



## **The second phase of Nigerian constitution under the British imperial rule (1951-1959)**

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### **Abstract**

This article is written from historical perspective. The article reveals that this period witnessed a change in British attitude toward the enactment of Nigerian constitution from the path where it was predominantly made by the British from their own perspective to a more humane attitude that allows Nigerians to have some say on the enactment of their constitution and the McPherson constitution of 1951 was the first in a series of constitutions during this phase that gave this right to Nigerians. Consequently constitution making during this period was drawn out by the joint efforts of the British and Nigerians. The article also reveals that this period in the history of Nigeria was marred by Nationalism and nationalist movement which might have led to the change of attitude by the British imperialist. This period also marked the independence struggle and of course the subsequent Independence that followed in 1960. The aim of the author is to posit the different constitutional instruments that were put in place at successive constitutional phase and to recognise that successive constitution at any given stage brought with it a change in politics and hope for Nigerians' struggle for independence. It hoped that by revisiting this period in the constitutional making in Nigeria that people will begin to measure the effectiveness of the constitutions enacted during this period with the post independence constitutions after it.

**Keywords:** constitution, Nigerian's struggle, nationalism, document, British rule, imperialists, attorney general, commissioners, conferences, order in council

### **Introduction**

This period of constitutional development in Nigeria, was a period of intense political pressure by Nigerian Nationalist agitating for political freedom on British imperial colonialists. Before now there was no consultation with Nigerians regarding the type of constitution they should have, but this phase witnessed a change in the ways and manners Nigerian constitutions were drawn out. It was a period that some Nigerians for the first time were given a say on the type of constitution that would govern them. What is however unique in this phase is that it brought with it a new approach to Constitution making in Nigeria. From this period onwards, it ceased to be the responsibility alone of the British officials and became a matter of joint efforts of both the British and the Nigerian politicians and this period also witnessed different attempts that were made to come out with the most suitable constitution for Nigeria. The first constitution of this period was the Macpherson Constitution of 1951.

### **The Macpherson Constitution (1951-1954)**

The Macpherson constitution was an important constitution for every Nigerian because it gave Nigerians their first opportunity of expressing themselves on the type of constitution that they wanted. This constitution according to Awa<sup>[1]</sup> was achieved in various stages and it began with the setting up of a Select Committee of the Legislative Council to review the 1946 Richard's constitution. The committee was made up of all the un-official members of the Council (all Nigerians), the three Provincial Chief Commissioners, the Attorney General, the financial secretary and the Chief

Secretary, who was the chairman. The basic aim of the committee was how to involve Nigerians in the making of this constitution and how best to achieve this review and consequently the problem was eventually resolved at Ibadan conference where it was agreed that a series of questionnaires be drawn out that should be submitted for public discussion and comment at various levels. The first was at Village and District meetings, and then at Provincial and Divisional Conferences, followed by Regional Conferences and Lagos and Colony Conference, rounding up with a General Conference.

The constitutional drafting process as noted by Ezera<sup>[2]</sup> took place between 1949-1950 and at Ibadan general conference a draft proposal was adopted and the draft was finally adopted by the Select Committee of the Legislative Council and the Full Council before it was sent to the Secretary of state for the Colonies for his approval. In his despatch to the governor dated 15<sup>th</sup> July 1950, the Secretary of state gave general approval to the draft proposals. The draft finally formed the basis of the new Constitution in the form of Nigeria (Constitution) Order in Council of 1951. The new constitution enthused Awa<sup>[1]</sup> provided for a unicameral legislature, known as the House of Representatives. Under this constitution, opined Joye and Igweike<sup>[3]</sup> the advisory and deliberative provincial Councils of the previous Constitution now acquired independent legislative power within certain fields defined in the third schedule. They were also empowered to legislate on any matter declared by any law of the House of Representatives, as the former Legislative Council was now called, to be within the competence of the legislature of each

region, as the provinces were now called. The governor was empowered to make laws for the peace, order, and good government of Nigeria, with the advice and consent of the House. The specific organ for formulating policies was the Council of Ministers whose advice the governor was to follow on all matters in which he did not have discretion (Nigerian Constitution, Order in Council 1951). The public service and the judiciary were left at the centre, i.e., in the hands of the central government and not regionalized.

The membership of each Regional House of Assembly was made up of: 80 elected, 4 ex-officio and three special members in the Western Region, in the Eastern Region, there were 80 elected, 5 ex-officio and 3 special members, and in the Northern Region, 90 elected, 4 ex-officio and 10 special members (Nigerian Constitution, Order in Council, 1951). In each Region an Executive Council was established and also a lieutenant- Governor appointed. Each executive council consisted of the lieutenant- Governor as the president, 6 ex-officio and 9 other members appointed by the Lieutenant Governor from the Regional House of Assembly. A House of Chiefs was also created for the first time in the Western Region, consisting of the Lieutenant Governor as the president, 4 Chiefs and 3 ex-officio members (Nigerian Constitution, Order in Council, 1951).

This Constitution enthused Awa (1964) was a political landmark for Nigerians because it helps set the agenda for political independence. It offered Nigerians their ever to participate in the framing of the constitution under which they were to be governed first opportunity. The constitution was a reflection towards a shift to regional government as against the unitary form of government before it, which was resented by most nationalists, such as Awolowo, Saruana (Ahmadu Bello) and Azikiwe. Perhaps more important, was that the Regions ceased to be a mere a there was a further constitutional conference held in London to trash out yet another constitution administrative units to become political entities, each vested with both executive and legislative powers in respect of specific area of the country and also for the first time ever, both the Central and Regional Houses of Representatives became composed of elected majority but also of elected Nigerians, also the Regional and Central Executive Council became the principal instrument of policy, subsequently replacing the distasteful autocratic rule of the Governor and that of his officials with a rule of the elected representatives of the people, but the reserved legislative powers of the governor was still intact.

This Constitution nevertheless gave birth to many political parties that sprang up during and after 1951 and these parties played a very important role in asserting the pressures that bear upon the bringing down of the subsequent constitution.

### **The Lyttleton constitution (1954-58)**

This Constitution worked fairly smoothly until 1954 when, referred to as the Independence popularly came to be depicted as the Lyttleton Constitution named yet after the brain behind the constitution. In 1957, Joye and Igweike<sup>[3]</sup> there was a constitutional conference that was convened in London in 1957 that was attended by the leaders of the three main Nigerian parties, who by now had consolidated their regions and wielded so much political powers at regional level at the

expense of the centre. The regional government, apart from their leaders were also represented by a further ten delegates. However, the Federal Government (Centre) was, represented by the Governor General, the three regional Governors, the high commissioner of the Southern Cameroons, two Federal Ministers and the leader of the Opposition in the House of Representatives. The Capital Territory of, Lagos was represented by two delegates while the United Kingdom was represented by the Colonial secretary, who also acted as the chairman, also the United Kingdom had ten delegates and nine advisers.

In that conference opined Joye and Igweike<sup>[3]</sup> the Leaders of the three main Political Parties and the leader of the Government Business in the Southern Cameroon put forward a memorandum to the Colonial Secretary independence for Nigeria in 1959, but this was flatly rejected by Colonial Secretary, he nevertheless, said that any request for Independence for 1960 will be considered, if so requested by the House of Representatives which will be elected in 1959. Before the conference started a thirteen point demands of political importance were put forward and approved.

They were that: 1. The Western and Eastern Regions should become self-governing immediately after the conference and Northern Region at a later date in 1959; 2. that the Governor should cease to preside over the executive Councils though they would be informed of the Executive Council decisions; 3. That a Regional Governor should continue to be appointed by the Crown on the advice of the British Government, but after informal consultations with the Regional Government concerned; 4. That a Regional Governor, in his discretion, should appoint as Premier the person appearing to him to command a majority in the House Of Assembly concerned and on the Premier's recommendation should appoint other Ministers and assign responsibilities to them; 5. That the Constitution should be amended to provide for safeguards to ensure that on the attainment of self-government, a Regional Government did not act as to endanger Governor of the Federal Government of its functions; 6. That the Eastern Region should have a House of Chiefs with powers similar to those of the Western House of Chiefs and that a satisfactory formula for the classification of Chiefs in the Region should be evolved; 7. That the status of the Southern Cameroons should be raised to that of a Region but with the Governor-General retaining ultimate responsibility as a trust territory while the Northern Cameroons should continue to remain part of the Northern Region; 8. That the existing Federal Legislature should be allowed to run its full term until the end of 1959 and that thereafter it should consist of 320 elected representatives; 9. That a second chamber to be known as the Senate should be established in the Centre, consisting of twelve members from each Region including the Southern Cameroons, four from the Federal territory of Lagos and four special members; 10. That the office of the Prime Minister of the Federation should be established and that the Governor General as the Prime Minister a person who appeared to him to command a majority in the House of Representatives and upon the recommendation of the Prime Minister any member of the House or of the Senate as a Federal Minister; 11. That the Governor-General, and in his absence the deputy, should continue to preside over the Council of Ministers until

independence, when the Prime Minister should take over; 12. That the Council of Ministers should henceforth consist of no more than ten members excluding the Prime Minister and the three ex-officio members being the Chief Secretary, the Attorney-General and the Financial Secretary until independence, when these should cease to be members; 13. That, a small number of changes, on the existing 'Legislative List' should be made (Report of the Nigerian Constitution Conference, 1957, cmd 207).

There was mixed reaction by the politicians and the public at large, when the news that independence which the Nigerian's representatives in London Conference had requested for 1959 had been refused for a later date of 1960. But there were two important political developments that resulted from that conference, first, on 8 August 1957 both Western and Eastern regions of Nigeria became self-governing and secondly the Office of the Prime Minister was created.

Under this Constitution, the Nigeria semi-federal system, which the Richard Constitution started, was expanded. The constitution according to Osaghae<sup>[4]</sup> extended the previously semi-autonomous regions into a super regions which was politically and economically stronger than the centre and also making each region to have their marketing board, separate regional revenue resources, separate election for regions and federal. There were provisions for each region for separate public services, judiciary and a governor replacing former Lt Governor. Also under this constitution, as earlier said above for the first time in 1957 the office of the Prime Minister was created at the centre and the deputy leader of the NPC occupied the office, as the leader of that party was not keen at leaving the regional power base for a weak centre. With independent date for Nigeria approaching a new constitution had to be thrashed out to reflect the trend of time as Nigerians intensified their independent political demands. This led to Robertson Constitution of 1958 otherwise known as Independent Constitution.

### **The Robertson Constitution (1958-1960)**

This Constitution was conned the 'Independence Constitution' a conference was convened in London in 1958 and about 114 delegates according to Joye and Igweike<sup>[3]</sup> were in attendance. At the conference the ethnic minority's representatives made their fear of ethnic majority dominance after independence known and demanded as they had always agitated for, the creation of more regions in Nigeria before independence. The Regional imbalance with three main ethnic groups, the Hausa in the North, the Ibos in the East and the Yorubas in the West created undue fears, for, the East and the West felt threatened by the preponderance of the population of the North, while the minorities also at the approach of independence did not feel sufficiently safe at the hands of the various Regional Governments once the paternalising hands of the British colonial administration were withdrawn. The position is that Nigeria was reminiscent of this description in 1957. The uncomfortable fusion caused by the structural imbalance was causing strains and stresses. There were cries to the British government for the creation of more regions by the ethnic minorities, but to no avail. The British Government, decided to set up a Commission under Sir Henry Willink as the chairman, to look into the minorities fears and the means of

allaying them. The commission has reported thus:

In each region we came to the conclusion that – on its own merits – a separate state would not provide a remedy for the fears expressed; we were clear all the same that, even when allowance had been made for some exaggeration there remained a body of genuine fears and that the future was regarded with real apprehension (Report of the Commission appointed Enquire into fears of the minorities and means of alleviating them, 1958, cmd 505)

The British Government had only agreed to adhere to the demand for more regions only if independence for Nigeria will come at a later date other than 1960 that had been thrashed out for independence. In the end this was considered too much a sacrifice for obtaining independence by the three major political parties leaders, (N.P.C., A.G., and N.C.N.C.) and therefore decided that the creation of more regions be left for the time being and to be an internal matter to be addressed after independence. At the end it was agreed that a list of fundamental human rights should be written into the constitution to protect Nigerian citizens against arbitrary abuse of power by government, it was also agreed that the Northern Region become self-governing on 15<sup>th</sup> March 1959, while independence for the whole country should be on 1<sup>st</sup> October 1960. Other decisions concerned Revenue allocation, creation of new Regions and boundary adjustments after independence, Amendment to the Constitution and the status of Southern Cameroons that was then ruled as part of Nigeria. The Robertson Constitution of 1958 added some structural refinement to the constitutional edifice: a bicameral legislature and a judiciary with powers, inter alia, to pronounce on constitutional matters and on inter regional and federal regional disputes. (Report of the Resumed Nigerian Constitutional Conference. London, cmd 569)

It was this agglomeration of colonial constitutions with its, to some extent, jerry built and ad-hoc provisions that, with minor modifications became Nigeria's independence Constitution of 1960. Special provisions were made to entrench the more important sections of the constitution – for example, liberal rights, federalism, powers of the highest officials and creation of new regions- by making the amendment procedure subject to two third majorities in both legislative houses and pre-supposing the assents of at least two of the three Regions. By 1960 this constitution ceased to be a working legal document for Nigeria as Nigeria attained Independence and a new Constitution had to be written to usher the country in Independence, thus a new era of constitutional development was came into being in Nigeria and I will now analyse the form this development takes.

### **Summary**

The Nigerian Constitution development started right from the inception of the British imperial government sets its foot in Nigeria. Once the agreement of Lagos was signed by the then British Consul Bruce and Chief Akintoye of Lagos, the faith of the people now known as Nigerians were sealed and was in the hands of the British colonial administrators. Unlike the post colonial constitutions, the Nigerians had no authorship of the constitution that was meant to govern them. Therefore to have the authorship of their constitution they must be involved in the development, making and enactment of their

constitution, through debates, suggestions, and acceptance of the final draft either in a referendum or in an opinion poll. This was further complicated and made matter worse for Nigerians when two types of constitution prevailed in Nigeria during this time, the indirect rule and direct rule. This is what Awa (1964) referred to the Dual Mandate. The Southern part of Nigeria was ruled by direct rule whilst the Northern part of Nigeria was indirect rule. What could be more catastrophic for Nigeria when they finally got their quasi freedom and enacted a constitution that ushered them in independence? The constitution enacted in 1959 that ushered Nigeria to independence in no doubt brought together peoples of different constitutional and political ideology, a move which has continually abrupt all Nigeria's constitutional enactment. As revealed in this article the British constitution as an instrument of governance in Nigeria was quite often short lived and during their over bearing stay in Nigeria developed and enacted not less than seven constitutions for Nigeria. One would continue to imagine whether this anomaly have had a spill off effect on Nigeria's to develop and enact its constitution. Nigeria since its independence in 1960 has developed about nine constitutions. Considering that the American constitution has lasted the cause of time with the exception of some amendments over its life span and that the British have no formal written constitution this analogy would appear to be right.

#### **Acknowledgment**

Imuetinyan Press John Ugiagbe was the Managing Director of Pressway Global Ventures INC Ltd. He has lectured in the UK Colleges and Universities for 12 years He is now a lecturer at Igbinedion University, Okada, Nigeria. He holds a number of academic, professional and vocational qualifications. He is a graduate in Economics (BA, Hons), from Wolverhampton University, a graduate in African Studies (BA, Hons) from Birmingham University and a graduate in Law (LLB) from S'ton Solent. He holds a Dip.BA (finance and marketing) from the University of Aston in Birmingham, and a MBA, De M'Fort University and a Certificate in Education (Garnett College). He also holds the Chartered Institute of Marketing Diploma and Higher National Diploma in Business studies. He regularly writes for the Nigerian National News Papers, especially the (The Nigerian Observer). He is the author of a novel: A Journey's Path. He has a wide and varies research interests, which include: Fiscal federalism, Poverty alleviation, Constitution and constitutionalism, Marketing planning and ethical issues across the globe, Nigeria's social, political and economic development, qualitative methods in research

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