

Reconsidering Place of Traditional Institutions under the Nigerian Constitution: A Comparative Analysis

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Abstract

The advent of colonialism witnessed the usurpation of powers of traditional rulers by the invading forces of Western Europe in Nigeria and many African countries. During the pre-colonial era, traditional rulers occupied crucial positions of authority in Nigeria and many African Kingdoms. They were highly revered and believed to be representatives of the gods on earth. In Nigeria, Traditional rulers were the political and spiritual heads of the various kingdoms. The pre existing traditional political structure in some parts of Nigeria, no doubt, facilitated the implementation of indirect rule system by the British colonial masters. Since the attainment of Nigeria's independence in 1960, traditional rulers hardly feature in the political scene. Successive post independence regimes have made tremendous moves to reincorporate the roles of institution in the constitution without actualizing it. This paper shall critically x-ray the place of traditional institution under the 1999 Constitution of the Federal Republic of Nigeria. The paper shall equally delve into the contemporary trend in some other jurisdictions.

I. INTRODUCTION /CONCEPTUAL CLARIFICATION

Traditional institution simply refers to the indigenous political arrangements whereby leaders with proven track records are appointed and installed in line with their native laws and custom to act as custodian of their people's norms, cultures and practices. A traditional ruler is a person who has been appointed to, and occupies the throne of an area by virtue of his ancestry in accordance with the established tradition. Traditional leadership is an ancient institution prevalent across the entire African continent. In Nigeria, courts have held that the issue as to who is eligible to ascend a traditional stool or throne is subject to the customary law and traditions of the people concerned which is a question of fact borne out by evidence, unless such custom has assumed a status of notoriety for it to be judicially noticed.¹

Historically, the African people practiced no other form of governance than traditional leadership. The socio-cultural norms and traditions embedded in the traditional institutions have remained an integral part of every organized society in Africa.² Apart from being the powerful human tool for survival, the defined cultural norms and values also forms the basis for the existence of every civilized society. These norms and values have helped in sanitizing the various societies both in the pre and post colonial Nigeria. They also form the basis upon which traditional rulers exercised their act of governance, power, authority and influence on their subjects. It was the traditional institution of governance that acted as the custodian of customary law, communal assets, such as lands, guardian and symbols of cultural values and religions practices, dispensation of justice, enforcement of contracts and resolution of conflicts.³

Before the advent of colonialism, most societies in Nigeria and some other African countries were governed through the monarchical system of traditional ruler ship. In Nigeria, the monarchs were referred to in various names and appellations such as the Oba,⁴ Emir,⁵ Obi,⁶ amongst others. So highly revered because they possess elaborate religious and political powers, and regarded as representatives of God, the Supreme Being on earth. The forces of imperialism and colonialism have however severally undermined and disintegrated the institution of traditional leadership in many African States.

¹ See *Olaniyani v. Oyewole* (2011) 14 NWLR (PT1268) P. 445

² Olaniran O., and Arigun A., *Traditional Rulers and Conflict Resolution; An Evaluation of The Pre and Post Colonial Nigeria. Online Journal of Research on Hummanities and Social Science Vol.3 No. 21, 2013 p.120.* available at www.iiste.org accessed on 10/9/2014

³ *ibid*

⁴ In the Yoruba kingdom

⁵ In the Hausa dynasty

⁶ In Igbo land

The British system of administration in Nigeria employed the system of indirect rule by which local Chiefs and other intermediaries were used. This no doubt accounts for the entrenchment of tradition institutions of governance in the pre-colonial Nigerian constitutions¹ and succinctly thereafter.² Unfortunately, recognition of traditional institution in the Nigerian Political Sphere was finally extinguished after the 1979 constitution.³ The 1999 Constitution of the Federal Republic of Nigeria did not prescribe any role for traditional rulers.

Conversely, the traditional conception of chieftaincy has today been adulterated in Nigeria. At present, there are numerous chieftaincy titles based on the principles of tradition on one hand and another based on the principles of modernity and capitalism. Numerous well educated and wealthy Nigerians, particularly, the politicians have now acquired chieftaincy titles of various stools which have no nexus with traditions⁴. That is why there are struggles for traditional title across Nigeria as at today.

In Ghana, South Africa, Uganda, Botswana and other numerous African countries, chieftaincy remains very central institution in governance and elaborate recognition is given to this ancient institution. Their sources of authority and powers are equally spelt out in the constitution of these countries.

In England, there was in existence a traditional system known as divine right of Kings; a political theory which claims that the sovereign is a direct representative of God and has the right to rule absolutely by his royal birth. The practice originated from the medieval concept of God's award of temporal powers to civil rulers and spiritual powers to the church. This right was particularly claimed by the early Stuart kings in England and explains many of their attitudes in the struggle which developed between them and parliaments for political sovereignty⁵. The practice was so highly dominant in the 18th and 19th Century in Europe⁶.

II. TRADITIONAL INSTITUTION IN THE PRE-COLONIAL AND EARLY COLONIAL ERA OF NIGERIA

In the pre-colonial era of Nigeria, traditional rulers wield effective powers in their domains. They derived their legislative, executive and judicial functions from age long tradition of their people which were recognized and revered over time.⁷ For example, among the Yoruba's in the South Western part of Nigeria, traditional rulers were regarded as representatives of the gods of the land,⁸ and custodians of the people history and culture. The Yoruba traced their origin and kingship to Oduduwa who is generally ascribed to be their ancestral dynasty and the ancestor of their numerous crowned kings⁹. Among the Hausa, Kanuri and other peoples of the Northern Nigeria, the Emirs and Shehu wielded strong political power, authority and influence over their domains. In most regions, traditional rulers were hardly seen in public places except during a very important function, festivals and religious celebrations¹⁰. However, there were some parts of Nigeria where chieftaincy institution did exist in pre-colonial era. This is what operates in the Eastern part of Nigeria, particularly the Igbo Societies which was rather

¹ See the Richard Constitution of 1946, Macpherson constitution of 1951, Littleton Constitution of 1954, the Independent constitution of 1960 of Nigeria respectively.

² The 1979 Constitution of Nigeria.

³ The invasion of the military into the Nigerian politics in 1966 rapidly contributed to the total annihilation of the traditional institution.

⁴ There are plethora of instances across the Nigeria. Even wealthy non natives and sometimes even foreigners have been conferred with various titles across the country.

⁵ Bryan A.G., Blacks Law Dictionary, 9th Edition at p. 549.

⁶ See the Holy Bible in Romans chapter 13 and Daniel Chapter 2vs 21 which was always cited as the source of the authority

⁷ Najeem A.L., The position of Chiefs. in Yusuf B. U (ed) Nigerian since Independence: The first 25 Years: vol 1 The society (Ibadan: Heineman Education Books, 1989) p.83 see also Amusa S.B, Chieftaincy Festival and Rituals, the role of the Ataoja in the Osun Osogbo Festival in Historical Perspective. In Babawok, T.A, Alao And Adesoji A. (Eds) the Chieftaincy institution in Nigeria (Lagos: Concept Published For Centre for Black and African Arts and Civilization, 2010) p.66.

⁸ Referred to in Yoruba as the Alase Ekeji Orisa

⁹ See Obayemi A., The Yoruba and the Edo Speaking Peoples and their Neighbours before 1600ad in JFA Ajayi and M. Crowther Eds. History of West Africa, Vol1 (1976) at pp255-322

¹⁰ *Supra* note 9.

described as prototypically stateless, a cephalous, or segmentary, consisting of autonomous villages and village groups¹ ruled by diffused authority without any formalized, permanent or hereditary leadership positions².

In theory, the offices of traditional rulers in pre-colonial Nigeria were permanent and hereditary. In practice, however, they have numerous advisers who aid them in arriving at a consensus on all matters.³ This is because most communities established elaborate procedures to curtail autocracy and abuse of powers.⁴ Analyzing the restraints and checks and balances imposed on the powers of pre-colonial traditional rulers, Davies A.E. reiterates:

Traditional authority in pre-colonial Nigeria whether in the monarchical, associational or conciliar type was as good, revered and effective as the authority of the Kings in Europe and other places that had an organized governmental system. Traditional rulers were in theory and in practice *defacto* and *dejure* governors of their domain. They were not dependent on any higher body to exercise their authority. They were not however, absolute rulers as some writers have portrayed them. Rather, their authority and political behaviour were limited by institutional restraints conventions and customs⁵

Colonial Nigeria witnessed the influx of the British. The imposition of the British colonial rule on Nigeria fundamentally altered the traditional ruler ship system by subordinating it to the imperial powers. The introduction of indirect rule in the Northern Nigeria which was later extended to the Southern part gave the traditional rulers the opportunity of participation in governance through the Native Authority. The indirect rule did not only strengthen the power of traditional rulers but equally created traditional institutions where it did not exist at all⁶. The British colonialist introduced Warrant Chiefs in Igbo land⁷ who presided over Native courts without recourse to local traditions⁸.

Convinced by the enormous powers influence and recognition wielded by the traditional rulers, the colonial government in Nigeria made moves to give them constitutional backing in the colonial administration. Their roles have however metamorphosed as embedded in the various colonial constitutions.

III. TRADITIONAL INSTITUTION AND NIGERIAN CONSTITUTIONAL TIMELINES

(a) The 1914 Amalgamation

In 1914, the Northern and Southern protectorates of Nigeria were amalgamated. The 1914 constitution of Nigeria provided for six Nigerian traditional rulers as unofficial members of the legislature council⁹. They include two Emirs from the North, the Alaafin of Oyo from the South, as well as one member each from Lagos, Calabar and the Benin- Warri area.¹⁰ From this period, traditional rulers began to feature and enjoyed constitutional recognition throughout the colonial era. However, due to its limited legislative competence, the council failed to attract much interest on the part of either the official or the unofficial members.¹¹

¹ Known as Obodo Towns

² See generally, Ifemisia C.C., South Eastern Nigeria in The 19th Century. An Introductory Analysis.(USA: New York NOK, 1978)

³ *Ibid*

⁴ See Agbese P.O. Chiefs, constitutions and policies in Nigeria p6 available at <http://www.chv.up.ac.za/chv.download> on 4/9/2014.

⁵ Davies A.E, The fluctuating Fortunes of Traditional Rulers in Nigeria, Plural societies, vol. xix mos. 2&3 March (1990) p.138. in Agbese P. O. *Ibid* P. 6

⁶ For example, in the Eastern Nigeria

⁷ Between 1890 and 1917

⁸ That greatly facilitated the entrenchment of the Indirect Rule System.

⁹ See Adesoji A.O, Traditional Ruler ship and Modern Governance in 20th Century, in: Babawall T.A, Alao and Adesoji (eds) *Supra* note 9 cited in Amusa S.B, and Ofuafor M.O, Resilience of Tradition in contemporary Politics, A Historical study of the political influence of Traditional Rulers in Nigeria. *Current Research Journal of Social Sciences 4 (6) (2012) p. 409.*

¹⁰ *Ibid* atp. 410.

¹¹ See kalu E. Constitutional Developments in Nigeria (London: Cambridge University press, 1964) p.22.

(b) The Clifford Constitution of 1922

Earlier in 1920, a delegation from the National Council of British West Africa (NCBWA) went to London to agitate for direct representation on the Nigerian council, amongst others. These demands were openly rejected by both the secretary to the state¹ and the Governor of Nigeria.² Despite the refusal, Sir Hugh Clifford initiated the first constitutional review by ushering in the Clifford constitution of 1922.³ The constitution introduced elective principles which opened new roles for traditional rulers by providing the first opportunity for them to directly participate in elective politics. All categories of traditional rulers fielded all the successful towns and legislative council candidates from 1923 to 1938.

(c) The Richard constitution of 1946

Significantly, the Richard constitution of 1946 established a House of Chiefs in the Northern Nigerian and a house of Assembly in each of the three regions. The Houses of Assembly is made up of official members appointed by the Governor and unofficial members selected by the Native Authorities from amongst themselves.⁴

(d) The MacPherson Constitution of 1951

In 1951, a constitutional order in council known as the MacPherson Constitution was passed. Under the constitution, traditional rulers in the west and Northern Nigeria were allowed to make direct input in the selection of members of their regional Houses of Assembly. The constitution established regional House of Chiefs, in both the North and West. Traditional rulers were represented in the selection of members of the National House of Representatives, both directly through the participation of the House of Chiefs as well as through indirect means by exerting their influence over the composition of the regional Houses of Assembly. Infact, the traditional rulers in both Western and Northern Nigeria were represented in three ways viz; Firstly, by according them direct input into the selection of members of the regional Houses of Assembly. Secondly, regional Houses of Chiefs were established in both regions and thirdly, traditional rulers were represented in the selection of members of the national House of Representatives.

(e) The Littleton Constitution of 1954

The Littleton constitution, no doubt greatly reduced the constitutional powers of traditional rulers both at the centre and in the regions. At the federal level, the constitution divided the legislature into the senate⁵ and the House of Representatives⁶ who were directly elected. For the first time, the House of Chiefs played no single role in the entire process of selecting members of the House of Representatives. The Oba of Lagos was automatically included in the senate and most senior Chiefs were automatically included in the regional legislature.⁷ The cabinet or council of ministers at the federal level and the executive council at the regional level also provided roles for traditional and appointed rulers⁸.

It is worthy of note that under the Littleton constitution, traditional rulers were provided with a formal role through which they could participate in government. However, these roles were greatly reduced from that provided in the prior constitutions. Senior traditional rulers were excluded from standing for elections to either the House of Assembly or the House of Representatives by virtue of their automatic membership in the House of Chiefs. The status of the House of Chiefs was also lowered below that of the House of Assembly. Thus, even

¹ Louis J.M, Traditional Participants in a Modern Political System – the case for Western Nigeria, *Journal of modern African studies* vol. 18 No 3 1980 p. 444.

² Lord Milner

³ Sir Hugh Clifford

⁴ See Win C.R, the Role of Traditional Rulers in Elective politics in Nigeria. Fifth Annual Graduate Students Paper Competition, African studies programme, Indian University (1982) p.4.

⁵ Those selected by the Governor were to ensure adequate representation of the minorities which might not otherwise have been included. For example, the Western and Northern Regions accentuated the roles of the Native Authorities and the traditional rulers. In the west, in addition to the unofficial members selected from and by the Native Authorities, the Governor, after due consideration with the Chiefs of the Western provinces appointed three Head Chiefs to the House. See generally Win C.B, *Ibid* at p. 9.

⁶ Composed of 12 representatives appointed by the Governors of the regions

⁷ Made up of 320 members

⁸ Winn C.R, *Supra* 22 atp. 17

though they retained their legal position in the governmental structure, their position was rather reversed from active participation in policy formulation to mere advisors¹

(f) The Independence Constitution of 1960

Colonial involvement of traditional rulers in politics reached the climax in the late 50's and during the first republic². During this period, prominent political parties in the three regions began to patronize and lure renowned traditional rulers through political appointments. In the western region the Obas such as Oba Adesoji Aderemi, the Ooni of Ife was appointed as the Governor of the region by the Action Group (AG) in 1959,³ and many others were given ministerial appointments.⁴

Independence eroded the position of traditional rulers in the federal and regional legislature. In the North, the council of chiefs was created and chaired by the premier of the North. This was a policy making body whose decision was binding on the government. In the western and Eastern regions, minority councils were created which were merely advisory without any policy or decision making powers.⁵

From the above, it is glaring that the attainment of Nigeria's independence eroded the powers of traditional rulers in the federal and regional legislature in favour of the appointed chiefs. The situation was better in the North because the council of chiefs could make a binding policy decision unlike in the Eastern and Western regions where they only perform advisory role.

(g) The Republican Constitution of 1963

Nigeria's acquisition of a republican status vide the 1963 constitution slightly altered the position of traditional rulers.⁶

Notably, one of the few specific reference to traditional rulers was cap X11 (miscellaneous) section 1961 (prohibition of certain legal proceedings) sub section 3 which empower the government to grade chiefs and ousting the courts jurisdiction in matters relating to appointment, grading and deposition of chiefs.⁷

(h) Military Rule, Constitutionalism and Traditional Rulers

The military coup of 1966 forced the government headed by the prime minister Tafawa Balewa from office.⁸ By this development, the 1963 constitution was suspended and both the legislature and executive powers became vested in the federal military government.⁹ Military rule, no doubt wrought several alteration and modification to the powers, role and importance of traditional rulers notwithstanding the fact that military governments often resort to their counsels on some issues no formal political role was accorded to them.¹⁰ For example, the federal and state government take over of local police prisons and native courts in 1968, no doubt alienated the power of traditional rulers in the Northern Nigeria. Similarly, the promulgation of the Land use Decree,¹¹ Creation of new states and local governments affected the power of traditional rulers in the North.¹² The introduction of the local government reforms in 1976 by the military completely removed local government administration from traditional ruler and placing same in newly created local government councils. Commenting on the impact of the 1976 local government reform, a scholar said:

“.....radically altered the locus of traditional rulers vis a vis local government. The alteration is more vividly epitomized in the concrete

¹ Uche N., the Role of traditional Rulers in emerging Democratic Nigeria in <http://www.gamji.com>. accessed on 9/9/2014 at p.5

² Particularly between 1960 and 1966

³ See the Guardian July 16, 2007, cited in Amusa S.B and Ofuafor M.O, Supra at p 410

⁴ Such as the Olubadan of Ibadan land, Osemawe of Ondo, Ohiwo of Iwo, Ohi of Warri and a host of others. See generally Vanghan O., Nigerian Chiefs Traditional Power in Modern Politics 1980 to 1990s (University of Rochester Press, Rochester, 2000) at p. 6-99.

⁵ See Win C.R Supra at p. 21.

⁶ It must be noted that under this republican constitution, the British Queen ceased to be Nigeria's Head of state and the duties of the Governor General were bequeathed on the President. The composition and function of the senate as well as the constitution of the regions was not altered.

⁷ See generally the Constitution of the Federation (Lagos: Federal Ministry of Information, print Division 1963

⁸ This was led by General J.T.V Aguiyi Ironsi

⁹ See the constitution (Suspension and Modification) Decree No 1 of 1966

¹⁰ Agbese P.O. Supra note at p.21

¹¹ of 1978

¹² Davies A.E Supra note at p. 138

Particulars of the new local government system, in which among other feature traditional rulers have been extricated from the centre of local Government operations and converted into informed observes of local government¹.

The 1976 reforms however relegated the power of traditional rulers to the local government level and charged them with the responsibility of formulating policies and rendering advice to local government on issues of development plans and others relating to chieftaincy and control of traditional titles.

The above exposition no doubt demonstrates a deliberate relegation of the powers of tradition rulers to the grass root.

(i) The 1979 Constitution

The 1979 constitution of Nigeria established a Council of State at the federal level and a council of chiefs at the states. The constitution did not provide any administrative role to the traditional rulers. They are to merely serve as advisory bodies to the Governor at the state level on matters relating to customary law, inter communal relations, chieftaincy, peace and tranquility within their domain.²

It must be noted that the provision of the 1979 constitution in relation to the powers of traditional rulers is *imparimateria* with that of the 1989 constitution.

Under the 1995 draft constitution, apart from retaining the provisions of the 1979 and 1989 constitution in relation to the powers of traditional chiefs, the constitution further added a new role for the council of chiefs, to the effect that the consent of the state council of chiefs shall be sought by the government in matters of creation of new chieftaincy or upgrading of any chief or making of any law which may improve the security of tenure or dignity of traditional institutions.³ This draft constitution further qualified the new roles of the council to the extent as not to confer any legislative, executive or judicial function on the council.⁴

(j) The 1999 Constitution

The 1999 constitution of the federal Republic of Nigeria did make any provision for traditional ruler to exercise any political power and neither were they represented in the council of state. Thus the 1999 constitution is the most radical in quashing, abrogating and eschewing the traditional chiefs from exercising any political power in Nigeria.

IV. MATTERS ARISING FROM ISSUES OF FORMAL CINSTITUTIONAL ROLE FOR TRADITIONAL RULERS

The relevance of traditional institution to governance in Africa has elicited respectable literature and heated debate in the post colonial era. The debate has three critical strands:

One highly skeptical strand contends that chieftaincy is anachronistic – a hindrance to the transformation and development of African continent, undemocratic, divisive, costly and therefore should be abolished.⁵ Another view contends that traditional institutions are indispensable for political transformation of Africa and they represent a major part of Africa's history, culture and political governance systems.⁶ A third and more balanced view while acknowledging the limitations of tradition institution because of the manner the colonial administrators maneuvered them to their advantage, nonetheless, recognizes the fact that traditional institutions

¹J.O. Egwurube "Traditional Rulers and modern Local Government in Nigeria – where the problem lies! A paper presented at the International Conference on Local Government in West Africa (Ile-Ife; University of Ife Press, 1982) cited in Davies A.E Supra at p. 138.

² These powers are as contained in part 1 of the Third Schedule to the 1979 Constitution.

³ See the federal republic of Nigeria Report of the Constitutional conference containing the draft constitution vol. 1 (Abuja: 1995) at p. 184

⁴ *Ibid*

⁵ See a Report of the Economic Commission for Africa on the Relevance of the African Traditional Institutions of Governance (2007) at p. 10.

⁶ This view is attributed to the ineffectiveness of the African states to bring about socio-economic development due to its neglect of traditional institutions. See generally, Davidson B, Black Man's Burden (London: James Currey 1992).

constitute crucial resources with the potentials of promoting democratic governance and access of rural communities to public services.¹

Therefore, a critical evaluation of the various strands as borne out by their divergent arguments above has provoked further research towards a deeper understanding of the relevance of chieftaincy on the modern constitution of African states.

It must be recalled that the core issue and central theme of this paper bothers on allocation of constitutional role to traditional rulers. One then wonders whether the agitation is in the national interest or in the interest of the subjects or for the selfish interest of the traditional rulers themselves.

The relevance of traditional political institutions in general and traditional ruler ship in particular has continued to generate intense and most often, heated and acrimonious debate in Nigeria and other African countries. This has provoked great deal of scholarly interest, and counter interest. The mass media is not left out of the debate.

Many scholars question the need for continued existence of chieftaincy in Africa. In a very expository work in chieftaincy in the independent Zambia, Van Binsberg contends that;

Chieftaincy is obsolete and should be allowed to die out, as it has in Europe, where its remnant (monarchies) can only be seen in the most backward of countries.²

Similarly, Babafemi Badeja and SA Ogunyemi³ maintained;

The institutions of traditional ruler ship is an historic relic that belongs to antiquity. These relics of by gone instruments of oppression which are a constant reminder of uneven social development and sociological disunity in Africa are irrelevant to a society currently subject to the objective laws of capitalism controlled from the western states of capitalism.⁴

More often than not, many scholars have always blamed the traditional rulers for their convenience with the British colonial masters in facilitating colonial exploitation; particularly their participation in the trans-Atlanta slave trade⁵. It has been however contended that the trade was the prevailing global commerce as at then and was not considered bad and major continent of the world like America's, Europe, Asia and Africa was deeply involved⁶

Another skeptical opposition which also emerged is that chiefs often avail their services to both the colonial and post colonial state by betraying the responsibility of their communities⁷

Furthermore, some scholars have vehemently opposed according formal constitutional provision to the traditional institution. Their arguments ranges from making them submit to known standards of scrutiny and accountability which may debase the traditional institution, duplicating the effort of government, the risk of alienation by the subjects, problem of bureaucracy arising from adding another tier of government to the existing three tiers of government amongst others⁸

¹ Report of the Economic Commission for Africa *supra* at p. 10

² See Van B.W., Chiefs and the state in Independence Zambia " *Journal of Legal Pluralism* 25 and 26 (1987) pp 156 – 166.

³ Babafemi A.B, and Ogunyemi S.A, Integrating the past with the present: A futile exercise? In John A.A.A and Adigun A.B (Eds) African Traditional Political thought and institutions (Lagos: Centre for Black African Arts and Civilization, 1989) cited in Peter O.A. *Supra*

⁴ *Ibid* at p. 183

⁵ See Amusa S.B and Ofuafor M.O, *Supra* at p. 409. See also Pita O.A *Supra* at p 7.

⁶ *Ibid*, quoting from Curtin P.D The Atlantic Slave Trade 1600-1800, in Ajayi J.F.A and Crowder M., (Eds) History of west Africa (2nd ed) (London: Longman 1976) pp 302-330

⁷ These concerns issues such as exploitation of tributes, labour and tithes on peasant produce amongst others

⁸ See generally Uche N., *Supra* at p 7

According to Abubakar, traditional rulers do not have any official role to play in the political machinery and government in the contemporary Nigeria. At best, they should serve in an unofficial capacity as mere advisory body to the local state and federal government functionaries¹

Some analysis have equally objected to the provision of formal constitutional roles for traditional rulers for some reasons while some are of the opinion that their return to the political thrones would drag them in the mud, others believed that royal factors cannot cope with political insults, bickering, prevarications, sabotage and character assassination associated with the Nigerian politics, and they should rather concentrate on the discharge of duties imposed on them by local traditions²

Some political analysts have maintained that drafting the royal fathers into politics amounts to waking up the sleeping dogs stating that modern democracy has come to halt the dictatorship of few which does not preclude traditional rulers and Wada Nas, former minister for special Duties categorically stated that traditional rulers should not have a role in the Nigerian constitution. Since traditional authority presupposes the absence of democracy and a hereditary institution is unsuitable for democratic practices.³

Notwithstanding the fact that many scholarly writings as demonstrated above vehemently question the continued existence of traditional institutions in modern society, there are equally plethora of evidence to the contrary as several reasons have been adduced for the survival of chieftaincy against all odds.

In the words of late General Sani Abacha:

“The institution of traditional rulers is an enduring part of our heritage. It plays a critical role as the custodian of culture and traditions. Expectedly, our traditional rulers are closely linked to the grassroots, and so understand the problems of our people intimately. In our search for peace, order and stability in our society, the institution could be a veritable instrument. It is in the overall interest of our people, that this institution in our national life be acknowledged and a clear provisions are made (in the constitution) for its functions.⁴

In a similar view, it has been posited that:

“...rather than throw the baby away with the (bath) water, African traditional political institutions only need to be purged of colonial accretion, not scrapped. Such institutions were well-suited to the African situation in the pre-colonial era, and they can indeed be used positively to enhance African identity and dignity in the post colonial era.⁵

It has been further adumbrated that traditional institutions are indispensable for the political history of Africa. This view has been attributed to the ineffectiveness of African states in bringing about sustained socio-economic development to the neglect of the traditional institution, and its failure to restore Africa’s own history,⁶; that political and economic development would be more successful when rated upon widely shared institutions and cultural values.⁷

¹ Abubarkar S., *The Established Caliphatic Sokoto, the Emirates and their neighbors* in Ikime O. (ed) *Ground work of Nigerian History* (Ibadan: Heineman Educational Publishers 1980) pp: 303-326, cited in Amusa S.B and Ofuafor M.O *Supra* note at p 407

² Oladesu M., *What Role For Traditional Rulers. Online nation Newspaper posted on Jan 8, 2013.*

³ Ahmed T,I *Traditional Rulers in Contemporary Nigerian society* available at <http://news.biafrmegenanworld.com> accessed on 9/14/2014

⁴ Extract of the text of Addresses presented by late General Sani Abacha, former Head of State, Commander in Chief of the Armed Forces of the Federal Republic of Nigeria, on the inauguration of the National Constitutional Conference, Abuja, June 27th 1994 cited in Pita O.A *Supra* at p. 1.

⁵ Iyortange T., *the Evolution of political institutions among the Tiv of Nigeria and the question of Relevance*, In Ayoade and Agbaje (Eds) *African Traditional Political thought and institutions* p. 173

⁶ See Davidson B. *Supra*

⁷ Fallers L. *the predicament of the modern African Chief: An instance from Uganda* “*American Anthropologist*, New Series. 57 No.2 (April 1995) pp 290 – 305. Cited in Report of Economic Commission for Africa *Supra* at p.11.

In Nigeria, it is a corroborative fact that whenever the policy makers are overwhelmed by a sense of inadequacy in carrying the masses along with them on some critical issues with dire consequences the assistance of traditional rulers is always resorted to.¹ No wonder that the traditional institution has been described as the most effective channel by which the federal and state governments reach the people in rural areas.²

Among other arguments posited for the continued existence of traditional institution ranges from its tendency to provide the bedrock upon which modern governance can be constructed, advocating for the interest of the local community;³ serving as a strong philosophical basis for accountability in governance⁴; articulation of the indigenous political values and practices and their harmonization with the modern democratic practices.⁵

According to Tonah, several reasons account for the survival of chieftaincy against all odds. These includes the continuing allegiance of large sections of the population including the elites to their traditional leadership, the inability of the states to create a national identity out of the numerous ethnic groups who have been forced together with a nation state; the continuing association of chieftaincy with power and wealth; and the flexibility of the institution and ability to adapt to the changing political order of the post colonial period.⁶ That is why another scholar also lend his voice to the submission above that in the light of the comparative failure of the African states to bring about democracy and development, having being undermined by greedy and violent political elite, chieftaincy has re-emerged as an important vehicle for authentic indigenous political expression.⁷

Domestically, in the contemporary Nigeria, the claim and agitation for a constitutional provision and recognition for traditional institution is in the best interest of the country. By virtue civilization, modernization and education, traditional institution cannot be relegated to the dust of history. In fact, wealthy, powerful and well known Nigerians have now surfaced with considerable interest in the traditional ruler ship and are now vigorously contesting the various thrones. Some have even placed the traditional stool on a high pedestal than the office of State Governors or other leadership positions in Nigeria.⁸

At present, both the Federal and State Governments attach much importance to the traditional institution by appointing some of them into prominent positions.⁹

It is very material to note that the stool of traditional institution in most African countries in general and Nigeria in particular is no longer business as usual. Today, many traditional rulers are so learned sound and are great intellectuals of various disciplines. Incorporating them in governance would no doubt lead to productivity because of their rich talents and wealth of experience. For example, the Sultan of Sokoto, the Emir of Gwandu,

¹ Instances abound as in the crises triggered by the annulment of June 12, 1993 presidential election, the execution of Ken Saro Wiwa in 1995 amongst others see generally This day, July 19, 1997 p.3

² Pita O.A *Supra* at p.3

³ Olufemi V. (ed) *Indigenous; political structures and Governance in Africa* (Ibadan: Sefer, 2003) pp.3-25 cited in report of Economic Commission for Africa (*supra*) at p. 11. see also Skalink p: Authority versus power: Democracy in Africa must include original African Institutions “*Journal of Legal Pluralism Nos 37-38 (special issue) (1996) pp.109-121*”

⁴ Osaghe E.E, the passage from the past to the present in African political thought: the question of Relevance. Cited in ECFA Report *Ibid* at p.11.

⁵ Ayttey G.B.N *Africa Betrayed*. (New York: St. Martins Press, 1992 and AJID, “ Governance at Nigeria’s Villages and Cities” *African Journal of Institutions and Development Special Issue 2 No. 1 1996* cited in ECFA Report *Ibid*

⁶ Tonah S. *Diviners, Malam, God and the Contest for Paramount Chiefship in Mampurugu* (Northern Ghana) *Arthropods*

⁷ See Ray, D.E, Van Nieuwall; and Adrian B, *The New Relevance of Traditional Authority in Africa: Reflections on Chieftaincy in Africa: Future Directions. Journal of legal Pheralism 37 (38) at pp 1-38*

⁸ For instance, the late Sardauna of Sokoto, Ahmadu Bello, who once aspired to the sultanate openly said that if he was asked to choose between the presidency of Nigeria and the sultanate, he would most willingly and gladly settle for the later. See generally Mohammed Y, *God or man’s case. Newswatch November, 21, 1998 at p.6.*

⁹ Such as chancellors of various universities, for example, the Emir of Zaria, the Oba of Benin, Emir of Kano, Obi of Onitsha and the late Attah of Igala Ach. Abigu Obaje are chancellors of various universities in Nigeria. Equally, the Etsu of Nupe was in 2003 appointed by the Federal Government to chair the local government Region Committee, and many others have served in different capacities under the military regime. See Pita O.A *Supra* at p.4

the Etsu Nupe, and the Emir of Zuru were Generals in the Nigerian Army. The Oba of Lagos was a police AIG, the Gbong Gwom of Jos was a police DIG. The Emir of Kazure holds a Ph.D in Law and the Asaba of Asaba is a Professor. In fact today, most Emirs and Chiefs like the current Emirs of Kano Mall. Sanusi Lamido who was the immediate past Governor of the Central Bank of Nigeria. Others had served in the public service of states and the federation¹.

Recounting an indelible encounter with one of the Nigerian foremost traditional ruler, Uche Nworah has this to say:

Anyone who has had the opportunity of interacting with our traditional rulers will readily agree that some of them are sound and first class individuals. Recently, I had the opportunity of sharing a space with the Alafin of Oyo, Oba Lamidi Adeyemi in 2007 Edition of the gathering of Africans Best (GAB) award in London. It was my first time of meeting the Alafin, and must say that he held me and the audience spell-bound that night with his masterful speech.... The standing ovation he received afterwards may not be enough to thank him for showing some of us the other side of traditional rulers. An intelligent side, a side that shows that traditional rulers can also be men of great intelligence and sound minds.²

The scholar also recounted his experience with Igwe Osita Agwuna Igwe of Umuonri and Eze Enugwu-Ukwu as drinking from a fountain of knowledge. He pondered why such erudite rulers should be idling away at their palaces and not made part of the Nigerian renaissance with specific roles assigned to them in the constitution.³

V. EFFORT OF SUCCESSIVE ADMINISTRATIONS

Following the erosion of political relevance of traditional institution by the 1979 constitution, the farmers of the 1989 and 1999 draft constitution did not provide any constitutional roles for traditional institution in Nigeria.

In spite of this relegation, traditional rulers still have and are still having modicum of recognition under successive administration in Nigeria. For instance, the General Sani Abacha led automatic regime had decreed that 55% out of the statutory allocation of local government should set aside for the upkeep of traditional institution in such local government areas.⁴

In 1986, President Ibrahim Babangida set up a Political Bureau Committee to ascertain Political Preferences of Nigerians. The committee received many memoranda on the role of traditional rulers and the need for a constitutional provision for it.⁵

As noted earlier, both federal and state governments in Nigeria emphasize the importance of traditional institution by appointing men to serve in various capacities. Today, State governments are creating new traditional thrones. For example, in 1997, the Benue State Government created several new second-class stools in the state which had no precedent in the political experience of the people and had no connection with the pre colonial existing traditional stool.

At the federal level, a new institution called the Nations Council of Traditional Rulers was created to serve as a consultative assembly through which the Federal Government could feel the pulse of grassroots communities.⁶

During a condolence visit to the Shehu of Borno over the death of his brother, Senator David Mark was quoted thus:

¹ *Ibid*

² See Uche N., *The Role of Traditional Rulers in Emerging Democratic Nigeria (Supra)* at p.1

³ *Ibid*

⁴ Amusa S.B., and Ofuafor M.O., *Supra* at p.410

⁵ See Feder Government of Nigeria Report of the Political Bureau. (Abuja: MAMSER, 1978), at p.147 cited in Pita O.A. *Supra* at p.2.

⁶ See Pita O.A. *Supra* Referring to Thisday Newspaper fop 19 July, 1997 at p.3.

“We will continue to assist our traditional rulers and leaders who are responsible for unity, peace in order to further strengthen their roles. We shall find specific roles for them in the constitution when we finally review the 1999 constitution”.¹

Further on the agitation, the former President Olusegun Obasanjo had earlier in the last lap of his administration led a promotional campaign on the need to constitutionally empower traditional rulers.²

Similarly, late President Umaru Musa Yar'Adua equally proposed new constitutional roles for traditional rulers during his term which had provoked fresh debate on the significance of the traditional institution in the country.³

At various levels, many royal fathers have been on the forefront agitation for political, administrative and advisory roles under the proposed constitutional amendment. In the face of the on-going deliberations at the National Conference and the evolving constitutional amendment process embarked upon by the National Assembly, the demand by traditional rulers for specific constitutional roles have also been reinforced.⁴

VI. LESSONS FROM OTHER JURISDICTIONS

Apart from the fact that traditional institutions evolved during the pre colonial era, the institution has survived transformed and has become indispensable in many countries of Africa, and even other non African states. It is therefore imperative to make a comparative assessment of the prevailing practices and experience of these countries in juxtaposition with the practice in Nigeria. It must be noted, however that the constitutional experience of some homogenous states like Japan may not be directly relevant to Nigeria which is characterized with cultural diversity and plural chieftaincy stools.

Across Africa, there are several kinds of chieftaincies as well as different approaches by government at incorporating them into existing, new, emerging, and developing democratic structures.⁵ There is an urgent need to consider the relevant enactments regulating chieftaincy institution in some of these countries.

(a) Ghana:

In Ghana, chieftaincy remains a very critical institution of government and has been upheld as an institution that will remain a very important part of the Ghanaian governance as a way of identifying the people's cultural heritage. It is the only institution to reckon with when national bureaucratic structures have failed.

Over the years Ghana has so much enjoyed the co-operation and support of its traditional institution for a range of developmental efforts to the extent of incorporating the institution into its constitution.

Article 270(1) of the 1992 Constitution of Ghana emphatically provides:

“The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed”.

The constitution further defines a chief “as a person who, hailing from the appropriate family or lineage has been validly nominated, elected, or selected and enstooled, enskinned or installed as a chief or queen-mother in accordance with the relevant customary law and usage.”⁶

¹ See the *Guardian Newspaper*, July 17th 2007. The Deputy Senate President on condolence visit to Ibadan also advocated for a constitutional role for traditional rulers. See Abdu A. Democracy of Monarchy. Traditional Rulers and the Nigerian Constitution available at <http://www.ganuji.com> accessed on 14/9/2014.

² Abdu H. *Ibid*

³ Emmanuel O., *Supra* at p.1.

⁴ See NATIONAL CONFAB. What Roles for Traditional Rulers?/the union available at <http://theunion.com.ng> accessed on 14/9/2014.

⁵ As we shall reiterate later, in many African countries, the relationship between traditional institution and government have however remained strained as is the case in Nigeria.

⁶ See Republic of Ghana, Constitution of the Republic of Ghana (Accra: 1992) p. 164 cited in Pita

Ghanaian constitution also established Regional and National House of Chief with earmarked functions,¹ and are expressly prohibited from partisan policies² Chief who wishes to venture into politics are required to abdicate their stool.

In earnest, the Ghanaian constitution vests all stool lands in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage.³

Therefore in the present day Ghana, chieftaincy stool plays complimentary role to the government and it is the most cherished and visible institution of governance with different grades and spoils spread across every town villages. The chiefs are responsible for maintaining law and order.

b. South Africa

In South Africa, despite the fact the chiefs were accused of cooperating with the successive government during the successive apartheid era, several legislations have been enacted to validate the traditional institution. The new South African constitution⁴ also contains safeguard for the traditional institution. The existence of multiparty system in South Africa has also been adduced as one of the reasons for the survival and recognition resulted chieftaincy over the years. The constitution provides for the establishment of the House of Traditional Leaders of the provincial and National level.⁵

Earlier in 1986, the legal and constitutional committee of the ANC produced a set of constitutional guidelines prescribing that hereditary rulers conform with the principles of democracy embodied in the constitution and its Bill of Rights; and abolished all forms of inequality and discriminating that hitherto dominated the institution.⁶

Article 183/184 of the 1993 South African Constitution provides for a limited recognition of traditional rules and Houses of Traditional Leaders were established both at the National and Provincial Levels, and charged with the responsibility of providing advisory role for both the government and the legislature in matters relating to native law and custom.

Under Article 182, a traditional ruler is made the leader of the community with the responsibility of observing indigenous laws pertaining to land within his jurisdiction, and he is equally made an ex- officio of the local government and can be elected to any office of such local government.⁷

Furthermore, Chapter 12 of the 1996 constitution of South Africa specifically acknowledges the institution of traditional leadership and the role in democratic governance and went further to reinforce its continued authority and functioning in accordance with traditional law within the broader legal framework.

It must be noted that prior to and after the constitution was being finalized, there are other several legislations in South Africa aimed at recognizing and reinforcing the power of the traditional institution.⁸

c. Malawi:

O.A., *Supra*.

¹ *Ibid* at p. 165. The functions includes playing advisory role to government 5.272(9), study, interpret and codify customary laws, evaluate traditional customs and usages, adjudicate in any cause or matter affecting chieftaincy.

² Article 276(1) of the Ghanaian Constitution.

³ See Article 267(1) of the Ghanaian Constitution of 1992.

⁴ See the South African Constitution of 1996.

⁵ See Tshido M., Population and the politics of chieftaincy and Nation Building in the New South Africa. *Journal of contemporary African Studies*, Vol.14 No.2, July 1996

⁶ See Nathai, S., Constitutional and Legislative framework for Traditional leadership in South Africa. In the seventh Conference on Traditional, political parties and democratic governance in African, University of South Africa, Pretoria

⁷ It must be noted that while the Ghanaian constitution specifically forbids traditional rulers from aspiring into political offices, that is not the case in South Africa.

⁸ There were/are such other legislations such as Council of Traditional Leaders Act of 1994, the Traditional Leadership and Governance framework Act of 2003; the Commercial Land Rights Bill of 2003/2004 and an organization known as the Congress of Traditional Leaders (CONTRALESA) which was launched in 1987.

In Malawi, the constitution provide for specific roles for the traditional rulers by mandating the election of 24 chiefs to its 80 member senate and each of them is to be elected by a caucus of all the chiefs in the district by a secret ballot system within 30 days of each local government election.¹

d. Botswana:

The 1966 independence constitution of Botswana created a House of chiefs to serve as a consultative body to the government in respect of tribal matters.²

e. Swaziland:

Swaziland has been mobilizing its traditional rulers in development initiatives.³ This is because the chiefs know their subjects and what is going on in their areas better than any other person.⁴

f. Japan:

In Japan, the emperor performs ceremonial functions and the constitution designates him as the symbol of the state and of the unity of the people, deriving his position from the will of the people.⁵

g. Malaysia:

The constitution of Malaysia provides for specific roles for traditional institution. It provides for a conference of Traditional Rulers,⁶ comprising of all Royal Highnesses with outlines function⁷ and may also deliberate and question of any national policy and matters that it thinks fit.

h. Uganda:

Although Uganda had earlier witnessed fluctuation in the power of traditional institution, the status of his four chieftaincy kingdoms was constitutionally established by the 1962 constitution⁸. Furthermore, the 1995 constitution of Uganda restored the constitutional status of traditional ruler ship.⁹ The constitution explicitly provides for chieftaincy institution in the whole country in accordance with the peculiar custom, culture, tradition, wishes and aspirations of the people to whom it applies.¹⁰ It equally empowers national parliament to prescribe methods of resolving chieftaincy disputes and permits the traditional institution to enjoy rights and

¹ See the Constitution of the Republic of Malawi 1994 at p.33 cited in Pita O.A. *Supra* at p. 15.

² Pita O.A., *Ibid*.

³ For example, in year 2000, a non governmental programme known as Orphan Aid was launched with the co-operation of the chiefs to assist children whose parents have died from HIV AIDS.

⁴ See Hall J., Traditional Leaders Rescue Swaziland Aid Orphans: A new programme which uses Swaziland's traditional community to rescue Aids Orphans from life on the street. In Daily Mail & Guardian, 5 April, 2000.

⁵ Pita O.A., *Supra* at p. 13

⁶ Known as the *Majlis Raja – Raja*.

⁷ Such as agreeing or disagreeing to extension of any religious acts, ceremonies, advisory role to the government on appointments into some specified offices, amongst others.

⁸ Pita O.A. *Supra* at p. 15

⁹ Constitution of the Republic of Uganda 1995

¹⁰ *Ibid* at p. 152

privileges entitled to from the government or under the native law and custom.¹ Citizens are not to be compelled to pay allegiance or contribute to the cost of maintenance of a traditional leader. All traditional and cultural leaders are expressly prohibited from participating in politics and cannot exercise any administrative, legislative or executive powers of government or local government.²

Under the constitution, any custom, practice, usage or tradition which detracts from the rights of citizens guaranteed by the constitution are prohibited.³

i. Zimbabwe:

The Zimbabwean constitution of 1985 provides for constitution status for its traditional rulers and empowers the president to appoint chiefs in accordance with acts of parliaments after due consideration to the customary principles of succession of the tribes people over which the chief will preside.⁴

The constitution equally provides for a council of chiefs⁵ and empowers the parliament to prescribe qualification of candidates for election into the council of chiefs and equally determine the tenure of such candidates.

VII. CONCLUDING REMARKS

No community in the world can achieve peace, order, stability and development without defined norms and values. This paper has, no doubt examined the travails of traditional institution in Nigeria and has equally drawn from the experiences of some other jurisdictions. There is no doubt that the traditional institution is an integral part of the socio cultural heritage of Africa. In spite of the *lacunae* in the 1999 Constitution of the Federal Republic of Nigeria on the roles of traditional institution, the overall welfare of the institution, appointment, upgrading, presentation of staff of office and deposition of chiefs is now the responsibility of government at all levels. As seen from the preceding discussion, traditional rulers have acted and are still acting as agents of cohesion, peace, dispute management, reconciliation, religious tolerance, and land administration in many African countries. To exclude the institution out of the constitutional framework of Nigeria would surely impact effective governance. That is why the loss of direction, prevailing state of poverty, frequent electoral and post electoral strife, persistent and widespread ethnic and civil conflicts, corruption and maladministration which characterize most African states have been attributed to the failure to fully integrate the traditional institution in governance.⁶ Therefore, in the bid to reconstruct the new Nigeria, there is need to align the traditional institution of governance with the modern structures. The proposed amendment of the 1999 Constitution should consider making provision for the traditional institution with designated roles.

¹ *Ibid* at p. 151

² *Ibid* at p. 152

³ *Ibid*

⁴ See Constitution of Zimbabwe, 1995 at p.100 Cited in Pita O.A., *supra* at p 16

⁵ *Ibid*

⁶ Olaniran O., Arigun A., *Supra* at p. 125