Constitutions are designed to set out the rules and regulations within which governments operate. They establish the composition, powers and functions of the institutions of the state, regulate the relations between these institutions, and enshrine the legal rights and duties of the citizenry. An important distinction can be drawn between codified and uncodified constitutions. Codified constitutions are largely written, centred around a single document, incorporating key constitutional provisions that are binding on all political institutions.

7.2 Britain

Great Britain is a constitutional monarchy. The constitution exists in no one document but is a centuries-old accumulation of statutes, judicial decisions, usage, and tradition. The development of a constitution is structured chronologically around eight "landmark" moments within British constitutional history, from the Glorious Revolution of 1688 to the Devolution Settlement of 1998. In addition to these events, it also focuses on the union between England and Scotland in 1707, the ascendancy of Robert Walpole as the Crown's first minister in 1721, the Great Reform Act of 1832, the Parliament Act of 1911, ratification of the European Convention in 1953 and the UK joining the European Community in 1972. Each of the main chapters pivots around an analysis of one of these events. In addition, other related developments are given consideration. For example, the chapter on the Great Reform Act also examines the later expansion of the franchise during the nineteenth and twentieth centuries.

Similarly, the ratification of the European Convention deals briefly with the later passage of the Human Rights Act in 1998 "incorporating" Convention rights in the UK law. This structure focuses on particular periods when constitutional issues were at the fore of British politics whilst also achieving a broadly comprehensive overview of the country's constitutional development. The British constitution is often described as an

'unwritten constitution', but it is best described as 'partly written and wholly un-codified'. The three institutional powers in the British constitution are, according to the *separation of powers* theory, the executive (Government: the administration that runs the country); the legislature (Parliament: the institution of law-making); and the judiciary (judges: the adjudicators in disputes). Of the three institutional powers, constitutional theorists have identified Parliament as being the supreme law-making body. Parliament can make, or unmake, any laws that it wants. This is the theory of parliamentary sovereignty. The constitution has evolved over time, with two main strands of historical development: *first*, the changing relationship between the monarchy, executive and the Parliament; and, *second*, the landmark reforms that have extended rights and liberties and delimited constitutional powers.

The hereditary monarch, who must belong to the Church of England according to the Act of Settlement of 1701, is almost entirely limited to exercising ceremonial functions as the head of state. Sovereignty rests in Parliament, which consists of the House of Commons, the House of Lords, and the crown. Effective power resides in the Commons, whose 646 members are elected from single-member constituencies. The executive—the cabinet of ministers headed by the prime minister, who is the head of government—is usually drawn from the party holding the most seats in the House of Commons; the monarch usually asks the leader of the majority party to be the prime minister.

Historically, the hereditary and life peers of the realm, high officials of the Church of England, and the lords of appeal (who exercise judicial functions) had the right to sit in the House of Lords, but in 1999 both houses voted to strip most hereditary peers of their right to sit and vote in the chamber. Most legislation originates in the Commons. The House of Lords may take a part in shaping legislation, but it cannot permanently block a bill passed by the Commons, and it has no authority over money bills. The crown need not

assent to all legislation, but assent has not been withheld since 1707.

The British Constitution is a product of a long process of evolution. The present mechanism and functioning of government in Britain can only be understood if we analyse the process of this growth. Generally speaking, the process of development of the British Constitution can be broadly divided into six main periods, which are discussed below.

7.2.1 Anglo-Saxon Period (400-1066): The first period to which the growth of English political institutions could be traced is that of Saxon settlement. The Saxon rule continued till 1066 when William of Normandy conquered England. During this period, England was a loose aggregation of tribal Commonwealths comprising seven Kingdoms: East Anglia, Merica, Nothumberland, Kent, Sussex, Essex and Wessex. In the ninth century, Wessex established its sovereignty over all other "Kingdoms" which were absorbed into a larger territory. In the process, the institution of Kingship—a single sovereign—was born. Besides kingship, the institution of local government was another important contribution of the Anglo-Saxon period. During this period, the majority of the population lived in small villages. Each village formed a township and was a unit of local government. The local government machinery consisted of a town assembly with certain elective officers.

7.2.2 Norman Period (1066-1154): The Norman conquest of England in 1066 marked a new development in the growth of the British Constitution. The major development of the Norman period was the growth in the royal power. The king ruled with the help of the Great Council or Magnum Concilium—a body consisting of royal officers, church dignitaries and other leading men of the kingdom. To help the king carry on the government during the interval when the Great Council was not in session, another small body called Curia Regis or Little Council emerged out of the former. The British Parliament arose out of the plenary sessions of the Great Council. Likewise, the Privy Council (and the Cabinet), the Exchequer (treasury) and the High Court of Justice grew out of the Curia.

7.2.3 Angevin or Plantagenet Period (1154-1485): The political institutions established by William, were revived by Henry II who founded the Plantagenet dynasty. During the Plantagenet period, the powers of the Parliament increased. In 1341, the Parliament got King Edward I to agree to the following matters:

- The King will not levy any tax without the approval of the Parliament.
- The Parliament may appoint a Commissioner to audit the accounts.
- The Ministers will be appointed by the Parliament.
- The Ministers will resign before the commencement of the session and reply to any charge levelled against them.

The Parliament also acquired the right to dethrone a King. As a matter of fact, in 1327, Edward II was made to leave the throne. As for constitutional landmarks, the Magna Carta of 1215, signed by King John and the major feudal landowners, is still seen as a reference point for the protection of civil liberties. It required that every man accused of a crime should be given a fair trial and be judged by his peers, and that the legal system be free of bribery and corruption. These principles are of continuing relevance today. The right to a fair trial, for example, is now explicitly protected in law under the Human Rights Act, 1998, a very recent landmark in the development of the British constitution. This Act brings many of the rights and freedoms laid down in the European Convention on Human Rights into English law.

7.2.4 Tudor Period (1485-1603): The period from 1485 to 1603 is known as the Tudor period. The constitutional history of this period is the "history of consolidation of the governmental system". The Tudor monarchs concentrated wide powers in their hands and thereby strengthened the influence of Kingship. Thus, Parliament, though it survived, did not place serious obstacles in the way of royal despotism.

However, Queen Elizabeth (1558-1603) did consult the Parliament frequently and accepted its judgment on many important occasions.

7.2.5 Stuart Period (1603-1714): After the death of Elizabeth, the throne of England passed to her cousin James I (1566-1625). However, he soon came into conflict with the Parliament. This was because he believed in the divine right of Kings and laid undue stress upon the royal powers and prerogatives. During the reign of Charles I (1625-1649), the conflict between the King and the Parliament developed into a civil war. Charles I was put on trial and executed. The Kingship and the House of Lords were abolished. The Parliament formally proclaimed England a "*Commonwealth*" or Republic in 1649. A written Constitution, known as the "*Instrument of Government*", was adopted and Oliver Cromwell (1653-1658) was named Lord Protector. However, the Protector ran into trouble with the Parliament and his new Constitution failed.

After the death of Cromwell, monarchy was restored in England with the crowning of Charles II, the third Stuart. He tried to make a compromise between the royal authority and parliamentary supremacy. However, his successor, James II, soon after this ascension to the throne, quarrelled with Parliament over the right to exercise his right to suspend the operation of certain laws and tried to rule arbitrarily. Ultimately, the conflict between the King and the Parliament led to the "*Glorious Revolution*" of 1688 which saw the overthrowing of King James II (1685-1688). King William III (William of Orange) agreed to a *'bill of rights'* for the protection of individual rights and liberties and parliamentary dominance over the monarchy was declared. After 1688, Parliament continued to gain power at the monarch's expense, to the extent that the monarch is today a largely ceremonial figure with very limited powers. The events of 1688-89 established the outlines of the English Constitution. Britain became a constitutional monarchy. Parliament established its

supremacy over the actual powers of the Monarchy. Till date, this basic structure of the British constitutional system remains intact.

Other notable developments in history include the Act of Settlement 1701, which provided judges with freedom from interference by the other constitutional powers; and the widening of public participation in the political process, with the extension of certain voting rights to men in the nineteenth century and to women in the first half of the twentieth century, thus creating, over time, a parliamentary democracy.

7.2.6 Hanover Period (1714-1837): The Glorious Revolution of 1688 prepared the ground for redefining the powers of the King and the Parliament. In February 1689, during the reign of the Hanover dynasty, the Parliament passed the Bill of Rights which is one of the most important documents in English constitutional history. It proclaimed the legislative supremacy of Parliament and restricted the powers of the Monarch. The Monarch could neither veto any particular law passed by Parliament nor delay its enforcement. He could no longer levy or raise any tax or make royal appointments or maintain a standing army during peacetime without the approval of the Parliament.

7.2.7 Present Constitution: The Status Quo: The United Kingdom of Great Britain and Northern Ireland consists of four countries: England, Northern Ireland, Scotland and Wales. Legislative competence for the UK resides in the Westminster Parliament, but there are three legal systems (England and Wales, Northern Ireland, and Scotland) with separate courts and legal professions.

The United Kingdom is a constitutional monarchy with a bicameral parliament composed of the Houses of Commons and Lords. Formally, executive power is vested in the Crown in the person of the Sovereign, but in reality, central government is carried out in the name of the Crown by ministers of state. The powers of the Sovereign and the Crown derive either from Acts of Parliament or are prerogative

(recognized in common law). There is no formal separation of the powers of the legislature and executive and while legislative authority is vested in the Sovereign in Parliament, ministers responsible for implementing new acts are also involved in the process of legislation. Similarly, in the House of Lords, the Lords who sit as judges in the Appellate Committee can also take part in the legislative business of the upper house.

Table 7.1: Development of the British Constitution

Changing Relationship between the Monarchy, Executive and the Parliament	Landmark Reforms Extending Rights and Freedoms and Setting the Boundaries of Constitutional Powers
- Kings and Queens have absolute power up to 17th century. - English Civil War takes place, in which Parliament stands up to the monarchy. - Glorious revolution of 1688, following the civil war, gave Parliament dominance over the monarchy. - Since 1688, Parliament has gained power at the monarchy's expense. - Parliament develops procedures to keep executive governance in check.	- Magna Carta 1215: first real attempt to set out constitutional powers and give rights and freedoms to citizens. - Act of Settlement 1701: provided for judicial independence from the other constitutional powers. - Extension of voting rights (19th/20th centuries): led to parliamentary democracy. - UK joins the European Community in 1973 and therefore becomes subject to European Community law.

However, perhaps the most significant constitutional development of all has been the UK's participation as a Member State of the European Community (EC) (now European Union, or EU) since 1973. This has meant that the British constitution is subject to the exercise of powers and processes by a further set of institutions. EC law, which describes the law developed by the institutions of the European Union, is superior to English law, and there is little doubt that when the UK joined the EC, it gave away aspects of its own parliamentary sovereignty. A constitutional question that

remains contentious is whether the UK can, in any circumstances, withdraw from the European Union.

It is often suggested informally, that the United Kingdom does not have a written constitution. This is not strictly true, but what it does not have is a single document setting out the legal framework and functions of the organs of government and the rules by which it should operate. Such documents are a declaration of a country's supreme law and have overriding legal force to empower a constitutional court to declare acts of the legislature illegal if they conflict with the rights embodied in such a formal constitution. In this, the UK currently differs from most other countries, for instance, the United States, Ireland, Germany, France and South Africa.

The constitution of the United Kingdom, in contrast, is a "whole system of government...(with a)...collection of rules which establish and regulate or govern the government". The system is based on a combination of "Acts of Parliament and judicial decisions...political practice…and detailed procedures established by various organs of government for carrying out their own tasks". Examples of the latter are "the law and custom of Parliament" and the "rules issued by the Prime Minister to regulate the conduct of ministers". In effect, Parliament has the right to modify the Constitution of the United Kingdom on the basis of simple majorities in the two Houses of Parliament.

The constitutional status quo in the UK has resulted in a very flexible system, in which governance depends on political and democratic principles rather than a rigid system that relies on legal rules and safeguards. This can be construed as both strength and a weakness, but for reform it has several important consequences. For example, there are no special procedures for proceeding with new constitutional arrangements, and all such acts must pass through the Westminster Parliament in the normal legislative manner. In addition, no truly federal arrangement can be established within the United Kingdom while the Westminster Parliament remains supreme: it currently retains the right to

revoke power recently devolved to Northern Ireland, Scotland and Wales. There are numerous items of legislation from medieval to modern times that have affected the constitution, and a few can be singled out as particularly significant.

Magna Carta, granted by John in 1215, with the current version approved by the English Parliament granted by Edward I (1297). It established that punishment should be by judgment of one's peers or the law of the land, and that justice cannot be denied to an individual.

Table 7.2: Constitutional Reforms in Britain since the 1990s

Conservative Government (1990-1997) Publication of Ministerial Code (1992); Intelligence Services Act 1994; Promulgation of Civil Service Code (1997)
Labour Government (1997-2010) Devolution (1997 onwards); Human Rights Act, 1998; Freedom of Information Act, 2000; Constitutional Reform Act, 2005; Constitutional Reform and Governance Act, 2010
Coalition Government (2010-) Parliamentary Voting System and Constituencies Act, 2011; Fixed-term Parliaments Bill; European Union Bill; Production of Cabinet Manual

7.2.8 Constitutional and Administrative Law Reforms in Britain since 1997: The first Blair administration came into power on May 1, 1997 pledged to undertake the most radical shift in constitutional arrangements, broadly conceived, for a century. For the most part it has been as good as its word, even if its critics still clamour for more. It included a commitment to a Human Rights Act, to a Freedom of Information Act, for devolution to Wales, Scotland and Greater London, and to reform of the House of Lords. In addition, it has moved forward on devolution to the English regions, to reform of the House of Commons, to civil service reforms, to electoral and party regulation as well as a sea change in the way local government is run. Taken together, these achievements have

seriously altered the constitutional map and, for the most part, the changes are irreversible, regardless of the colour of any succeeding government.

Although the Labour party has long had a predisposition towards constitutional reforms (both the Crown Proceedings Act, 1947 and Parliament Act, 1949 were products of this policy), the current major constitutional changes and proposals have their seeds in 1989 and 1993 party policy documents. Immediately on assuming office in 1997, the New Labour government established various review committees and initiated proposals covering a wide range of constitutional matters, in addition to reconsidering policies formulated for the election campaign. These included:

- Electoral reform and, in particular, the voting system for Westminster elections (Jenkins Commission, 1998).
- Electoral law and administration (Howarth Committee, 1998).
- Modernisation of the House of Commons (Select Committee, 1997-98).
- Reform of the House of Lords (Joint Committee, 2001).
- Introduction of a Bill of Rights (Consultation Paper 1996).
- Introduction of a Freedom of Information Act (Joint Consultative Committee, 1997).
- Consideration of English regional government (Labour Party Policy Paper, 1996).
- Creation of a Ministry of Justice (Labour Party Policy Document, 1995), and devolution to Scotland and Wales (White Paper, 1997).
- Plans were also announced for a revitalisation of the government's policy making capacity and capabilities (White Paper, 1999).

Many of these "bold and ambitious" initiatives resulted in a surge of important constitutional legislations early in Labour's first parliamentary session including:

- Scotland Act, 1998.
- Government of Wales Act, 1998.

- Northern Ireland Act, 1998.
- Human Rights Act, 1998.
- Regional Development Agencies Act, 1998.
- European Parliamentary Election Act, 1999.
- Bank of England Act, 1998.
- Registration of Political Parties Act, 1998.
- Greater London Authority Referendum Act, 1998.
- White Paper 1997 on freedom of information, and reform of local government (White Paper, 1999).

7.3 Brazil

With its more than 200 million inhabitants, Brazil has the largest population in Latin America and ranks fifth in the world. The majority of people live in the south-central area, which includes the industrial cities of Sao Paulo, Rio de Janeiro and Belo Horizonte. Brazil is a federal republic with 26 states and a federal district. The 1988 Constitution grants broad powers to the federal government, made up of executive, legislative, and judicial branches. The president holds office for 4 years, with the right to re-election for an additional 4-year term, and appoints the cabinet. There are 81 senators, three for each state and the Federal District, and 513 deputies. Senate terms are 8 years, staggered so that two-thirds of the upper house is up for election at one time and one-third 4 years later. Chamber terms are 4 years, with elections based on a complex system of proportional representation by states. Each state is eligible for a minimum of eight seats; the largest state delegation (Sao Paulo's) is capped at 70 seats. This system is weighted in favour of geographically large but sparsely populated states. Several political parties are represented in Congress. Since representatives to the lower house might switch parties, the proportion of congressional seats held by particular parties can change.

Brazil proceeded cautiously down the European path in the nineteenth century, tending to follow a "North European" (English-Swedish) rather than a "Latin" (French-Spanish)

pattern. Under the Empire (1822-1889), the extent and significance of suffrage constituted exceedingly modest advances over the absolutistic structure of government during Brazil's subordination to Portugal (1500-1822). During the colonial period, the only elected officials in Brazil had been members of community councils and local judges, except for an extraordinary Cortes for which Brazil chose representatives at the end of the era (1821). With Brazilian independence in 1822, came new demands by the planter elite for a larger measure of representative government, and the Constitution of 1824 ("freely granted" by Emperor Pedro I) added a national parliament to the *municipio* councils.

Brazilian constitutionalism, however, was more apparent than real; although the Parliament was loosely modelled after Britain's, in fact the system more closely resembled absolutism than constitutional monarchy because of the extensive powers of the Emperor to intervene in all important matters of policy and personnel. Specific provisions of the Constitution of 1824 reveal how limited Pedro's belief in democracy really was: the Emperor himself appointed the ministers of state and presidents of the provinces; though Parliament had the power of the purse, he also could veto legislation and dissolve the Chamber of Deputies at will. In addition, the Emperor named bishops, magistrates, and ambassadors, and possessed the authority to make war and peace.

The Brazilian Constitution of February 24, 1891, the first to be promulgated after the proclamation of the Republic on November 15, 1889, remained in force for forty-three years. Dr. Getulio Vargas, during his fifteen years as President, promulgated two substitutes: the *first*, drafted by a Constituent Assembly elected in May 1933, was proclaimed on July 16 of the following year; the *second*, dated November 10, 1937, was drawn up, in complete disregard of the 1934 Constitution, by Dr. Getulio and his Ministers when he was preparing to close the Senate and Chamber of Deputies. It is a typical product of the dictatorship, repugnant to any democratic Government.

The present Constitution was drafted by the Constituent Assembly elected in December 1945, after the Dictator had been deposed, and was promulgated on September 18, 1946. The Constitution of 1891 was a concise, liberal document of ninety-one clauses, which established the form of government and the principles on which it was founded, leaving the details to be evolved by future administrations. It was based on the Constitution of the United States of North America, the States being empowered to legislate on all matters not pertaining exclusively to the federal Government. The legislative power was vested in a National Congress, composed of Senate and Chamber of Deputies. The latter was made up of one Deputy for every 70,000 inhabitants in each State and in the federal district, elected for a term of three years. The Senate was composed of three representatives from each State and the federal district, elected for nine years, one-third retiring every three years and being replaced by the elected substitute. Elections were on the basis of universal suffrage for all citizens over twenty-one, registered in accordance with the law and not disqualified for specified reasons, such as illiteracy.

In 1967, the executive power over the legislative and judiciary, yet again weakened federalism through the political and administrative centralization that was regarded as indispensable in addressing alleged threats to national security. The decentralizing tendency of the transition to democracy in Brazil was the adoption of the 1988 Constitution. After 1985, under civilian rule, democratic leaders decided that the constitution then in force (the 1967 Constitution, as amended in 1969), which had been the child of authoritarianism, should be replaced by a new, truly democratic charter. Thus, the1988 Constitution incorporated a number of provisions designed to act as safeguards against a possible return to authoritarianism.

Three of the new constitutional features must be singled out for their subsequent political and economic effects. The *first* was the reinforcement of the power of the National Congress vis-à-vis the federal executive. A *second* was the decentralization of

federally collected funds to state governments (fiscal federalism). A *third* feature was the adoption of a detailed bill of rights, together with provisions that gave autonomy to the judicial branch and to public prosecutors. A more robust federalism, a reinvigorated political life in the legislature, and the so-called *judicialization of politics* were relevant consequences of these developments.

7.4 Nigeria

Nigeria is a federal republic in West Africa. With an estimated population of about 173 million people, Nigeria is the most populous country in Africa. The political system of Nigeria has undergone various changes over the last few decades. During the past few years, the country witnessed political tumult aided by military coup at different stages which destabilized the stability of the country. Historical evidences indicate that during 11th century, the vast land of Nigeria was inhabited by different tribesman and later this diversification culminated into the formation and rise of popular kingdoms. Most importantly, the north-eastern part of Nigeria was ruled over by Borno, the Hausa city-state kingdoms of Katsina, Kano, Zaria, and Gobir in the northern-central Nigeria, the Yoruba city-states/kingdoms of Ife, Oyo, and Ijebu in south-western Nigeria, the southern kingdom of Benin, and the Igbo communities of eastern Nigeria were all placed under different reigns at different times. From the second half of the 19th century to 20th century, the British took over the administrative, political and military charges of the country thereby leading to great political upheavals. Finally, after years of hard struggle, the country achieved independence in the year 1960 on October 1.

Nigeria is a federal republic with a presidential system. The constitution provides for a separation of powers among the three branches of government. General elections held in February 1999 marked the end of 15 years of military rule and the beginning of civilian rule based on a multi-party

democracy. General elections were held for the second consecutive time in April 2003. In both elections, President Olusegun Obasanjo and his party, the People's Democratic Party (PDP), were victorious. Despite the consolidation of democratic rule following years of military dictatorship, some feared that in the absence of a clear successor, the incumbent president might seek to amend the constitution so that he could run for a third term in 2007.

7.4.1 Constitutional Development: Right from the colonial period, Nigerians were barely involved in the art of constitution making while the British colonial overlords employed constitution making to consolidate their imperial strategies. Post-colonial Nigerian leaders have utilized constitution drafting to ensure regime longevity. Independent Nigeria has so far experimented with five constitutions, the 1960, 1963, 1979, 1989 and 1999 Constitutions (The 1989 Constitution was not promulgated). Nigeria's current constitution, the fourth since independence, went into effect on May 29, 1999. The 1999 Constitution has given birth to the Fourth Republic, though with problems for which it faces demands for a revision or amendment. The first two of these constitutions were drawn up during civilian regimes while the last three were made or promulgated during military regimes.

The current 1999 Constitution is a product of haste because the receding military junta was in a hurry to leave the political turf. Consequently, the 1999 Constitution has all the trappings of military centralization of power resulting in de-federalization of Nigeria and the consequent clamour and agitation for the amendment of the constitution. Modelled after the US Constitution, it provides for a separation of powers among a strong executive, an elected legislature, and an independent judiciary. Critics of the Constitution complain that the federal government retains too much power at the expense of the states. Although the Constitution proclaims personal freedom and a secular state, it also permits Muslims to follow *sharia*, or Islamic law.

It is on record that until now, eight constitutions have been operated in Nigeria. It began with the Sir Frederick Lugard's Amalgamation Report of the 1914.Thereafter, there were the Sir Clifford Constitution (1922); Sir Arthur Richards Constitution (1945); Sir John Macpherson Constitution (1951), Oliver Littleton's Constitution (1954), the Independence Constitution (1960); the Republican Constitution (1963) and the 1979 Constitution (1979). There was another draft Constitution in 1989 prepared during the regime of former President Ibrahim Babangida. This was never tried until General Sanni Abacha's administration brought about the 1994-95 constitutional Conference, which laid the foundations for the 1999 Constitution.

- The Clifford Constitution, which was introduced by Sir Hugh Clifford in 1922, replaced both the Legislative Council of 1862 which was subsequently enlarged in 1914, and the Nigerian Council of 1914. Under the Constitution, a Legislative Council was for the first time established for the whole of Nigeria, which was styled as, *The Legislative Council of Nigeria*. One feature of Clifford's Constitution was that only Africans with minimum gross income of US$ 100 a year were eligible to vote and be voted for.
- When Sir Richards became the governor of the colony of Nigeria, he initiated moves to draft a new constitution. In March 1945, through a Sessional Paper Number 4, the Chief Secretary to the government, Sir General Whitely, initiated a motion in the Legislative Council which was passed unanimously in the House. This motion for a new constitution gave birth to the Richards Constitution. In this Constitution, there was one Legislature for the whole of Nigeria. It also made provisions for three delineated provinces, viz. North, West and East. There was an overwhelming African majority, but were not to be elected in the provinces and the Central Legislative House.
- In 1948, Sir Macpherson became the Governor of Nigeria and decided to fashion out a new Constitution. It represented a major advance from the pre-existing constitutional

provisions because it introduced majorities in the Central Legislature and the Regional Houses of Assembly.

- The Macpherson Constitution was set aside and replaced by the Littleton Constitution, which laid the foundation for a classical Federation for Nigeria. The component units of Nigeria were *"separate yet united"* in their sub-economies, civil service, legislature and public services.
- The constitutional evolution of Nigeria which started in concrete terms with the Clifford's constitution of 1922, climaxed with the enactment of the 1960 Independence Constitution. Its provisions were the presence of the office of Governor General who was the non-political head of State, while the prime minister was the head of government.
- In 1963, the Republican Constitution did not change this position but merely removed the constitutional umbilical cord binding Nigeria to Britain.
- Within six years of Independence, the Constitution had failed, basically due to the cracks that had started appearing within its first two years. One of the factors that led to the collapse of the first republic was the nature of political authority within the State. The President, who was constitutionally, the chief executive usually, exercised his powers on the advice of the prime minister and his cabinet members. The Westminster model could not fit into African society where "the leader wants to assert his authorities without restraint".
- One fundamental innovation in the 1979 Constitution was the primacy given to federal character principle aimed at national integration and equitable representation of all the ethnic groups.
- In 1989, an attempt was also made by General Ibrahim Babangida administration to draft a constitution for the country. Indeed, a constitution was drafted for Nigeria.
- The Constitutional conference, which produced the 1999 Constitution, was inaugurated in 1994 in the wake of the

turmoil that greeted the annulment of the June 12, 1993 Presidential election. Some members of the conference were "elected" one-third of the members of the conference. The 1999 Draft Constitution was signed into Law on May 5, 1999. In the present 1999 Constitution of the Federal Republic of Nigeria, separation of powers is a fundamental constitutional principle. Relevant sections of the Constitution place each of the basic powers of government in a separate branch. Thus, while Sections 4 and 5 deal with the legislative and executive powers respectively, Section 6 is concerned with the judicial powers.

7.5 China

China is one of the countries with the longest history in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition. Feudal China was gradually reduced after 1840 to a semi-colonial and semi-feudal country. The Chinese people waged wave upon wave of heroic struggles for national independence and liberation and for democracy and freedom. Great and earth-shaking historical changes have taken place in China in the 20th century. The Revolution of 1911, led by Dr. Sun Yat-sen, abolished the feudal monarchy and gave birth to the Republic of China. But the Chinese people had yet to fulfil their historical task of overthrowing imperialism and feudalism. After waging hard, protracted and tortuous struggles, armed and otherwise, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucrat capitalism, won the great victory of the new-democratic revolution and founded the People's Republic of China. Thereupon, the Chinese people took state power into their own hands and became masters of the country.

China is a unitary and socialist state whose constitution calls on the nation to "*concentrate on socialist modernization by following the road of building socialism with Chinese*

characteristics" while adhering to the "leadership of the Chinese Communist Party (CCP) and the guidance of Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory" as well as "the important thought of the Three Represents", which are attributed to former CCP general secretary and president of China Jiang Zemin. The political system is led by the 86.7 million-member CCP. Political processes are guided by the CCP constitution and, increasingly, by the state constitution, both promulgated in 1982. The CCP constitution was revised in 2002, and the state constitution was amended in 1988, 1993, 1999 and 2004. Both constitutions stress the principle of democratic centralism, under which the representative organs of both party and state are elected by lower bodies, and they in turn elect their administrative arms at corresponding levels. Within representative and executive bodies, the minority must abide by decisions of the majority; lower bodies obey orders of higher-level organs. In theory, the National Party Congress is the highest organ of party power, but the real power lies in the CCP Central Committee and its even more exclusive Political Bureau.

7.5.1 Constitutional Developments: The Provisional Constitution of the Republic of China was drawn up in March 1912 and formed the basic government document of the Republic of China until 1928. It provided a Western-style parliamentary system headed by the weak president. However, the system was quickly usurped when Song Jiaoren, who as leader of the KMT (Kuomintang) was to become prime minister following the party's victory in the 1913 elections, was assassinated under the orders of President Yuan Shikai. Yuan regularly flouted the elected assembly and assumed dictatorial powers. Upon his death, China disintegrated into warlordism and the Beiyang Government operating under the Constitution remained in the hands of various military leaders.

The Kuomintang under Chiang Kai-shek established control over much of China by 1928. The Nationalist Government promulgated the Provisional Constitution of the Political Tutelage Period in 1931. Under this document, the

government operated under a one-party system with supreme power held by the National Congress of the Kuomintang and effective power held by the Central Executive Committee of the Kuomintang. In Leninist fashion, it permitted a system of dual party-state committees to form the basis of government. The KMT intended this Constitution to remain in effect until the country had been pacified and the people sufficiently "educated" to participate in a democratic government.

The current Constitution traces its origins to the end of the Second Sino-Japanese War when the impending outbreak of the Chinese Civil War pressured Chiang Kai-shek into enacting a democratic Constitution that would put an end to KMT Party rule. The Chinese Communists sought a coalition, made of one-third Nationalists, one-third Communists, and one-third of members from other parties, to form a coalition government that would draft the new Constitution. However, Chiang Kai-shek refused to relinquish power and insisted on having the Nationalist Government draft the Constitution and then holding nation-wide elections in which the Communists would be permitted to participate.

Unable to resolve the impasse, the KMT-drafted Constitution was adopted by the National Assembly on December 25, 1946, promulgated by the National Government on January 1, 1947, and went into effect on December 25, 1947. The Constitution was seen as the third and final stage of Kuomintang reconstruction of China. The Communists though invited to the convention that drafted it, boycotted and declared after the ratification that not only would it not recognize the ROC constitution, but all bills passed by the Nationalist administration would be disregarded as well. Zhou Enlai challenged the legitimacy of the National Assembly in 1947 by accusing KMT of hand-picking members of the National Assembly 10 years earlier and thus could not have legal representation of the Chinese people.

7.5.2 Constitution of the Republic of China (1947): The Republic of China (ROC) Constitution was adopted on

December 25, 1946, by the National Constituent Assembly meeting, convened in Nanking. It was promulgated by the National Government on January 1, 1947, and put into effect on December 25 of the same year. In addition to the preamble, the Constitution comprises 175 Articles in 14 chapters. In essence, the Constitution embodies the ideal of "sovereignty of the people", guarantees human rights and freedoms, provides for a central government with five branches and a local self-government system, ensures a balanced division of powers between the central and local governments, and stipulates fundamental national policies.

The 1982 Constitution is essentially a Dengist constitution, reflecting Deng Xiaoping's ideas for modernising China, i.e., social stability, economic development and opening to the outside world. It is also a result of the constant, and sometimes painful, search for China's own version of socialism. It made its tentative move towards liberalisation, politically and economically, while insisting on firm control by the Party. Thus, the Preamble both upholds the so-called "Four Fundamental Principles" and emphasises the construction of socialist modernisation as a fundamental national task. Article 18 of the Constitution formally provides a constitutional basis for foreign investment and its protection in China. Article 11 of the Constitution allows the development, within the limits prescribed by law, of an individual economy as a complement to the socialist economy. Article 10, for the first time in the PRC's constitution, defines the ownership of land in China. Although hailed as "the best since the founding of the PRC", the 1982 Constitution was soon amended in April 1988, to legitimise the existence of the rapidly developing private economy as well as to provide a constitutional basis for the commercial transfer of land use rights, both of which were the results of economic reform and pre-requisites for further economic development.

- 1954 constitution was based on the constitution of the Soviet Union.

- 1975 constitution of the PRC was modelled on the ideology of the Cultural Revolution. This constitution subjected the NPC to the Communist Party and removed previous constitutional protections such as equality under the law and private property succession rights.
- 1978 constitution moved away from the ideologies of the Cultural Revolution, it did retain some remnants of it. It also retained Communist Party control over the state structure.
- 1982 constitution shifted to economic construction and modernization. This Constitution also contains more extensive rights than any of the previous constitution.
- The current constitution was adopted at the Fifth Session of the fifth National People's Congress on December 4, 1982.

Since then, the Constitution has been amended 4 times, respectively in 1998, 1993, 1999 and 2004.

Further, ideologically significant revision was necessitated by the adoption by the Party at its Fourteenth Congress of the notion of a "socialist market economy" in 1992. So not long after the Central Committee of the CPC formally submitted its "Suggestions on Amending Certain Contents of the Constitution", the NPC dutifully adopted the suggestions and translated the new Party policy into law in March 1993. As a result of the revision, the term "socialist market economy" then replaced that of "planned economy". The terms "state-run (guoying) economy" and "state-run enterprises" replaced by "state-owned (guoyou) economy" and "state-owned enterprises" respectively. Similarly, provisions on state planning were removed and in their place were put provisions that require the state to strengthen economic legislation and macroeconomic control. On the whole, the 1993 amendment provides flexibility, though not specific direction, for future development.

The Fifteenth Party Congress in 1997 laid down certain political foundations for post-Deng China, which adopted a policy to continue the reform policy launched by Deng

Xiaoping in 1979 and to incorporate a Dengist version of socialism into the Constitution. Once again, efforts took place to transform the Party policy into constitutional provisions through constitutional revision. The revision was undertaken by a Revision Group of the Central Committee of the Party, headed by Li Peng. Since its first draft, issued on December 5, 1998 for internal Party discussion, the drafting work went swiftly. By January 22, 1999, a formal proposal had already been made by the Party to the Standing Committee for consideration and adoption.

The six amendments in 1999 fall into three categories: further supplementation to the Four Fundamental Principles, a Chinese version of the "Rule of Law", and a politico-economic version of "socialism with Chinese characteristics". On the whole, the 1999 revision of the Constitution was essentially designed to carry out the conversion of the adopted ideology of the Fifteenth Party Congress of 1997 into the form of fundamental state law, that is, to convert the will of the Party into that of the state. The revision reflects the Party's determination to continue the reforms and opening-up and to administer the country according to law. Examined from a development perspective, such revision indicates the then understanding of the notion of socialism with Chinese characteristics among the Party leadership.

The First Plenary Session of the Sixteenth Party Congress (2002) began the change-over of Party leadership, which continued until the First Plenary Session of the Tenth National People's Congress in 2003. These congresses saw the partial handover of leadership power from Jiang Zemin to Hu Jintao. So, the Sixteenth Party Congress was to sum up the Party's experience (or to record its achievements) in the previous five years and to set out a policy direction for the new leadership. Not surprisingly, the policy "spirit" as adopted by the Sixteenth Party Congress would need to be incorporated into the Constitution; hence a new round of constitutional revision. As early as on March 27, 2003, a Constitutional Revision

Group headed by Wu Bangguo (the new Chairman of the Standing Committee of the NPC) and under the direct leadership of the Standing Committee of the Politburo of the Party, was established.

At the same time, the principles for the revision were also set down by the Standing Committee of the Politburo. Official consultation was swiftly conducted in the next several months within limited circles of authorities and personnel, such as of provincial leaders, leaders of the democratic parties, and selected groups of local leaders and prominent scholars. The draft suggestion on amending certain contents of the Constitution was soon taking shape by August 2003. It is at this time that the ongoing revision was first officially reported. It should be pointed out that even though this was the first formal announcement of the ongoing revision of the Constitution, there was no mention of such a Group, even though it was said that the plenary session would discuss the proposals for constitutional reform. As was the previous practice, the recommendations were dutifully and faithfully adopted by the NPC, making itself once again a rubber stamp of the Party. Sadly, this practice was patently undemocratic: If the people have no right to participate in such fundamentally important political matters, it is perhaps unrealistic, if not insulting, to tell the people that they enjoy democracy and the rule of law.

Even though the ongoing revision was not officially reported until August 2003, the Chinese media began to break the news unofficially around June 2003. It was clear that Chinese scholars were consulted at a rather early stage, and certainly no later than June 2003. Not surprisingly, academics began to express a wide range of views and opinions, suggesting far reaching revisions to the Constitution, and academic symposiums devoted to the revision were also organised, the most notable convened in Qingdao City, and in Shanghai, both in June 2003 and both of which were attended by prominent scholars consulted by the Politburo on the

revision, such as Professors Jiang Ping and Wu Jinlian. However, enthusiasm among academics was quickly dampened. A secret instruction was soon issued by the Party to stop all conferences and publication of academic papers on constitutional reform, and leading economists and legal scholars actively involved in presenting their views were reported to have been harassed by the security forces. Thus, contrary to the assertion by the Chinese authorities that the revision of the Constitution was carried out on a democratic basis with wide consultations; consultations were only conducted within the strictly limited circles of the authorities and the elite.

Nevertheless, the drafting went swiftly. By mid-October 2003, the Suggestions on Amending Certain Contents of the Constitution had been adopted by the Third Session of the Central Committee of the Sixteenth Party Congress, which also decided to pass the Suggestions to the Standing Committee of the NPC to be converted into a constitutional amendment bill in accordance with the constitutional procedures. As usual, the Standing Committee of the NPC dutifully did so at its Sixth Meeting of the Tenth NPC held during December 22-27, 2003. Also on December 22, 2003, the Suggestions on Amending Certain Contents of the Constitution were, for the first time, published in full in the Chinese media. Theoretically, the Amendment Bill finally adopted by the full NPC on March 14, 2004 was no longer a Party document, but a formal legislative bill, except that the Bill was a verbatim copy of the Suggestions. As such, the revision started in late March 2003 and completed in mid-October of the same year was another world record.

Similar to the 1999 revision, the present revision was designed to incorporate policy decisions made at the Sixteenth Party Congress in 2002, including the adoption of the "Three Represents" idea, along with the "Four Fundamental Principles" and Deng Xiaoping's Theory, as guiding principles of the Party. It was meant to be a partial, not comprehensive, revision. It was

expressly decided that only the matters that must be regulated by the Constitution and only the provisions that must be revised immediately would be dealt with by the revision. Other matters, though desirable for revision, would be clarified later by constitutional interpretations, rather than by the present revision. In other words, the present revision was little more than an implementation of the Party policies as adopted at the Sixteenth Party Congress in 2002. The various amendments fell into five categories: the adoption of a new guiding principle for the Constitution, an explicit recognition of human rights, further protection for private property, a more civilian-type approach to a state of emergency and some technical revisions.

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