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# Constitution making in Nigeria and the effect of military rule

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**Abstract:**

*This paper studies the process of making constitution in Nigeria. It traces it from the period of colonial rule to the period of independence and post independent era including the era of military rule. It is of the view that the colonial masters put in place a process of making written constitution for the country even when the home country had none. This was bequitted to Nigeria at independence. But Nigerian political leaders were unable to build on it due to series of military intervention in the political affairs of the country. The military merely copied, adopted and used the pattern of the former colonial masters in fashioning out constitutions for Nigeria. Consequently, the period of military rule prevented the country from developing a pattern of constitution making for itself. It therefore hindered the evolution of an indigenous process and political development. No room was given for reflection on the past as to what operated in pre- colonial Nigeria e.g. convention and precedents or on the need to fashion out something new for the country as the Americans did when independence was gotten from Britain. They not only just adopted political systems but that they failed to exploit it to build their own political culture such as a hybrid of parliamentary and presidential system, and then nurture it into a political system.*

**Key words:** Nigeria, constitution, military, colonial masters, Independence.

## Introduction

*The Land Nigerian*

The country Nigeria, is located in the West African sub – region with an estimated population at about 200 million.[1] She has a land area of 356,669 square miles and lies between Longitude $3^0$ and $15^0$E and latitude $4^o$N and $14^o$N. Nigeria is bounded in the north by Niger, east by Cameroon, west by the Gulf of Guinea and the south by the Atlantic Ocean.[2] Archaeological evidence from various parts of Nigeria suggest that parts of the country including the south, have been inhabited by man since Paleolithic or stone age period of 500,000 -

[1]www.population.gov.ng
[2]T. Falola et al., *History of Nigeria 1: Nigeria Before 1800 AD*, (London: Longman Nigeria,1993, p.12

9000BC.[3] She has 250 distinct ethnic groups in Nigeria with each group occupying a distinct and continuous territory. Most of the smaller groups had very little contact with other groups before the spread of Islam and the imposition of colonial rule. In the forest belt, a long standing historical link existed between the Edo of Benin and the Yoruba of Ife and Lagos. The Delta people whose territory was too swampy for cultivation and consequently produced mainly fish and salt, had sizeable trade with the forest peoples who supplied them basic foodstuffs in exchange for fish and salt.

Though God created the land of Nigeria, God did not create the entity called Nigeria. Nigeria is a creation of the British. "The modern Nigerian state is the creation of 19th century European colonial imperialism, it is a product of competition and conflicting claims over territories, spheres of influence and interests among the British, French and German agents of imperialism against the backdrop of their larger relations in Europe. Nigeria emerged as a result of the transformation or replacement of the old political and administrative systems in pre-colonial societies or territories. This was brought about by British and European traders whose activities followed the adventures of Europeans such as Mongo Park, the landers Brothers, Clapperton etc. The traders had in about 1879, formed the United African Company (UAC) to compete with some French firms in the Niger Area.[4] The National African Company which emerged and administered the territories where it traded informally had for years demanded for a charter from the British government to administer the areas. The charter was not granted until 1886. Armed with a charter, the company was renamed Royal Niger Company (RNC) with status of limited liability and began to administer the areas formally. It consequently imposed taxes, collected custom duties and set up modern police force.

**British Administration**

The British government at this time, was not interested in direct administration of these territories but had rather weak control over the areas. Before the British acquired Lagos as a colony, it had worked out a system of colonial administration for its tropical dependencies. This was the crown colony system of administration that had been tried in the West Indies and India. In about 1851, it had attacked Lagos and annexes it in 1861.[5] This set on, the process or policy of military conquest, diplomacy and pacification. In 1862, Lagos was made a crown colony and crown colony administration was established due to its success in West Indies and India. It was made up of a Chief Justice, Colonial Secretary and a Senior Military Officer. In about 1876, the crown colony of Lagos was merged with Gold Coast. In 1886 the Colony of Lagos was separated

[3]R. K. Udo, "Environments and Peoples of Nigeria: A Geographical Introduction to the history of Nigeria" in *Groundwork of Nigerian History*, ed., Obaro Ikime, (Ibadan, Heinemann, 2004), p.14
[4]Enaruna Edosa, *Nigerian Government and Administration, A Brief Outline*, (Benin City: Morgan George Publishers, 1994), p.29.
[5] Ibid.,P.25.

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from Gold Coast and given a separate government of its own.[6]In 1899, Britain withdrew the charter from the Royal Niger Company[7]and in1900, established the Colony of Lagos and Niger Area and Coast Protectorate with the Niger Area and Coast Protectorate renamed later as the Southern Protectorate.[8]On January 1st 1900, the Protectorate of Northern Nigeria was established.[9] In 1906, Lagos Colony was merged with the Southern Protectorate to form the Protectorate of Southern Nigeria and the Protectorate of Southern Nigeria was merged with that of the Northern Protectorate in 1914 to become Nigeria.[10] Nigeria thus became an amalgam of about 450 ethnic nationalities that have been grouped into 36 states, 6 geo-political zones and 774 Local Government Areas with one Federal Capital Territory, Abuja.[11]

British colonial administration was in hierarchy and had different level. At the top was the central government followed by the protectorate administration with each protectorate administration divided into divisions or districts. The colonial administration was headed by a governor-general who was assisted by a lieutenant governor, legislative council and executive council. Though he administered the entire country, he was responsible to the home government in London while the legislative council was subordinated to the executive council. The protectorate administration was headed by a lieutenant governor who was also in charge of direct administration. The provinces were divided into districts or divisions with each district headed by a divisional of District officer who had direct dealings with the traditional rulers under the indirect rule system.[12]

The indirect rule system was based on native administration. There were three levels of administration used in the system. These were native authority, native courts and native treasury. The native authority was headed by a native chief or any other person that was appointed by the government e.g. first class and second class chiefs that were appointed over the areas where they exercised authority and were recognized as chiefs. Hence they owed allegiance to the British government that appointed them. This was to the exclusion of the elites as no educated Nigerian was so appointed probably to continue to capitalize on their ignorance as they did while signing treaties.

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[6]G.O. Olusanya, "Constitutional Developments in Nigeria 1861 – 1960" in *Groundwork of Nigerian History*, ed., Obaro Ikime, (Ibadan, Heinemann, 2004), pp.528 -529.
[7]Edosa, *Nigerian Government and Administration, A Brief Outline*, p.25
[8]R.O. Ekundare, *An Economic history of Nigeria 1860 – 1960* (London: Methuen & Co. Ltd, 1973), p.25
[9]Onwuka Njoku, *Economic History of Nigeria 19th and 20th Centuries* ((Nsukka: Magnet, 2001), p.134.
[10]Olusanya, "Constitutional Developments in Nigeria 1861 – 1960" p.520
[11]Joseph Bassey, "The Military and Government: Efforts at Preserving National Unity", in *Nigeria at Fifty: Issues and Challenges in Governance: 1960 – 2010*, ed., Bawuro Barkindo et al, (Abuja: Aboki Publishers, 2011), p.591
[12]Olusanya, "Constitutional Developments in Nigeria 1861 – 1960" p.520

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The native authority and indirect rule systems were reformed due to identified problems. The native authorities thus became composed of three- Sole-Native Authority, Native Authority Council and democratic governance. The period of sole Native Authority lasted till 1930. During this period, paramount chiefs or rulers were appointed as sole authority over his area. Thereafter, native authority Councils were introduced when it was realized that the duties of a sole authority were too many for him to effectively discharge. The councils were made up of chiefs from towns, cities and villages. There were also the period of democratic government from 1947 when native authority administration were democratized or transformed into representative units or institutions with elected members.[13]

The native courts were the judicial arms of all local administration. They were separated from the political arm or native authority instead of being fused or centralized in the hands of a paramount ruler as in pre-colonial days. In 1914, the native court ordinance was enacted and spelt out its responsibility to include arrest and maintenance of law and order. In practice however, the native authority also acted as the native court and the system became autocratic. On the other hand, the native treasury was a unit in each administration. It had the duty of collecting taxes on income of individuals from heads of compounds, wards etc. The system was very successful in the north due to the existence of the emirate system as it was introduced there when Lord Lugard became the governor and the people were used to paying tax.

In the west, there was problem due to the kind of powers the Yoruba chiefs wielded as they could not be autocratic due to checks and balances. Crisis emerged when attempts were made to try and make them exercise powers similar to those of emirs. This was due to the fact that allegiance to the Oba or Alafin was only nominal and mainly cultural. It was however successful due to the existence of centralized administrative system. In the east, it failed because they were a decentralized people and decisions were made by a council of elders and not a single person, there existed no paramount rulers just as there were no real people with local influence and authority that could be used. Hence people were appointed as Warrant Chiefs. In the Coastal areas, the House System was introduced. It was a system of House rule introduced by trading companies and wealthy Africans, their kinsmen and agents were recognized and used in administration. An ordinance was passed which made it an office for failing to submit to his authority. A 1903 Road and Creeks Proclamation empowered the High Commissioner to use forced labour to maintain roads and creeks. The house system failed because traditional rulers were not used in administration.[14]

[13]Edosa, *Nigerian Government and Administration, A Brief Outline*, p. 34
[14]Edosa, *Nigerian Government and Administration, A Brief Outline*, pp.25 – 29

**Constitution Making**

A constitution is a body of rules, regulations and principles which govern or guide the administration of a given state. It is the fundamental laws of the land which regulates or defines the actions and activities of the citizens and government as well as the relationship between them while at the same time stating expressly, the rights and duties of the citizens.[15]In pre-colonial period, Nigeria had no written constitution. What operated then were laws based on conventions and practices handed down from generations to generation and thus unwritten. When the British colonialists annexed Lagos in 1861, they did not introduce any constitution for the governance of the area. It rather set up a legislative council that was non representative and advisory body.[16]Written constitution was therefore introduced into Nigeria by the colonial government even though they themselves had no written constitution. The introduction of a written constitution thus began with the Clifford constitution of 1922.

Modern constitution making may be said to have however, began from 1914 after amalgamation. Thus, taking 1914 as the base year, Nigeria has had about eleven constitutions in 85 years (1914 -1999). With the 25 years of military rule during which the constitutions were suspended, it means that Nigeria has had constitutional government for only 60 years, thus making the average life span of each constitution to be about five years. 'Nigeria has thus spent a greater part of its life, resources and energy in constitution making. The frequency with which our leaders suspend and rewrite our constitution is an evidence of our failure to reach consensus on major political issues of national question such as representation, power sharing, leadership, revenue allocation, minority question, party system, the electoral process etc"[17]

British administration was not democratized and it was dominated by British officials. Apart from dominating all aspects of political, social and economic life of Nigerians, they engaged in discrimination such that the educated elites were excluded from the indirect rule system, discrimination also existed in jobs and an African received less salary than his white counterpart. Because the same discrimination and partiality obtained in British West African colonies, it led to the formation of the National Congress of British West Africa in Accra in 1920 under the leadership of Casely Hayford. It sent a delegation to London to protest British racism, discrimination and domination, and demanded for legislative councils for each territory, establishment of house of Assembly, appointment of Africans to judicial offices and establishment of West African university.[18]

[15]Ibid., p.
[16]A. O. Okoh, "Constitution Making in Nigeria", in *Nigerian Government and Politic,* ed., *A.* O. Oronsaye(Benin City, Petersam Publishers, 1996), p.107
[17] Ibid
[18]H. S. Nnamdi, "Constitutional Strides to Full Nationhood", in *Nigerian Political System Inputs, Outputs and Environmen*t, ed., R. F. Ola, (Benin City: Ambik Press, 1998), pp.81- 82.

Though the delegation was opposed by Governor Hugh Clifford and the delegates failed in their London mission, their protest influenced political sensitization such that by 1922, Clifford introduced a new constitution in Nigeria that was known as the Clifford's constitution. The constitution provided for greater Nigerian representation in the legislative council. One of the most significant aspects of the constitution was its introduction of elective principles. Thus for the first time in British West Africa, Africans were elected though only from Lagos and Calabar.[19]

Though the introduction of this constitution was significant in that it was the first time black Africans would be so elected in tropical Africa and introduced elective principles with the aim of preparing the people for self-government, it did not introduce a pattern and process of democratic or otherwise, of constitution making into Nigeria as it was solely drafted and introduced by the governor. But "the new constitution with its elective principle stimulated the formation of political organizations in the country. The most important of these organizations was the Nigerian National Democratic Party (NNDP) and with their formation, a more effective vehicle for expressing grievances and aspiration was provided"[20]

The Clifford's constitution lived until it was replaced by the Richard's constitution in 1947. Several external and internal events preceded the introduction of the constitution. These were, the activities of the West African student's union, British loss of her eastern colonies, the nationalist struggle in India, passage of the colonial Development and Welfare Act of 1940, involvement of Nigerian in the second world war and Publication of the Atlantic Charter especially the 3rd clause and the Labour strike of 1945.

These events made the British to see the need to develop a new approach to deal with the problem of political and constitutional development of its colonies and Nigeria. While it led to the introduction of a new constitution, its introduction followed the pattern of the introduction of the Clifford's constitution and thus failed to also set a process and pattern of constitutional making for Nigeria. The constitution had several defects and was thus faced with different criticisms though it had its merits for being a land mark in the constitutional development of Nigeria.[21]

Though the Richard's constitution originally intended to correct the lapses of the 1922 constitution, it sorrowfully created loophole that has been problematic and disturbing in the Nigerian federation. "Richard's constitution led to the creation of regional councils for the north, east and west. Their creation has subsequently been severely criticized for being the foundation of

[19]Ibid., p.82
[20]Olusanya, "Constitutional Developments in Nigeria 1861 – 1960" p.525
[21]Ibid.

tribalism in Nigerian politics. Other constitutions that followed it have not been able to undo the deed of the constitution……"[22]

The Richards constitution collapsed and was replaced with the McPherson constitution of 1951 due to persistent opposition to it by the NCNC led by DrNnamdiAzikiwe and Herbert Macaulay. Macpherson ensured dialogue with the nationalists in fashioning out a new constitution, established the public service commission for appointment, promotion and dismissal of public servants, special commission for the Nigerianization of the civil service, ensured local government reforms.[23]It was in the process of producing the constitution and setting out to correct the mistakes of the past that a process and pattern of constitution making was introduced into Nigeria.

In March 1949, he set up a select committee of the legislative council to examine how to fashion out a new constitution. The committee recommended the carrying out of wide consultation with the people from village, native authority to the provincial and regional levels before convening a general conference called "All Nigerian Constitutional Conference"[24] The consultation was carried out through questionnaires that dealt with issues such as regionalism, federalism, centralized system etc. This was followed with regional conferences in Ibadan, Enugu and Kaduna. The recommendations of the regional conferences were then submitted to a constitutional Drafting Committee (CDC) which drew up recommendations for an All Nigerian Constitutional conference which took place in Ibadan in January 1951.The select committee of the Legislative Council after examining the recommendations of the conference sent a report to the Secretary of state. The approval of the recommendations led to the emergence of the Macpherson constitution.[25] Thereafter, every constitution that emerged in Nigeria followed the pattern and trend of constitutional conferences, setting up of Constitution Drafting Committees or constitution review committees. These are, the Lyttleton constitution, independent constitution, the republican constitution, 1979 constitution, 1989 constitution, 1996 constitution and 1999 constitution.

**Constitutional Conferences**

In July 1953, a constitutional conference was summoned to work out a new constitution. It held in London from July 30 – August 23rd and produced the Lyttleton constitution.[26]It came up with a federal system of government, unicameral legislature at the center and council of ministers for each region.[27]This ushered in the process or trend of calling constitutional

[22]Olusoji Alao, "Partisan Politics and Challenges of Democratic Consolidation in Nigeria," in *Nigeria at Fifty: Issues and Challenges in Governance: 1960 – 2010,* ed.,Bawuro Barkindo et al, (Abuja: Aboki Publishers, 2011), p.611.
[23]Edosa, *Nigerian Government and Administration, A Brief Outline*, pp.37-38
[24]Olusanya, "Constitutional Developments in Nigeria 1861 – 1960" p.529.
[25] Ibid
[26]Okoh, *Constitution Making in Nigeria*, p.115
[27]Olusanya, *"Constitutional Developments in Nigeria 1861 – 1960*" p.537

conferences and it being held outside the shores of Nigeria to review a constitution and enact a new one. This later became a precedence. The conference resumed in Lagos on January 19, 1954 to settle outstanding issues of the 1953 conference such as report of the fiscal commission, separate regional status for the Cameroons, future of British officials serving in the public service in Nigeria. "The 1954 constitution was very significant in that it provided the basis of the constitution of independent Nigeria. Its importance in this respect was highlighted by Sir Ahmadu Bello, the Sadauna of Sokoto when he stated that of all the conferences, the 1953/1954 was the most decisive, the others stemmed from it and their conclusions were logical developments. That is, there were no further structural changes."[28]

A decision was reached during the 1953 conference that the new constitution should be reviewed in three years beginning from August 31, 1953. This meant that it ought to take place in 1956 but could not be carried out due to the new crisis in the eastern region. Consequently, the conference held on May 23 to June 26, 1957 in London to amend the Lyttleton constitution.[29] At the conference, while the east and west demanded for regional self-government that had been promised, the north declared its readiness for self-government in 1959. The conference created the position of Prime Minister and approved the establishment of a senate. In 1958, another constitutional conference was held in Lagos from September 29 – October 27 with concern for independence. It examined the reports of the minority's commission, constituencies' delamination commission and the fiscal commission. This was followed by the 1960 London constitutional conference which was held to put finishing touches to the independent constitution. After independence, and following the precedence laid by McPherson, the All Nigerian Constitutional Conference was held in Lagos to produce the republican constitution. The collapse of the first republic in January 1966 brought the constitution to an end.[30]

**Constitution Making by the Military**

On January 15, 1966, a military coup brought to an end, constitutional government in Nigeria. It also led to the collapse of the first republic and suspension of the 1963 constitution. Before the coup, the independent and republican constitutions witnessed a number of political upheaval. There was the Action group crisis of 1966, dispute over revenue allocation, controversy over the 1962-63 census, crisis of the 1964 federal elections and that of the western regional elections of 1965. These events led to the coup that terminated the life of the 1963 constitution.

In February 1966, the general Aguiyi – Ironsi regime set up three study groups to look at the constitutional, administrative and institutional problems of the country. The constitution study group was mandated to review all aspects of the

[28]Ibid., p.539.
[29]Okoh, *Constitution Making In Nigeria*, p.116
[30]Ibid., pp. 118-119

1963 constitution and identify factors that militated against national unity etc. The work of the committee was halted by the promulgation of the constitution suspension and modification No.5 unification decree 34 of 1966.[31]"To the military, the decree was aimed at promoting the unity of the country while to others, it was aimed at enthroning one particular ethnic group in the public service of the country. This decree led to a series of ugly incidents which culminated in the Nigerian civil war."[32]

In July 1966, a counter coup enthroned the government of Lt. Colonel Yakubu Gowon who promised to return the country to the pre-decree 34 situation. He followed the precedence set by the British and carried on by political leaders at independence by setting up an ad - hoc constitutional conference to make recommendations for the political future of the country. The civil war which broke out and lasted for 30 months prevented the revision of the constitution. After the war, the regime unfolded a nine – point programme for the return of the country to civil rule that included the introduction of a new constitution. He was however, overthrown by Brigadier Murtala Mohammed who set the stage for drafting of a new constitution.

Following the same colonial process and pattern, the Murtala Mohammed regime announced a five – point programme of transition to civil rule and set up the Constitution Drafting Committee (CDC) in September 1975. Its terms of reference included, creating a constitution based on federal system of government, democracy, rule of law, guarantee of human rights, establishment of genuine and truly national political parties, an executive presidential system of government, independent judiciary, establishment of corrupt practices tribunal, public complain bureau and constitutional restraint on the number of states to be created. The Committee then produced a draft constitution and following the precedence laid by the Macpherson administration, he set up a constituent assembly of 230 members, 40 nominated and 199 elected to review the draft constitution. When General Murtala Mohammed was assassinated in a coup, General Olusegun Obasanjo continued with his work and handed over power to a democratically elected president on October 1, 1960 after the constitution had been approved by the supreme military council. The 1979 constitution thereafter, came into operation. It was a major departure from the Westminster parliamentary system that was operated between 1954 and 1966. It was envisaged that it would last but its life was terminated by the military which took over political power again on December 31, 1983.[33]

In August 1985, the Buhari regime that had terminated the 1979 constitution and presidential system of government was itself brought to an end by a coup led by General Babangida to set the stage for the making of another constitution. His government also followed the precedence laid by the British administrator to consult with the people by setting up a select committee called

[31] Ibid.
[32] Ibid
[33]Ibid., pp. 120-121

the Political Bureau for the sensitization of Nigerian, receive and collate their ideas and opinions as was done in the past using questionnaires, on the future political system of the country. He set up a constitution review committee (CRC) in 1984 to examine the 1979 constitution and make recommendations. This was followed with the setting up of a Constituent Assembly (CA) to deliberate on the recommendations of the CRC. The work of the CA did not result in any fundamental changes in the 1979 constitution but led to the emergence of the 1989 constitution. The constitution came into effect piecemeal through three decrees, the first being decree No 15 of 1985 - basic constitutional and transitional provision, under which local government councils were constituted. The second was the basic constitutional and transitional provision decree No 15 of 1991 under which civilian governors and members of state Houses of Assemblies were elected and became functional. The third was the federal government basic constitutional and transitional provision decree of 1992 under which the national assembly was constituted and presidential elections held on June 12, 1993. The results of the election was annulled setting the stage for yet another constitution making in Nigeria.[34]

When General Babangida relinquished power to an interim National Government (ING) headed by Chief Earnest Shonekon on August 27 1993, Nigeria again returned to full military rule when on November 27, 1993,GeneralSanniAbacha took over the reins of government. He promised to restore power to a democratically elected government. Hence in January 1994, he adopted the same process 10 years later in producing the 1999 constitution. Abacha inaugurated the Constitution Debate Coordinating Committee in 1998 for consultation by piloting debate, coordinate and collate views of Nigerians and submit a report. He established the National Constitution Commission with the mandate to organize a national constitutional conference. The commission served as the secretariat of the conference and following the process and trend of the past by inviting memoranda from all parts of the country and from interest groups, prepared a 30 point agenda for the conference and collated documents and sample memoranda. A constitution Review Committee of 40 was set up to review the draft which was again subjected to another review by a group of Abacha Advisers. The constitution of Nigeria decree 24 of 1999 was enacted to give it a force of law and the constitution came into being with effect from May 29, 1999.[35]

The malady of constitutional conference continued even during the democratic government of Goodluck Jonathan who convoked a constitutional conference in 2014 despite the existence of state and federal legislatures. This was an indication that even the political class and the citizenry had in the 21st century, imbibed the trend and process of constitution making inherited by the military and were yet to come to terms with or adapt to the democratic process of

[34]Ibid., pp.121- 122.
[35]J. O. Aghaghowa & E. I .Atuanya, "Elitism in Nigerian Politics: Bureaucratic, Military, Economic and traditional", in *Nigerian Political System Inputs, Outputs and Environment,* ed., R. F. Ola, (Benin City: Ambik Press, 1998), p.451

fashioning out a constitution or amending an existing one. The conference set up 20 committees to examine 20 main issues. The report or recommendations of the committees were sent to the national assembly to form part of issues for the amendment of the 1999 constitution.

In all, the military only copied, adopted and used the pattern of the former colonial masters in fashioning out constitutions for Nigeria and prevented the country from developing a pattern for itself. It therefore hindered the evolution of an indigenous process and political development. No room was given for reflection on the past as to what operated in pre- colonial Nigeria e.g. convention and precedents or on the need to fashion out something new for the country as the Americans did when independence was gotten from Britain. There, they opted for a written constitution whereas their colonizer, Great Britain operated an unwritten constitution. Though Nigerians participated in the constitutional conferences that led to the emergence of these constitutions, they only did the bidding of their masters by acting scripts presented to them. They could therefore be said to have been imposed on Nigerian. Also, all the constitutions drafted by the military were intended for use by subsequent democratic administration instead of bringing back the previously suspended constitution and allow the civilian government to carry out amendments where necessary. The constitutions therefore, did not reflect the true or popular wish, needs, desires and aspirations of Nigerians because the nominees and elected representatives were arguably not true representatives of the people. Hence the clamour for sovereign national conference till date.

**Military and Leadership**

The constitutional functions assigned to the Nigerian military elite is goal adaptation. The constitution of the federal republic of Nigeria lay down four basic functions of the military to include, defending Nigeria from aggression, maintaining its territorial integrity and securing its boarders from violation on land, sea and air, suppressing insurrections and acting in aid of civil authorities to restore law and order when called upon to do so by the president, but subject to such conditions as may be prescribed by an Act of the National Assembly and performing such other functions as may be prescribed by an Act of the National Assembly.[36]

The origin of the Nigerian military is traceable to the 1880s, when the British government established the West African Frontier Force for use to subjugate the peoples and engage in pacification patrols to cow areas of dissent after conquest.[37]At independence, the Nigerian military was small in size and had five battalions located in Enugu, Ibadan, Kaduna, Ikeja and Kano and two

[36]The Constitution of the Federal Republic of Nigeria 1999 Chapter IV part iii c, (Lagos: Federal Government Press), p.85
[37]Njoku, *Economic History of Nigeria 19th and 20th Centuries,* p.137

reconnaissance squadrons in Kaduna and Abeokuta with 7,000 -10,000 personnel, 228 British Officers and a British Commanding Officer until 1965.[38] In 1954, the Nigerian army had only eight indigenous Nigerian officers, the rest being British.[39] But at independence, only 18% of the officers were Nigerian and most of them were from the then eastern region.[40]The military that was bequeathed to Nigeria at independence was publicized and not totally professional. Madiabo notes that at the stage noted above, "it was therefore easy for a few interested persons to do whateverthey wanted with the army without being challenged and the British government, being among the most interested, took full advantage of the situation. For a start, they saw to it that almost all military installations were concentrated in one area of the country."[41]Consequently while the north had 12 military installations in Kaduna, two in Zaria and one in Kano, the west had only three, one in Ibadan and two in Abeokuta. The east on its part had only one, the 1st battalion in Enugu, the Mid – West had none and those in Lagos were either administrative or ceremonial units.[42]

The army was further politicized when the ethnic quota system of recruitment into it was introduced shortly before independence so as to secure absolute majority within the rank and file and then gain control of the army. "under the system, whenever new recruits were needed by the army, northern Nigeria would provide 60 per cent, eastern and western Nigeria 15 percent each, and Midwestern Nigeria 10 percent……..in the name of ethnic balance. Military hospitals were staffed with doctors trained in Kano for about three years in preference to doctors of southern Nigeria origin with internationally recognized diplomas. The result of this system was that standards fell within the army and soldiers became politically conscious."[43]

According to him, standard procedures were also compromised as the criterion for promotion and advancement was based more on political consideration than on efficiency or competence. According to the author, the situation forced some officers especially from the south who were politically conscious to identify themselves openly with political parties and politicians in order to gain military promotions and appointments without hindrance and junior officers joined in the bitter struggle for military success through politics. This ultimately, reduced the army and its promotion system to ridicule. Political alignment was to rob the army of the discipline that it is well known and it became risky for a commanding officer to punish a soldier from opposing ethnic group for fear of being accused of victimization. The involvement of the army in politics Madiebo claim, took a new turn for the worse during the Western

[38]Mohammed, "The Military and Governance in Nigeria: Prospects and Challenges of Democratic Consolidation", p.579.
[39]A. A. Madiebo, *The Nigerian Revolution and the Biafran War*, (Enugu: Fourth Dimension, 1980), p.8
[40]Fawole, "Military Rule and the Unitrianization of Nigeria", p.150.
[41]Madiebo, *The Nigerian Revolution and the Biafran War*, p.9.
[42] Ibid.
[43]Ibid., p.10

Nigeria parliamentary elections in October 1965 when it condoned malpractices and was thus far from being impartial in ensuring fair play.

From the foregoing, the army had not only been politicized but had become tools of politicians and appendages of political parties that were ethnically based and the army divide along ethnic lines. The politicization of the army and its division along ethnic lines rubbed it of unity and cohesion that was needed to weld all units together. This lack of oneness and ethnic divide came to fore in the 1966 counter coup after which the Igbo were massacred. The army at independence was therefore not only a politicized one but an institution that was divide along ethnic lines, disunited and professionally in disarray without proper command structure.

Tonwe argue that though these state of the military was such, it did not intervene in politics as its involvement in politics did not begin with the general strike of June 1964 and the crisis in the western region though it was thought that they would intervene. However, the possibility of an intervention through a coup began to unfold when General Mobutu seized power in the Congo on November 25, 1965 and General Sogho did same in Dahomey (Benin Republic), on 29th November same year. The possibility was first discussed in the media when in December that year The Nigerian Outlook in its editorial, accused the federal government of neglecting its duty by being unable to and unwilling to provide security for the people. It called on the army to prevent the spread of chaos in the west, save the country from ruin, restore law and order in Lagos and Ibadan and public confidence. The paper was not alone in this call as the intellectuals, public and army itself also reflected on the possibility and necessity of a military intervention due to the coup of Col. Bokassa in Central African Republic on January 1st and Col. Lamizana in Upper Volta (Burkina Faso) on January 4th.[44]

Despite these developments, the Northern People's Congress (NPC) ruled out the possibility of a coup in Nigeria because General Aguiyi Ironsi, head of the army was surrounded by northerners and officials reported to be supporters of the party even though he was Igbo and likely sympathetic to UPGA. The army was also small and it was not expected that the political class or elite would be challenged by a small armed force of about 7,500 that was defective in equipment, had few experienced indigenous officers, had little prestige and was generally looked down upon by a people who were politically conscious.[45]

Fawole is of the view that military intervention was not envisaged not necessarily because the officers and men had imbibed the political tradition and subordination to civilian control characteristic of the British military but largely because of the effective operational command and control that rested with the

[44]D. A. Tonwe, "The Nigerian Civil War, 1967 – 1970 and the Military Rule in Nigeria", in *Nigerian Political System Inputs, Outputs and environment,* ed., R. F. Ola, (Benin City: Ambik Press, 1998), p.387.
[45] Ibid

British until 1965. Hence it would have been unthinkable to contemplate political intervention or would have been outright suicidal. Thus, the army was erroneously perceived to be politically neutral whereas political neutrality was enforced on it by foreign control.[46]

Another factor was that the army had foreign engagements. "It was fully engaged in operations outside the country from 1960 – 1964having been requested to contribute a contingent of troops to the UN peacekeeping operations in the Congo in 1960. The Nigerian government obliged by making sure that each of the army's five battalions and two Reece Squadrons had a tour of duty ranging from six to twelve months at a time. And thus was the force kept fully occupied in the Congo operations that its officers were regularly rotated around. The officers therefore, never had a chance to stay in any one place long enough to contemplate conspiracy"[47]

However, these factors for unlikely disruption of the democratic process in Nigeria did not remain unchanged as the army became enlarged, new officers were rapidly trained and promoted to fill vacuum created by expatriates who departed the country. In addition, with the passage of time, the image and prestige of the army was given a boost by the rapid decline in the prestige of politicians due to corrupt practices and the breakdown of law and order. The army, because they were not directly involved in politics were seen as faultless as far as the public was concerned, from the negative developments. The army then took advantage of the growing discontentment of the masses with the politicians to orchestrate a coup that brought civil rule to an end on January 15, 1966.[48]In addition, after the tour of duty, inactivity caused by settling down to routine garrison duties and administration set in. This created opportunity or atmosphere for contemplating intervention in domestic politics and governance not war. This must have created barrack fatigues that allowed soldiers to begin to judge the performance of politicians and arrogate to themselves the right to intervene.[49]

Thus, the second phase of leadership in post-colonial Nigeria is generally assumed to have commence on January 15, 1966 when the military took over governance. This opened a new chapter in post-colonialNigeria and people expressed hope that the military had the nationalistic credentials to rebuild the nation. But decades after, the records left behind by them were at variance with the expectations of the people. Though it played a useful role in ensuring security, unity and indissolubility of the country through successful prosecution of the civil war of1967 – 1970, its involvement in politics is an aberration with very baneful consequences on the development process. "While its prolonged stay in power legitimized violence as an instrument of changing government or leadership, it also undermined the growth of leadership, created trauma

[46]Fawole, "Military Rule and the Unitrianization of Nigeria", p.150.
[47] Ibid
[48]Tonwe, "The Nigerian Civil War, 1967 – 1970 and the Military Rule in Nigeria", p. 387
[49]Fawole, "Military Rule and the Unitrianization of Nigeria," p.151

through its proclivity for law and order, intensified militarism and criminalization of Nigeria, abuse of power as evidenced in predominance of corruption, nepotism, ethnicity, favoritism that became the defining characteristic of national life."[50]

In the era, Nigerian leaders did not think of evolving a political system of their own for Nigeria. Hence when independence was attained from 1957, the political and military leaders adopted hook line and sinker, the political system that was similar to that of Britain i.e. parliamentary system without serious attempts to ascertain the deep roots of what they were expected to copy and apply or operate. After abandoning the parliamentary system in 1979, they copied the United States presidential system without clear awareness of the long history behind the adoption of the system by those who fought for independence.[51] The problem that emanated was not just adopting political systems but that they failed to exploit it to build their own political culture such as a hybrid of the two, and then nurture it into a political system just as they did with constitution making.

One of the reason was the emergence of the military as a non-contender of political power yet dominated political power for decades. The effect of this was that it led to their infiltration into politics which in turn led to intervention in the political system which in itself not only disrupted the political process but prevented the political system from developing into a culture. Thus the period of intervention of about 30 years gave indigenous political culture little room incubate.

In the same vain, the leaders, especially the military adopted hook line and sinker, the system of constitution making of the colonial masters. Thus from 1954 upwards, the trend and pattern of making a constitution for Nigeria followed the pattern of organizing constitutional conferences as enumerated in previous pages. As in political system, they also failed to exploit it to build their own indigenous system of making a constitution and nurture it into a culture especially as the socio – political system that existed in pre- colonial period had no written constitution. Thus, while they merely copied, they failed to learn and grow up. The Nigeria leaders during military regime "resembled the direct descendants of the familiar Peter Pan who, in literature for children, never grew up, for he was always a boy and was treated as such by his peers."[52]

[50]O. O. Okpe, "The Postcolonial State, Leadership Challenges and the Governance Process in Nigeria", in *Nigeria at Fifty: Issues and Challenges in Governance: 1960 – 2010,* ed., BawuroBarkindo et al, (Abuja: Aboki Publishers, 2011), p.561.
[51]T. N. Tamuno, "Keynote Address: Nigeria at 50: GaudeamusIgitur", in *Nigeria at Fifty: Issues and Challenges in Governance: 1960 – 2010,* ed., BawuroBarkindo et al, (Abuja: Aboki Publishers, 2011), p.15
[52] Ibid.

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**Conclusion**

This paper examined the constitutions of the Federal Republic of Nigeria, process of making them and the pattern/ trends of the process (es). It further examined the roles of the colonial administration, independent political leaders and past military regimes in fashioning out constitution for Nigeria. The history of constitution making in Nigeria began with the 1922 Clifford's Constitution during the British colonial era which witnessed the emergence and operation of five different constitutions. The colonial administration had the habit of dumping an existing constitution by convoking a fresh constitutional conference to make recommendation for a fresh constitution instead of amending it. For example, what the MacPherson administration ought to have done was to use the recommendations of the constitutional conference to amend the 1947 Richard's constitution rather than produce a new one. However, the colonial administration did set the precedence for constitutional amendment when the recommendations of the 1957 London constitutional conference were used to amend the Lyttleton constitution instead of producing a new one. But there was again, a departure from this while producing the independent and republican constitution. The military on taking over the reign of governance merely copied and adopted the pattern.

The paper believe that the military has had the greatest opportunity to contribute to the political development of Nigerian and that it has made immense contribution to constitution making and provided her with three constitutions with the 1963 constitution being the only one so far produced by political leaders. Military constitutions have been drafted by different procedures, such as constitution drafting committee, political bureau, constitution review committee, constitutional conference/ commission and constituent assemblies. Drafting of constitution was done by a committee and submitted to a constituent assembly for deliberation. These bodies were made up of delegates solely appointed by the military rulers while the others were elected under their supervision. A review of the procedure adopted by the military in formulation and creation of the constitution gives an indication that there had been some inputs by the people but this 'popular' participation can be described as superficial. The level of participation especially in the formulation of the 1999 constitution does not justify the preamble to the constitution. The sovereign will of the people was undermined and reduced to mere words while the restrained and uncontrolled will of one man held sway.[53] The final draft is submitted to the highest law making body of the military (Supreme Military Council or Provincial Ruling Council) for promulgation and the act of this body becomes final.

Thus while the political leaders merely adopted political systems and failed to exploit them to build their own political culture and then nurture it into a

[53]Ikuromo Margaret Oruan, *The Military and Constitution Making: the Nigerian Experience*, htn--- (kk) – the military – and – constitution-making. Accessed 19/06/2018

political system, the military leaders also adopted hook line and sinker, the system of constitution making of the colonial masters and failed to exploit it to build their own indigenous system of making a constitution and nurture it into a culture. This ultimately prevented Nigeria from developing an indigenous culture of constitution making i.e. developing a pattern for itself thereby hindering the evolution of an indigenous process of producing a constitution and political development.

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