

SECTIONS 31 to 39 INCLUSIVE OF THE CONSTITUTION OF
WESTERN NIGERIA

CHAPTER II.

THE LEGISLATURE OF THE REGION

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PART 3

SUMMONING, PROROGATION AND DISSOLUTION

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31. (1) The Governor may at any time prorogue or dissolve the Legislative Houses of the Region.

Prorogation and dissolution of Legislative Houses.

10 (2) Subject to the provisions of subsection (3) of this section, the Legislative Houses of the Region, unless sooner dissolved, shall continue for five years from the date of their first sitting after any dissolution and shall then stand dissolved.

(3) At any time when the Federation is at war, the Legislature of the Region may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

20 Provided that the life of the Legislative Houses of the Region shall not be extended under this subsection for more than five years.

(4) In the exercise of his powers to dissolve the Legislative Houses of the Region, the Governor shall act in accordance with the advice of the Premier:

Provided that -

30 (a) if the Premier recommends a dissolution and the Governor considers that the government of the Region can be carried on without a dissolution and that a dissolution would not be in the interests of the Region he may refuse to dissolve the Legislative Houses;

- (b) if the House of Assembly passes a resolution that it has no confidence in the Government of the Region and the Premier does not within three days either resign or advise a dissolution, the Governor may dissolve the Legislative Houses; and
- (c) if the office of Premier is vacant and the Governor considers that there is no prospect of his being able to appoint a person who can command the support of the majority of the members of the House of Assembly to that office within a reasonable time the Governor may dissolve the Legislative Houses. 10

CHAPTER III

EXECUTIVE POWERS

Exercise of Executive Authority of Region.

- 32. (1) The executive authority of the Region shall be vested in Her Majesty.
- (2) Subject to the provisions of this Constitution, the executive authority of the Region may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him. 20
- (3) Nothing in this section shall prevent the Legislature of the Region from conferring functions on persons or authorities other than the Governor.

Ministers of Government of Region.

- 33. (1) There shall be a Premier of the Region, who shall be appointed by the Governor.
- (2) Whenever the Governor has occasion to appoint a Premier he shall appoint a member of House of Assembly who appears to him likely to command the support of the majority of the members of the House. 30
- (3) There shall be, in addition to the office of Premier, such other offices of Minister of the Government of the Region as may be established by the Legislature of the Region or, subject to the provisions of any Regional law, by the Governor, acting in accordance with the advice of the Premier.
- (4) Appointments to the office of Minister of the Government of the Region other than the office of Premier shall be made by the Governor, acting in accordance with the advice of the Premier: 40

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Provided that at least two Ministers shall be appointed from among the members of the House of Chiefs.

(5) A person shall not hold office at the same time both as a Minister of the Government of the Region and as a Minister of the Government of another Region.

10 (6) Subject to the provisions of subsection (11) of this section, a person who holds office as a Minister of the Government of the Region for any period of four consecutive months without also being a member of a Legislative House of the Region shall cease to be a Minister at the expiration of that period or, if that period expires at a time when the Legislative Houses are dissolved and he does not in the meantime become a member of a Legislative House, at the date on which the Legislative Houses first meet after that dissolution.

20 (7) Subject to the provisions of subsection (11) of this section, a person who holds office as a Minister of the Government of the Region and who is at no time while holding that office also a member of a Legislative House of the Region shall not be qualified for reappointment as such a Minister before the Legislative Houses are next dissolved after he ceases to hold that office, unless in the meantime he has become a member of a Legislative House.

(8) The office of the Premier shall become vacant -

- 30 (a) when, after any dissolution of the Legislative Houses of the Region, the Premier is informed by the Governor that the Governor is about to re-appoint him as Premier or to appoint another person as Premier; or
- (b) if he ceases to be a member of the House of Assembly otherwise than by reason of a dissolution of the Legislative Houses.

(9) The office of a Minister of the Government of the Region other than the Premier shall become vacant if the office of Premier becomes vacant.

40 (10) Subject to the provisions of subsections (8) and (9) of this section, the Ministers of the Government of the Region shall hold office during the Governor's pleasure:

Provided that -

- (a) the Governor shall not remove the Premier from office unless it appears to him that the

Premier no longer commands the support of a majority of the members of the House of Assembly; and

- (b) the Governor shall not remove a Minister other than the Premier from office except in accordance with the advice of the Premier.

(11) The office of the Attorney-General of the Region shall be that of a Minister of the Government of the Region:

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Provided that -

- (a) the provisions of subsections (6) and (7) of this section shall not apply in relation to a person holding that office;
- (b) if the person holding that office is for any reason unable to perform the functions conferred upon him by this Constitution or any other law, those functions may be performed by such other person (whether or not that person is a Minister) as may from time to time be designated in that behalf by the Governor acting in accordance with the advice of the Premier; and
- (c) a person shall not be qualified to hold that office or to perform the functions conferred upon the person holding that office by this Constitution or any other law unless he is qualified for admission as an advocate in Nigeria and has been so qualified for at least ten years.

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Establishment of Executive Council.

34. (1) There shall be an Executive Council for the Region, whose function shall be to advise the Governor in the government of the Region and which shall consist of the Premier and such other persons, being Ministers of the Government of the Region, as the Governor, acting in accordance with the advice of the Premier, may from time to time appoint.

(2) A person appointed as a member of the Executive Council shall vacate his seat in the Council if he ceases to be a Minister of the Government of the Region or if the Governor, acting in accordance with the advice of the Premier, so directs.

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35. (1) The Executive Council shall be collectively responsible to the Legislative Houses of the Region for any advice given to the Governor by or under the general authority of the Council and for all things done by or under the authority of any Minister of the Government of the Region in the execution of his office. Collective.
Responsibility.

(2) The provisions of this section shall not apply in relation to -

- 10 (a) the appointment and removal from office of Ministers of the Government of the Region, members of the Executive Council and Parliamentary Secretaries to Ministers, the assignment of portfolios to Ministers or the authorization of another member of the Executive Council to perform the functions of the Premier during absence or illness;
- 20 (b) the dissolution of the Legislative Houses of the Region; or
- (c) the matters referred to in section 44 of this Constitution (which relates to the prerogative of mercy).

36. The Governor, acting in accordance with the advice of the Premier, may assign to the Premier or any other Minister of the Government of the Region responsibility for any business of the Government of the Region, including the administration of any department of government. Allocation
of portfolios
to Ministers.

30 37. (1) Whenever the Premier is absent from Nigeria or is by reason of illness unable to perform the functions conferred upon him by this Constitution the Governor may authorize some other member of the Executive Council of the Region to perform those functions (other than the functions conferred by this section) and that member may perform those functions until his authority is revoked by the Governor Performance of
functions of
Premier during
absence or
illness.

40 (2) The powers of the Governor under this section shall be exercised by him in accordance with the advice of the Premier;

Provided that if the Governor considers that it is impracticable to obtain the advice of the Premier owing to his absence or illness he may exercise those powers without that advice.

Exercise of
Governor's
Powers.

38. (1) In the exercise of his functions under this Constitution, the Constitution of the Federation or any other law the Governor shall act in accordance with the advice of the Executive Council or a Minister of the Government of the Region acting under the general authority of the Executive Council except in cases where by this Constitution he is required to act in accordance with the advice of any person or authority other than the Executive Council:

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Provided that the Governor shall act in accordance with his own deliberate judgment in the performance of the following functions -

- (a) in the exercise of the powers relating to the dissolution of the Legislative Houses of the Region conferred upon him by the proviso to subsection 31 of this Constitution;
- (b) in the exercise of the power to appoint the Premier conferred upon him by subsection (2) of section 33 of this Constitution;
- (c) in the exercise of the powers conferred upon him by section 37 of this Constitution (which relates to the performance of the functions of the Premier during absence or illness) in the circumstances described in the proviso to subsection (2) of that section; and
- (d) in signifying his approval for the purposes of section 63 of this Constitution of an appointment to an office on his personal staff.

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(2) Where by this Constitution the Governor is required to act in accordance with the advice of any person or authority, the question whether he has in any case received, or acted in accordance with, such advice shall not be enquired into in any court of law.

Governor to
be informed
concerning
matters of
Government.

39. The Premier shall keep the Governor fully informed concerning the general conduct of the government of the Region and shall furnish the Governor with such information as he may request with respect to any particular matter relating to the government of the Region.

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No. 5 of 1963

IN THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL

SUPREME COURT OF NIGERIA

ADEGBENIGBO

-v-

AKINTOLA

APPENDIX to the CASE OF
THE RESPONDENT THE HON.S.L.
AKINTOLA

SECTIONS 31 to 39 INCLUSIVE
OF THE CONSTITUTION OF WESTERN
NIGERIA

1963

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