

THE ROLE OF TRADITIONAL INSTITUTIONS IN LOCAL GOVERNANCE IN NIGERIA*

Abstract

As a country, Nigeria is the outcome of the 1914 amalgamation of the Northern Protectorate and the Southern Protectorate. Ever since its formation nonetheless, the country has gone through various phases. Colonial domination, the several military coups, the Civil War are some of the negatives which have somewhat blighted the constitutional history of Nigeria and even in recent times, constitutional discuss seems to have shifted towards the manifest maladministration which continues to bedevil the country: a situation which is also visible in the massive corrupt and incompetent institutions of governance at the local levels of the country. However, a number of studies have acknowledged the buoyancy, acceptability and relevance of African traditional institutions in the socio-cultural, economic and political lives of Africans, particularly in the rural areas. Therefore, scholars have variously expressed the view that by totally neglecting the traditional institutions in local governance, there has been a loss in local cohesion in Nigeria thereby leading to the several noticeable negatives. This paper considers the concepts of traditional institutions and local governance, while analyzing the roles of traditional institutions in the different epochs of Nigeria's constitutional history.

Keywords - Nigeria, Traditional Institutions, local governance, constitution

1. Introduction

The political entity called Nigeria is the product of the 1914 amalgamation of the Northern Protectorate and the Southern Protectorate by the British Colonial Administration. However, a review of the historical background of Nigeria as a political entity would reveal the several challenges which the country has gone through including having the systems of administration which were present in the several parts of the country, completely dominated and subjugated by the British. This fact seems to be the reason why most Western scholars hold the belief that pre-colonial African societies had no system of administration: that is, no law, no order, no government, and no civilization. However, this belief has long been seen as not only very erroneous but grossly subjective. As a fact, it has been known that traditional African societies, indeed, had well organized and well established systems of administration where public order was provided and maintained; where laws were made and implemented; where inter-communal and inter-tribal conflicts were adequately settled. Again, the several military coups seem to have had an adverse impact on traditional setups in the country. The above facts appear to be the root of the manifest maladministration which continues to bedevil the country, a situation which is visible in the massive corrupt and incompetent institutions of governance at the local levels of the country. Nonetheless, scholars have variously expressed the view that by totally neglecting the traditional institutions in local governance, there has been a loss in local cohesion in Nigeria thereby leading to the several noticeable negatives.

In effecting our aim to examine the role of traditional institutions in local governance in Nigeria, this paper is divided into rubrics. We shall begin by considering the concepts of institutions, traditional institutions and local governance. We will then proceed to analyze the roles of traditional institutions in the different epochs of Nigeria. We will examine the then Native Authority system. We will analyze the effects of the 1976 Local Government Reform on traditional institutions in local governance in Nigeria. The work is concluded by proposing several recommendations as to how best traditional institutions can be incorporated into local governance in Nigeria.

2. Conceptualizing Institutions, Traditional Institutions in Nigeria and Local Governance

Institutions

From the framework of positive political theory and as often applied by political scientists, 'institution' as a concept refers to 'the relatively durable structures and processes of political decision making... Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction'.¹ Consequently, they structure incentives in human exchange, whether

*By **Hilda OBI-OBIORA, LLB, LLM, BL**, Lecturer, Nnamdi Azikiwe University, Anambra State. Email: hildaobi-obiora@gmail.com

***Favour Christopher ASIAZOBOR, LLB, LLM, BL**, Lawyer, Benin City, Edo State. Email: favourasiazobor@gmail.com

political, social, or economic.² Institutions can be formal, such as legal codes, or informal, such as social customs, mores, and traditions. The crucial point to note is that institutions channel and structure human behavior.³

Traditional Institutions in Nigeria

When we speak of traditional institutions in Nigeria, we refer to a system of indigenous traditional administration which varies from one part of Nigeria to the other. The institution of traditional rulers is an enduring part of our heritage; it plays a critical role as the custodian of culture and traditions.⁴ Traditional rulers are the heads of their communities and they owe their legitimacy to customs and traditions. They are commonly chosen by the 'gods', represent them on earth and have religious sanctity. They are regarded as very powerful and custodians of spiritual activities. 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.⁵ The Ibrahim Dasuki Committee on the Review of Local Government Administration in 1984 defines a traditional ruler as, the person who by virtue of his ancestry occupies the throne or stool of an area and who has been appointed to it in accordance with the custom and tradition of the area and has suzerainty over the people of that area.⁶ Therefore, traditional institutions, as it relates to Nigeria, denote all those customary administrations ubiquitously present in the several parts of Nigeria and autochthonous to the people in the different areas.

Local Governance

Local governance historically predates the emergence of nation-states. In ancient history, tribes and clans established systems of local governance in most of the world. They established their own codes of conduct and ways of raising revenues and delivering services to the tribe or clan. Tribal and clan elders developed consensus on the roles and responsibilities of various members. It therefore appears that local governance is actually the forerunner of modern governance in nation-states. By local governance, we refer to public administration at the local level. Generally, local governance is tailored along grassroots development. From available literature however, it appears that it is practically impossible to examine 'local governance' as a concept without considering the concept of 'local government'. Nonetheless, it appears that the views of scholars on local government as a concept have been restricted to local government in democracy as a system of government. By this, we mean that, the several authors on the subject obviously assume that the concept of local government only relates to democratic systems. Therefore, Gokhale for instance makes the point that 'Local Government is the government of specific locality by the local people through the representatives elected by them.'⁷ On his part, Lockard Opines that local government may be loosely defined as a public organization, authorized to decide and administer a limited range of public policies within relatively small territory which is a sub division of a regional or national government⁸ and following this trend, Stone defines local Government as that part of the government of a country which deals with those matters which concern the people in particular locality.⁹ It is our position however, that the concepts of local governance and local government cannot only be placed in the domain of democratic systems. As a fact, these concepts can be stretched to systems without democratic tendencies. Therefore, in this paper, we apply the concept of local governance to traditional institutions irrespective of whether these institutions can be classified as democratic.

¹ D. Rodriguez, 'State Constitutionalism and the Domain of Normative Theory' [2000] (37) *San Diego L. Rev.*; 523, 537-38

²B. Barton, 'An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation - Courts, Legislatures, or the Market?' [2003] (37) *GA. L. Rev.*; 1167, 1176

³M., Jonathan, 'Models of Subnational Constitutionalism' [2011] *Penn. St. Law Review*; 1156. Available at: <http://www.pennstatelawreview.org/115/4/115%20Penn%20St.%20L.%20Rev.%201151.pdf>.> accessed 13 November 2020

⁴P. O. Agbese, 'Chiefs, Constitutions and Policies in Nigeria' <<http://www.chr.up.ac.za/chr>> accessed 30 November 2020

⁵*Olaniyan v. Oyewole* (2011) 14 NWLR (PT. 1268) p. 445

⁶K. E. Orji, 'Traditional Rulership and Local Governance in South- South Nigeria' [2013] (16) (2) *Journal Of Humanities and Social Science*; 39

⁷B. K Gokhale, *The Constitution of India* (Sheth & Company. 1972); 1307-08

⁸Lockard D., "Encyclopedia of Social Sciences", Vol. 9, New York, p. 45.

⁹ P. Stone, *Local Government for Students* (MC Donald and Evons Ltd. 1963); 1.

3. The Roles of Traditional Institutions in Local Governance in Nigeria

The Period Before 1966

Concerns on traditional institutions and local administration have occupied the center stage in the political history of Nigeria even prior to the epochal amalgamation of 1914 and the eventual grant of independence from British hegemony in 1960. Prior to colonization, there existed different administrative arrangements of indigenous traditional administration in the several parts of the country. In the Northern part of the country, the Hausa/Fulani practiced a highly centralized system of government where the Emir is both the political and religious leader. The Emir had the responsibility of making laws, enforcing them and maintaining peace and order in his Emirate. As the religious leader, he was expected to ensure that the conduct of the affairs of the Emirate was guided by the provisions of Islamic and Sharia laws.¹⁰ Nevertheless, in discharging his functions, the Emir had a number of advisers. Notable among these were: 'Sarkin Fada' [the spokesman of the Emir and organizer of palace workers], 'Waziri' [the Prime Minister], 'Galadima' [the Administrator of the capital city], 'Madawaki' [the Commander and Head of the Army], 'Magaji' [Officer in-charge of the Treasury], 'Sarkin Dan Doka' [in charge of Security], 'Sarkin Ruwa' [in charge of Water Resources, among others].¹¹ The administration of justice was based on strict Islamic law, also known as the Sharia law. This was administered by Sharia Courts headed by a trained judge called 'Alkali'. Although there were village heads who settled minor disputes, the final decisions in most cases resided on the Emir.

In the Western part of Nigeria, the administrative system was monarchical under the control of the Oba. In discharging his duties, the Oba was assisted by Baales who administered towns and villages and in turn, paid royalties to the Oba at stipulated times. The power of the Oba was not without checks.¹² In Oyo Kingdom for instance, the Oba wielded much power but was subject to the control of the Oyo-mesi, an institution of Kingmakers. The Oyo-mesi therefore served to prevent abuse of power. Also, the Oyo-mesi, had the power to force an erring Oba to abdicate his throne or commit suicide in case of irreconcilable difference.¹³ In the same way, the Oyo-mesi did not wield absolute power because they were also subjected to the control of the Ogboni, acting under the authority of religion. As for the administration of justice, the Alafin held sway as the supreme judge of the Oyo Empire and there could be no appeal against his judgment. Again, in the Eastern region of Nigeria, being predominantly dominated by the Igbo ethnic group, the system of administration was republican and egalitarian in nature because they had no kings or chiefs. The basic administrative decisions were taken on behalf of the people by an assembly of men known as the 'Ohaneze'. The Ohaneze is a group of men made up of family heads who hold the Ofo title. The Council of Elders is assisted by various Age-Grade groups. The power of the Council of Elders was not without checks. To this end, one of the functions of the Age-Grade groups was to prevent the abuse of powers by the Council of Elders. However, the Age-Grade groups also executed other general functions. These include, the preservation of law and order, forging defense for the village against external attacks, construction and maintenance of roads, etc. However, it is pertinent to note the role accorded to the Ozo title holders, who are respected and influential men in the village who are often consulted in the day to day administration of their communities.¹⁴ Concerning the administration of justice, the various institutions listed above were vested with the function to administer justice contingent on the particular nature of the case.

In the South of Nigeria, there were several precolonial administrative arrangements. The Benin Kingdom was one of such precolonial setups. In fact, the ancient Kingdom of Benin was one of the most prosperous, powerful and protuberant states in pre-colonial Africa. Its artistic achievements,

¹⁰J. O. Fatile and D. K. Adejuwon, 'Conflict & Dispute Resolution in Trade Unionism in Nigeria', [2010] (6) (3) *Journal of Public Policy and Administration Studies*; 40-52

¹¹Ero, 'Traditional Structures in Local Governance for Local Development: A Study of Ife East Local Government Area, Osun State, Nigeria' in O. K. Ohiole and I. S. Ojo (Eds.), 'Traditional Institution and the Modern Day Administration of Nigeria: Issues and Prospects' [2015] (2) (9) *Journal of Research and Development*; 35

¹²Rotimi Ajayi, 'Politics and Traditional Institutions in Nigeria: A Historical Overview' [1992] (21) *Transafrican Journal of History*, 124-138

¹³S. B. Fajonyomi, 'Governing the Grassroots. An Analysis of Decision-making in Nigerian Local Governments' in Osakede, and Ijimakinwa, 'Traditional Institution and the Modern Day Administration of Nigeria: Issues and Prospects', p. 35

¹⁴Ero, 'Traditional Structures in Local Governance For Local Development: A Study of Ife East Local Government Area, Osun State, Nigeria' in Osakede, and Ijimakinwa, (edn), 'Traditional Institution and the Modern Day Administration of Nigeria: Issues and Prospects', p. 36

intricate pantheon of gods, sophisticated system of government headed by the Oba, and the frightening aura of its monarchy make the Benin Kingdom a fascinating subject of constant historical discussion amongst scholars. The history of the Benin Kingdom dates back to the Ogiso era, which has been traced to the 10th Century.¹⁵ The central administration and leadership structure of the Benin Kingdom comprised of three different sets of functional chiefs of importance each with different functions and responsibilities to perform. At the helm of the central administration and leadership structure is the Uzamanihiron and the Uzama comprises of Eghaevbo (chiefs): the Eghaevbo no re and Eghaevbo no gbe. There were also palace chiefs (Egua- Enigie) who were assigned different responsibilities and functions of importance. The palace chiefs comprised of the Iwebo, Iwague and the Ibiwe. The Iwebo, looks after the Oba's regalia, the Iwague looks after the Oba's apartment and are his private attendants and confidants while the Ibiwe looks after the wives of the Oba. To be an Uzama or Eghaevbo, one must be someone of high repute, resolute, tested, and credible and must have proven himself beyond all reasonable doubt in society.¹⁶ It is pertinent to mention the position of the Iyase at this juncture.¹⁷ His position is tantamount to that of a prime minister. Hence, he occupies the number two position in the Benin Kingdom.

It is seminal to note that an examination of the indigenous systems of administration mentioned above reveals that the systems, unlike what many European authors maintain¹⁸, possess fundamental rudiments of good governance and tendencies for constitutionalism. For instance, by institutionalizing the Oyo-mesi as a check on the power of the Oba in the Oyo Empire, the administrative system in the Western part of Nigeria prevented abuse of power by the Oba, even to the extent that the Oyo-mesi could force an erring Oba to abdicate his throne or commit suicide in case of irreconcilable difference.¹⁹ In this sense, one can validly maintain that this practice necessarily guaranteed checks and balances, constitutionalism, as well as public accountability, in the Western part of Nigeria. The situation in the Eastern part of Nigeria, where the Age-Grade groups served as a check on the activities of the Council of Elders, also goes to show the element of checks and balances in the precolonial setup in the Eastern part. Again, owing to the positions of the Oba, the Iyase and the Uzama of Benin Kingdom, one could validly argue that the precolonial administrative arrangement in the Benin Empire essentially involved the principle of separation of powers long before the English Publicist, John Locke²⁰ and the French Thinker, Baron De Montesquieu expressed his their views on the principle of separation of powers.²¹

Nonetheless, during the period of colonialism, the system of Indirect Rule or Native Authority system was introduced. This system gave protuberant roles in numerous grades to traditional rulers. In fact, it could be argued that the major actors under the system were the traditional rulers. Under the colonial administration, local government was known as Native Authority or Administration system. It was a form of indigenous rule under colonial authorities whereby 'traditional institutions of chiefs and other traditional rulers administer the natives under the supervision of British Administrative Officer'²² In this wise, traditional rulers were members of the colonial administrative apparatus because they were given wide powers over matters in their domain except the power to keep a regular army and to levy tax.²³ It was this magnitude of functions given to traditional rulers under the native authority system that pitched them against the educated elite in the period immediately preceding political independence.

¹⁵E. B. Eweka, *Evolution of Benin Chieftaincy Titles* (UNIBEN Press. 1992); 8

¹⁶John Ugiagbe, 'Nigeria's Failing Democracy: Lessons From the Benin Kingdom' <<http://nigerianobservernews.com/18122013/features/features1.html#.VyaDktR97IU>> accessed 2 November 2020

¹⁷Seo Ogbonwan, 'Of heredity and Benin traditional system' <http://www.edoworld.net/of_heredity.html> accessed 2 November 2020

¹⁸James Gibling, 'Issues in African History' <http://www.zyama.com/Iowa/African%20History.htm> accessed 2 November 2020; Christopher Prior, 'Writing Another Continent's History: The British and Pre-Colonial Africa, 1880-1939' <http://www.gla.ac.uk/media/media_64283_en.pdf> accessed 2 November 2020

¹⁹Fajonyomi, 'Governing the Grassroots. An Analysis of Decision- making in Nigerian Local Governments' in Osakede, and Ijimakinwa, 'Traditional Institution and the Modern Day Administration of Nigeria: Issues and Prospects', p. 35

²⁰ Second Treatise on Civil Government (1690)

²¹ The Spirit of Law (1748)

²²Cletious E. Emezi, 'The Changing Patterns of Local Government in Nigeria' [1983] (1) (1) *The Nigerian Journal of Local Government Studies*; 7 and 8

²³Fajonyomi, 'Governing the Grassroots. An Analysis of Decision- making in Nigerian Local Governments' in Osakede, and Ijimakinwa, (edn), 'Traditional Institution and the Modern Day Administration of Nigeria: Issues and Prospects', p. 36

However, there was nothing wrong with the use of indigenous institutions, chiefs and rulers in the then newly established local administration, for that was the existing governing structure before the advent of colonialism but there was certainly something wrong with the system itself. By placing traditional ruler as subordinates to the British, the policies being churned out were radically different from what the traditional rulers 'knew'. Notwithstanding, under this new indirect rule system, they had the duty to stand by those policies and implement them when in the main, they (the traditional rulers) had no conviction concerning the policies which were basically foreign to them. In other words, 'The policies were transmitted to the traditional rulers who hardly understood the logic and rationale of the policies. Nevertheless, they transmitted those policies to their people and expected compliance'²⁴ making the (indirect rule) system illogical.

In the period immediately preceding political independence, traditional rulers retained their prominence in governance. The Richards Constitution of 1946 for example established Houses of Assembly in each of the three regions, and a House of Chiefs in the North. The Houses of Assembly were composed of both official members and unofficial members. The official members were those members who were appointed by the Governor and the unofficial members were chosen by the Native Authorities from amongst themselves. This function of the Native Authorities as it relates to the regional Houses of Assembly was also reenacted under the McPherson Constitution of 1951. However, the Lyttleton constitution of 1954 reduced the constitutional functions of the traditional rulers both at the federal and regional levels. At independence, the 1960 Constitution also established a Council of Chiefs at the regional level and the 1963 Constitutions also reenacted this provision relating to the Council of Chiefs at the regional level. 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.

The Period After 1966

As mentioned above, Nigeria as a country was hosted into military rule in 1966. Thereafter, the civil War took its turn in the negative events which characterized the history of Nigeria in that period. However, these events seem to have had negative effects on traditional institutions in Nigeria. This is especially so as regards military rule. Particularly because the military government as well known, does not permit any form of challenge to its rule. Therefore, the military rulers effectively relegated the traditional rulers to the background. This unfortunate position of the traditional institutions became glaring in 1976 during the General Olusegun Obasanjo military regime. This regime embarked on a local government reform. The reforms were the Federal Military Government's response to the recommendations of the Udoji Public Service Review Commission.²⁵ The aim of the reforms was to make the local governments more effective in their primary role of bringing development to the grassroots. The reform established a multi-purpose single tier system throughout the country, with the same structure and functions. Local Governments were recognized as a third tier of government within the federal structure. The 1979 Constitution recognized local government as such thus reinforcing the main features of the reform. However, with its conviction that, while traditional rulers are very powerful and respected among the Nigerian peoples, they must not be partisan, the military covertly and overtly excluded traditional rulers from government. This was done through the Local Government Reforms of 1976. This demoted status of the traditional institutions was reiterated in the 1979, 1989 and 1999 constitutions designed by military regimes in Nigeria.²⁶ While analyzing the negative effect of the 1976 local government reform, a scholar made the following points:

... radically altered the locus of traditional rulers vis a vis local government. The alteration is more vividly epitomized in the concrete Particulars of the new local government system, in which among other feature traditional rulers have been

²⁴A. A. A. John., 'The Development of Democratic Local Government in Nigeria' in Aborisade and Mundt (Ed.), *Local Government in Nigeria and the United States: Learning from comparison* (Ife Local Government Publication Series. 1995); 19

²⁵Wikipedia, <https://en.wikipedia.org/wiki/Jerome_Udoji> accessed 15 November 2020

²⁶T. Babawale, A. Alao and A. Adesoji., *The Chieftaincy Institution in Nigeria* (Concept Publishers for Centre for Black and African Arts and Civilization. 2010); 481-497

extricated from the centre of local Government operations and converted into informed observers of local government.²⁷

Through these avenues, traditional rulers were legally and formally insulated from the administration and affairs of government, as they were given very limited advisory roles to play. Even at the local levels which are the levels in which the traditional rulers commanded great respects, the military governments made the local government administrator/chairman superior to the traditional rulers.²⁸ More surprisingly, the current 1999 Constitution however does not mention the traditional institution at all thereby reversing the gains (if any) which the institution made over the years.

4. A Comparative Analysis

From the foregoing, it appears that the trend in Nigeria has been directed towards neglecting traditional institutions. This is irrespective of the perception that a total neglect of traditional institutions in local governance would lead to a total loss of local cohesion in the country. Therefore, it is imperative to embark on a comparative analysis concerning the roles of traditional institutions in local governance. Firstly, undoubtedly United Kingdom operates a monarchical system of government. This system basically involves a hereditary leadership. Monarchy as a system of government reflects the personification of the majesty and sovereignty of state in an individual. However, in the United Kingdom the function of the head of state lies with the royal family, while the role of chief executive resides in the Prime Minister elected from the British Parliament. Again, the composition of the British Parliament shows an attempt to imbue traditional governance into the contemporary British government. For instance, although House of Commons, being the second chamber of the British bicameral parliament, is composed of members which are democratically elected, the House of Lords includes two different types of members. That is, the Lords Spiritual, consisting of the most senior bishops of the Church of England, and the Lords Temporal, consisting of members of the peerage and life peers who are appointed by the Sovereign on the advice of the Prime Minister.²⁹ This shows an attempt to involve British traditional setup into contemporary governance.

In Malawi, the constitution provide for specific roles for the traditional rulers by mandating that the Senate shall consist of eighty members including one Senator from each District, being a Chief registered as a voter in that District and elected by a caucus of all the Chiefs of that District in secret ballot within thirty days of each local government election.³⁰ The Zimbabwean constitution of 1985 provides for constitutional status for its traditional rulers. To this end, the institution, status and role of traditional leaders under customary law are recognized under the Zimbabwean constitution. The constitution provides that a traditional leader is responsible for performing the cultural, customary and traditional functions of a chief, headperson or village head, as the case may be, for his or her community.³¹ Therefore, in Zimbabwe the roles of traditional leaders include promoting and upholding cultural values of their communities and, in particular, to promote sound family values, to take measures to preserve the culture, traditions, history and heritage of their communities, including sacred shrines, to facilitate development, to administer Communal Land and to protect the environment in accordance with an Act of Parliament, to resolve disputes amongst people in their communities in accordance with customary law, to exercise any other functions conferred or imposed on them by an Act of Parliament.³² More interestingly, the constitution also provides that except as provided in an Act of Parliament, traditional leaders have authority, jurisdiction and control over the Communal Land or other areas for which they have been appointed, and over persons within those Communal Lands or areas.³³ Furthermore, in the performance of their functions, traditional leaders are not subject to the direction or

²⁷J. O. Egwurube, *Traditional Rulers and modern Local Government in Nigeria – Where the Problem Lies!* University of Ife Press. 1982)

²⁸Emordi, E. C. and Osiki, O. M, ‘Traditional rule in Nigeria: The Crisis of Relevance in Contemporary Politics’ [2008] (4) *Journal of History*; 67-92

²⁹ Wikipedia, <http://www.parliament.uk/documents/upload/hofLB.pdf>> accessed 15 November 2020

³⁰See section 68 (1) (b) of the Malawi Constitution 1994

³¹ See section 280 of the Zimbabwean Constitution 1995

³² Section 282 of the Zimbabwean constitution

³³ Section 282 (2) of the Zimbabwean constitution

control of any person or authority, except as may be prescribed in an Act of Parliament.³⁴The constitution also creates a National Council of Chiefs.³⁵

In Ghana, chieftaincy remains a very critical institution of government and has been upheld as an institution that will remain as an integral part of governance in Ghana as a way of preserving the cultural heritage of the Ghanaian people. It is the only institution to reckon with when national bureaucratic structures have failed.³⁶ The constitution provides for constitutional status for traditional institution by specifically stating that ‘The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed’.³⁷ Again, although Chiefs who wish to venture into politics are required to abdicate their stool, the constitution creates Regional and National Houses of Chiefs with earmarked functions, and who are expressly prohibited from partisan policies.³⁸ In South Africa, the constitution permits national or provincial legislations to establish houses of traditional leaders and establish a council of traditional leaders.³⁹ The constitution also recognizes the traditional institution, status and role of traditional leadership. In the same vain, subject to the constitution and any legislation that specifically deals with customary law, the constitution mandates the courts to apply customary law when that law is applicable.⁴⁰ In Botswana, the constitution establishes a House of chiefs⁴¹ to serve as a consultative body to the government in respect of tribal matters. The constitution bestows the House of chiefs with certain constitutional functions including the function⁴² to consider the copy of any Bill referred to it which seeks to alter any of the provisions of the Botswana Constitution or affect the designation, recognition, removal of powers of Chiefs, Sub-Chiefs or Headmen, the organization, powers or administration of customary courts, customary law, or the ascertainment or recording of customary law, tribal organization or tribal property.⁴³

5. The Critique

From the literatures on the subject, there seems to be an intense debate that by totally neglecting the traditional institutions in local governance in contemporary African states, including Nigeria, there has been a loss of local cohesion in the polity. While it may be tempting to argue that traditional institutions are no longer needed in contemporary local governance however, the relevance of traditional institutions continue to emerge in various sectors of governance. For instance, the relevance which politicians place on traditional rulers, in order to garner local support, during political campaigns appears to be a pointer to the significance of traditional institutions in contemporary times. Again, traditional rulers seem to be more accountable and responsible than any other group, but they get little support from official channels notably the state government.⁴⁴ Therefore, one wonders why most African States, including Nigeria, has completely neglected traditional institutions in local governance. This neglect has clearly led to several negatives , the present malpractices of the Community Development Associations (CDA) in land development shows that there is a dire need to entrust sensitive local functions to traditional rulers. This is also the situation with conflict resolution and management at the local levels. Although there are formal mechanisms available for conflict resolutions and management at the local level however, more often than not, these resolutions do not completely resolve the issues at stake and they are capable of generating unending enmity between the conflicting parties. Consequently, it has been argued by scholars that the traditional institutions could play a vital role in resolving such local disputes. To this end, in his analysis of the role of traditional institutions in the dispute at the Niger Delta Region of Nigeria, Kenneth Nweke stated that the traditional institutions are charged with legislative, executive and judicial functions. They make laws, execute them and interpret and apply the fundamental laws, customs and traditions of the people for the smooth running of their communities. Conflicts are usually managed and resolved based on the customs and traditions of the

³⁴ Section 282 (3) of the Zimbabwean constitution

³⁵ Section 285 of the Zimbabwean constitution

³⁶Iyeh Peter, ‘Reconsidering Place of Traditional Institutions under the Nigerian Constitution: A Comparative Analysis’ [2014] (31) *Journal of Law, Policy and Globalization*; 145

³⁷ Article 270(1) of the Ghanaian Constitution 1992

³⁸ Articles 276 (1) and 272 (9) of the Ghanaian Constitution

³⁹ Section 212 of the South African Constitution 1996

⁴⁰ Section 211 of the South African Constitution

⁴¹ Section 77 of the Botswana Constitution

⁴² Section 85 of the Botswana Constitution 1966

⁴³ Section 88 (2) of the Botswana Constitution

⁴⁴J. O. Fatile, *Boundary Disputes & Communal Conflict Resolutions: The Role of Traditional Rulers* (Ziklay Consult Workshop. 2010); 386

people.⁴⁵ Also, Peter Ekeh, while proposing his analysis of modern comparative politics in Africa made the point that most educated Africans are citizens of two publics in the same society. On the one hand, they belong to a civic public from which they gain materially but to which they give only grudgingly. On the other hand they belong to a primordial public from which they derive little or no material benefits but to which they are expected to give generously and do give materially. To make matters more complicated, their relationship to the primordial public is moral, while their relationship to the civic public is amoral. The dialectical tensions and confrontations between these two publics constitute the uniqueness of modern African politics.⁴⁶ Hence, it appears that the traditional institution plays fundamental roles in the local arrangements. This position seems to be supported by the Supreme Court in *Umeadi v. Chibunze*.⁴⁷ The apex court held in that case that, where parties who believe in the efficacy of a juju resort to Oath-taking to settle a dispute, they are bound by the result and so the common law principles in respect of proof of title to land no longer applies since the proof of ownership of title to land will be based on the rules set out by the traditional arbitration resulting to Oath-taking. Again, Nigeria's president's new approach in combating insecurity in the country seems to be in consonance with the above. In his bid to combat insecurity in Nigeria, the president recently urged State governors to engage with traditional rulers within their States.⁴⁸

6. Conclusion and Recommendations

There is no doubt that traditional institutions enjoy a fundamental legitimacy in local arrangements. Nonetheless, their roles, especially after the local government reform of 1976, appear to be in a constant struggle with the functions of the local government councils. Therefore, their powers seem to be considerably restricted by the government. As argued above however, traditional rulers seem to be more accountable and responsible than any other group, but they get little support from official channels notably the state government.⁴⁹ This is especially obvious when one considers the present massive corruption and malpractices which thrive in contemporary local governance. It is therefore imperative to propose relevant recommendations on the proper roles and functions which traditional institutions could play in local governance in Nigeria. Firstly, it is recommended that the Constitution of the Federal Republic of Nigeria 1999 be altered to accommodate subnational constitutions. This would necessarily give each State of the federation the opportunity to include traditional rulers in local governance in relevant sectors. For instance, in States such as Delta state where local crises are predominant, traditional rulers could help to resolve these local disputes as they usually command respect and reverence from the locals.⁵⁰

Secondly, it is recommended that the Age Grade system which operated [and continue to operate] in several traditional settings should be incorporated into constitutional local governance. The present local government system should be overhauled to accommodate the age grade system. For instance, the Local Government Councillors should be elected from the Age Grade. This will ensure that responsible individuals who possess great affiliation to the community are elected as Councilors. Thirdly, it is recommended that the present land tenure system should be overhauled. In this wise, it is proposed that the prominent traditional rulers in each subnational region should be entrusted with the function of land administration in their particular territory. By so doing, in states where land disputes are rampant and usual, the traditional institution could effectively serve as a means to prevent and adequately settle such disputes. It is important to note that this practice has been utilized in Zimbabwe and it has thrived. The importance of the traditional institution cannot be undermined, as expressed by Peter Ekeh who made the point that Africans view the civic public (that is, the present government/administrative arrangement) as an object of extortion, where they can constantly benefit without giving back.⁵¹ Finally, in order to assist the local government to function effectively, it is proposed that a House of Chiefs should be established in each local government council. This would help to check and balance the activities of local government chairmen especially as it appears that the Councilors in local government councils are often overridden by their chairmen. This is in line with the practice in Ghana where Regional Houses of Chiefs are bestowed with earmarked functions.

⁴⁵Kenneth Nweke, 'The Role of Traditional Institutions of Governance in Managing Social Conflicts in Nigeria's Oil-Rich Niger Delta Communities: Imperatives of Peace-Building Process in the Post-Amnesty Era' [2012] (5) (2) *British Journal of Arts and Social Sciences*; 206

⁴⁶P. P. Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement' [1975] (17) (1) *Comparative Studies in Society and History*; 19

⁴⁷(2020) 10 NWLR (Pt.1733) 405 @ 412, Ratio 7

⁴⁸Premium Times, 'Insecurity: Buhari Charges Governors to Work with Traditional Rulers', <<https://www.premiumtimesng.com/news/top-news/430214-insecurity-buhari-charges-governors-to-work-with-traditional-rulers.html>> accessed 9 December 2020

⁴⁹Fatile, 'Boundary Disputes & Communal Conflict Resolutions. The role of traditional rule', p. 386

⁵⁰L. A. Jinaduu, 'The Constitutional Situation of the Nigerian States' [1982] (12) *PUBLIUS*; 155, 158-59

⁵¹Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement', p. 3