



## Beginning of the Nigerian constitutional development under the colonial rule 1914-1926

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### Abstract

There are two sections that cover the period of constitutional development in Nigeria by the British imperial administrators and within the section two periods are identified. The first phase is marred by the time in which the indigenes (Nigerians) had no say in the making of the constitutions and therefore constitution making at that time was the prerogative of the colonialists. The second phase of the colonial administration was the time when Nigerian was given some say, in the making of their constitution because the political wind at that time in the country was changing due to nationalists' movement and growth of political parties that were asserting political pressure for a new political direction on the imperial colonialists. However, only the first phase will be covered in this article. As the Nigeria's Edolite adage rightly says; "Any right minded person who wishes to understand the present must know something of the past." Therefore I will countenance the venture of Nigerian Constitutional development by looking at how Nigeria came under the control of the imperialist and consequently how the Nigeria's Constitution came about.

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

### Introduction

Nigeria as it is known today was named by Flora Moor the girl friend, later wife of Lord Lugard, Nigeria's first Governor General, during the British imperial Majesty's rule in Nigeria. According to Elias (1967) the British traders in 1849 established their presence in the Bight of Benin and Biafra of the coast of Nigeria in 1852 and once the British got afoot hold in Nigeria an agreement, according to Awa<sup>[1]</sup> were signed. The first practical involvement opined Awa<sup>[1]</sup> with the affairs of Lagos, which for a long time was the capital of Nigeria after Nigeria became Independent country, was in 1852, when a treaty was signed between the Lagos King Akitoye, and the Chiefs and Commodore Bruce who was at the time the commander and Chief of her majesty's ships and vessels in the West –Coast of Africa and Mr. Beecroft on behalf of the Queen of England. Nigeria was under the tutelage of the British imperial colonialist until 1960 when the country became an independent country and a republic in 1963. Nigeria was amalgamated in 1914, when South and North were brought together as one nation under one umbrella as a nation. Before 1914 the North and South were each divided into provinces for administrative convenience. The present day Western Nigeria, although it is now shared into different states, and the then Northern region, also now divided into different states in the present day Nigeria, the colonial administration according to Awa<sup>[1]</sup> had followed a pattern of provincial boundaries that had existed before their inception in Nigeria, but in the East, also now comprising of different states, artificial boundaries were created because in the East the indigenous and social organisation was most fragmentary. Each province was in charge of a British resident, with other administrative officers (District Officers and Assistant District Officers) below him in charge of

subdivisions of the province; all officials were responsible to the chief executive of the territory.

Sir Lugard was the High Commissioner that saw the amalgamation of Southern and Northern Nigeria through and he subsequently became the first Governor General of the fused Nigeria and with it, a constitution which he promulgated and was named after him, Lugard constitution. Nigeria became an independent country in 1960 and a republic in 1963 and with it a complete detachment politically from the British imperial Majesty rule.

### Lord Lugard Constitution (1914-1922)

Under this constitution, there was a provision for a single governor and commander in chief for the whole country. The previous arrangement in Lagos where there was executive and legislative councils for the colony of Lagos was retained, but the executive council of the colony became the executive council for the whole country but the powers of the legislative council was restricted to the colony. According to Joye and Igweike<sup>[3]</sup> there was also an advisory and deliberative council that was set up for the whole country. This body included a governor and thirty others nominated by him. The nominated members consist of seventeen ex-officio members, the rest constituted unofficial members, while seven of the thirteen unofficial members were nominated to represent, commercial, shipping, mining, and banking interests. The remaining members, mostly chiefs, represented to use Joye's and Igweike's<sup>[3]</sup> phrase 'as far as might be the native population both of the coast and the interior' (p.18).

Under this Lugard's scheme a governor-general headed the entire government, which was made his office and was advised by the executive council and the three protectorates were each under a lieutenant governor. For administrative

ingenuity, the Railway, military, audit, treasury, posts and telegraphs, judiciary, survey, and legal were kept under central departments. Despite this amalgamation and the resultant constitution, the constitution itself did not solve the problem it was intended to solve. North and Southern Nigeria continued to be administered as a separate entity and soon ran into problems with Nigerians who were disgruntled and disenchanted with the series of limitations of the Constitution. The constitution was eventually replaced by another constitution, yet named after its promoter and architect in Sir Clifford who replaced Lord Lugard as the Governor-General.

### **The Clifford Constitution (1922-1946)**

This is the longest serving constitution that Nigeria has ever known. It started during the peace-time of the aftermath of the first world wars and, abruptly ended when the 2<sup>nd</sup> world war had just ended. Under this constitution the governor was to govern the country with the advice of the executive council and the legislative council of Nigeria. The principal administrative officials of the government were made ex-official members by order of the Royal instruction 1922 (colony) and the executive council was composed entirely of British officials responsible to the governor. The governor with the approval of the secretary of state was empowered to nominate other officials as members or extraordinary members when wished to obtain specialised advice (Joye & Igweike)<sup>[3]</sup>.

The Council was in political terms a lame duck that carried no political clout apart from giving advice to the governor who was not obliged to accept. He had absolute powers subject only to the control and supervision of the secretary of state in London. The Nigerian legislative council was dominated by the British officials and were responsible to the governor. The council had the governor as the president, 26 official members which was made up of 23 ex-officio and 3 nominated) 4 elected unofficial members (3 from Lagos and 1 from Calabar) define and not more than 15 unofficial members (Legislative Council, Order Council 1941). The lieutenant-general or the chief commissioner as was later called and the senior residents of the northern provinces were all members of the legislative council of Nigeria, but other members to the council were elected basically on a franchise that was limited to adult British subjects or protected persons who had residents qualification of 12 months and were in possession of gross income of not less than £100 per annum. All legislative functions were limited to the colony and southern protectorate and the legislation over the Northern Protectorate was the prerogative of the governor, but in matters regarding expenditure that needed to come out of the funds of Nigeria the governor needs the sanction of the council. However, this constitution failed to meet Nigerians aspiration as the political wind in the country was changing after the 2<sup>nd</sup> world war had ended. Consequently a new constitution had to be thrashed out to reflect the new trend in the country in the name of Arthur Richard who was also the Governor at the time.

### **The Richards Constitution (1946-1951)**

The Richard's constitution was the brainwork of Sir Arthur Richard who succeeded Sir Bourdillon as the Governor of Nigeria. As already mentioned above the political situation in

the country then was very much charged with more wide spread agitation from Nationalist groups for constitutional reform. It is worth mentioning here that when Sir Bourdillon was the governor of Nigeria, he had proposed to reform some aspects of constitution that was politically seen as damaging to the existing constitution. For example he had doubted the wisdom of insulating the north from the rest of Nigeria. He noted that the copious advice being given the governor by the legislative council, the press, and youth organisation all came from the South; from the North advice came primarily from the chief Advisory committee of chief, an informal body. The governor thought that, the government's original objective was to prevent the subordination of the north by the south, and that the policy should be reversed. Sir Bourdillon decided it would be better for the Emirs and their People to demand participation in advising the Governor on Nigerian affairs. This political debacle according to Awa<sup>[1]</sup> Bourdillon tried to solve by wanting to establish regional councils to serve as provincial legislatures, which would have advisory powers only, and a federal council in Lagos. As an alternative, Bourdillon suggested three parallel first chambers, with the Lagos council as a second chamber. The use of the word "Federal" enthused Awa<sup>[1]</sup> made many officials to be fearful of Nigeria going the path of Canada and the United States of America where antagonism between states and federal authorities existed (p.4). And Sir Bernard Bourdillon tried to dampen this fear by restating his view that the regional council would have inherent authority, in legislative matters and not merely advisory powers. But Sir Richard was to replace Sir Bourdillon as governor and when Sir Richard took over as the Nigeria governor he quickly went into action. He embarked on constitutional reforms just one year of assuming of office partly because he feared that there would be a political unrest if there were no constitutional reforms. Ezera (1960) opined that Bourdillon made proposal for a new constitution for Nigeria and his aims were; "promoting the unity of Nigeria; providing adequately within the desire for the diverse elements which make up the country and; securing greater participation by Nigerians in the discussion of their own affairs" (p.67). The white paper embodying these proposals was subsequently tabled before the legislative council for its approval and adoption. The proposals were debated and voted upon, by the members of the Legislative Council and the motion was carried and the proposals were eventually passed to London and with minor amendments, were passed into law in August 1946 in the form of three principal constitutional papers (Order in Council 1946-49). It finally came into force in January 1947, taking its name after the Governor, who was the designer and chief architect of the constitution.

According to Joye and Igweike<sup>[3]</sup> the constitution preserved the existing Executive Council and enlarged the legislative council with nation-wide powers to make laws for the peace, order and good government of Nigeria as a whole but there were some reserved legislative powers that were vested on the Governor. The membership of the council enthused Joye and Igweike<sup>[3]</sup> was made up of the Governor (President), 16 official (13 ex-officio and 3 nominated) and 28 unofficial (24 nominated and 4 elected) members. The governor nominated the three officials while the newly established Provincial

Councils, acting as electoral colleges, nominated the 24 un-officials. The four elected members were as under the 1922 Constitution except that franchise was widened by the reduction of the property qualification of voters from £100 to £50 gross annual income (Joye & Igweike) <sup>[3]</sup>. The councils were meant to act as a link between the Native authorities and the legislative council. As already briefly mentioned, they don't wield no political clout, although the new constitution provided for the establishment of a council for each of the three provinces, i.e., northern, western and eastern provinces, they were nevertheless only meant to deliberate and to act as an advisory body with no legislative powers whatsoever. They could only consider and comment on matters referred to them by the Governor and any legislative proposals to be introduced in the legislative council that were applicable to the province concerned. In addition, provision was made for the setting up of a House of chiefs for the Northern Province, with chief commissioner as its president and all first class chiefs in the province and not less than 10 second class chiefs selected by and from among them.

Under the Richards constitution and by order of Nigeria (Protectorate and Cameroons) Order in Council of 1946, the Cameroons was administered as if it was a part of the Northern and Southern Provinces of the Protectorate. Some part of present day Cameroon was administered as part of Nigeria until 1960 when Nigeria became an independent Nation. Sir Richard's constitutional theory was that Nigeria falls within the natural division of three units. This tripartite division argued Awa <sup>[1]</sup> has subsequently plagued the people of Nigeria in their efforts to plan further constitutional advance. Sir Richard had tried to understand the beliefs, attitudes, aspirations, languages and tradition of the Nigerian peoples during his constitutional proposal. Lord Hailey did divide northern Nigeria into Moslem north and non-Muslim north.

The non-Muslim north had a much looser form of political organisation, based on groups of clans who recognised as the only political authority with clan heads and the clan's council. Lord Lugard maintained the independence of Muslim rule. The aim should be, he argued, to develop those areas, however rudimentary their institutions were at the start, until they became self-governing. He based his theory that good government was no equivalent for self-government.

He nevertheless went ahead with tripartite division of Nigeria. However, Macpherson replaced Sir Richard. He soon began to look for ways to make the constitution he had inherited work better than it was. The crises generated by the constitution were glaring to him. He therefore decided on a new constitution that will involve Nigerians more than other constitutions have achieved and this led to a new constitution depicting the Macpherson constitution, as usual named after him.

### Summary

This era of constitutional making in Nigeria was entirely dominated by the British imperial colonialists. The Constitutions in this period though developed in Nigeria and was meant as instrument of governance for Nigerians, was none the less entirely made and by the British without taking into consideration the people the constitutions were meant to rule. This nonplus attitude by the British in dealing with

Nigerians' affair feeds up anger and disquiet amongst Nigerians, especially the Nationalists who were already at the time demanding a change in British attitude towards the affairs of Nigeria. The pressure brought to bear on the imperialist eventually paid off and the next constitution that was to follow Macpherson of 1950 was a turning point in the way and manner the British developed and enacted the subsequent constitution before Nigeria's independence in 1960.

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

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