, as a result of the Republican Constitution, no individual had claims to political authority except through the election of the people. Nigeria still remained a member of the Commonwealth of Nations.
- (iii) **The Head of State (The President):** The head of state was the president who must be a Nigerian citizen who had attained the age of 40 years. The president, unlike the Queen who was a

hereditary monarch, was elected by the people. Under the Constitution, the president should be elected through a secret ballot by an electoral college of members of the Senate and House of Representatives meeting in a joint session. The tenure of office was five years. During his tenure of office, the president was disqualified from holding any other public office. The president was the commander-in-chief of the Armed Forces.

He was vested with the executive authority of the federation. However, most of his constitutional powers were exercised in accordance with the advice of the prime minister and his ministers. Often, the prime minister or the relevant ministers exercised certain powers of the president in his name without reference to him. In other words, the president was a ceremonial head of state. He had no executive powers.

Nevertheless, he had powers to appoint the prime minister after a general election. He had the power to dissolve the House of Representatives on the advice of the prime minister. He was empowered to sign bills before they become laws. He was also empowered to remove a federal judge or the director of audit after a resolution had been duly passed by each House of Federal Parliament recommending the officer's removal on account of gross misconduct. He possessed the right to be constantly informed about the conduct of the federal government. The president had the power to war and advise both the government and the entire nation.

- (iv) **The Prime Minister:** The prime minister was appointed by the president. However, the Constitution provided that he should appoint a member of House of Representatives who appeared to him likely to command the support of the majority of the members of the House. The prime minister could be removed from the office through a vote - of no confidence on the floor of the House. He would also cease to be prime minister whenever he ceased to be a member of the House of Representatives.

Although the executive authority of the federal government was vested in the president, most of his powers were exercised by the minister. The prime minister was the head of the federal government. He was the chairman of the federal cabinet. He advised the president on the appointments and removal of federal ministers. He also advised the president on the appointment of federal supreme court judges. He acted as the leader of government in the House of Representatives and also responsible for the defence and security of the nation.

- (v) **The Federal Executive:** Though the executive authority was vested in the president, the president was, in practical terms, a titular head of state. In practice, the executive authority of the federal government was exercised by the prime minister and his ministers. In other words, the federal cabinet exercised the executive authority of the federal government in the name of the president. The federal cabinet comprised the prime minister and the ministers of the federal government. The members of the cabinet could remain in power only when it commanded the majority support of the members of the House of Representatives. Whenever the members of the cabinet lost the support of the majority of the members of the House of Representatives, the entire cabinet would resign as a body.

The cabinet was collectively responsible to the Parliament for advising the President in the exercise of his executive authority. In other words, the cabinet was responsible for the execution of government policies and programmes. Consequently, each member of the cabinet was charged with the control of a federal government ministry where he was the political head. Members of the cabinet must be members of the Parliament. Any member who ceased to be a member of Parliament would automatically cease to be a member of the cabinet.

- (vi) **The Regional Governor:** The regional governor occupied in the region a position similar to that which the president occupied at the federal level. The governor was a titular head of the region. He was elected by the members of the regional legislature. He had a five-year tenure. The executive authority of the region was vested in him. But the authority was exercised by the premier and his ministers in the name of the governor. The governor appointed the premier after a general election. But the appointment must be of a member of the House of Assembly who appeared to command the support of the majority of members of the House. He appointed ministers on the advice of the premier. He must give assent to bills passed by the Regional Assembly before they would become laws.

- (vii) **The Regional Premier:** The premier was the head of the regional cabinet. He was appointed by the governor from the members of the House of Assembly. In Northern Nigeria, the governor could appoint as premier any member of any of the Regional Houses. The regional premier would resign from office anytime he lost the support of the House. The premier advised the governor on the appointment and removal of his ministers. He presided over the cabinet meetings and coordinated the activities of the ministers. He was the leader of government in the Regional Assembly.
- (viii) **Regional Executive:** The regional executive authority was vested in the governor. But the governor was titular head of the region. He had no executive powers. In practice, his constitutional authority was exercised by the regional cabinet in his name. The cabinet comprised the premier and the ministers of the region. The members of the cabinet of the region must retain the confidence and support of the Regional Assembly in power. Any time the support and confidence were lost, the members of the cabinet would resign as a body. The members of the cabinet were collectively responsible to the regional legislature for advising the governor in the exercise of the executive authority of the regional government. The regional cabinet, in effect, was responsible for the execution of regional policies and programmes. Each member of the cabinet was normally assigned a ministry which he controlled.
- (ix) **Federal Legislature:** The federal legislature was bicameral. It consisted of the House of Representatives and the Senate. The Senate was presided over by the president of the Senate. The House of Representatives had the speaker as its chairman. The House of Representatives consisted of 312 members directly elected by the people from 312 single member constituencies. The Senate consisted of 12 representatives from each region elected at a joint meeting of the Regional Houses from among the nominees of the governors; four representatives of the Federal Territory (Lagos), and four other senators selected by the president on the advice of the prime ministers. Under this Constitution, there were a total of 56 senators. The federal legislature legislates on matters within the exclusive and concurrent legislative lists. Apart from a money bill which must originate in the House of Representatives, other bills could originate in either of the Houses. When a bill was passed by one House, it would be sent to another House. When a bill was passed by the two Houses, it would go to the president for his assent before the bill would become a law. But under the Constitution, the president must not refuse assent to a bill duly passed by the Parliament. The House of Representatives was superior to the senate. A money bill which was passed by the House of Representatives but rejected by the senate would become law after the expiration of one month. But an ordinary bill passed by the House of Representatives but rejected by the senate would become a law after 6 months.
- (x) **The Regional Legislature:** Each region had a bicameral legislature. It consisted of, the governor, the House of Assembly and the House of Chiefs. The House of Assembly was presided over by the speaker of the House, while the House of Chiefs was presided over by the president of the House. The regional legislature made laws on matters within the residual powers and concurrent list for the region. While the members of the House of Assembly were directly elected by the people from single-member constituencies, the members of the House of Chiefs were not elected. They were traditional rulers appointed by the governor on the advice of the premier. The process of law-making in the region was the same as that of the federal government
- (xi) **The Judiciary:** Under the Republican Constitution, the judiciary was regionalised as under the 1960 Constitution. However, under the Republican Constitution, the judicial service commission was abolished. The president was empowered to appoint the federal Chief Justice and other Justices on the advice of the prime minister. The appointment of the Regional Chief Judge and other Judges of the regional High Court were made by the regional governor on the advice of Regional premier. The judges had security of tenure. The president was empowered by Constitution to remove a federal judge on grounds of inability to perform his duties or for gross misconduct. However, this could only be accomplished under strict conditions. Before the president could remove the judge, he must receive addresses from both Houses of Parliament which must be supported by at least two-thirds majority of all members of each House praying the president to remove the judge. This was also the process taken by the governor and regional

legislature before a regional judge was removed. The Republican Constitution abolished appeals to the Judicial Committee of the Privy Council in London and made the Supreme Court the highest court of the land.

- (xii) **Fundamental Human Rights:** These were the same as under the 1960 Independence Constitution. Attempts to include the Preventive Detention Act which would have abridged the fundamental right failed as a result of widespread opposition to it.
- (xiii) **Citizenship:** Citizenship remained the same as described under the 1960 Constitution.
- (xiv) **Emergency Powers:** There was also a provision for declaration of state of emergency. This was as it was provided under the 1960 Constitution.
- (xv) **Constitution Amendment:** The procedure for the amendment of the Constitution including creation of new states and boundary alteration remained as rigid as it was provided under the 1960 Constitution which had been discussed earlier.
- (xvi) **The Nigeria Police:** The Nigeria police continued to be a federal subject under the headship of the inspector-general of police. Each region had contingents of the Nigeria Police Force which were under the control of the regional commissioner of police. The regional commissioner of police was responsible and accountable to the federal inspector general of Police. The inspector-general of Police was responsible and accountable to the prime minister in the maintenance of public safety and order. However, the Constitution provided for the local government police in the regions. The Constitution also provided for a Federal Police Service Commission for the appointment, promotion and discipline of the members of the Nigeria Police Force.

Merits of the Republican Constitution

The Republican Constitution of 1963 was associated with the following merits as compared with the 1960 Constitution:

- (i) **Complete Political Independence:** Though Nigeria gained her independence under the 1960 Independence Constitution, the Queen of England still remained Nigeria's head of state. Under the Republican Constitution, the Queen of England ceased to be the head of state of Nigeria. The Nigerian head of state then became the president who must be a Nigerian citizen.
- (ii) **Establishment of the Principle of Egalitarianism:** A very important element of republican status brought about by the Republican Constitution was the principle that the people were politically equal and supreme and no one had hereditary rights to political office. Political power could be attained through the process of election. Thus, the president should be elected by an electoral college of the people's representatives for a specified period of five years. The prime minister, ministers and members of Parliament were elected by the people.
- (iii) **Abolition of Appeals to the Judicial Committee of the Privy Council:** The Constitution abolished all appeals to the Judicial Committee of the Privy Council. This emancipated the Nigerian Judiciary from British imperial domination. The Supreme Court started for the first time to serve as the highest court of appeal for Nigeria.
- (iv) **Establishment of Federal Police Service Commission:** The Constitution established a Police Service Commission for the appointment, promotion and discipline of the members of the Nigeria Police Force. This arrangement tried to remove the appointment, promotion and discipline of Police Officers and men from partisan consideration.
- (v) **Nigerian-made Constitution:** The Republican Constitution was the first constitution of Nigeria ever to be made exclusively by Nigerians. The Constitution was made in Nigeria and enacted into Act of Nigerian Parliament by the people's representatives. It was a democratic political Constitution.

Demerits

The demerits of the Republican Constitution are as follows:

- (i) **Abolition of the Judicial Service Commission:** The Constitution abolished the Judicial Service Commission. Consequently, the appointment, promotion, discipline and removal of judges were

not removed from partisan political influences. This consequently weakened the independence of the judiciary from executive and legislative controls.

- (ii) **Local Government Police:** The Constitution provided for the organisation of local government police. These local government police officers and men were in most places used in the oppression and victimisation of non-indigenes. This arrangement did not promote national integration and unity. It served as an instrument of violation of human right.
- (iii) **The Provision for the House of Chiefs:** The provision for the regional House of Chiefs ran counter to the principle of republicanism. Members of the Regional House of Chiefs were not elected by the people. The chiefs were hereditary rulers. Thus, the provision did not fit into the republican status of the country.

11.3 MAJOR DIFFERENCES BETWEEN THE 1960 AND 1963 CONSTITUTIONS

The differences between the Independence and Republican Constitutions are as follows:

- i. While the Queen, a British, was the Head of State of Nigeria under the 1960 Constitution, the President, a Nigerian, was the Head of State under the 1963 Constitution. Nigeria was a monarchy in the 1960 Constitution, but became a republic under the 1963 Republican Constitution.
- ii. The 1960 Independence Constitution provided for the Judicial Committee of the Privy Council in London as the highest court of appeal for Nigeria. But under the 1963 Republican Constitution, the Judicial Committee of the Privy Council was abolished as the highest court of appeal. Then, the Supreme Court became the highest court of appeal in Nigeria.
- iii. Under the 1960 Independence Constitution, there was in existence the judicial service commission. But this was absent in the 1963 Republican Constitution. Thus, there was no independent organ responsible for the appointment, promotion and discipline of Judges.
- iv. The 1960 Constitution was made out of agreements reached at the London Constitutional Conference of 1957, 1958 and 1960 presided over by British Colonial Secretaries. The 1960 Constitutional Act was passed by the British Parliament and assented to by the Queen. But the 1963 Republican Constitution was made in Nigeria by Nigerians. The Republican Constitutional Act was passed by the Nigerian Parliament.
- v. Under the 1960 Constitution, a judge could not be removed from office unless the matter for his removal had been properly investigated by a tribunal appointed by the governor-general. And where the tribunal recommended his removal, it must be referred to the Judicial Committee of the Privy Council through the governor-general and the Queen. The Judicial Committee of the Privy Council would then decide and advise the Queen that the judge be removed from office for inability to perform his duty or for gross misconduct, where these facts had been established.

But in the Republican Constitution, the procedure was different. Under this Constitution, a judge could be removed by the president from office for gross misconduct or inability to perform his duty. But before the judge would be removed, the president must have received addresses from Houses of Parliament passed by not less than two-thirds majority of all the members of each House praying the president to remove the judge. Thus, the removal of a judge under the Independence Constitution was decided by the Judicial Committee of the Privy Council based on the recommendations of the investigating tribunal appointed by the governor-general. But the removal of a judge under the 1963 Constitution was determined by the representatives of the people.

KEY POINTS

The Independence Constitution of 1960

Background

The agreements of the 1957, 1958 and 1960 London Constitutional Conferences gave effect to the 1960 Independence Constitution. The Constitution came into force on October 1, 1960 with Nnamdi Azikiwe as

the first indigenous governor-general.

Features

- (i) Independence Status: The Constitution conferred an independent status on Nigeria with effect from October 1, 1960.
- (ii) Federalism: It was a federal constitution. Governmental powers were shared between the centre and the constituent units in such a manner that they were coordinate in powers.
- (iii) The Head of State: The Head of State was the Queen with the governor-general as a representative in Nigeria. In consequence, Nigeria was a monarchy.
- (iv) The Federal Executive Authority: The Federal Executive Authority was vested nominally in the Queen who was represented by the governor-general. But in practice, the authority was exercised by the federal cabinet.
- (v) The Regional Executive: The regional executive authority was nominally vested in the governor as the Queen's representative in the region. But in practice, the executive authority of the regional government was exercised by the regional cabinet.
- (vi) Federal Legislature: The federal legislature comprised the Queen, represented by the governor-general, the senate and the House of Representatives.
- (vii) The Regional Legislature: The regional legislature was bicameral. It comprised the Queen, the House of Chiefs and the House of Assembly for each of the three regions North, West and East.
- (viii) (a) The judiciary was regionalised.
- (b) There was a Judicial Service Commission.
- (c) The Judicial Committee of the Privy Council was the highest court of appeal.
- (ix) Fundamental Human Rights: There was a detailed provision of fundamental human rights.
- (x) Nigerian Citizenship: There was a provision for qualifications for Nigerian citizenship.
- (xi) State of Emergency Powers: The Constitution empowered the Federal Parliament to declare a state of emergency in any region or in the whole federation.
- (xii) Constitutional Amendment: The Constitution provided rigid procedures for the amendment of its provisions including the provisions for creation of new regions and boundary alterations.

Merits

- (i) It provided for Nigeria's independence.
- (ii) Fundamental human rights were provided to protect citizens from arbitrary rules.
- (iii) The Constitution was rigid which ensured that rash changes of the Constitution were not made.
- (iv) The provision of the Judicial Service Commission guaranteed the independence of the judiciary.
- (v) Federalism was the best arrangement for achieving unity in diversity in the large and diverse states of Nigeria.

Demerits

- (i) The Queen was the Head of State of Nigeria thereby making Nigeria incompletely independent from Britain.
- (ii) Appeals against decisions of the Nigeria Supreme Court could be made to the Judicial Committee of the Privy Council in London.
- (iii) There was a fusion of the legislature and the executive and both the federal and regional governments.
- (iv) Much powers were given to the regions.
- (v) There was an imbalance of the federal structure; the Northern region was larger than the rest of the regions.
- (vi) Bicameralism at the regional level was wasteful.
- (vii) Women in the North were disenfranchised.

The Republican Constitution of 1963 Background

The July 1963 Conference on the Republican Constitution gave effect to a White Paper. The White Paper which was presented to the Nigerian Parliament in form of a bill was passed into the Republican Constitution Act in August 1963. The Constitution came to effect on October 1, 1963 with Dr Nnamdi Azikiwe as the first president.

Features

- (i) Separate Constitution: The Republican Constitution comprised four distinct constitutions for the federal government and the four regions.

- (ii) **Republican Status:** The Constitution scrapped the status of monarchy in Nigeria as the Queen of England ceased to be the head of state. The Constitution declared Nigeria a republic.
- (iii) **The Head of State:** He was the president who was elected by the electoral college of members of Parliament. His tenure was five years. He was a titular head of state.
- (iv) **The Prime Minister:** He was appointed by the president. He was the head of government and the leader of the cabinet. Most of the president's powers were exercised on the prime minister's advice.
- (v) **The Federal Executive:** The executive authority of the federal government was vested in the president, but in practice, the functions were performed in his name by the federal cabinet.
- (vi) **Regional Governor:** He was the titular head of the region. He was elected by the members of the regional legislature for a five-year tenure. The Constitution vested in him the executive authority of the region. But this authority was exercised on the advice of the Premier and his ministers.
- (vii) **Regional Premier:** He was the head of the regional government and the leader of the cabinet. He was appointed by the governor.
- (viii) **Regional Executive:** The regional executive authority was vested in the governor. But this executive authority was exercised on the advice of the regional cabinet.
- (ix) **Federal Legislature:** The federal legislature was bicameral. It comprised the president, the House of Representatives and the House of Assembly.
- (x) **Regional Legislature:** The regional legislature was bicameral. It comprised the governor, House of Chiefs and the House of Assembly.
- (xi) **The Judiciary:** The judiciary was regionalised. The Judicial Service Commission was abolished. The Constitution also abolished appeals to the Judicial Committee of the Privy Council. The Supreme Court became the highest court of appeal for Nigeria.
- (xii) **The Police Force:** The Nigeria Police Force remained centralised. The Constitution provided for local government police.

Merits

- (i) There was complete political independence as the Queen was no longer the head of the Nigerian state.
- (ii) It established the principle of egalitarianism.
- (iii) The Constitution abolished appeals to the Judicial Committee of the Privy Council; and the Supreme Court of Nigeria assumed the rightful status as the highest court.
- (iv) It established the federal police service commission in an attempt to divorce the appointment, promotion and discipline of the Police from partisan political influences.
- (v) The Constitution was made in Nigeria by Nigerians.

Demerits

- (i) The abolition of the Judicial Service Commission put the appointment, promotion and discipline of judges under partisan political influences.
- (ii) The creation of local government police gave room to oppression and victimisation of non-indigenes in many parts of Nigeria. It also aggravated the problem of national integration and unity.
- (iii) The establishment of the House of Chiefs, the members of which were not elected, contradicted the principle of republicanism.

SAMPLE EXAMINATION QUESTIONS

Essay Questions

1. Discuss the background to the Independence Constitution of 1960 and outline its main features.
2. Discuss the merits and demerits of the Independence Constitution of 1960.
3. What are the main features of the Republican Constitution of 1963?
4. Discuss the status, functions and powers of the President under the Republican Constitution of 1963.
5. Examine the main differences and similarities between the Independence and Republican Constitutions.

Objective Questions

1. Under the 1960 Constitution, the constitutional head of state of Nigeria was The
 - A. Queen of England.
 - B. Dr NnamdiAzikiwe.

C. Sir Abubakar Tafawa Balewa.

D. The President of Nigeria.

E. Sir Ahmadu Bello.

2. The first Constitution ever to made in Nigeria by Nigeria was the

A. Independence Constitution.

B. Republican Constitution.

C. 1979 Constitution.

D. 1951 Constitution.

E. 1946 Constitution.

3. The President under the 1963 Constitution was not

A. a titular head of state.

B. a ceremonial head of state.

C. a nominal head of state.

D. an executive head of state.

E. an elective head of state.

4. The first president of Nigeria was

A. Sir Abubakar Tafawa Balewa.

B. Alhaji Shehu.

C. Dr NnamdiAzikiwe.

D. ChiefObafemiAwolowo.

E. Sir Ahmadu Bello.

5. Which of the following provisions was common to both the 1960 and 1963 Constitutions?

A. Establishment of the Judicial Service Commission

B. The President being the Head of State of Nigeria

C. The Judicial Committee of the Privy Council being the highest court of appeal in Nigeria

D. The removal of a judge was determined by a Imotion by both Houses of Parliament with not less than two thirds majority of all members of each House

Answers

1. A

2. B

3. D

4. C

5. E