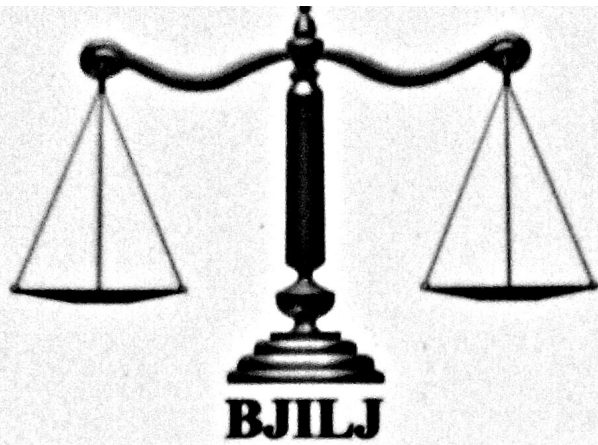
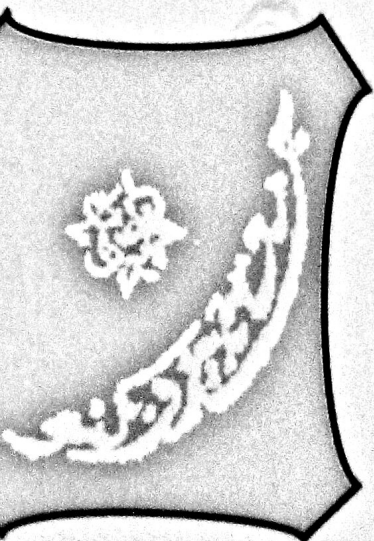




BAYERO JOURNAL OF INTERNATIONAL LAW & JURISPRUDENCE



MAIDEN EDITION
Volume 1, No.1, April, 2016



Contents

1. The Attitude of the European Court on Human Rights and Nigerian Courts to Religious Freedom: Have the Controversies been Solved? Ibrahim Sule	1
2. Law, Religion and National Security: The Challenges and Way Forward for Nigeria Professor Mohammed Tawfiq Ladan	29
3. Constitutional (non-) Interpretation in a Democracy: The Footprints of the Nigerian Supreme Court in the Murky Waters of Politics Professor Solomon T. Ebobrah	46
4. Nigeria Nation at a Cross Road: Search for Democracy Amidst the Militarization Challenge Dr. Azubike C. Onuora-Oguno	74
5. A Conceptual Analysis of the Rule of Law in Nigeria Professor Balarabe Alhaji Haruna & Amana Mohammed Yusuf	101
6. The Executive and the Rule of Law: Role, Relevance and Strategies for Sustained Democracy Dr. Yusuf Dankofa	128
7. The Rule of Law and the Challenges of Electoral Process in Nigeria, Mahan Wallangs Mafuyai	142
8. An Appraisal of the Legal Status and Autonomy of Local Government in Nigeria: Lessons From Brazil and South Africa Amana Mohammed Yusuf	162

Nigeria Nation at a Cross Road: Search for Democracy Amidst The Militarization Challenge

Onuora-Oguno Azubike*

Abstract

Democratisation is both an expression and expansion of man's freedom. Over the years it has become synonymous to man's progress. It is not a static phenomenon, it has an in built dynamism which requires that it must be developed and consolidated. Democracy interestingly has become a yard-stick on which development is measured today, yet the long term viability of democratic governments in several countries remains questionable. African States are generally classified as under developed and the question therefore is has Africa failed in the democratisation process? What are the causes and the challenges that are being encountered in Africa's democratization process? This paper seeks to appraise democratisation in Africa with a view of highlighting the challenges facing democratisation on the African continent using Nigeria as a case study. The challenges faced by the rampant disregard for the rule of law forms the major problem leading to the quagmire of Nigeria's search for democracy. The core argument advanced in the paper is hinged on the perception that the emergence of military intervention with governance caused a major setback towards evolution of democracy and good governance in Nigeria. It is hoped that the search for democracy by Nigeria will be set on a proper note with the adoption of democratic and constitutional governance. The paper concludes by reasserting the hope for democracy in Nigeria with the enabling of all institutions identified to be pivotal to the achievement of this quest.

Keywords: Democracy, Governance, Military Rule

Since Nigeria returned to democracy in May 1999, after almost three decades of military rule, and almost two decades of economic crises, the country has been faced with the complex challenges of national reconciliation, national reconstruction and economic reform, and democratic consolidation. ... although the political game has changed from the rule of the gun, to the rule of the vote, the

* LL.B, BL (Nigeria), LL.M (South Africa). Onuora-Oguno was an LLD Candidate at centre for Human Rights, University of Pretoria South Africa. Aside his academic achievements Mr Onuora-Oguno has vast professional experience gained from his work and affiliation with the International Refuge Rights Initiative, Kampala Uganda, he worked as a law clerk in the Information and Evidence Unit, Office of the Prosecutor International Criminal Court, The Hague, Netherlands. Azubike.onuoraoguno@gmail.com

long shadow of militarism continue to loom large over the political process, fueling frustrations, provoking violence...¹

1.1 Introduction

The concept of democracy and democratisation are twin concepts explaining a process to an end. According to Ronen, "democracy in itself is not a goal, it is a means for the attainment of something far more abstract which one might call human freedom, contentment, happiness or a life free from fear".² The concept of democracy has different meanings and connotations in its long history and is understood differently today in the context of different social and economic systems.³ Democracy has its origin in two Greek words 'demos'-people, 'whole citizen' and 'kratos'- power or rule.⁴ Iluganga Kabongo is of the view that; "Democracy is not to be equated with the ritual of voting and elections, but it is rather the co-existence of a plurality of opinions guaranteed by freedom of expression under the rule of an accountable majority."⁵

Democracy like all human interaction and relationships must not be taken for granted. It must be nurtured and sustained.⁶ The great diversity of African countries-both in the size of their populations and the nature of their political regimes offers an opportunity to explore the challenges that African states face in their journey towards democratisation.

While African States in the very recent times have embraced democracy, the absence of the factors highlighted by Kabongo above is not present in majority of African States. Democracy characterised by the rule of an accountable majority is a concept that is located within the purview of good governance and the rule of law. Good governance is a concept that demonstrates the presence of a budding

1 Cyril, O; 'Nigeria: Democracy on trial'. Available at <http://www.nai.uu.se/news/newsletter/newsletterpdf/0411obi.pdf> last accessed 09/06/12, 11.34am.

2 Ronen, D; (1995) *Democracy and pluralism in Africa*, ed., (Boulder: Lynne Rienner Publishers. Association of African Universities, 1995), pp 41-51.

3 Artblaster, A; (1994) *Democracy* (Minnesota: University of Minnesota Press, 1994) p7

4 Ibid. p 13

5 Ibid. P. 35

6 Obasanjo, O; and Mabogunje, A.,(ed.) *Elements of Democracy*, (Abeokuta: ALF. Publications (1992) p15

livelihood for citizens of a nation from a government that is responsive and abiding by the laid norms as ought to be enshrined in constitutional democracy. As will be discussed later in the paper, the concepts of both good governance and the rule of law are to a large extent not visible in the Nigerian democratic structure as well as in majority of African governments. The Zimbabwe situation among other African situation raise issues of the unaccountability of the ruling majority.⁷

The Military regime of Sanni Abacha in Nigeria, Samuel Doe in Liberia and Mobutu Seseseko in the then Zaire are examples of past problematic regimes in some African States and their quest to achieving a democratised state.⁸ Obasanjo and Mabogunje argued that colonialism retarded the growth of traditional and political institutions in order to prevent them from competing with colonial institutions.⁹ Africa has a long history of colonisation which lasted for close to 60 years¹⁰ labouring under the hands of colonial masters. For most African countries with Nigeria as an example, the colonisation process was not a sudden one but a very gradual one. Industrialisation, trade and commerce, religion and health incentives¹¹ amongst others were the baits dangled before most traditional rulers that were in existence in Africa, thus the British had a slow and steady takeover of the her colonies.

7 The government of Museveni in Uganda have also come under strong criticisms for making very unpopular decision which does not support public opinion. Generally, From Gambia to Sierra Leone and Nigeria in the very recent times have come under serious scrutiny for accountability issues. In the very recent past issues with Oil subsidy is a major issue in Nigeria that has raised issue with governments accountability. See Chirwa, D and Nijzink, L; (2011). *Accountable Government in Africa: Perspective from Public Law and Political Studies*. Mario, C and Alpin-Lardies C; (2010) *Rethinking accountability in Africa- A practitioners' Perspective*. <http://www.etu.org.za/toolbox/docs/govern/accountability.html> (accessed February 12, 2013).

8 The end of the governments mentioned all ended in fiasco, either with a civil war resulting in the ousting of the governments or very loud public celebration (like in the Abacha). The grounding of the rule of law in the governments ensured the people lived in fear and apprehension with no one able to employ the rule of law in any sense.

9 Obasanjo, O and Mabogunje, (ed.) (1992) *Elements of Deocracy*, (Abeokuta: ALF Publications) 15.

10 Nigeria was amalgamated in 1914 and gained independence in 1960.

11 The British had established trade relations with its colonies resulting in the trade in textile, building of schools and hospitals. These representations shrouded the major quest of colonization. It is on record that force was only employed in places where they found resistance examples of King Jaja of Opopo are instructive to this effect.

However, years after decolonisation, the question is still raging, firstly, whether had Africa been left at its own pace (without colonialism) it would have developed beyond where it is today? Secondly, whether the inability of African states to embrace democracy is the reason that inhibits the march towards realising the dream of a democratised Africa? Thirdly, what is the impact of military intervention in Africa politics? The intervention of the military in Africa politics soon after independence of some states contributed its fair share of the inability to achieve democratisation by majority of states. For instance, the Republic of Benin became the first African state to have a military coup in 1963 and subsequent ones in 1965, 1967, 1969 and 1972; Burundi- in 1966 had two coups, Chad had 3 coups in 1979 alone, Ethiopia-1974 and 1979, Mauritania- had a coup each year from 1978 to 1980.¹² The current military involvement in the North of Mali leaves a sour taste towards the search for democracy of African States.¹³

It is against this backdrop that this paper interrogates the search for democracy by Nigeria as a nation and examines how the militarization of democracy has brought Nigeria to the current cross road. These issues will be addressed by considering existing literature on law; politics and development in Africa, academic journals, internet resources and lecture notes. The paper is divided into parts dealing with the introduction; reflections on various constitutional developments in the history of the country; democratic theories; the militarised democracy; and finally conclusions and recommendation. A brief history of pre-colonial, colonial and post-colonial Nigeria and the constitutional developments with an analysis of the impact of the years of military rule in Nigeria is also made. At the end of this paper, the current trend of Nigerian's democracy and its military flavour would have been highlighted with recommendation on how the search for democracy could be achieved.

¹² Obasanjo, O and Mabogunje, (ed.) (1992). *Elements of Deocracy*, (Abeokuta: ALF Publications) P. 21. for a comprehensive list of all military coups in Africa see: <http://www.systemicpeace.org/africa/ACPPAnnex2b.pdf> (accessed February 12, 2012).

¹³ French troupes and African Union forces led by Nigeria are in Mali currently with a task of protecting the citizens and attempt to return the country back to democracy.

1.2 The Democratisation Challenge

The first major problem with democratisation in Africa is the challenge of comprehending the concept and meaning of democracy which is meant to promote the freedom of the individual as a person.¹⁴ Sartori in his reference to Marx in the Communist Manifesto of 1848 reiterated the opinion that "democracy should encourage an association in which the free development of each is the condition of the free development of all".¹⁵ Another challenge lies in the inability of the people to decide the nature and form of democratic governance that is relevant and most useful to them.¹⁶

The failure of African States and indeed Nigeria to achieve basic development standards (in terms of social amenities, stability in economic growth and a good standard of living) could be attributed to the failure of African states to achieve democratisation. Issues of military interventions and militarization of democracy culminating in lack of good governance in Nigerian politics all pose problems and challenges that need be analysed in search for an answer to the challenges of democratisation in Africa.¹⁷

1.3 Scope and Limitation

This paper analyses Nigeria's path to democracy and the influence of military interventions. While there is abundant literature on the subject of democracy and democratisation, the paper will not focus on all problems covered by previous scholars but examines military intervention in Nigerian politics and its role as a catalyst to bringing Nigeria to the cross road in the quest for democracy.

14 Sartori, G. (1962) *Democratic Theory* (Westport, Conn.: Greenwood), p. 18.

15 Sartori, G. (1962) *Democratic Theory* (Westport, Conn.: Greenwood), P.452.

16 Nigeria is currently at a cross on whether to adopt fiscal federalism or not amidst call by some other groups for a con-federal system. While the call for a sovereign national conference still looms large in the country it remains a task to find a way of ensuring that the voice of the masses are heard in ensuring participatory democracy.

17 The concept of military intervention and the militarisation of democracy is used in this sense to show how the military as an institution obstructed the democratisation process in Nigeria and also how the democratisation terrain at some point was the exclusive reserve of past military heads of state and personnels.

1.4 Justification

The very recent drive towards achieving good governance and the metamorphoses of least developing states into developing states are indicators to the timeliness of this paper. Moreover the rejection of non democratic governments by the United Nations¹⁸ and the African Union¹⁹ makes this paper timely and important.²⁰

2.0 Democratic Schools of Thought

The emergence of new concepts of democratisation and democracy in the world brings to the fore the need to fashion out a model for the definition and assessment of the terms.²¹ Thus, modern democracy can be seen as a system in which opportunity is given to majority to influence decisions and determine periodic change in government.²² The two concepts of rule of law and human development are also important phases to the understanding of the concept of democratic thoughts.²³ However, democracy like all other social science concept defies a definitive meaning; to aid our understanding of the concept of democracy it is important that we peruse different democratic school of thoughts.

2.1 Radical Democracy

Racial democracy was first discussed by Tom Paine and Thomas Jefferson in the ancient Greek set up. Dodd argued that in this system of democracy the society is seen as undifferentiated from the individual members, and that common goal of

18 The Arab Spring, Libya and Iraq are clear instances that the UN has shown its displeasure for non democratic governments.

19 The presence of AU forces in Mali is a clear indication to the preference of democracy by Africa Leaders. More especially the AU declaration on Unconstitutional changes of government (2000).

20 It is however, to be noted that the efficacy of the various methods applied internationally and regionally are not core concerns of the paper, however, at the very least it is the authors assumption that non democratic governments have been removed and 'democratic' ones put in place. Also the A.U has not really tested the provisions of the declaration on the non constitutional change of government.

21 Saward, M; "Democratic Theory and Indices of Democratisation" in David B (ed.) *Defining and measuring democracy*, SAGE Modern Politics Series Volume 36 (1994)

22 Lipset, S.M; (1994) *The Social requisites of democracy*, *America Sociological Review*, 59, 1-22.

23 Gerardo, L. M (2009), *Measuring Democracy: A Bridge between Scholarship and Politics (Democratic Transition and Consolidation)*

the society is held in high priority. However, there is a large show of unequal citizen's right.²⁴

2.2 Liberal Democracy

In liberal democracy, the concept of individual right against state right is well pronounced. Here, the will of the majority is impeccably democratically fused with the problems of the minority. Complexity of group interest and the need for government to try and retain the support of these interest groups in order to survive make this form of democracy unusual in most third world countries.²⁵

2.3 Guided Democracy

Guided democracy borders on authoritarianism and on the people's democracy, the society been perceived as an organic whole with common interest unlike the aggregation of undifferentiated individuals in radical democracy. In guided democracy states claim to execute the general will of the people without being inhibited by constitutional checks to protect minorities or as in radical democracy by the majority.²⁶

2.4 Socialist Democracy

The concept of socialist democracy is concerned more with equality and social justice. The society is seen as a potential organic whole with the common interest of every individual in mind consequently only societal transformation is encouraged. The major problem here is that the attitude towards citizens' right and election is ambiguous; this is simply because if the pursuit of social justice takes precedence conflict between the state and the individual is always heightened.²⁷ Cohesion becomes the only means of advancing the course of the state especially when private education, medical care, entrepreneurship or importations of goods tend to upset the economic plans of the state.²⁸

²⁴ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 10

²⁵ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 10

²⁶ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 11

²⁷ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 13

²⁸ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 14

2.5 Constitutional Democracy

The concept of constitutional democracy was first used to describe the way in which culturally diverse country such as Nigeria ensured that all significant groups were incorporated into the running of the government without being frozen out.²⁹ In this form of democracy the society is comprised of several groups with language race and religion as the dividing walls. The state simply acts as an umpire is the coordination of the affairs of the various interest groups. The consequences of this are that a social class tends to be in charge of the whole affair of the state with oppression of the weaker group being very evident. Cultural division is thus encouraged as even though elections are open to everyone taking part in it, the people are most times monolithically aligned. Political change moves at the slowest pace with only the privileged few being in control of state machinery.³⁰

With the brief overview of some of the democratic theories, it is very imperative to state that each of the above theories have tendencies of reaching over board or been stretched out of limit. While one society can claim the success of its own democratic style as the best, I suggest that the choice must rather be a pragmatic one. For instance, the radical democracy can degenerate into populism where the will of the majority will clearly drown the will of the minority in the society. According to Roland Henwood, every noble society is weighed today with respect it has for its minority class.³¹ In the case of a guided democracy, it in most cases degenerate into totalitarianism with arbitrary interpretation of social interest that suites the leaders been in place. This style has also been seen in the Nigeria democratic government of former president Obasanjo. The Liberal democracy, presents the situation where citizens enjoy individual freedom, interest is represented through the election of elected official in the public sector; the problem is that this form of democracy while sweeping over all other forms of

²⁹ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 14

³⁰ Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed. 10

³¹ Lecture note delivered to the LLM 2008 class on Democratisation in Africa Center for Human Rights University of Pretoria.

democracy discussed above can be best described as existing only on paper in Africa.³²

Veronica Nmoma is of the view that political system must consist of three essential ingredients;³³

1. Meaningful and extensive competition between individuals and organised groups;
2. A highly inclusive level of political participation in the selection of leaders and policies through regular and fair elections;
3. A level of civil and political liberties.

It could be argued that the above essentials are set out in most African states especially from the 1990's with the increased unpopularity of military rule. However, compliance is definitely based on different parameters. The nature of elections and freedoms of civil societies still remain a far cry from what is conceived as basis on which democratisation can be fully achieved. For instance, while one may argue the competitiveness among several political groups in Nigeria, it is also sadly noted that such competitiveness is superficial with ruling party always accused of using state apparatus to hound the opposition parties. Consequently, if the above mention criteria will be met and practiced the entrenchment of a constitutional democracy must be in place.

Constitutional democracy as should be practised is the complete application of rule of law and human rights in any given society. Democracy is by far the most challenging form of government.³⁴ Democratisation is both an expression and expansion of man's freedom. Over the years it has become synonymous to man's progress. It is not a static phenomenon, it has an in built dynamism which requires that it must be developed and consolidated.³⁵ Democracy, interestingly, has

³² Pinkney, R; (2003) *Democracy in the Third World*, 2nd ed, 17

³³ Nmoma, V; (1995) *Ethnic Conflict, Constitutional Engineering and Democracy in Nigeria* in Glickman, H. (ed.) *Ethnic Conflict and Democratization in Africa*, (Atlanta: The African Studies Association Press), 311

³⁴ This assertion is made in the light of fact democracy requires respect for the minority even when it is a style of governance that the majority wins the credit.

³⁵ The quest for a country like Nigeria represents this assertion as it is an ending process with trying to find a blend that will surely attest to the fact that democracy is in place in a multiethnic society like ours.

become a yard stick on which development is measured today, yet the long term viability of democratic governments in several countries remains questionable.³⁶

2.6 Democracy in Africa State

Democracy or democratization is currently widely embraced by most of the countries in Africa today. Africa with a large history of ethnicity and colonisation has experiences which are best described as traumatising.³⁷ It has been argued that European colonisation of Africa explains the under development of the continent.³⁸ However, after over 50 years of the outlaw of colonisation by the United Nations,³⁹ some African states are still languishing in abject poverty fraught with lack of social and developmental activities.⁴⁰

Democratisation and its dividends can be outlined as evident in a society where the following characteristics abound- rule of law, human rights, competitive election, separation of powers, freedom of the press, liberalized economy, provision of some social services, namely education, health, water, electricity.

Some of the dividends of democratic regimes are discernable in African democracies⁴¹ but grossly insufficient when compared with the population growth in most of the countries. Excuses have been given that the varying degrees of entrenchment of democratic values and dividends as already enunciated ensues from nascent African democracies. This is based against the back drop that the oldest democracies in Africa have existed only for about forty years or so.⁴² This

36 J. J. Linz and A. Valenzuela, eds., *The Failure of Presidential Democracy: Comparative Perspectives*, (Baltimore: Johns Hopkins University Press, 1993), p. ix.

37 Most civil wars that broke out in Africa were offshoot of ethnic strife and struggle for resources. Clear examples are the Biafra War in Nigeria, the Rwanda genocide, Liberia and Sierra Leone are other examples that are worth mentioning.

38 Nmoma, V; (1995) *Ethnic Conflict, Constitutional Engineering and Democracy in Nigeria* in Glickman, H. (ed.) *Ethnic Conflict and Democratization in Africa*, (Atlanta: The African Studies Association Press), 311.

39 Resolution 1514, December 14 1960.

40 Statistics by the World Bank, UNESCO and other international agencies are replete with the poor performance of African States in issues such as education, maternal mortality etc.

41 South Africa, Ghana and even Nigeria will not be argued as not having taking some steps in ensuring the provision of social amenities albeit still at a very unacceptable basis in the case of Nigeria.

42 Wali, MA; 'Africa: Viability and Challenges Democratization and Investment Climate in Sub-Saharan Africa' 2000 available at <http://www.wami->

arguments at best describes a cross road scenario especially when it is considered how long this argument will avail the inability of African states to create a democratic way of life and the provision of basic amenities as longed after by citizens.

It is the author's opinion that the travails of democratisation heralded in Africa with the insatiable desire of the military to interfere with governance. This is from the fact that, before the consolidation of democracy,⁴³ military coups and counter coups and emergence of dictatorship began in most of the countries starting with Togo in 1963 and by 1985, more than half of African states were under one kind of dictatorship or another.⁴⁵ Military coups became fashionable as they were supported by both the eastern block and the western block.⁴⁶

It is imperative that a brief history of Nigeria's democratic history be made. This is based on the view that the various system of governance that was introduced by the colonialist contributed its fair share in the presence of ethnicity and tribalism in Nigeria's quest for democratisation. A perusal of the various constitutional development circles also highlights the major challenges especially the role of the military.

2.7 Nigeria Democratic History

Nigeria became an independent country on October 1st 1960. In order to have a full understanding of the democratic history of Nigeria, the pre-colonial, colonial and post colonial eras will have to be highlighted.

2.8 Pre-Colonial Nigeria

It is a common parlance that Nigeria was colonised by Britain, the annexation of Lagos Colony in 1861 marked a down turn in the history of Nigeria. By virtue of

ao.org/ecomac/english/doc/STRENGTHENING%20THE%20INVESTMENT%20CLIMATE%20IN%20
ST%20AFRICA-%20FINAL.pdf last accessed 07/06/12 12.01pm.
Consolidation of democracy is used in this sense as meaning at the point when most African States gained
pendence and trying to evolve democratic experiences the military interfered with governance in most
s.
e McGowan, P and Johnson, T.H; African Military Coups d' Etat and Underdevelopment: a quantitative
ical Analysis, Journal of Modern African Studies, 22, 4 (1984) pp 633-666.
kney, R; (2003) Democracy in the Third World, 2nd ed. 10
kney, R; (2003) Democracy in the Third World, 2nd ed. 10 p. 100

Proclamation No. 3 1863.⁴⁷ British rule was formally introduced into Nigeria. The country, referred to as Nigeria today became amalgamated in 1914 by the British administration of Lord Lugard. Nigeria had a fairly democratic society in its infancy. Among the Yoruba's the political structure recognised lineage heads, chiefs and a paramount ruler (the Oba), in the Igbo community, the arrangement was more of an egalitarian society where everyone was equal and had the right to participate in the decision making process. In the Hausa community a more hierarchical political structure existed⁴⁸ that informs the reason why the colonial administrators employed the indirect rule system as opposed to the direct system in the other part of the country.

The concept of separation of power was present through the various checks and balances that was existent in this cultures. It has however been argued that democracy is not part of the natural order of life, for most of the human history, rulers have ruled without being chosen by the majority of their subjects and with, at best, only limited opportunities for subjects to make their views known on the decisions affecting them.⁴⁹ Pre-colonial Nigeria is best described as the period of the dark, so with the colonisation of the Western Coast of Africa by the British occasioned by the heavy presence of trade opportunities and availability of raw materials.⁵¹

2.0 Colonial Era

The British invasion and subsequent conquering of the entity today known as Nigeria was gradual rather than sudden. Obasanjo and Mabogunje argue that the colonial era of Nigeria resulted in a situation in which leaders demonstrated a lack of affection and insincerity towards the governed, which subsequently resulted in the governed being seen as objects to be manipulated.⁵² Another feature of the

Oyedele, Lecture Notes and Materials Politics of Africa : University of Ilorin, 20001
Pirkinney, R: (2003) Democracy in the Third World. 2nd ed. 10. . P. 3.

Obasanjo, O and Mabogunje, (ed.) (1992). Elements of Deocracy, (Abeokuta: ALF Publications) P. 22.

The description, it is recalled that the economic structure of one that was not beyond the shores communities, issues of slave trade, killing of twins and the Osu cast systems were all entrenched. See generally, Hussainatu, A; (2008), History and Structure of the Nigerian Economy: Pre-colonial Period to 17 and Beyond.

Sartori, G; (1962) Democratic Theory (Westport, Conn.: Greenwood), . p. 4.

Obasanjo, O and Mabogunje, (ed.) (1992). Elements of Deocracy, (Abeokuta: ALF Publications) P.4.

colonial era of the Nigeria democratic experience was the elimination of kingship structure as a result of direct rule system by the British.

This period heralded various constitutions coming into being and below is a brief over view of some of the constitutions.⁵³

2.9.1 The Richard's Constitution of 1946:

The basic aim of the Richard's constitution was to promote the unity of Nigeria, provide room for the diverse elements which make up the country and secure greater participation by Africans in the discussion of their own affairs.

2.9.2 Provisions of the Richard's Constitution:⁵⁴

Under the Richard's Constitution a legislative council was established for the whole Nigeria and it consisted of: The Governor - as the President; 16 official members of which 13 were ex-officio and 3 nominated; and 28 unofficial members. Out of the 28 unofficial, 24 were indirectly elected while 4 members were elected. Two officials represented the Northern Provinces of the country and nine out of the 24 were unofficial members. Two officials and six nominated members represented the Western Province, while the Eastern Province was represented by two officials and were nominated members. One elected member represented Calabar while the colony of Lagos was represented in addition to three elected members by one official and one nominated unofficial member.

2.9.3 Macpherson Constitution⁵⁵

The McPherson Constitution established a central legislative council and a central executive council for the country. The central legislative council known as the House of Representatives consisted of: A President, Six ex-officio members; One hundred and thirty-six representative members elected from the Regional House, and Six special members appointed by the Governor to represent interests not

⁵³ The Colonial Laws Validity Act of 1865 empowered the British to make laws for Nigeria and its colonies. This heralded the Lugard Constitution (Nigeria Protectorate Order in Council 1913), Clifford Nigeria Protectorate Order-in-council 1922); Richard, (Nigeria Protectorate Order in Council 1946); Macpherson (Nigeria Protectorate Order in Council 1951); Lyttleton, (Nigeria Protectorate Order-in-council 1954).

⁵⁴ Nigeria Protectorate Order in Council 1946.

⁵⁵ Nigeria Protectorate Order in Council 1951.

adequately represented in the House.⁵⁶ In the central government, there was also an Executive Council otherwise known as the Council of Ministers. It consisted of the Governor as President, six ex-official members and twelve ministers. Each region was represented by four ministers appointed by the Governor on the recommendation of regional legislatures. But the ministers were not made in-charge of departments.

The Constitution divided the country into three regions - Northern Region, Western Region and Eastern Region, and in each region there existed a Regional Legislature and an Executive Council. In the Northern and Western Regions there were Houses of Chiefs and Houses of Assembly, but in the Eastern Region, there was only one House - House of Assembly. The MacPherson's Constitution consequently broke down.⁵⁷ Other Constitutional conference also came and went like the two considered above.⁵⁸

2.9.4 Post Colonial Era

At independence Nigeria had a con-federal system of government comprising of the eastern, western and northern regions. Dr. Nnamdi Azikiwe was the first executive President while Alhaji Abubakar Tafawa Belwa was the Prime Minister. In 1963, Nigeria was declared a republic and from then on the political terrain of Nigeria took a turn which I wish to define as one for the worse.

Clear from the content of the various Constitutional regimes is the fact that the concept of unequal representation was entrenched. Some regions had more representatives than other regions, individualism rather than collective attitude was highly promoted by the manner of the appointment of both the direct and

⁵⁶ Before the Macpherson's Constitution, the Legislative made laws for the South and the Governor for the North; however, Ss 33, 34 and 35 increased the no representation and also ensure that the governor made uniforms laws on the advice and consent of the legislative.

⁵⁷ The non distinction of power and responsibility is a major factor that led to the emergence of the new constitution. This assumption is made on the basis that the 1954 Constitution drew a distinction between Federal government and Regional government powers and responsibilities. See Kalu, E (1960); Constitutional Developments in Nigeria, Cambridge University Press; Kalu, N.K; (2009) State Power, Autarchy, and Political Conquest in Nigerian Federalism, Lexington Books.

⁵⁸ Further constitutional conferences in London in 1953 and 1954 that led to the Lyttleton Constitution and then the Independence Constitution of 1960, Republic Constitution of 1963 etc.

indirect members of the various arms of government.⁵⁹ Consequently the quest for personal gratification took centre stage.⁶⁰ These characteristics heralded the emergence of the military in Nigeria politics and a different trend to the development of Nigeria and the democratisation quest, disrespect for the rule of law, violations of human rights and corruption etc all became heightened.⁶¹

3.1 Challenges of Democratisation in Nigeria Today

Africa and indeed Nigeria today is confronted with numerous challenges in its democratization quest. The core challenges are numerous and include, but not limited to, the following; entrenching constitutionalism and the reconstruction of the postcolonial state; Preventing military intervention in politics; Instituting structures for the effective management of ethnic diversity; promoting sustainable development and well-enforced property rights regimes; nurturing effective leadership; elimination of ethnicity and tribalism, lack of good governance.⁶² A few of the above mentioned are discussed below to provide an insight into its importance to Nigeria democratic search.

Firstly, the importance of Constitutionalism cannot be ignored if a viable democracy must be achieved. Several of Africa's Constitutions have not taken into consideration the will and desire of the people and can at best be said to be set of laws and guidelines issued out by the military as is the case with the Nigerian constitutions. The importance of having a people oriented constitution has been reiterated by several scholars. For instance, Hansungule is of the view that;

lack of a broadly popularly agreed Constitution that is sanctioned by an equally popular people-based process and lack of awareness of the Constitution

⁵⁹ As already stated in this paper, true democracy even though a politics of numbers has respect for the right of minorities and must be guided by the rule of law.

⁶⁰ The Coup led by Kaduna Nzewu was hinged on the basic principles of trying to wipe out corrupt politicians, subsequent military interventions of Buhari, Abacha and Babangida all had the same underlying principles. On the contrary the aims were defeated and corruption rather grew in leaps and bounds.

⁶¹ General Babangida and General Abacha's regimes in Nigeria represent the worst periods of flagrant disrespect for the rule of law in Nigeria. It was during these eras that ouster clauses emerged in Nigeria laws and various Draconian decrees.

⁶² J Mbaku, and J Ihonvbere, *Multiparty Democracy and Political Change: Constraints to Democratisation in Africa* (Aldershot UK: Ashgate, 1998) p23.

among the general public-what opportunities it provides for the citizenry, how it operates and particularly how to use it as a means for dispute resolution, protection of dignity and fundamental human rights and freedoms are also major challenges.⁶³

It follows that a people based constitution will entrench a viable Constitutional democracy. The positive impact of a Constitutional democracy is also reiterated by Egbewole thus: "The judiciary as an important arm of governance is saddled with the interpretation of the law and a major player in democratic governance and the symbolization of constitutional justice."⁶⁴ Premised on this above positions, it is imperative to state that if Nigeria must entrench constitutionalism as it builds a viable post colonial state to take its place among the comity of nations it must strive towards achieving a constitutional framework which the people must lay claim to and abide by the rule of law and constitutional justice.

Secondly, military intervention in a nation's politics represents the situation in which the military attempts to disrupt a democratically elected government in quest to solving a political quagmire. Most times for the success to be profound, this intervention end up bloody with its attendant economic harshness and disrespect for the rule of law.⁶⁵ Involvement in governance is an aberration of the goals of the task that the military are expected to engage in, to wit the territorial defence of the nation. Some factors are therefore identified as occasioning the military intervention in politics; socio-economic development, political development, the centrality of military, conflict, and regional differences.⁶⁶ Nigeria's history of military intervention has been anchored

63 'Challenges and Prospects to Democracy and Governance in the SADC Region' paper presented in a one day workshop on May 5 2008 at the Centre for Human Rights University of Pretoria

64 Egbewole, W. O; (2012) CONSTITUTIONAL JUSTICE AND DEMOCRACY: WHAT INPUTS AND LINKAGES? Available at <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan050906.pdf> (accessed February 13, 2013).

65 LTSG ANTONIO, F; (2004) PREVENTING MILITARY INTERVENTIONS: A Policy Issue Paper available at http://pcij.org/blog/wp-docs/Trillanes_Preventing_Military_Interventions.pdf (accessed February 13, 2013).

66 Murat, Ö; What accounts for military interventions in politics: A cross-national comparison available at <http://www.e-akademi.org/incele.asp?konu=WHAT%20ACCOUNTS%20FOR%20MILITARY%20INTERVENTIONS%20IN%20POLITICS:%20A%20CROSS-NATIONAL%20COMPARISON&kimlik=1285708304&url=makaleler/monder-1.htm> (accessed February 13, 2013).

severally on the above to be the basis of the intervention. The claims of the Military personnel range from putting an end to impunity or ensuring economic development of the nation. It is therefore important that the current democratic voyage of Nigeria must ensure it does not provide a soft landing to encourage the military to interfere in the Nigeria political cum democratic space by advancing the frontiers of the rule of law and good governance as already advanced.

As regards other factors mentioned above, the institutional structures of Nigeria like the Judiciary, National Human Rights Institution, and Police etc must be set on a paradigm to achieve its goals. For instance, to ensure that issues of ethnicity and tribalism are checked, institutions like the federal character commission must be effective and devoid of nepotism. In addition, the question of good governance must evolve to become an innate nature of Nigerian's political leaders. A good governance structure will therefore ensure sustainable development in all facets of national existence.

However, for the purposes of this paper I shall analyse in more details military intervention in Nigeria democratic space as a major challenge of Nigeria movement towards realising a fully liberal democratised state.

3.1.0 Military Intervention in Nigeria Politics

A military government is put in place in situation where political power is vested in the military personals of a State. Interestingly, due to the regimented nature of the Military, it represents the most organised sector of any state. Johari, opines that there exist basically two types of military governments; direct or indirect.⁶⁷ In any circumstances, whether direct or indirect the military has some level of influence though more pronounced in the direct military system. Nigeria's military experiences have been largely direct with an exception of the brief moment of indirect influence during the three months life span of the Interim National Government that became direct when Gen. Sanni Abacha staged a palace coup to take over the reigns of government fully.

Johari, J.C; (1982), comparative Politics, Sterling Publishers, p577

the foray of the military into the political governance terrain in most circumstances takes the shape of coups. Whatever shape or nature it takes; military interventions have major impact on policy of nations. According to Staffan and Clark;⁶⁸

'Military intervention' is a more useful concept than 'coup d'état' ...because attempting coups d'état is not the only the way military units or social groups intervene in politics: they also start rebellions aimed at overthrowing specific regimes. This kind of behaviour is an alternative to coups, when a regime's leaders are sufficiently protected by praetorian guards to make such efforts risky. It is also a more viable strategy for would-be rulers who enjoy a primary support base in the hinterlands. Like coups, military interventions in the form of rebellions can demonstrate that important sectors of a state's elites and/or population deem the governing regime a legitimate target for overthrow through violent means.

No matter what nature military intervention takes, it is posited that military rule is absolute rule.⁶⁹ Oputa (JSC) Rtd opines that military rule;

Subverts and undermines the institutions of the State, imperceptibly initially but surely and gradually. It leads inevitably to moral and political corruption, alongside the decay of time-honoured loyalties and values as well as institutional decay. In due course and as a manifestation of this deepening decay, cruelty and murder become norms of governance. Good faith and truthfulness become childish scruples while force and craft become the keys to success. Selfishness, naked and unadorned, need only succeed to supply its own justification.⁷⁰

Nigeria experienced the first military coup in January 29, 1966 when some young military officers' lead by Lt. Chukwuemeka Kaduna Nzeogwu killed prominent Nigeria Political leaders that included Alhaji Sir Ahmadu Bello, Sarduna of

68 Staffan, I. L.; John F. k; Does Democratization Reduce the Risk of Military Interventions in Politics in Africa? Available at http://www.clas.ufl.edu/users/sil/downloads/LindbergClark08_Military.pdf (accessed February 13, 2013).

69 It is now a common cliché that the worst form democracy is better than military rule. This position is agreeable to the author in the sense that there is practically and extinction of the rule of law in military regimes and a grounding of the judiciary.

70 Per Justice Chukwudiufu Oputa, Chairman Human Rights Violations Investigation Commission, www.nigeriamuse.com/nigeriawatch/oputa/oputavolumeone.pdf last accessed 12/12/11 12.00am.

Sokoto, amongst other top Northern leaders.⁷¹ Major Gen. Aguyi Ironsi later became the President but was assassinated almost after assuming office. The coup subsequently failed and General Yakubu Gowon became the head of state with the first responsibility being to fight the civil war to keep Nigeria as one entity following the secession attempt by the Col. Odimegwu Ojukwu lead Biafara.

The event leading to the Civil war in Nigeria was a further enthrone of ethnicity, minority, marginalisation, tribalism and nepotism. It is my view that the civil war broke out primarily because the north saw the assassination of its political leaders as a deliberate act of the military officers who were mainly easterners as an attack on the north and not as a cleansing of the political rot that was evident then in the country. Thus the military involvement in the political terrain threw the nation into an abyss of civil war leading to ill fate and suspicion among the various ethnic nationalities in Nigeria.

In 1975, General Murtala Mohammad became the next head of state and was subsequently assassinated on February 14, 1976 by Col Dimka's failed coup attempt which ushered in President Olusegun Obasanjo.⁷²

The first Civilian dispensation came to life with election conducted in 1979 which saw Alhaji Sheu Shagari becoming the first civilian President. This democratic dispensation was consequently cut short with the Gen. M. Buhari lead coup in 1983 which witnessed the promulgation of retroactive Decrees that tried, imprisoned and ultimately led to death sentences on some former civilian administrators.⁷³

The military test of the reins of power and political governance created an insatiable appetite in them. This invariably led to the worst days of Nigeria's military dictatorship which was characterised by flagrant disrespect for the rule of

71 Omoigui, N; The Prelude: Bloody Coup of January 1966 available at http://www.waado.org/nigerdelta/nigeria_facts/MilitaryRule/Omoigui/Prelude-1966Coup.html (accessed February 13, 2013).

72 www.nigeria2Day.com (accessed Feb 17, 2013).

73 Politicians and activist were either sentenced to life imprisonment or faced firing squad. Ken Saro Wiwa and the Ogoni 11 are sad examples of the rampant extra judicial killings. See Omoigui, N; The Prelude: Bloody Coup of January 1966 available at http://www.waado.org/nigerdelta/nigeria_facts/MilitaryRule/Omoigui/Prelude-1966Coup.html (accessed February 13, 2013).

law, corruption and human rights violations.⁷⁴ The attributes of subsequent military regimes after 1983 contributed immensely to the current state of under development of the country. This was achieved by the entrenchment of ethnicity and class factor which has eaten deep into the fabric of the Nigerian nation. The overriding effect therefore is that round pegs were easily put into square holes and promoting lack of accountability in the nation.⁷⁵

Gen Ibrahim Badamosi took over power in the August 27, 1985 palace coup.⁷⁶ Later in 1985 Gen. M. Vatsa's Conspiracy was foiled. Other notable coup attempts in Nigeria include the Major Gideon Gwaza Orkar failed Coup of April 22, 1990. The Babangida Regime held on to power till he bowed to pressure in 1993.⁷⁷ An interim government lead by Chief Ernest Shonekan came to life and was short-lived by the palace coup of Gen Sani Abacha. The Sudden demise of Gen Sanni Abacha saw the coming into power by Gen. Abdulsalami Abubaker who subsequently conducted and handed over power to the present democratic dispensation of the Nigeria State which was heralded on May 29 1999.⁷⁸

3.1.1 Military and Democracy in Nigeria

From the brief history of the military in the Nigeria polity, it is clear that the Constitution of the Federal Republic of Nigeria had been severally bastardized without regard⁷⁹ from these men in *khaki*. It is also very disheartening to note the

⁷⁴ The Murder of Dele Giwa, Ken Saro Wiwa, Kudirat Abiola and incarcerations of activist attests to the fact the military regimes in Nigeria had little positives about it.

⁷⁵ Anugwom, E.E; *The Military, Ethnicity and Democracy in Nigeria* available at <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/social%20development/vol16no2/jsda016002007.txt> (accessed February 13, 2013).

⁷⁶ A palace coup is one in which the sudden and decisive change of government illegally or by force is carried out by individuals in positions of authority who are themselves part and parcel of the ruling regime

⁷⁷ The pressure heightened after the annulling of the June 12, 1992 election assumed to have been the most free and fair election in Nigeria. An interim government was put in place headed by Chief Ernest Shonekan.

⁷⁸ General Abdulsalami Abubakar handed over power to a new democratic elected president in Nigeria on 29 May 1999, Olusegun Obasanjo thus became the president for what is largely referred to as the new dispensation of democracy in Nigeria after the military juntas took over governance in Nigeria in 1985. see generally http://www.waado.org/NigerDelta/Nigeria_Facts/MilitaryRule/Omoigui/NorthCounterCoup.htm for a detailed account of the various military coups in Nigeria last accessed 11/03/2012, 2.00pm.

⁷⁹ Decree No 2 (Suspension and Modification) 1984, known as ouster clause was a notorious law by the military to render the provisions of the constitution numb.

low, corruption and human rights violations.⁷⁴ The attributes of subsequent military regimes after 1983 contributed immensely to the current state of under development of the country. This was achieved by the entrenchment of ethnicity and class factor which has eaten deep into the fabric of the Nigerian nation. The overriding effect therefore is that round pegs were easily put into square holes and promoting lack of accountability in the nation.⁷⁵

Gen Ibrahim Badamosi took over power in the August 27, 1985 palace coup.⁷⁶ Later in 1985 Gen. M. Vatsa's Conspiracy was foiled. Other notable coup attempts in Nigeria include the Major Gideon Gwaza Orkar failed Coup of April 22, 1990. The Babangida Regime held on to power till he bowed to pressure in 1993.⁷⁷ An interim government lead by Chief Ernest Shonekan came to life and was short-lived by the palace coup of Gen Sani Abacha. The sudden demise of Gen Sanni Abacha saw the coming into power by Gen. Abdulsalami Abubakar who subsequently conducted and handed over power to the present democratic dispensation of the Nigeria State which was heralded on May 29 1999.⁷⁸

3.1.1 Military and Democracy in Nigeria

From the brief history of the military in the Nigeria polity, it is clear that the Constitution of the Federal Republic of Nigeria had been severally bastardized without regard⁷⁹ from these men in *khaki*. It is also very disheartening to note the

⁷⁴ The Murder of Dele Giwa, Ken Saro Wiwa, Kudirat Abiola and incarcerations of activist attests to the fact the military regimes in Nigeria had little positives about it.

⁷⁵ Anugwom, E.E; *The Military, Ethnicity and Democracy in Nigeria* available at <http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/social%20development/vol16no2/jsda016002007.1> (accessed February 13, 2013).

⁷⁶ A palace coup is one in which the sudden and decisive change of government illegally or by force is carried out by individuals in positions of authority who are themselves part and parcel of the ruling regime.

⁷⁷ The pressure heightened after the annulling of the June 12, 1992 election assumed to have been the most free and fair election in Nigeria. An interim government was put in place headed by Chief Ernest Shonekan.

⁷⁸ General Abdulsalami Abubakar handed over power to a new democratic elected president in Nigeria on 29 May 1999, Olusegun Obasanjo thus became the president for what is largely referred to as the new dispensation of democracy in Nigeria after the military juntas took over governance in Nigeria in 1985. see generally http://www.waado.org/NigerDelta/Nigeria_Facts/MilitaryRule/Omoigui/NorthCounterCoup.htm for a detailed account of the various military coups in Nigeria last accessed 11/03/2012, 2.00pm.

⁷⁹ Decree No 2 (Suspension and Modification) 1984, known as ouster clause was a notorious law by the military to render the provisions of the constitution numb.

[illegible]

...the ... of the ... was ...
... The ...
... of the ...
... the ...

[Faint, illegible text]

1990. *Journal of Management Education* 14(1): 1-10.

fact that the years of military rule in Nigeria launched the country into the severe challenges⁸⁰ it is facing today on the journey of democratisation.

For instance, during the Babangida era (1985-1993), various economic reforms were introduced in a bid to enshrine a developmental growth of the country. Sadly, however, the nature of the economic reforms permitted the consolidation of old patronage network to consolidate their positions.⁸² The process of commercialisation and privatisation became an exclusive reserve for the benefit of the military officers in power. Public funds grew wings over night and no one was ever held to account for this funds. It is very disturbing that Nigeria experienced the oil boom in the military era. It had been suspected that the sum of \$2.8 billion of oil revenues disappeared when General Buhari was the minister of Petroleum under President Obasanjo (1976-1979).⁸³ Currently, the question of corruption under the various regimes in Nigeria is yet on the increase. From the recent democratic experience from May 1999 under President Obasanjo to the current government of President Goodluck Jonathan, looting of public funds remains.⁸⁴ However, this paper does not analyse the level of corruption in democratic governments and the military governments of Nigeria. It is worth noting however, that the major difference is that in the democratic governments culprits are liable to face criminal prosecutions as opposed to the military regimes.

A complete marginalisation of the ethnic minority was heightened and protected by the use of military might. The Abacha regime perhaps became the worst culprit of oppression and flagrant abuse of the rule of law. The killing of Ogoni 12 (Ken Saro Wiwa and 11 others) ensured the listing of Nigeria as

80 Religious bigotry, Corruption and ethnicity remain the major challenges confronting Nigeria present democracy.

81 The Structural Adjustment Programme remain the most notorious of this policies.

82 W Reno War Lord Politics and African States, (Boulder, Colo.: Lynne Rienner, 1998), p.184.

83 Nmoma, V; (1995) Ethnic Conflict, Constitutional Engineering and Democracy in Nigeria in Glickman H. (ed.) Ethnic Conflict and Democratization in Africa, (Atlanta: The African Studies Association Press) 188.

84 This position seeks to state that corruption is not only known to military regimes. The crises in the Power sector, Oil subsidy, Police Pension scheme and failed banks are all recent challenges that has retarded the growth of the Nigerian nation. It is however, the authors position that the effect of public looting experienced during the Babangida and Abacha regimes set a tone to which the nation is still sighing under.

pariah state by the international community.⁸⁵ Breakdown of the rule of law was evident as the day light. The judiciary struggled to survive amidst military decrees restricting the implementation of the constitution which was already suspended by Decree NO 2 of 1984.

The return of Nigeria to democratic governance in May 29, 1999 is a landmark event towards setting Nigeria on the part of good governance. This is an assumption that democracy is synonymous with good governance. While the advent of democracy is heralded in anticipation of the attendant benefits, a sense of concern arose in the turnout of events. The opening of the political space led to the in-rush of political forces, new political elite and a generation of politicians mainly nurtured during the military era, with little or no experience in democratic norms and values were fast-tracked into existence within twelve months. This situation ensured that Nigeria's return to democracy had every hint of the military.

Nigeria can only have democracy when the fundamentals and variables of what makes up democracy are available.⁸⁶ Apparently, the reality of the above situation is seen from the fact that since its independence in 1960, every democratic attempt has been determined and implemented by the ruling faction of the military, the very managers of institutionalised violence.⁸⁷ Indeed the promise of a return to democracy constituted an important platform for the legitimacy of military intervention in political life. The question therefore is, what kind of democratic legacy can the military bequeath to a country given its forcible entry into politics? Given the fact that the military in Nigeria is a product of Nigerian history and in particular the colonial project to what extent does it influence

⁸⁵ www.archive.org/details/WUC1995-1101-Ken_Saro_Wiwa.

⁸⁶ The fundamentals referred to here are the elements of good governance as set out by the World Bank and other international institution. While this standards defer the core components include; accountability, rule of law, transparency and unhindered participation in governance. See http://www.governancepro.com/news/article_12.html, <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>, <http://info.worldbank.org/etools/docs/library/114925/eum/docs/eum/ethiopiaeum/Module1CityManagementStrategyEth.pdf>, and <http://www.ifad.org/gbdocs/eb/67/e/EB-99-67-INF-4.pdf> (all accessed February 12, 2013) for further elaborations on the concept of good governance.

⁸⁷ Only the Late Musa Yaradua and Goodluck Jonathan Presidency are current leaders that does not have a military background.

democracy in Nigeria?⁸⁸ Nigeria's 1999 transition to civilian rule culminated into a long, turbulent period of military rule and failed democratic experiments. At the time of the political handover, many Nigerians expressed hopes for a "democracy dividend"⁸⁹ that would expand political liberties, improve the performance of government, encourage accountability among leaders, and revive the ailing economy.⁹⁰ A major attribute of any democratic governance structure is the concept of popular participation. Popular participation in governance has become one of the most internationally accepted attributes of democracy. By the concept, citizens are the most distinctive element of democracies.⁹¹

4.1 At the Cross Road- The Nigeria Nation and Democracy: Moving Forward

Nigeria, like most African countries, has in the recent past celebrated a landmark of the Golden Jubilee of Independence. Many call it the end of colonial rule.⁹² If Nigeria must therefore realize its dream of discovery of real democracy, it must evolve a viable institutional network. Its institutions must be accountable and responsive. In discussing institutions essential for protection of rights, the role of the judiciary is particularly essential and competent to deal with rights that protect the common goods. The courts as an appropriate forum to safeguard rights in protection of common goods must be reinforced by democratic procedures.

In addition, good governance must be embraced in its entirety. One of the cornerstones of good governance is accountability. Government should be made accountable to the people through free and fair election. A government not well constituted through the provision of the law of the land should not be recognized.

88 Aliyu M. Katsina 'Militarization of Democracy in Nigeria: the Portents are Terrifying' available at <http://aliyu.wordpress.com/2008/08/21/militarization-of-democracy-in-nigeria-the-portents-are-terrifying> last accessed 08/06/12 12.25pm.

89 See the dividends of good governance already mentioned above on 86.

90 Afrobarometer Briefing Paper No. 46 July 2006.

91 Idowu A. A; 'Human Rights, Democracy and Development: The Nigerian Experience' available at <http://aliyu.wordpress.com/> last accessed 08/06/12, 12.26pm.

92 Odinkalu, C. A; 'Security, Peace & Conflict Management In Africa: Options For National Integration in Nigeria' Keynote address at the 4th University of Ilorin International Conference, October 16-18, 2012.

93 Ademola O. J; Bridging the peace gap in Nigeria: The panel of the wise as a constitutional essential presented at 4th University of Ilorin International Conference, October 16-18, 2012.

to the people. Besides, those at the helm of affairs should carry the people along in their major decisions especially those that affect all of us.⁹⁴ It is the author's conviction that the recent constitutional review process in Nigeria which has seemingly engaged consultations is lauded. However, the process must not be hijacked by political bigwigs.

Consequently, if the Nigerian nation must emerge from the cross roads in her search for democracy issues of ethnicity, corruption and patriotism must be shunned.

5.1 Conclusion

If Nigerian's democracy must survive the harsh critics on the nature of flawed election, then using military capabilities and aggression to defend or promote government selfish interests should be discarded.⁹⁵ It is also not contestable that what we are witnessing in Nigeria today is not a new phenomenon. Retired military officers have increasingly entered partisan politics, playing leading roles, since Gen. Babangida's transition. In the present democratic dispensation, a former President of the Federal Republic of Nigeria was a retired army general; so also are former Minister of Defence a retired general; the presidential chief of staff, National Security Adviser, several senators are retired officers who wielded immense political power under the military. One of them is currently the president of the Senate.

While Nigeria's return to elected civilian rule in May 1999 marked the formal end of military authoritarianism in the country's political life, the democratic opening—after two bitterly contested and incrementally controversial elections in 2003 and 2007 has led to mixed political outcomes. The Nigerian government must be ready to put in place laws that will provide stiff punishment for those who conspire and commit electoral fraud in order to send a warning signal to

⁹⁴ Adeosun A. B; *Nigeria@50: The Role of Good Governance and Effective Public Administration towards Achieving Economic Growth and Stability In Fledgeling Democracy* International Journal of Politics and Good Governance
Volume 3, No. 3.3 Quarter III 2012.

⁹⁵ Ogwu L.C, 'demilitarizing Nigerian Democracy' November 15, 2008 available at <http://www.nigerianmuse.com/articles/?m=1046> last accessed 05/06/12, 10am.

those unscrupulous politicians who are out to subvert the will of the people in subsequent elections.⁹⁶ Sadly, the ongoing democratic experiment in Nigeria is failing. Just as the earlier experiments of the 1960s failed so significantly that they opened the way to a catastrophic civil war and the 29 years of military dictatorship that consumed the hopes and dreams of a generation.⁹⁷

The spirit of democratic tolerance and disciplined discourse indispensable to democracy is not fully allowed to germinate. A general sense of insecurity, frustration, and exasperation almost as bad as existed during the harsher periods of military dictatorship has crept back into Nigerian life. Nigerians are becoming emotionally and physically battered, as they were during the earlier periods of the country's history. There has been little accountability. The economy has remained in the doldrums, and political assassinations have become rampant.⁹⁸ Some people have begun to characterize the current democratic dispensation as a "Democratic Dictatorship."⁹⁹

Finally, it is concluded that the military ethics is antithetical to democratic values. During the long years of military rule in Nigeria, the military arrested the growth of the democratic spirit and foisted on the people paternalistic, feudal, and authoritarian values from which Nigerians have yet to emancipate themselves. The argument is that former military rulers are also citizens of Nigeria and therefore, entitled to seek office under democratic dispensation. Of course, it would be unconstitutional to stop anyone aspiring to play a political role just because they had served the country as soldiers. Military despots cannot suddenly become democratic leaders by merely replacing their military uniforms and buttons with flowing robes.

⁹⁶ Suleiman Nasiru 10years of democracy: is Nigeria making head way? Available <http://www.ngex.com/news/public/article.php?ArticleID=1518> last accessed 04/05/12, 9am.

⁹⁷ This assertion is made against the backdrop of grave corruption allegations trailing the government at all levels.

⁹⁸ Kidnapping of relatives of politicians is on the increase now in Nigeria and this spells a bad omen to the continued existence of the democratic experience.

⁹⁹ The government of Obasanjo was in most circumstances treated as a democratic dictatorship for its lack of respect for the role of law and disregard for judicial decision.

Recommendations

It is anticipated that for the rule of Law to exist in Nigerian's current political experiment that administration of judicial institutions must be strengthened. Also, restoration of respect for the rule of law, to streamline the Constitution and make a satisfactory fundamental law of the land, sensitive to the needs of the multi-ethnic, multi-linguistic, multi-religious, pluralist nation, to demarcate the responsibilities of the various tiers of government, and to neatly separate the powers and responsibilities of the executive, the legislature, and the judiciary must be entrenched.

Equally importantly, Nigerians expects the current government to encourage the culture of dialogue, debate, and consensus building, to provide security of life and property in a land that has known great insecurities, to be even-handed in its dealings with the people, to be honest, transparent, and accountable in its actions and policies where previous and sadly the present administrations had enthroned corruption, lack of accountability, and wholesale looting of the treasury and national resources.

Nigeria presents a history of a nation that has experienced several forms of governance with the military having the largest chunk of years. The negative effect of the military form of ruler-ship cannot be over emphasised, the military demands submission, democracy enjoins participation; one is a tool of violence, the other a means of consensus building for peaceful co-existence.¹⁰⁰ It is therefore recommended that;

1. Nigeria should embrace democracy, shield and protect it; this would be achieved by allowing judicial independence and strengthening of all democratic institutions. The recent role of the judiciary as already highlighted above should be encouraged by ensuring the continued independence of the judiciary and the practise of the separation of power.
2. Good leadership should be encouraged and structures of democracy eg independent electoral body, human rights commission should be

¹⁰⁰Kamla-Raj, K; "Human Rights and Sustainable Democracy in Nigeria (1999 - 2003)" Vol. 13.1 (2006) *L. Soc. Sci.* Pp15-29.

- strengthened by ensuring that the funding cycle is independent of political organs.
3. Leaders should be held accountable while in office and out of office by the institutions of audit and probe panels to appraise the credibility and performance of leaders.
4. The anti-corruption bodies already set up should be empowered to carry out their duties, while not treating any persons as scared cow, the mode of appointment, reporting and prosecution of indicted persons should not be within the powers of the executive or any political organ.
5. Freedom and access to information should be encouraged, it is my view that awareness of the process of governance and administration will improve the participation of the masses and make the leaders more accountable.
6. The military should stay out of politics in Nigeria; this is against the backdrop that the military's apolitical culture is hurdle to its inability to serve as democratic vanguard. Nigeria's socio-economic problems require for their solution a system which can aggregate and reconcile competing societal demands as a basis for acceptable and desirable policies.¹⁰¹

¹⁰¹ http://findarticles.com/p/articles/mi_qa3719/is_200007/ai_n8891596/pg_11 last accessed 10/05/12.