

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Constitutional Development and the Evolution of the Nigerian State Since 1914

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Abstract:

This paper examines constitutional development in Nigeria since the amalgamation of 1914 and the implication on the evolution of the Nigerian state. In that year, the Governor-General, Fredrick Lugard established the Nigerian Council with the aim of developing an intelligent public opinion for the administration of the country. The body which consisted of European majority and African minority, however, became a mere "debating club". Between that time and the 1st of October 1960, when Nigeria became independent, four other constitutions were introduced. The Independence Constitution which was engineered in the dying years of the colonial era lasted until the introduction of the Republican Constitution on the 1st of October 1963. Following the military take-over in January 1966, the 1963 Constitution was abrogated and the military took the centre stage in constitutional making process, which led to the emergence of the 1999 Constitution. Although all Nigerian constitutions have been criticized, as being either colonial or military imposition, the most opposed constitution is the 1999 Constitution which is in vogue, because of its "unitary" nature. Hence, it is viewed as anti-federal and unsuitable for a multi-ethnic society like Nigeria. This paper concludes that in view of the consistent rejection of the constitution, some of the contentious provisions should be amended at the interim by the National Assembly to reflect acceptable federal principles, after sometime, an "inclusive" constitution making process should be initiated by the Federal Government to formulate an acceptable constitution for the country that would engender national unity. The paper adopts a historical narrative method.

Keywords: Nigeria, constitution, development, state. Amalgamation, federalism

1. Introduction

Nigeria as a political entity is essentially a colonial "creation". It was the British colonial agents that made Nigeria to be one. Prior to the British imperialist adventure, there existed independent empires, kingdoms, chiefdoms, clans and other decentralized republican entities, with some interaction between them. The Hausa/Fulani peoples of the North lived under a highly centralized political system called the emirate, with the Emir being more or less an absolute ruler. In Yoruba areas in the West, there were various kingdoms headed by the Obas, who were constitutional monarchs, and ruled through a variety of council of elders and secret societies. The Igbo and the Ibibio areas of the Eastern part were organised under highly decentralised – republican system with the highest level of political organization rarely extending beyond villages and clans (Akpan, 2004).

The British influence in Nigeria began with the appointment of John Beecroft as the consul over the Bight of Biafra and Benin in 1849. Initially, Beecroft resided in Fernando Po, Equatorial Guinea, but after some time the headquarters of the consular administration area was transferred to Calabar. The activities of the consular agents resulted in the signing of series of treaties with the people of the coastal territories, the bombardment of Lagos in 1851, and its annexation as a British colony in 1861. After some time, Lagos was placed under the administration of a Governor in Sierra Leone and later under that of Gold Coast. In 1886, Lagos became an independent colony with its own Governor (Dode, 2008).

Three different authorities were at work to enable Britain effectively occupy Nigeria. They were the Royal Niger Company, the Colony and Protectorate of Lagos under the Colonial Office in London, and the Oil Rivers Protectorate, which was renamed the Niger Coast Protectorate under the jurisdiction of the Foreign Office in London. In January 1900, the Royal Charter empowering the Royal Niger Company to administer some parts of Nigeria was abrogated and the British government assumed direct administration over the area. From that period, there existed three territories governed by the British, namely: The Colony and Protectorate of Lagos, the Protectorate of Northern Nigeria and Protectorate of Southern Nigeria. In 1906, the British undertook the first amalgamation exercise by merging the Colony and Protectorate of Lagos with the Protectorate of Southern Nigeria and named it the Protectorate of Southern Nigeria, with Lagos as the capital. Finally, the amalgamation of the Northern and Southern Protectorates took place on the 1st of January 1914, under the supervision of Fredrick Lugard (Akpan, 1978).

In an attempt to administer Nigeria successfully, Lugard established the Nigerian Council, which has been regarded as marking the beginning of constitutional development in Nigeria. After 1914, other constitutions formulated by the colonial agents and military rulers were introduced in the country including the 1999 Constitution, which is the official legal document that directs governance in Nigeria at present. The 1999 Constitution has been criticized as an anti-federal document and a military imposition. The agitators have also called for the restructuring of the country by

embracing the devolution of power among other federal principles that would engender justice, equity and national development. The lacuna associated with the 1999 Constitution can be linked to the fact that it did not emanate directly from the people. As noted by Jega (2007), none of the several constitution making processes in Nigeria has been characterized by a popular participation. Reasons responsible for this include colonial and military objectives underlying such constitutional reviews, this has resulted concomitantly in the citizen's indifference to the process and their outcome since 1914.

In view of the contention generated and its implication on nation building, it has become needful to examine constitutional development in Nigeria since 1914, to ascertain the extent of the participation of Nigerians in the process since the constitution is meant to cater for the uniqueness of Nigeria as a nation (Thisday, 12th August, 2017).

2. The Concept of a Constitution

Generally speaking, a constitution is a statement that outlines the agreed basic principles of formal organizations, ranging from a national government to private clubs. It is the basic set of laws by which the people are governed. Thus, the constitution of a state is the body of rules and regulations, which determine how a state is governed. A constitution defines and establishes the principal organs of government. It defines the structure and functions of each organ of government and sets limits within which such functions are to be exercised; it spells out the inter-relationships among the organs. The constitution declares the principles, which regulate the operation of these organs and defines the bonds between the citizens and the state. Thus, the conditions for the exercise of legitimate power, those that should exercise political power, how it should be exercised and the limits of these powers are enshrined in a constitution. It is therefore inconceivable for a state to exist without a constitution (written or unwritten) defining the relationship between governors and the governed. The constitution of a state embodies the fundamentals of the political system. The fundamentals have the force of law, enforceable by the courts (Udokang, 2006).

Basically, the constitution ought to be the supreme law of political blueprint of the political system made by the people for the proper regulation and control of the society, as well as for the correct and orderly behaviour of the people in such a system. But the success of any constitution depends on the foundation upon which such constitution rests. This is so because a constitution does not command immediate respect, compliance and obedience. For instance, people are likely to withhold their support and respect for a constitution if they feel that their aspiration and interest are not well protected by the constitution. Since a constitution is a political document, it is therefore expected to cover and reasonably reflect the dominant political dispositions in the political system, failure of which may generate fear, distrust, frustration and alienation and may culminate in aggression. Those whose goals and aspirations are blocked and frustrated by the system are usually aggressive in nature and would eventually employ other constitutional means to register their grievances, and this could generate constitutional instability which then affects the stability of the entire political system (Abia, 2008).

3. Pre-colonial Constitutional Development in Nigeria

3.1. The 1914 Constitution

After the amalgamation of 1914, a machinery to enhance the smooth administration of the wide geo-political entity, known as the Nigerian Council was established. The council was made up of 24 officials and 12 unofficial members. There were six Europeans representing commerce, shipping, banking, mining, chambers of commerce and six Africans, consisting of important chiefs of Northern and Southern Nigeria (among whom were Sultan Attahiru of Sokoto, the Alafin of Oyo, the Emir of Kano, Chief Dogho Numa) and educated Africans from Lagos and Calabar. The officials included the members of the Executive Councils, First Class Residents, Political Secretaries of the Northern and the Southern Provinces (Olusanya, 1980; Abia, 2008).

One of the major criticisms against the 1914 constitution was that Africans were in the minority. Lugard even declared that the interest of the African population would be well protected by the European civil servants. In practice, its composition and functions showed clearly that it was a sort of European club for the gathering of European administrative officers, headed by the Governor-General himself and surrounded by hand-picked friends and supporters who were in Nigeria. The Nigerian Council was required to meet only once in each year. Resolutions passed by the Council were to have no legislative or executive authority. Thus, the body was purely a deliberative and advisory organ which did not enjoy any executive or legislative authority. It was simply a listening shop, a debating institution for the sake of debating and its advice could be ignored by the Governor General (Ayua, 1985; Abia, 2008).

Apart from the fact that it had no legislative power, the Council did not have any control over finance. One of the provisions stated that: "no resolution passed by the Council shall have any legislative or executive authority, and the Governor shall not be required to give effect to any such resolution unless he thinks fit to do so". One of the challenges that faced the body was that most of the traditional rulers, who were members, could not speak English and therefore could not participate in discussions. Naturally, they found proceedings of the Council boring and as a result, they hardly attended the meetings (Olusanya, 1980).

However, Abia (2008) opines that despite the ineffectiveness of this council, some advantages were recorded particularly in the centralization of departments or governments. For instance, there was a unified system of central administration: the military, audit, judicial, survey, railways, treasury, post and telegraphs, medical and public works, already in existence, were brought under the direct control of the Governor-General in Lagos. Also, general orders and principles of administration for the purpose of regulating the entire civil service in Nigeria were equally developed.

3.2. *The Clifford Constitution of 1922*

In the year 1922, a new constitution was introduced, known as the Clifford Constitution, after the name of Sir Hugh Clifford, who succeeded Lugard in 1919, and was the architect of the constitution. According to Olusanya (1980), Clifford was a fluent speaker and an able debater and could therefore not tolerate a "dead" legislative council. Moreover, he was of the opinion that good administration required an awareness of public opinion and noted that the Nigerian Council as constituted was incapable of serving as an effective medium of public opinion. Consequently, he abolished the Council and substituted it with a new legislative council whose jurisdiction covered the whole of the Southern Protectorate. The Clifford Constitution was particularly significant because it contained the principles of election. It provided for a Legislative Council consisting of 46 members – 27 unofficial and 19 officials. Four of the unofficial members were to be elected by an adult suffrage with residential qualifications of one year and a gross income of £100 per annum. Three of them were to represent Lagos and one, Calabar. The new constitution with its elective principle engendered the emergence of political organisations in the country. The most important of these organisations was the Nigerian National Democratic Party, led by Herbert Macaulay. However, the Legislative Council legislated for the Colony of Lagos and Southern Provinces, while the Governor made laws in the North by proclamation. An executive council was established for the whole country, but without a Nigerian member (Olusanya, 1980; Ayua; 1985).

The constitution had some defects. For instance, it had limited nature of franchise because the right to vote and be voted for was limited to the cities of Lagos and Calabar. Nigerians were not consulted before the constitution was enacted, also Nigerians were excluded from the executive council and the Governor exercised unlimited power. Consequently, the Legislative Council became a "toothless bulldog". The constitution still encouraged the colonial policy of "divide-and-rule" and empowered one group to exploit and dominate the other groups under the watch of the Europeans. The Northern Protectorate was excluded from the Legislative Council and this isolation, in spite of the 1914 amalgamation, was a reflection of the "divide-and-rule" policy of the British colonial administration. Despite its demerits, the constitution lasted for the next 25 years.

3.3. *The Richard's Constitution of 1946*

The outbreak of World War II accelerated the pace of political and constitutional developments beyond what was experienced in the pre-war years. The weaknesses of the Clifford Constitution following the emergence of Nigerian nationalism gave birth to a political organisation, in 1944 known as the National Council of Nigeria and Cameroon (NCNC), later renamed the National Council of Nigerian Citizens, which played a significant role in the nation's history. The Richard Constitution (although conceived by Governor Bernard Bourdillon got the name from Arthur Richard who was the Governor when it was introduced) came into force on the 1st of January 1947.

The Constitution was designed to promote the unity of Nigeria and to secure greater participation of Nigerians in their own affairs. Under the proposals, a new legislative council whose jurisdiction was to cover the whole country was established. The new council was enlarged both in membership and in scope. There were to be 41 members, 28 of these were to be unofficial members. Four unofficial members were to be elected from Lagos and Calabar on a franchise of £100 and £20 respectively, the rest were to be selected by the Regional Councils to be set up in each Region under the new constitution. The remaining four members were to represent banking, shipping and commerce. The Regional Councils were to consist of members elected by the Native Authorities. This was an ingenious attempt to link the indirect rule system of administration to the Crown Colony System. These councils were to possess no legislative powers but only a limited financial power (Coleman, 1958; Olusanya, 1980).

The constitution brought the North and South together under one Legislative Council which was a clear departure from the 1922 constitution. For the first time also, an African unofficial majority emerged at the central legislative council. Moreover, the nature of the constitution and its practices allowed for increased nationalist activities, because the emergence of the NCNC in 1944 helped in exposing the defects of the constitution, which, in the long run, created the need for change. The constitution also helped in building a bridge between the North and South, hence it could be described as an adumbration of a federal constitution (Abia, 2008).

The Clifford's Constitution had some demerits. For instance, Nigerians were not consulted in the course of drafting, therefore, the document was regarded as an imposition. The unofficial majority in the Legislative Council was rendered useless, mainly because the Governor still retained the power to veto proposals initiated by the council. The majority of the unofficial members were nominated by either the Governor or the chiefs who were loyal to the colonial authorities. In addition, the elective principle (franchise) introduced by the Clifford Constitution of 1922 was still being limited to Lagos and Calabar; hence, the participation was still limited. The constitution introduced regionalism which created room for the dominant ethnic nationalities in each of the three regions to dominate the minority groups, in addition, the emerging political parties were regionally based (Abia, 2008).

3.4. *The Macpherson Constitution of 1951*

Sir Arthur Richards (later Lord Milverton) of Bristol and Lagos, retired in 1947 as the Governor of Nigeria, was succeeded by Sir John Macpherson in 1948. Before this time, there was already a widespread dissatisfaction with the Richard's Constitution, particularly because of the non-involvement of Nigerians in its making. The campaign against changes in the constitution was spearheaded by Dr. Nnamdi Azikiwe of the NCNC. Dr. Azikiwe later led a delegation of some Nigerian nationalists to London to protest to the then Secretary of State for the Colonies, Mr. Arthur Creech Jones, but Mr. Jones turned down the petition of the Nigerian delegation and merely advised the Nigerian leaders to return home and cooperate with the British administration in ensuring the success of the constitution (Ojiako, 1981).

Before the introduction of the constitution, Nigerians were, for the first time, given an opportunity to choose the type of the constitution they wanted. Thus, the widest spectrum of public opinion was consulted at every level of the Nigerian society. Under this constitution, a central legislature and central executive council were established for the whole country. The central legislature called the House of Representatives consisted of 142 members (136 Africans and 10 officials). The constitution also established the three regions – Northern, Western and Eastern-a regional legislature and a regional executive council. In the Northern and Western regions, the legislature consisted of two chambers – House of Assembly and House of Chiefs-while in the Eastern Region, there was only one chamber. In the political history of Anglo-Nigeria relations, the Macpherson Constitution was the first attempt to venture into the field of federalism and Nigerians themselves actually devised the new structure. This structure so put in place involved the establishment of quasi-autonomous regions and the devolution of powers from the central government to the regions. For the first time too, Nigerians were appointed ministers at both central and regional levels without portfolio (Ayua, 1985; Udoma, 2008; Abia, 2008).

Ayua (1985)notes that although the Macpherson Constitution of 1951 made a considerable advance from the previous constitutions, it was at the end of the day unsuitable to the prevalent conditions in the country. Being basically a unitary constitution with extensive authority of the central government and its powers of control over the regions, it could not function well in a big country like Nigeria with diverse communities of different cultural backgrounds and more so in a setting of inter-regional friction as there were burning desires for regional autonomy with each of the regions being dominated by an over-bearing ethnic group and political party. There were evidences of tension in the country, such as the Eastern Regional crisis of 1953. Another serious national incident occurred when the date for Nigeria's independence was discussed in the House of Representatives. This sparked off a crisis in the parliament as there was a sharp disagreement as to the timing of Nigeria's independence between representatives from Southern and those from Northern parts of the country. This led to the breakdown of the Macpherson Constitution and its replacement with the Lyttelton constitution in 1954.

3.5. *The Lyttelton Constitution of 1954*

The Lyttelton Constitution of 1954 was the first constitution in Nigeria that was not named after a colonial Governor of Nigeria, but someone outside of Nigeria. It was named after Mr. Lyttelton, who chaired the 1953 London and 1954 Lagos Constitutional Conferences, which produced the constitution and also because of his immense contributions in terms of ideas and given his position as the overseer of the affairs of all colonial territories. The constitution introduced "true federalism" in Nigeria. Each of the regions was granted greater autonomy and independence from central control. The provision of earlier constitutions which required regional legislation to pass through the central Council of Ministers and legislature was abolished. Directives were no longer to flow from the central legislature to the regional legislatures. The regions were given residual powers; both the federal and regional government were given exclusive powers. But in case of conflict on concurrent power, the federal laws prevailed over the regional laws (Udokang, 2006).

However, despite its strong points, the constitution had some demerits. For instance, the Council of Ministers as a policy making and implementation instrument was presided over by the Governor-General up to 1957. The failure to break the Northern part of the country and create more regions did not assuage the minority aspiration because this was inconsistent with a federal government to have one component unit of the federation (the North) larger in size and representation than the other components combined. The absence of a second legislative chamber at the centre crippled the efficacy of the constitution. In line with the principles of federalism, the second chamber was imperative to balance the minority interest; moreover, the northern part of the country with the highest population claimed more seats in the single legislature at the expense of the minority. This imbalance tended to result in ethnicity, wrangling and parochialism (Udokang, 2006).

As can be seen from the discourse, constitutional development in Nigeria during the colonial period witnessed at early stages the Governor's Constitution which were imposed by the British government on the Nigerian people, and then the gradual and progressive relaxation of imperial control in Nigeria through later constitutions which attempted to get Nigerians involved in the administration of their country. The fact, however, remains that Nigerians had very little experience in the art of self-government as they were not really brought into the mainstream of political administration until much later. The British government therefore created and left behind a political class whose horizon did not extend beyond acquiring political power and fighting tooth and nail to preserve it without any meaningful coherent policy for its exercise (Ayua, 1985).

4. Post-Independence Constitutional Development in Nigeria

4.1. *The Independence Constitution of 1960*

The House of Representatives, which was elected in December 1959 at its first meeting held in January 1960, passed a resolution requesting her Majesty's Government to introduce a necessary legislation to enable Nigeria become an independent sovereign state with effect from 1st of October 1960. This resolution was endorsed by the Senate. The Independence Act was accordingly passed by both Houses of British Parliament in July 1960 and received the Royal Assent on the 29th of July of the same year. Nigeria therefore attained independence and became a member of the Commonwealth on the 1st of October 1960. The relationship between Nigeria and the British government was thus redefined by the 1960 Constitution. The powers of the British Parliament to legislate for Nigeria were terminated and the responsibility of the British government for the administration of Nigeria also ceased (Ayua, 1985).

Ayua (1985) notes further that the 1960 constitution emanated from Britain with the stamp of Westminster even though its framework was decided upon by the Nigerians themselves. Apart from this, the independence constitution did not bring about radical and complete severance or break from Britain. Thus, the Queen of England was still Queen of Nigeria and internally, the government was still "Her Majesty's Government". The constitution provided various ways in which the sovereignty of independent Nigeria, which was formally vested in the Queen, should be exercised. Nigeria's sovereignty was divided between three Regional governments and the Federal government. Because the Queen was an absent sovereign, she was represented in Nigeria by a Governor-General at the centre and by Governors at the Regions. The Queen was responsible for law making in Nigeria with the various legislative houses acting in conjunction. Her role was to assent to bills passed by the legislative houses. Her assent therefore had the effect of transforming a bill into binding laws.

The constitution provided for bi-cameral legislature at the centre, the Senate and House of Representatives. Each region was to have a House of Assembly and a House of Chiefs. Legislative powers were divided between the federal and regional governments. The federal government had exclusive powers to legislate on certain matters (44 items in all), such as external affairs, defence, deportation, extradition, police, exchange control, passports and visas, railways, currency, coinage and legal tender, etc. The other list contained concurrent issues that could be legislated upon by both the federal and regional governments. It also provided for the first time, a list of fundamental human rights and the recognition of the worth of human beings. This was in accordance with the models laid down in the 1948 Universal Declaration of Human Rights and the 1950 European Convention on Human Rights. These rights included freedom of expression, freedom of conscience, freedom of movement etc. It also made provision for and defined citizenship of Nigeria (Udokang, 2006).

The independence constitution gave the Supreme Court the power of judicial review, i.e., it empowered the Supreme Court to declare any act of the executive, the federal and regional governments that contradicted the constitution as null and void and of no effect. However, the Judicial Committee of the Privy Council in London was still the highest court of appeal. The constitution provided for a state of emergency; it granted the federal (legislature) government power over emergency situations to be exercised by 2/3 majority of the members of the parliament. Meanwhile, the constitution was rigid and fashioned after the British parliamentary system (Udokang, 2006).

As observed, the constitution afflicted Nigeria's sovereignty with colonial dictatorship because the Queen of England remained the head of the Nigerian government and as such wielded enormous power, sufficient to dictate the pace of political development in the country. The role of the Queen made it impossible for Nigerians to pursue, without interference, its economic, political and constitutional matters. The dissatisfaction engendered by this incompatible and eroding situation influenced the process which led to the constitutional reforms in 1963 (Akpan, 2008).

4.2. *The 1963 Republican Constitution*

The National parliament enacted the Republican Constitution, which became effective from the 1st of October 1963. The Queen of England was no longer the Head of State nor did she form part of the legislative houses of the federation. The monarchical (Westminster) system was replaced with a republican system of government, where the people had supreme power to elect their own head (President) and the government was free from external control in the act of its governance and administration. However, the Republican Constitution readopted most of the provisions of the independence constitution and also introduced some new ones, both in terminologies and substance. Dr. Nnamdi Azikiwe became the indigenous ceremonial Governor-General of Nigeria.

The 1963 Constitution was the only constitution ever written by and enacted by the Nigerian people through their representatives in the parliament (The Punch, 4/8/17). By its provision, the judicial committee of the Privy Council ceased to be Nigeria's highest court of appeal. Such role was ascribed to the Supreme Court. Other strong features of the constitution included the powers of the constituent units to substantially control their resources and pay prescribed taxes to the central government. Section 5 of the 1963 Constitution made provision for the existence of regional constitutions, state police, separate coat of arms and motto, separate semi-independent Mission in the United Kingdom, headed by "Agents-General" and revenue was based on derivation principle. There was an exclusive list with 44 items. These were predominantly items which were perhaps centralized in the common interest of the federation. They included defence, deportation, passport and visa, currency, coinage and legal tender, customs, nuclear energy etc. (Odje, 2002; Udokang, 2006). Because Nigeria operated "true federalism" at that time, the constitution described each region as "a self-governing Region of the Federal Republic" and created a federal "state" with limited powers (www.restructing.ng/nigeria-federalism-constitution-hisoric. accessed 11/8/17).

4.3. *The 1979 Constitution*

After the Nigerian Civil War, military rulers reacted negatively to the earlier dualistic federalism of the 1960s and its weak federal government which they felt had encouraged secessionist bids from sub-national governments. Under the inspiration of successive military governments, the objective of subsequent constitutions had been to strengthen the central government. The 1979 Constitution was a product of a Constitution Drafting Committee consisting of 49 "wise men", whose draft was debated and subsequently ratified with amendments by a member Constituent Assembly made of 230 members. In the process, the outgoing military regime considered certain sections to be in the interest of the nation and entrenched them. For example, the Land Use Decree vesting ownership of land in government on behalf of the people was entrenched in the constitution in spite of opposition to it (Elaigwu, 2004).

The constitution introduced a presidential system of government for the first time in the country. The president was to be elected by the electorate for tenure of four years but not exceeding two terms. There was provision for a

bicameral legislature at the centre consisting of the Senate and the House of Representatives to make laws for the entire nation. The state Houses of Assembly were unicameral and made laws for the states. The 1979 Constitution transferred powers from the concurrent lists of the 1960 and 1963 constitutions to its exclusive list. Consequently, the exclusive list contained 66 items (Odje, 2002). Even though its merit could be linked with the principle of separation of powers, it had some demerits, which lay in its applicability to real situations, and therefore placed question marks on certain provisions of the constitution. For instance, the provision for a federal character, citizenship, code of conduct, presidential powers, fundamental human rights and supremacy of the constitution left much to be desired than mere mention in the constitution. E.g. the federal character provision, at least in respect to the way it was implemented tended to substitute mediocrity for merit in admissions, appointment and allocation of resources of the federal government. Added to this was the enormous power which the constitution granted the President with the tendency of turning him into a despot; the principle of separation of power was feeble in its application as there were cases of jurisdictional conflict and excessive loyalty towards the protection of party interest. Its end came with the demise of the Second Republic following the military take over on the 31st of December 1983 (Udokang, 2006).

4.4. *The 1989 Constitution*

In 1987, the military government, headed by General Ibrahim Babangida, set up a constitution review committee to review the 1979 Constitution. A Constituent Assembly was inaugurated to debate the draft constitution. Babangida identified areas not open to debate in the constituent assembly. These included (1) federalism as a form of government, (2) the injunction against the adoption of a state religion, (3) the creation of states, the alteration of boundaries and local government, (4) presidentialism, (5) a two-party system, (5) the continuation of "the ban or disqualification placed on certain persons from participation in politics", (7) belief in basic freedom, including freedom of the press. The 1989 Constitution was modeled on the 1979 Constitution, but with some amendments. The constitution which was supposed to have become operational from the 1st of October 1992 was operated piece meal. For instance, while there were elected civilian state governors, local, state and national legislators, the military held sway at the federal level; this rendered the elected representatives powerless and therefore the Third Republic became ill-fated (Udokang, 2006, Elaigwu, 2004).

4.5. *The 1999 Constitution*

Following the annulment of the June 12 presidential election, purportedly won by Chief Moshood Abiola, and the exit from power by General Babangida, an Interim National Government headed by Chief Ernest Shonekan, was put in place. On the 17th of November 1993, General Sani Abacha sacked the Interim National Government and became the military Head of State. On consolidation of power, Abacha decided to produce a new constitution to usher in the Fourth Republic in Nigeria. This resulted in the establishment of a Constitutional Conference Commission in 1994, with the responsibility of organizing a national conference, which was inaugurated in June 1994. The delegates were handpicked from wards and district levels while the government nominated 96 persons to the conference. Many vital issues bordering on the corporate existence of Nigeria were discussed. They included: rotation of power, new revenue sharing formula, equitable sharing of power through federal character and zonal arrangement of the country into six zones. The draft was never promulgated into law because of the sudden death of Abacha on the 8th of June 1998 (Jega, 2007).

Abacha's successor, General Abdulsalami Abubakar established a 25-member Constitution Debate Collating Committee in November 1998 to review the 1979 Constitution and other constitutions and came up with a new draft constitution. Without adequate consultation, the 1979 Constitution was "renovated" and dusted off to create the 1999 Constitution. However, elected officials and Nigerians did not see this document until after the elections during the hand-over process. (Elaigwu, 2004).

5. An Assessment of the Nigerian Constitutions

As noted, the Nigerian Council which was introduced by Lugard was regarded as a "debating club". The body had European majority and its decisions were not binding on the Governor-General. The Clifford's Constitution was an entirely British colonial document, initiated without the consultation of Nigerians. Indeed, Governor Hugh Clifford rationalized this exclusion of Nigerians by claiming in 1921 that there was not any group from which he should seek its views. In the similar vein, the Richards' Constitution was introduced without prior consultation with Nigerians. The lack of consultation before the making of the constitution resulted in its vehement rejection by the nationalists spearheaded by the NCNC. In a bid to avert the challenges associated with the Richards' Constitution, series of conferences preceded the making of the Macpherson's Constitution of 1951. However, constitution was regarded as quasi-federal. Moreover, its provisions were believed to have been deliberately fashioned to favour a section of the country. In the process of making the Lyttelton's Constitution, the colonialists reverted to a relatively closed and less inclusive process of constitutional review by negotiating with the elitist class of representatives of political parties in London in 1953 and 1954. In 1957 and 1958, the same method was adopted in the review process that resulted in the 1960 Independence Constitution. The 1963 Republican Constitution review process followed the same method (Coleman, 1958; Jega, 2007; Abia, 2008).

In 1976, as part of its transition programme to civil rule, the Murtala/Obasanjo regime initiated a constitutional making process which was essentially elitist and partially exclusive. First, it set up a constitution drafting committee of 49 "wise men" mostly lawyers, academics and professionals; then established a Constituent Assembly to debate and approve the draft constitution. The constitution that emerged from the Constituent Assembly was subject to further review and amendment by the Supreme Military Council, which issued a decree to bring it into effect after some amendments. Substantially, the process of formulating the 1979 Constitution was relatively more open, democratic and less remote-

controlled by the military than the 1989, 1994 and 1999 processes. In the case of the Abacha, after the constitutional conference had submitted its report, he appointed another constitutional review committee, consisting of about 40 persons, to rework the report and make it agreeable with his (Abacha's) self- succession agenda. After this committee had finished its assignment in 1997, its report was subjected to another review and reworking by a small group of close advisers to Abacha. The committee had barely finished its assignment when Abacha died in June 1998. Thereafter, when General Abubakar took over power, there were reports of the existence of two drafts of the 1999 Constitution (Jega, 2007).

According to Jega (2007) and Elaigwu (2004), the 1999 Constitution, which is in operation today, is a product of a highly exclusive, hurried and closed process of review and re-drafting of the constitutional conference's original version. The Abdulsami Abubakar's regime, which was in a hurry to hold elections and hand over power within the short time frame it had set for itself, proceeded to rely on a very small circle of advisers and experts in conducting the review, which was primarily conducted by the Provisional Ruling Council itself through a series of meetings. Based on the circumstances of its making, some Nigerians believe that this constitution suffers a crisis of ownership. The document was designed under the tutelage of the military to enhance the pursuit of its "centralist agenda".

One of the inherent contradictions in the Nigeria's federalism is the adoption of the present 774 Local Government Areas as part of the federating units. This is a clear breach of Chapter 1, Section 2 (2) of the constitution, which states expressly that: "Nigeria shall be a Federal Republic consisting of States and a Federal capital Territory". This aberration confers political and fiscal advantages on a section of the country, which is not willing to give up. Thus, inequality is entrenched in the polity with all its obnoxious consequences. The 2014 political conference saw this as a rampart against national unity and nation building. It therefore recommended that the councils be removed from the constitution, just as it demanded that the 68 items in the Exclusive Legislative List be pruned as a foundation for restructuring the federation. The fact that the federal government is granted enormous constitutional responsibilities makes it possible for it to currently take 52.6 percent of monthly allocation, apportion 26.72 percent to the states and 20.6 to Local Government Areas(The Punch 7/8/17).

It is on the basis of this "centralist" perspective that there have been consistent calls for the practice of "true federalism". One of such advocates is Bisi Akande, a former Governor of Osun State and a chieftain of the ruling All Progressives Congress. He recently observed that:

The 1999 Constitution...will aid the disintegration of Nigeria rather than make it to progress. It is the source of Nigeria's under development, amending it would not bring any good result, rather, be discarded entirely. The constitution can never be beneficially reviewed and the ongoing piecemeal adjustments can only totally blot the essence of national values and accelerate the de-amalgamation of Nigeria. It should be scraped as a bad relic of military mentality; and it ought to be temporarily replaced with the 1963 Constitution to enable a transition for the writing of a suitable one. Otherwise, the document would continue to dwarf Nigeria's economy and stifle the country's social structure pending a disastrous and catastrophic bankruptcy.... The 1999 Constitution is Nigeria's greatest misadventure since Lugard's amalgamation of 1914. It places emphasis on spending rather than making money, thereby intensifying the battle for supremacy between the legislature and the executive, while the judiciary is being corruptly tainted and discredited. It breeds and protects corrupt practices and criminal impunity.... (The Punch, 4/8/17: 9).

6. Conclusion

This paper has examined the evolution of Nigerian constitution since the amalgamation of 1914. The Nigerian experience in the constitution making shows that the process has been elitist rather than popular, and much more exclusive rather than inclusive. This could be attributed to the fact that until recently, the processes have been initiated, controlled and directed by either the colonial masters or military rulers. Secondly, these initiators usually had pre-conceived motives of what outcome was expected. Third, especially under military rule, the process had mostly been the context of a carefully controlled or manipulated political atmosphere. Since the people themselves are yet to fully participate in constitutional making process, they have consistently had issues with each of the constitutions in the country. Particularly, the 1999 Constitution is viewed by many Nigerians as the greatest misadventure since Lugard's amalgamation of 1914, because it puts emphasis on spending money rather than making it (Jega, 2007; The Punch, 4/8/17).

In recent times, people all over the world have come to realize that democratic mode of governance based on a credible constitution, made by genuine representatives of the people, and with active participation of the people in the process is the best option for meeting the people's basic needs and aspirations, as well as building stable polities. Undemocratic and unconstitutional modes of rule had led to reckless misrule and underdevelopment and virtual destruction of social, political and economic foundations of political economy of most post-colonial countries, especially those in Africa. Greater attention is being paid to constitutionality, supremacy of the rule of law and good governance. This in turn is possible only if the process of making or reviewing constitutions is broad-based, accommodative, consensual and transparent. The best way to make the constitution a workable and acceptable document is to ensure that many shades of opinion and interests are involved in its making. It is in this sense that the process of bringing about a constitution is important as the end result (Jega, 2007).

There is need to make a clean break with the past and bring about, through popular participation, a constitution that all Nigerians would be proud of and would claim as their own because they would have been involved in its making process. It is necessary that the constitution is derived from maximum public participation and citizen's contributions

rather than the work of a select group of experts or even political party stalwarts. In other words, a bottom-up approach is most preferable in Nigeria's circumstances in order to avoid the pit-falls of the past experiences, which relied heavily on top-down approach. Vital issues such as revenue sharing, state police, and devolution of powers from the federal to states should be considered through the decongestion of the exclusive list and should be debated by the people themselves. Moreover, local government should be constitutionally empowered to function as autonomous centres of development (Jega, 2007).

The geographic and demographic size of Nigeria, its communal heterogeneity and complexity has made federal compromise both attractive and politically imperative. The logic of constitutional distribution of powers and responsibilities is essential to building a strong federation which does not suffocate constituent units, while being able to keep the complex nation together. In the interim, the National Assembly should gauge the mode of the nation, revisit the bill on devolution of powers to the states (which was recently thrown out) and amend the 1999 Constitution to accommodate it. After some time, the Federal Government should initiate a process for the drafting of a new constitution in which the majority of Nigerians can make inputs and accept the new constitution as their own. Efforts should not be spared building and sustaining an egalitarian nation where a people-oriented constitution is the guiding light.

7. References

- i. Abia, V.B.E. (2006). *Understanding Nigerian Government and Politics*. Lagos: Gofaflesh Publications.
- ii. Abubakar, S. (2011). "Inter-group Relations and the Challenges of Governance in Nigeria, 1960-2010". *Nigeria at Fifty: Issues and Challenges in Governance, 1960-2010*. Barkindo, B.M. Ifamose, F. and Akpen, P. (Eds.). Makurdi: Aboki Publishers.
- iii. Achebe, C. (1983). *The Trouble with Nigeria*. Enugu: Fourth Dimension Publishers.
- iv. Adeyiri, O. (2013). "Nigerian Federalism and the Challenges of Nation-Building: Issues, Problems and Prospects. Nigeria at 50. Politics, Society and Development. Sofela, B. Edo, V.O. and Olaniyi, R. O. (Eds.). Ibadan: John Archers Publishers.
- v. Afigbo, A.E. (2013). "The Amalgamation: Myth, Howlers and Heresies". *The Amalgamation and its Enemies (An Interpretative History of Modern Nigeria)*. Olaniyan, R.A. (Ed.). Ile-Ife: Obafemi Awolowo Press.
- vi. Ajayi, J.F.A. (1989). *Milestones in Nigeria History*. (New Edition). Essex: Longman.
- vii. Akinyele, R.T. (2013). "Etnicity, Religion and Politics in Nigeria". *The Amalgamation and its Enemies (An Interpretative History of Modern Nigeria)*.
- viii. Akpan, N.U. (1978). "Nigerian Federalism: Accidental Foundations by Lugard". *Journal of the Historical Society of Nigeria*. Volume 9, No. 2.
- ix. Akpan, D.E. (2004). "Political and Constitutional Development in Nigeria". *The Nigeria Nation: Nigerian People and Cultures*. Abasiatti, M.B., Ukpong, I.I. and Esenowo, D.J. (Eds.). Uyo: University of Uyo Press.
- x. Alli, M.C. (2001). *The Federal Republic of Nigerian Army*. Lagos: Malthouse Press Limited.
- xi. Amuwo, K. et al (Ed.) (2003). *Federalism and Political restructuring in Nigeria*. Ibadan: Spectrum Books.
- xii. Attahiru, M.J. (2007). *Democracy, Good Governance and Development in Nigeria*. Ibadan: Spectrum Books.
- xiii. Ayua, I.A. (1985). "Constitutional Development in Nigeria Since the Colonial Era". *Proceedings of the National Conference on Nigeria Since Independence*. Volume 1. Political Development. Atanda, J.A. and Aliyu, A.Y. (Eds.). Zaria: gaskiya Corporation.
- xiv. Coleman, J.S. (1958). *Nigeria: Background to Nationalism*. Berkley: University of California Press.
- xv. Crowder, M. (1968). *West Africa Under Colonial Rule*. London: Hutchinson and Co. Publishers.
- xvi. Dode, R. (2008). *Elements of Comparative Federalism*. Uyo: Nuclear Spin Publishers.
- xvii. Eke, P. P. (1989). "Nigeria's Emergent Political Culture". *Nigeria Since Independence*. The First 25 Years. Volume V. Politics and Constitutions. Ekeh, P.P. Dele-Cole, P. and Olusanya, G.O. (Eds.). Ibadan: Heinemann Educational Books (Nigeria).
- xviii. Eliagwu, J. I. (1985). "Nation Building and Political Development in Nigeria: The Challenge of Unity in a Heterogenous Society". *Proceedings of the national Conference on Nigeria Since Independence*. Volume 1, (Political Development). Atanda, J.A. and Aliyu, A.Y. (Eds.). Zaria: Gaskiya Corporation.
- xix. ... (2015). *Nigeria. Yesterday and Today for Tomorrow*. Essay in Governance and Society. Jos: Aha Publishing House.
- xx. Ezera, K. (2004). *Constitutional Developments in Nigeria*. Cambridge: Cambridge University Press.
- xxi. Falana, F. (2017). *The Punch*. Lagos, 5th August
- xxii. Fwatshak, S.U. and Akinwumi, O. (2014). *The House that "Lugard Built". Perspectives on Nigeria's First centenary: The Pains, the Gains, and the Agenda for the Future*. Jos: Jos University Press.
- xxiii. Ige, B. (1995). *People, Politics and Politicians of Nigeria (1940-1979)*. Ibadan: Heinemann Educational Books (Nigeria).
- xxiv. Ikime, O. (2006). *History, The Historian and The Nation. The Voice of a Nigerian Historian*. Ibadan: Heinemann Educational Book (Nigeria).
- xxv. Jimada, I.S. (2011). "The Challenges of nation Building and the Experience of Post-colonial Governance in Nigeria". *Nigeria at Fifty: Issues and Challenges in Governance, 1960-2010*.
- xxvi. Jinadu, L.A. (1989). "Theoretical Issues in Nigerian Constitutions". *The First 25 Years*. Volume V. Politics and Constitutions.

- xxvii. Muhammadu, T. and Muhammadu, H. (1989). "The Making of the 1979 Constitution". The First 25 Years. Volume V. Politics and Constitutions.
- xxviii. Nnoli, O. (1978). Ethnic Politics in Nigeria. Enugu: Fourth Dimension Publishers.
- xxix. Ogbogbo, C.B.N., Olaniyi, R.O. and Muojama, O.G. (Eds.). (2012). The Dynamics of Inter-group Relations in Nigeria Since 1960. Essays in Honour of Obaro Ikime @ 70. Ibadan: University of Ibadan.
- xxx. Odje, A.M. (2002). The Challenges of True Fderasm & Resource Control in Nigeria. Lagos: Quadro Impressions Limited.
- xxxi. Ojiako, J. (1981). Nigeria: Yesterday, Today and ...? Onitsha: Africana Educational Publishers.
- xxxii. Ojo, A.O. (1973). Politics and Government of Nigeria. Akure: Ilesanmi Press and Sons Nigeria.
- xxxiii. ... (1989). "The Republican Constitution of 1963". The First 25 Years. Volume V. Politics and Constitutions.
- xxxiv. Okpeh, O.O. Jr. (2011). The Post-colonial State, Leadership Challenges and the Governance Process in Nigeria. Nigeria at Fifty: Issues and Challenges in Governance, 1960-2010.
- xxxv. Olaniyan, R.A. (2013). "The Amalgamation, Colonial Politics and Nationalism, 1914-1960". The Amalgamation and its Enemies (An Interpretative History of Modern Nigeria). Groundwork of Nigerian History. Ikime, O. (Ed.). Ibadan: Heinemann Educational Books (Nigeria).
- xxxvi. Olusanya, G. O. (1980). "Constitutional Development 1861-1960". Groundwork of Nigerian History. Ibadan: Heinemann Educational Books (Nigeria).
- xxxvii. Sagay, I. "Nigerian Federalism & the Constitution – A Historic Perspective" www.restructing.ng/nigeria-federalism-constitution-hisoric. accessed 11/8/17
- xxxviii. Sklar, R.S. (1963). Nigerian Political parties: Power in an Emergent African Nation. New York: Nok Publishers.
- xxxix. Tamuno, T.M. (1980). "British Colonial Administration in Nigeria". Groundwork of Nigerian History.
- xl. ... (2011). "Nigeria at 50: Gaudeamus Igitur". Nigeria at Fifty: Issues and Challenges in Governance, 1960-2010.
- xli. The Punch, 4th August, 2017.
- xlii. Udokang, M. (2006). Foundations to the Study of Government and Politics. Lagos: Neutex Ventures.
- xliii. Udoma, U. (2008). The Eagle in Its Flight: The Memoir of the Hon. Sir Udo Udoma. Lagos: Grace and Son.