DOMESTIC IMPLEMENTATION OF THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE: A CASE STUDY OF NIGERIA BETWEEN 2011 AND 2015

BY

Usman SANI

LLM/LAW/101384/2014-2015

(P14LAPU8058).

DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA

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A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT FOR THE AWARD OF MASTER OF LAWS DEGREE (LL.M)

DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA

MARCH, 2021

Declaration

I, **Usman SANI**hereby declare that the work in this Thesis titled: **"Domestic Implementation of the African Charter on Democracy Elections and Governance: A Case Study of Nigeria between 2011 and 2015"** has been carried out by me. The information derived from other literatures has been duly acknowledged. No part of this thesis has been previously presented for another Degree or Diploma at this or any other institution.

_____ _____

Usman SANI **Date**

Certification

This Thesis titled: **"Domestic Implementation of the African Charter on Democracy Elections and Governance: A Case Study of Nigeria between 2011 and 2015"** by **Usman SANI** meets the regulations governing the award of the Degree of Master of Laws (LL.M) of the Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

_____ _____

Prof. K. M. Danladi **Date**
Chairman, Supervisory Committee

_____ _____

Prof. Yusuf Dankofa **Date**
Member, Supervisory Committee

_____ _____

Dr. Salim B. Magashi **Date**
Head, Department of Public Law

_____ _____

Prof. Sani Abdullahi **Date**
Dean, School of Postgraduate Studies

Dedication

This work is dedicated to my parents Alh. Sani Dangoggo and Hajiya Saude may the Almighty Allah (SWT) continue blessing their life, Amen.

Acknowledgements

Alhamdulillah! I thank Almighty Allah the Lord of the universe for the grace and opportunity to see the end of my programme successfully. I testify that none has the right to be thanked except Allah (S.W.A.). A research for knowledge is not an easy task, especially when it comes to thesis writing. My greatest and eternal appreciation goes to Almighty Allah (SWT) the most merciful, the most gracious, through whom righteous deeds are accomplished for keeping me alive and giving me the flair and strength to have written this thesis.

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20. *Free Zones Case (France v Switzerland* (1932) PCIJ Series A/B No. 46 .
21. *R v Keyn* (1876) 2 Ex. D. 63 100
22. *The Greco – Bulgarian Communities Case (Greek v Bulgaria)* (1930) PCLJ Series B. No. 94 118
23. *Winbledon* Case (1923) PCIJ Series No. 1 115

List of Abbreviation

& - - - - -	And
AC - - - - -	Appeal Cases
AGF - - - - -	Attorney-General of Federation
ALL ER- - - - -	All English Law Report
ALL FWLR - - - -	All Federation Weekly Law Report
ANLR - - - - -	All Nigerian Law Report
Anor - - - - -	Another
CA - - - - -	Court of Appeal
Cap - - - - -	Chapter
Ed - - - - -	edition/Editor
Eg - - - - -	Example
Etc - - - - -	and so on
FSC - - - - -	Federal Supreme Court
Ibid - - - - -	In the same source as previously cited
JCA - - - - -	Justice Court of Appeal
LFN - - - - -	Laws of the Federation of Nigeria
LTD - - - - -	Limited
MJSC - - - - -	Monthly Judgment of the Supreme Court
No - - - - -	Number

NRNLR	-	Northern Region of Nigerian Law Report
NWLR	-	Nigerian Weekly Law Report
Op. Cit	-	Opere Citato (In the work already cited)
Ors	-	Other
P	-	Page
Paras	-	Paragraph
Pp	-	Pages
Pt	-	Part
SC	-	Supreme Court
SCNJ	-	Supreme Court of Nigeria Judgment
UK	-	United Kingdom
USA	-	United States of America
V	-	Versus
Vol	-	Volume
WACA	-	West African Law Report
WNLR	-	Western Nigeria Law Report

Abstract

It is the habit of some African leaders to remain in power till they reached their death that is why even in countries where democratic government is practiced, some leaders make attempts to amend constitution in order to extend power. Political crises and insecurity become rampant in some African countries. These are mostly where elections are marred or the incumbent refuse to concede defeat and relinquish power to the winning party or candidate. Corruptions, insincerity of purpose are common traits of most African Leaders.The involvement of people of a state or polity in decision making about the affairs of their government is the unique feature of the Democracy. The African Union joined the international community in recognizing Democracy as the most acceptable system of government and therefore adopted the African Charter on Democracy, Elections and Governancein the 2007. Prior to the inception of the Charter on Democracy, Nigeria has been operating under democratic governance since 1999 to date. However, corruption insincerity of purpose and lack of accountability characterize most of the Nigerian Leaders. Consequently, the enjoyment of democratic dividend becomes difficult for Nigerians. Now that Nigeria has signed and ratified the Charter on Democracy, this work examines Nigerian Democratic governments in order to find out whether or not they are in compliance with provisions of the Charter on Democracy.The research is doctrinal, which consulted many statutes, case laws, textbook, articles, etc. The research found that many African countries signed and ratified the African Charter on Democracy Elections and Governance but refused to domesticate it. The consequence of it is changes or amendment of their National Constitutions to elongate the tenure of office of their leaders.There are abundant laws aiming at promoting rule of law and good governance in Nigeria, but the level of official corruption suggested that the rule of law in Nigeria is more of myth than reality. Reason being many cases relating to corruption were never investigated let alone punishing the guilt. The research recommended that Nigeria should domesticate Charter on Democracy and strengthen our domestic electoral and anticorruption laws and bodies. There shall be impartial application of the anticorruption laws against anybody found to be in its violation by the law enforcement agencies and courts.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The involvement of people of a state or polity in making decision about the affairs of a government is one of the unique features of a democratic government. It is therefore said to be a representational government and is based on the consent and will of the people, a responsive and responsible government in which the majority upholds power without suppressing the interest of the minority.[1] For democracy to be given life, people must participate. Political parties play a critical and crucial role in participating process, providing the main organizational link between politicians who run for office and mass public

The sustenance of a democratic government depends on the observance of rule of law. This is the guiding principle of justice and good governance. The international agencies employ the concept of good governance to be a basis or yardstick for measuring efficiency and effectiveness in the conduct of public affairs and management of public resources by public institution.[2] It focuses on the responsibility of government and governing bodies in meeting fairly the needs of the governed. Orderly process of succession in liberal democracies is usually expected since democracy itself is accorded high regards for its supposed capacity for peaceful resolution of conflicts. This calls for credible, good electoral governance. That is the general manner in which those saddled with the management of elections discharge their responsibility. Indeed, elections are considered important aspects of democracy. This is not only because of

[1]Bappah, A.I (2015) The Application of the Rule of law, Democracy and Good Governance in Nigeria Challenges and Prospects.In Danladi K. M (ed)*Law Making, Challenges and Good Governance in Katsina State*, Clear Resolution, Abuja, p. 6.
[2] Ibid

their role in determining succession but as a basis for legitimacy and ensuring accountability and good governance from political parties that form the government[3]

In its quest to promote democracy and good governance in Africa, African Union adopted the African Charter on Democracy, Elections and Governance (Here in after referred to as the Charter on Democracy). The Charter on Democracy, aims at tackling issues that pose a threat to stability and democracy in Africa, such issues include but not limited to unconstitutional change of government which is described by the Charter on Democracy to be one of the essential causes of insecurity and instability and violent conflicts in Africa[4]. Also the Charter on Democracy prohibits amendment or revision of constitution and legal instrument, which is an infringement of the principle of democratic change of government.[5] The Charter on Democracy also obliged the state parties to promote democracy, the principles of rule of law and human rights and also to promote good governance by ensuring transparent and accountable administration. The Charter on Democracy further provides that state parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the union's declaration on the principles governing democratic elections in Africa[6]. The Charter on Democracy makes provisions for advancing political, economic and social governance.

Nigeria as a state party to the Charter on Democracy has been pre-occupied by the quest for democracy and good governance since her independence in 1960. This aspiration has remained elusive due to many challenges which have continued to undermine the democratization process in the country more particularly between the periods of 2011 and 2015. These challenges include failure of leadership, corruption, *Boko Haram* insurgency, insincerityof

[3]Gberebic, E.D. *Democracy, Democratic Institutions and Good Governance*.covenantuniversity.edu.ng.Accessed, 5th December, 2015. 3:15pm
[4]Preamble to the Charter on Democracy.
[5]Article 23 (5), Ibid.
[6]Article, 4, 12 and 17, Ibid.

purpose, lack of political will and lack of proper vision by the political leadership, lack of accountability in governance, amongst other.[7] Thus, the 2015 elections offered Nigerians a good opportunity to vote wisely for a leader who out of personal conviction and preparedness is offering his or herself to serve rather than someone who will get there before beginning to plan. The recently concluded elections and peaceful transition of administration reveal that the nascent democracy in Nigeria is getting matured and therefore the Charter on Democracy is complied with. It is against this backdrop that this work examined domestic implementation of the Charter on Democracy in Nigeria with particular reference to the period of 2011 and 2015.

1.2 Statement of Problems

It is one of the habits of African leaders to remain in office till their death that is why even in countries where democratic government is practiced, some leaders make attempts to amend the constitution in order to extend power. Political crises and insecurity become rampant in Africa mostly where elections are marred. For example, post electoral crises in Nigeria in 2011 general Elections claimed the life of thousands of Nigerians across the nation. This is also associated with non-observance of principles guiding democratic elections.

Corruption, insincerity of purpose, lack of accountability etc. are common traits of most Nigerian leaders. Consequently, the enjoyment of dividend of democracy becomes difficult for Nigerians. Observance of rule of law in Nigeria becomes difficult as Nigerians citizens do not receive equal treatment more particularly before courts of justice as the true independence of the judiciary is wanting. Lastly, poverty among our youth as a result of unemployment instigates some of them to form illegal society thereby endangering the life and property of citizens. This is also a consequence of bad governance. The Charter on Democracy adopted by AU in 2007 has

[7]Udo, L.U *Democracy and Good Governance in Nigeria Challenges and Prospect*, http/…/globaljournal.org., accessed, 30th November,2015

been signed and ratified in 2012 by Nigeria but not yet domesticated to enable it gains enforceability in our domestic courts. It is against the above backdrop that the research work addressed these problems and provided necessary recommendations to the various stakeholders involved in the promotion of democracy, elections and governance by examining Domestic Implementation of African Charter on Democracy, Elections and Governance in Nigeria. The research examined and addressed the issues particularly between the period of 2011 and 2015.

The research questions formulated from the above problems are:

1. Are the Nigerian Democratic Electoral Laws and processes in conformity with the principles provided by the Charter on Democracy to impact good governance?
2. Is the role played by political parties in participating processes of the Democratic Elections in Nigeria producing orderly processes of succession and peaceful transition of power from one civilian regime to another?
3. Are the Conducts of government officials in the management of public resourcesin line with the principles of Rule of Law and free from corrupt practices?

1.3 Aim and Objectives of the Research

The major aim of this research is to examine and evaluate the Domestic Implementation of the African Charter on Democracy, Elections and governance taking Nigeria as a case study, more particularly between the periods of 2011 and 2015 and suggest other efficient measures of promoting Democracy, Elections and Governance in Nigeria.

The objectives of the work are:

1. To examine whether or not the Nigerian democratic electoral laws are in conformity with the principles provided by the Charter on Democracy to impact good governance.
2. To examine the role played by political parties in participating process of democratic elections in Nigeria in producing orderly process of succession and peaceful transition of power from one civilian regime to another.
3. To evaluate whether or not the conduct of government officials in the management of public resources are in line with the principles of Rule of Law and free from corrupt practices.

1.4 Research Methodology

The methodology used in this research is doctrinal. Therefore, statutes, international instruments, case laws, textbooks, articles and newspaper reports were consulted for the study. All materials consulted have been duly acknowledged.

1.5 Justification of the Research

Democracy is currently recognized as the most acceptable system of government by the international community. To this end, African Union adopted the African Charter on Democracy Elections and Governance in 2007 in order to promote democratic system of government. However, in Nigeria, instances happened where elections caused the loss of lives and properties as a result of election malpractices. Corruption in government officials, abject poverty and insecurity as a result of unemployment associated with bad governance create a setback in our democracy.

This research is relevant and worth doing because it assessed Nigerian democracy elections and governance between the periods of 2011 and 2015 by examining domestic implementation of the legal framework of the Charter on Democracy in Nigeria. This research

also pointed out those factors responsible for the setback in the Nigerian democracy and offered solutions to them. The research also offered suggestions and recommendations to different stakeholders on measures to be employed in promoting Democracy, Elections and Good Governance in Nigeria. Finally the need forthe research also arose in order to profer recommendations to incumbent and subsequent leaders on measures of promoting legal framework for achieving good governance taking into consideration the bad experience Nigeria passed through between the period of 2011 and 2015 as a result of bad governance.

1.6 Scope of the Research

Since 1999 to date when Nigeria has been operating under democratic governments, the actions and inactions of our leaders show that the rule of law and good governance are being neglected. The scope of this research will be limited to examining domestic implementation of the legal framework of African Charter on Democracy, Elections and Governance taking the period of 2011 and 2015 of Nigerian democratic government as a case study.

1.7 Literature Review

Ever since 1999 when Nigeria becomes a Republic and the adoption of the Charter on Democracy, Election and Governance by African Union in 2007, different authors have written on democracy and good governance. Sa'id[8] wrote an article titled Africa and Challenges of the Democracy and Good Governance in the 21stcentury. He tried to propose the problems relating to the issues of democracy and good governance in Africa and analyses their future prospects especially in the 21st century. However, as the paper was written in 2000, current challenges facing democracy and good governances in Africa were not dealt with. For example, attempts to

[8]Sa'id, A. *Africa and the Challenges of Democracy and good Governance in the 21st century*,http:iiupant.org. accessed, 15th December, 2015, 5:00pm

revise Constitution so that to extend tenure by some leaders, political crises as a result of elections malpractices are parts of the current issues addressed by the Charter on Democracy which this work shall cover.

Nwabueze,[9] in his book ''Constitutional Democracy'' traced its history to the arrival of colonial masters in Africa. He also provided that democracy is constitutional only if the conducts of government officials are guided by laws. However, the work did not touch the current challenges facing good governance which is the backbone of the democratic government and is seen as the major challenge to democracy in Africa. This research is therefore relevant as it covers the said area.

Ibrahim,[10] in his article on Implementation of the African Charter on Democracy Elections and Governance, highlighted the key objectives which the Charter on Democracy wants to achieve. However, instead of the writer to offer suggestions on how to ensure proper implementation of its provisions in its state parties, he ended up highlighting the weakness of the Charter on Democracy. The work therefore is inadequate in the area. This research will assess the implementation of the Charter on Democracy in its state parties and suggest possible ways of its promotion.

Sakai,[11] in his article on Critical Look at the Charter on Democracy, Elections and Governance in Africa, made enormous contribution in the area where he critically analyzed the Charter and identified issues that pose a threat to stability and democracy in Africa. He provided analysis of the root causes of unconstitutional changes of government including human right violation and suggests appropriate measures that should be taken to prevent as far as possible

[9]Nwabueze, B. (2003) *Constitutional Democracy in Africa*, Spectrum Books Ltd, Ibadan. P 174

[10]Ibrahim, K. *The Implementation of African Charter on Democracy and Governance*, http:mercury.ethe.ch. accessed, 5th November, 2015, 11.00am

[11]Sakai S.A*Critical Look at the Charter on Democracy Election and Good Governance*, http/…/surpn.org., accessed, 7th November, 2015. 10:30am

unconstitutional changes of government from reoccurring. However, despite all this, the write-up did not address issue of corruption in our leaders which is one of the factors responsible for bad governance in Africa which this research shall cover.

Also, Bappah, A.I.[12] in his article titled the ‘‘Application of the Rule of Law, Democracy and Good Governance in Nigeria Challenges and Prospects’’ made contribution in this area where he was able to examine the concept of democracy, rule of law and good governance and the challenges facing them in Nigeria and finally proffered prospects for the application of rule of law, democracy and good governance in Nigeria. However he did not examine domestic implementation of the regional instrument (Charter on Democracy) for the sustenance of democracy and good governance in Nigeria which this research work tends to achieve.

Another writer in this area is Charles,[13] in his paper titled ‘‘The Rule of Law, Democracy and Good Governance in Nigeria’’, examined the extent democracy and rule of law has influenced good governance in Nigeria. He finally made recommendation on how to promote rule of law and good governance in Nigeria. Despite the contribution of the writer in this area, discussion on regional instruments like African Charter on Democracy was not made. Also details of how to ensure credible election as a means to democratization was not provided. This research will address these issues by examining the role and the responsibilities of our electoral bodies of ensuring good and credible elections.

[12]Bappah, A.I (2015) The Application of the Rule of law, Democracy and Good Governance in Nigeria Challenges and Prospects. In Danladi K. M (ed) *Law Making, Challenges and Good Governance in Katsina State*, Clear Resolution, Abuja. P 11

[13] Charles N,*The Rule of Law, Democracy and Good Governance in Nigeria.*www.eajournals.org., accessed, 4th October, 2015. 11:30am

Akomolafe,[14] wrote in this area, where he examined the concepts of good governance, rule of law and constitutionalism. He made a tremendous contribution in the area only that his analysis was on the period of President Yar'adua administration and the early period of President Jonathan. It therefore did not extend to the period of discussion in this work.

Gilbert and Allen,[15] wrote a paper on Democracy and good Governance: the Missing Link in Nigeria where he examined the performance of our leaders in democratic government in Africa and the major challenge of democracy and good governance in Africa more particularly in Nigeria and they made necessary recommendations for the promotion of democracy and good governance in Nigeria. They however, did not make discussion on the legal framework of the Charter on Democracy and the current position of democracy in Nigeria which this research shall cover.

Mafuyi,[16] wrote an article titled The Rule of Law and the Challenges of Electoral Process in Nigeria. The writer submitted that the Rule of Law is and will remain the panacea for solving most of the problems that are currently bedeviling the Nigerian State. He also posits that respect for the Rule of Law is what guarantees for an Electoral system that herald a purposeful and meaningful election in any society. However, he did not examine the concept of Democracy and Good Governance which this work shall focus on.

Dankofa,[17] also wrote on Elections and the Rule of Law: Role, Relevance and Strategies for Sustained Democracy. The Learned Professor submitted that in Nigeria where presidential

14Akomolede I T14, *Rule of Law and Constitutionalism in Nigeria*.www.ejbss.com. Accessed on 30thOctorber,2015, 3: 15pm

15Glibert, L. D. and Allen, F *Democracy and Good Governance: The Missing Link in Nigeria*.www.mcser.org., accessed, 25th November, 2015. 5:30pm

[16]Mafuyai, M.W (2015). The Rule of Law and Challenges of Electoral Process in Nigeria.*B.U.K Journal of International Law and Jurisprudence*, Vol. 1, No. 1. P 145

[17] Dankofa, Y. (2015)Election and the Rule of Law: Role, Relevance and Strategies for Sustained Democracy, *B.U.K Journal of International Law and Jurisprudence*, Vol. 1, No. 1. P 125

system of government is practiced where President is the head of state and head of government the role, relevance and strategies for sustained Democracy can only be achieved where executive functions are guided by Rule of Law. He posits also that the process of Democratization is beyond mere Electoral competition of voting. It is therefore extended to limitations of powers. The better the system of check and balance functions the better the quality of Democracy. However, despite the contributions made in the area by this author, it did not satisfy the need of this work because the concept of democratic elections and their lawswas not examined which this work focuses on.

Another writer in this area is Ajanwachukwu,[18] who wrote on Legislation and Good Governance: A Critical Analyses of Extant Legislations on good governance. He submitted that governance is the exercise of economic, political and administrative authority to manage a country's affairs at all levels. He also posits that governance is good to the extent of its transparency, responsiveness and how information about government is made available and accessible to the public. He made analyses of certain provisions of Freedom of Information Act, 2011 relating to transparency of government and its agencies. However, the work did not cover the areas of democracy and democratic elections which is another way of achieving good governance. Hence, this work is still relevant.

Francis,[19] made a great contribution in this area of research in his article: The Role of INEC in fostering good political Governance. He gave a brief history of electoral body in Nigeria. He submitted that credible, free and fair elections are characteristics of good governance in democracy. He analyzed problems facing INEC in the discharge of its duties which include

[18]Ajanwachuku, O. (2013) Legislation and Good Governance: A Critical Analyses of Extant of Legislations on Good Governance, In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. P 317
[19] Frances, O.I. (2013). The Role of INEC in Fostering Good Governace. In: Azinge E. and Adediran A. (eds) *Legislating for Good Governance*, NIALS Press, Abuja. P 228

abuse of procedure for nomination of candidates, autonomy of INEC and elections disputes amongst others. He finally provided way forward to electoral process and good governance in Nigeria. The work notwithstanding its contribution in the area did not cover areas of democracy and its type together with system of constitutional democracy which this workshall cover.

Ofuani,[20] wrote on the Role of the National Assembly in legislating for good governance. He posits that the legislative powers vested in the National Assembly is capable of achieving good governance when they are able to evolve acceptable legal framework for governance to flourish. He also submitted that constitutional powers of the National Assembly which if exercised properly yield good governance for Nigerian people. However, democratic elections were not discussed in the work which is the key to having democratic sustainability. Hence! This work is also relevant.

Democracy and human rights are inseparable, good governance is achieved in democratic government where human rights are guaranteed. Achi,[21] wrote on human rights in Africa. He traced the history of human rights legislation to United Declaration of Human Rights which was adopted by United Nation (UN) in 1948 to the year 1986 when African Charter on Human People Rights came into force in Africa. The work however did not discuss human rights under the Charter on Democracy which this work shall cover.

Ornguga,[22] also wrote on human rights under Nigerian Democratic government and the challenges of enjoyment. The learned writer submitted that in spite of Nigeria being a signatory to many human rights documents, the creation or establishment of mechanisms for the protection

[20]Ofuani, S. O. (2013) The Role of National Assembly in Legislating for Good Governce. In: Azinge E. and Adediran A. (eds) *Legislating for Good Governance*, NIALS Press, Abuja. 339

[21]Achi, D. T. (2011). Human Rights in Africa: Critical Examination of the African Charter on Human and Peoples' Right.In: Dankofa, Y. (ed) *Human Rights Reviews*, Faith Printers International, Zaria. P 80

[22]Ornguga, Y. (2011).Human Rights in Nigeria: The Challenges of Enjoyment. In: Dankofa, Y. (ed) *Human Rights Reviews*, Faith Printers International, Zaria. P 70

and enforcement of fundamental human rights and freedom, the full enjoyment of human rights in Nigeria is still a mirage, due to some challenges, obstacles or barriers. The obstacles highlighted by the author are impunity of security personnel, delay in Nigerian criminal justice system ethno-religious conflicts. The work however did not examine right to democratic elections which this work shall cover.

Jega,[23] wrote on Election management in Nigeria which is a collection of papers that discussed Nigerian Elections and role of stakeholders, the security factor in elections, inter agency collaboration on election Management and so on. The work is very rich in area of elections as it covered the period of 2010 to 2015. However, the author being a Professor of Political science, he did not discuss the issues from legal points of view which this work shall cover.

Aneleke,[24] in his article on Political Party Ideology and Legislation for Good Governance examined the role played by political parties in ensuring good governance. He submitted that political corruption and underperformance are mostly aggravated by the absence of political ideology. Since a political party without defined and identifiable ideology is susceptible to abandoning the tenets of good governance expected in democratic dispensation. He finally called on having proactive legislatures that would enact laws that could propel the introduction and use of party ideology. The work despite its relevance in this area is still lacking as it did not examine the concept of democracy which this work shall examine.

The above writers notwithstanding their lapses have made tremendous contributions in the better understanding of this research topic and reference was made to their write ups where the need arises in the course of this research. The research will therefore provide more elaborate

[23]Jega A. M.(2015) Party Politics and Elections In Nigeria: Election Management in Nigeria, Safari BOOKS Ltd.P 110
[2424]Anele, k. k. (2013) Political Party Ideology and Legislation for Good Governance. In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. P 239

examination of the domestic implementation of African Charter on Democracy, Elections and Governance in Nigeria. It will also provide current information on the democracy and good governance in Nigeria and make necessary recommendation for the promotion of the legal framework of democracy and good governance in Nigeria.

1.8 Organizational Layout

Chapter one which is the general introduction contains Background of the study, Statement of Problems, Justification of the Research, Aims and Objectives of the Research, Scope of the Research, Methodology of the Research, Literature Review and Organizational Layout.

Chapter Two is on the conceptual Discourse and Historical Development of Democracy, Elections and Governance. It traced the history to pre-colonial, colonial and post-colonial periods. Concepts of democracy, elections and governance together with their types were also examined.

Chapter Three Examined Domestic Implementation of African Charter on Democracy, Elections and Governance in Nigeria. The chapter discussed democracy, elections and governance from legal perspective. The chapter also discussed political, economic and social governance. It finally discussed unconstitutional change of government and its sanctions.

Chapter Four is on Domestication and Implementation of African Charter on Democracy, Election and Governance in Nigeria and problems and challenges of domesticating the Charter on Democracy. Obligations of Nigeria to the Charter on Democracy were also discussed in the Chapter. While Chapter Five is the concluding Chapter and it covers Summary, Findings and Recommendations.

CHAPTER TWO

CONCEPTUAL DISCOURSE AND HISTORICAL DEVELOPMENT OF DEMOCRACY, ELECTIONS AND GOVERNANCE IN NIGERIA

2.1 Introduction

Democracy is commonly defined as self-government or "rule by the people. It is therefore said to be a representational government and it is based on the consent and will of the people, a responsive and responsible government in which the majority upholds power without suppressing the interest of the minorities[1]. The term was inherited from ancient Greece, where the city-state of Athens established the earliest known form of democracy. *Demokratia* in Athens involved periodic meeting held by citizens to discuss the problem of the polis and decide on solution by voting directly on alternatives. In addition to one-man one-vote principles, the public jury system, selection to public office by lot, short term at public office and holding public office according to a system of rotation allowed the Athenians to practice a direct rule that required the intensive participation of the citizen[2].

The inherent democratic tenet in the indigenous political system operated in different parts of Nigeria, accounted for their existence as entities and for centuries before the advent of colonial rule. For example, in the Emirate system of the Northern Nigeria, the decision of the Emir is directly subject to the agreement of his council which consists of the Emir himself, the *Waziri*, the Chief Imam and other prominent Chiefs that vary from one place to another[3]. During colonial administration, different political polices were introduced for example, Amalgamation

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[1]Bappah, A.I (2015),The Application of the Rule of law, Democracy and Good Governance in Nigeria Challenges and Prospects. In Danladi K. M (ed)*LawMaking, Challenges and GoodGovernancein KatsinaState,* Clear Resolution, Abuja. P. 11

[2]Arat, Z. F,(1991), *Democracy and Human Rights in Developing Countries*, Lynne Rienner Publisher Inc., London, p. 15.

[3]Omoiya S.Y (2012), *An Historical Appraisal of Nigerian Democratic Experience*, www.tsoulouhas.info accessed on 10/11/16 8:00am

of Lagos colony and southern protectorate in 1906 which success accounted for the 1914 amalgamation of the colonies and protectorate of the south and the north which was named Nigerian[4]. Upon attainment of independence in 1960, Nigeria experienced different changes of government from democracy to military government until the year 1999 when Nigerian returned to civil rule with successful transition from one civil regime to another.[5] In this Chapter therefore, an attempt is made to examine historical development of Nigerian democracy and election in Nigeria, types of Democracy, Election and Governance. Finally a discussion is made on the various stakeholders who have interests in democratic election.

2.2 Historical Development of Democracy and Election in Nigeria

The historical development of Democracy and elections in Nigeria will be viewed from three eras/periods which are pre-colonial, colonial and post-colonial (independence period).

I. Pre- Colonial Era

The entity referred to as Nigeria today became amalgamated in 1914 by the British administration of Lord Luggard. However, prior to the advent of colonial rule the inherent democratic tenet in the indigenous political system operated in different parts of Nigeria accounted for their existence as entities for a quite long period of time. For instance, the Yoruba political system under the *Oba* (kingship) guarantees good governance and people's representation through established institution. The *Alaafin* (King) of Oyo who was often praised as having the powers of life and death is in practice not so absolute in exercising his powers. The *Boshorun* who is the head of the *Oyomesi*, the committee responsible for the selection of new *Alaafin* is by Oyo constitution, empowered to order an *Alizarin* to abdicate the throne when

[4]Ibid.
[5]Bappah, A. I (2015) Op. Cit. P. 12

Alaafin is considered to have violated the empire's constitution. This principle of check and balances in the political system prevents absolutism and misuse of power by leaders[6] .

The *Alaafin* who is the administrative and political head of the empire runs the empire with the help of the council of seven chiefs called the *Oyomesi* headed by the *Boshorun.* These Chiefs are each in charge of the seven wards in the capital city of the empire. In practice the *Oyemesi* takes decision on not too important issues and pass their decisions to Alaafin who makes a pronouncement based on the decision of *Oyomisi*, while decisions on controversial or very important issues are made by the Alaafin in council session with the *Oyomesi.*[7]

The *Alaafin* and his council of chiefs enact laws and amend old ones for the good governance of the people of the empire. They also took decisions pertaining to the waging of war. The Alaafin in council adjudicates on rare offences like murder, treason, arson and armed robbery, while chiefs have competence over less serious offences emanating from their domain.[8]

In the emirate system of Northern Nigeria, the decision of the Emir is directly subject to the agreement of his council. The emirate council consists of the Emir himself, the *Waziri*, the *Khadi*, the chief Imam and other prominent chief that vary from one place to another.[9] Each emirate is divided into districts for administrative convenience. An official known as *Hakimi* was usually appointed by the Emir to administer the district.

The judicial administration was based on Sharia laws. The laws were administered by *Alkali* judges. The Emir had absolute powers even though he had a body of advisers, yet he can

[6]Omoiya, S Y (2012), *An Historical Appraisal of Nigerian Democratic Experience*, www.tsoulouhas.info accessed on 10/11/16 8:00am
[7]Adebayo W. (2014) *Yoruba Political System*, www.waidigbero.wordpress.com. 23/11/2017. 9:00am
[8] Ibid
[9] Adebayo A. (2011) *Pre-colonial Nigeria: The Hausa-Fulani Kindom*, www.cometonigeria.com. 23/11/2017. 10:00am

ignore or accept their advice. While with regard to legislative functions Islamic Laws were the supreme laws of the Emirate.[10]

The Igbo political system may be seen as a fragmented political system. Many institutions were in place and political authority was shared among them. For example, the *Ofo*title holders (council of elders), *Ozo* title holders, age grades etc. were all involved in the power sharing exercise. There was absence of centralization of power and authority in Igbo political system as it was more of the people's direct participation in the government (Direct Democracy). The family heads settle disputes between families. Serious cases were referred to the council of elders presided by the *Okpara* who was seen by the community to be of sound reasoning.[11]

The concept of elections was not known to various indigenous communities of Nigeria as masses were not given rights and freedom of choice of who to lead or govern them. However, in some of the communities like Hausa/Fulani there was body known as king makers who were saddled with responsibility of appointing an emir though they are also part of the council. The concept of separation of powers was present through the various checks and balances that were existent in this culture. It was however been argued that democracy was not part of the natural order of like 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 decision affecting them.[12]

II. Colonial Era

[10] *Pre-colonial Political Systems in Nigeria(Hausa-Fulani Political System),* www.passnownow.com. Accesssed on 24//11/2017 5:00pm

[11] Prof Seunoyediji. wordpress.com, accessed, 23/11/2016 9:30am

[12] Azubuke, O.O (2015). Nigeria Nation at a Cross Road: Search for Democracy Amidst the Militarization challenge, *B.U.K Journal of International Law and Jurisprudence*, Vol. 1, NO.1, p. 85

The British invasion and subsequent conquering of the entity known as Nigeria was a gradual process than a sudden one. It was argued 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 seeing the citizens as objects to be manipulated. Another thing is the elimination of kingship structure as a result of direct rule system by the British.

In the year 1865, British were empowered to make laws for Nigeria and its colonies by Colonial Laws Validity Act of 1865.[13] From this year up to the attainment of independence in 1960 different colonial policies were introduced and backed up by many orders, ordinances and laws/Acts. In the year 1920 there was a mobilization of elite in West Africa to lunch the national congress of British West Africa which was brought about by both internal and external factors. The congress was considered to be a viable body, by which Africans in Gambia, Sierra Leone, Gold Cost (Ghana) and Nigeria will press home their demands, to participate in the affairs of their environment, the congress sent a delegation to London to handover to the secretary of state for the colonies, a petition which demanded:[14]

1. The establishment in each territory in British West Africa, of a Legislative council half of which would be elected while the other half would be nominated.
2. The establishment of House of Assembly composed of the members of Legislative Council and six other "financial" representatives elected by the people to control revenue and expenditure.
3. The appointment of Africans to Judicial Offices and
4. The establishment of a West African University.[15]

[13] Ibid
[14] *Crisis and Achievement: National Congress of British West Africa*, www.crisissome.blogspot.com, accessed on 11/11/2016
[15] Ibid

Even though the requests of the congress were formally turned down by the secretary of state Lord Milner, the British Colonial Governor in Nigeria, Sir Hugh Clifford, censored the demands of the congress. He also accused the Nigerian members of the delegation not only of being unrepresentative of Nigerian people but also being ignorant of Nigerian conditions. Certainly, for Hugh Clifford's increased apprehension of the influence of the congress on the people, by 1922 he abolished the Nigerian Council together with old legislative council to constitute new Legislative and Executive Council. The new legislative council which was made up of 46 (forty six) members, 27 (twenty seven) of whom were official, while the remaining 19 (nineteen) were non-official. Three (3) of the elected seats were allocated to Lagos while the remaining (1) one was allocated to Calabar.[16] In total thirteen (13) Africans were in the new Council. For both the Northern and Southern Protectorates, they were represented by newly constituted Lieutenant-Governor, Senior Resident of the Provinces and the European representative of Kano Chamber of Commerce and mining industry.

The introduction of elective principles naturally brought about increased political activities in Lagos Island and this in turn, led to the emergence of political parties such as the Nigeria Youth Movement and National Council of Nigeria and Cameroon. The provisions in the constitution of 1946 by Sir Arthur Richard which came to effect on the 1st January 1947 extended the electorate principles to the Northern Nigeria[17]. The major or basic aim of the Richard's constitution was to promote the unity of Nigeria and secure greater participation by Africans in the decision of their own affairs. Under the constitution a Legislative Council was established for the whole Nigeria and it consisted of the governor as the president; 16 (sixteen) official members and 13 (Thirteen) unofficial members. Two officials represented the Northern

[16]See generally the *Clifford Constitution* of 1922,www.schoolmattaz.com, accessed on 10/10/2016, 6:00pm
[17]Omoiya, S.Y (2012) *An Historical Appraisal of Nigerian Democratic Experience*, www.tsoulouhas.info accessed on 10/11/16 8:00am

Province of the country and nine out of the 24 (twenty four) were unofficial members. Two (2) officials and 6 (six) nominated represented the western province, while the western province was represented by 2(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 members.[18]

Nigeria Protectorate Order in Council 1951 otherwise known as McPherson constitution established a Central Legislative Council and Central Executive Council for the country. The Central Legislative Council known as House of Representatives consisted of: A President, six ex-officio members, 136 representative members elected from the Regional House and six special members appointed by the governor to represent interest not adequately represented in the House. The Executive Council consisted of the Governor as the president, six ex-officio members and 12 Ministers. Each region was represented by four Ministers appointed by the Governor on the recommendation of Regional legislature. The ministers were not made in charge of the departments. The constitution divided the country into three regions Viz: Northern, Western and Eastern regions and in each region there existed a Legislative and Executive council.[19] The McPherson constitution did not make distinction between the powers and responsibility of Federal Government and Regional Government and consequently it broke down. This led to the emergence of 1954 Constitution which drew such distinction of powers and responsibilities. Further constitutional conferences in London led to the independence constitution of 1960.[20]

III. Post-Colonial Era

[18] Azubeke O.O (2015) Op. cit. p. 86
[19] Ibid
[20] Lyttleton Constitution of 1954. Available at www.schoolmattaz.com

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 Balewa was the prime Minister. In 1963, Nigeria was declared a Republic by a Republican Constitution of 1963[21].At the conclusion of 1963 election there was no singe political party that was able to have a simple majority in the Nigerian House of Representative, it therefore became necessary for regional political leaders to embark on house trading thereby, negotiating alliance. The alliance between Northern People's Congress(NPC) the political party that was dominated by people from Northern region and National Council of Nigerian Citizens (NCNC) that controlled the Eastern region made it possible for the First Republic government to be formed in Nigeria. However, in January 1966 some Igbo army officials staged a coup d'état to overthrow the government. This resulted into the killing of Tafawa Balewa, Ahmadu Bello, Akintola and some other senior officers.[22]

Johnson Aguiyi-Ironsi was placed in charge of the new Military Government. The Military officers remained in power until 1978 when a new constitution was written during Gen. Olusegun Obasanjo that would return the country to civilian rule and elections were held in 1979. Shehu Shagari was named in the 1979 election as the first civilian President and the new election was conducted in 1983 and he won again. This democratic dispensation was cut short with General M. Buhari coup in 1983.[23]

During General Babangida administration in 1990 a new constitution was set up, and the country was to return to civilian rule in 1992 and when the time approached, there was a suspicion that this promise was not going to be kept. Pressure started mounting, and finally, in

[21]Omoiya S. Y(2012),*An Historical Appraisal of Nigerian Democratic Experience*, www.tsoulouhas.info accessed on 10/11/16 8:00am
[22]Siollum, M. (2009) *Oil Politics and Violence: Nigeria's Military Coup Culture* (1966-1976), Algora Publishers, New York, U.S.A. p. 43
[23]Azubeke O.O (2015) Op. cit. P. 75

1992, the Federal Council allowed an election to take place, however, its results was annulled on a claim of fraud and postponed for additional one year. Another election was held in June of 1993 and the winner was declared to be Moshood Abiola. Babangida claimed fraud again and annulled the results of the second election. As a result of pressure mounted from within and outside Nigeria, Babandiga finally resigned. Ernes Shonekan a civilian was appointed President in August 1993. In 1995, General Sani Abacha during his administration announced a three-year program of transition to civilian set for August 1, 1998 with a return date to civilian rule set for October 1, 1998 and Abacha became the only nominated candidate for the presidency, demonstrations and riots broke out opposing the nomination and many were killed. However, on June 8, 1998 Abacha died.[24]

After the death of Abacha, Abdussalami Abubakar took his place and set up a transition programme that would lead the country back to democracy by May 29, 1999. Election was conducted and General Olusegun Obasanjo was declared the new democratically elected President and was sworn in as president in May 29, 1999. Obasanjo was elected for the second term in 2003 and therefore held the office of the president for eight years.[25]

In the controversial Nigerian general Elections of April 21, 2007, Umaru Musa Yar'adua was declared the winner and was sworn in in May 29, 2007. He continued to be the president until in February 2010 when Good Luck Jonathan was made the acting President because President Yar'adua went for medical treatment in Saudi Arabia in November, 2009 and subsequently following the death of Yar'adua, Jonathan was sworn in as President of Federal Republic of Nigeria in May 2010. In September, 2010 Jonathan announced his intention to contest the 2011 general elections which he eventually won against General Muhammadu Buhari

[24] Samuel, O. (2008) The Rule of Law, a Panacea to Corruption. In: Ikedinma, O. A.(ed.) *The Role of Judiciary Nigerian Democratic Process*, Vox Nigerian Limited, p. 156
[25] Ibid.

and therefore he was sworn in as President again in May 29, 2011. In March 28, 2015 another general election was conducted which made Muhammadu Buhari to emerged victorious and was sworn in as the President of the Federal Republic of Nigeria in May 29, 2015 and remains to be the president to date[26].

2.3.1 Concept of Democracy

The concept of democracy is traceable to the ancient Greeks and specifically the city-state of Athens in the fifth century B.C. The word democracy is derived from the Greeks word '*demos*' meaning people and '*kratos*' meaning power or rule. Directly translated, the word Democracy means 'rule by the people'. Originally they used it to mean the poor or the masses.[27] In 1863, Abraham Lincoln, the President of the United States of American who led the war against slavery, defined democracy as "government of the people, by the people, for the people"[28] This is probably the most frequently used definition of democracy. People raffle it off almost automatically, without pondering its deeper significance. Lincoln's definition emphasizes the government. But in its root meaning, is first and foremost about "the people" not government. In today's world, government is often the center of the action. Democracy is seen to be something that good government do, and bad government do not do. Once citizens have elected a government in power, they all too often sit back and wait for their elected official to respond to their needs and dreams, as Spectators or consumers. The truth is that for democracy to flourish, people must rise to much bigger challenge than simple voting in election. As Nelson Mandela put it in famous challenge to citizens during the 1994 Elections campaign, building the new democracy would require everyone to work hard. Government alone could not solve the

[26]Omoiya S. Y. (2012),*An Historical Appraisal of Nigerian Democratic Experience*, www.tsoulouhas.info accessed on 10/11/16 8:00am
[27]Arat, Z. A (I991) Op. Cit. P. 18
[28]Lincoln. history.illinois.edu, accessed, 14/11/16; 8:30pm

nation problem.[29] Mandela's challenge pointed to democracy as a way of life not simple free election.

Democracy therefore according to Idike,[30] is a political system in which the people in country rule through any form of government they choose to establish. Democracy is not rule by the elite, even when the representative elected by popular suffrage formed part of the political elite. Democracy is the essential rule by the representative of the people indiscriminately. Central to the concept and practice of democracy therefore, are the wishes and the will of the people.

2.3.2 Types of Democracy

Basically, Democracy is categorized into two: Direct/Participatory and Indirect/Representative democracy.

(a) Direct Democracy

In this type of democracy citizens without the intermediary of elected or appointed officials can participate in making public decision. Thus it reduces the distinction between government and the governed and between the state and civil society; it is a system of popular self-government. Its most common manifestation in the modern era is the use of referenda. Direct democracy is most clearly practicable with relatively small number of people in a community, organization, tribal council or the local unit of a labor union. For example, where members can meet in a single room to discuss issues and arrive at decisions by consensus or majority vote.[31]

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[29]Ibid.

[30]Idike, A.*A Democracy and Electoral Process in Nigeria: Problems of E. Voting Option*, www.ajuss.org., accessed,14/11/2016.

[31]Adenauer, K. S. *Concept and Principles of Democratic Governance and Accountability*. www.kas.de. Accessed, 25/11/2016

(b) Representative Democracy

This is the one which citizens elect officials to make political decisions, formulate laws and administer programs for the public good. It is common form of democracy whether for a town of 50,000 or a nation of 50 million people. It is limited and indirect. It is limited in the sense that popular participation in government is infrequent and brief being restricted to the act of voting every few years. It is indirect in that the public do not exercise power themselves. They merely select those who will rule on their behalf. This form of rule is democratic only in so far as representation establishes a reliable link between the government and the governed.[32]

The indirect or Representative Democracy has the following as its principles:

i. **Citizen Participation:** This means that citizens are part and parcel of what happens in their society or country.

ii. **Equality:** This means equality before the law and equality of opportunity without regard to one's race, gender, ethnic or religious background.

iii. **Political Tolerance:** This means the ruling class is mindful of the interests of minority.

iv. **Accountability/Transparency:** It means leaders allow for public scrutiny of what they do while in public office.

v. **Regular Free and Fair Elections:** This gives the citizen room to elect leaders of their choice and to throw incompetent leaders out.

vi. **Control of the Abuse of Power:** This is because a government without check and balance of its power is likely to abuse those powers. This can be achieved through the doctrine of separation of powers.

[32]Ibid.

vii. **Human Rights:** Democratic government strives to protect the rights and freedom of its citizens from abuse.

viii. **Multi-party system:** This means there must be more than one political party in a representative democracy. This is to give citizens room for voting a candidate of their own choice among different contestants.[33]

2.4 Concept of Elections

To elect simple means "to choose or make a decision" the simple definition of election is the act or process of choosing someone for a public office by voting. An election is a formal decision making process by which a population chooses an individual to hold public office. Elections have been the usual mechanism by which modern representative democracy has operated since 17th century. Elections may fill offices in the legislature and executive.[34]

The universal use of elections as a tool for selecting representatives is in contrast with the practice in the democratic archetype, ancient Athens, where the elections were considered an oligarchic institution and most political offices were filled using sortation also known as allotment, by which office holders were chosen by lot. Other forms of ballot such as referendums are referred to as elections especially in the United States[35].

[33]Klein, A. *Concepts and Principles of Democratic Governance and Accountability*, www.kas.de/…/kas-29779-1522-2-30.pdf…,accessed, 2/12/2016.
[34]Mafuyi, M. W (2015) The Rule of Law and the Challenges of Electoral Process in Nigeria, *B.U.K Journal of International Law and Jurisprudence*, Vol. 1 No. 1 . p 150
[35]Klein, A. *Concepts and Principles of Democratic Governance and Accountability*.www.kas.de/…/kas-29779-1522-2-30.pdf…,accessed, 2/12/2016

2.4.1 Nature and Characteristics of Elections

The concept of election has been earlier on defined in this work, since in a democracy the ideal is seeking the consent and mandate of the citizens for any leader to be accepted as legitimate, citizen participation in the choice of their leaders is important.

The following are elements of democratic election:

i. **Elections must be competitive:** Opposition parties and candidates must enjoy the freedom of speech, assembly and movement necessary to voice out their criticism of the incumbent government openly and to bring alternative policies and candidates to the voters.

ii. **Elections must be periodical:** Democracies do not elect dictators or leaders for life, elected officials must return to voters at prescribed intervals to seek their mandate to continue in office or face the risk of being voted out of office.

iii. **Elections must be inclusive:** Every eligible citizen must be allowed to vote, a government chosen by a small exclusive group is not democracy.

iv. **Elections must be definitive:** It must define who a public office bearer will be for a specific period of time.[36]

2.4.2 Electoral Process

This refers to the entire cycle ranging from provision of voters education to the dissolution of National Assembly. The electoral process includes the following:

i. Delimitation of Electoral boundaries

ii. Registration of voters

iii. Notice of Elections

[36]Mathias, K. *Concepts and Principles of Democratic Governance and Accountability*,www.kas.de/…/kas-29779-1522-2-30.pd…,accessed, 22/10/2016.

iv. Nomination of candidates

v. Elections campaigns

vi. Elections, announcement of results and completion of tribunal sittings.

vii. Participation of other organization

viii. Resolution of electoral conflicts resulting from the participation of other organization, people, groups, etc.[37]

2.4.3 Types of Elections

There are basically two type of election viz:

(a) Primary Elections: It is nominating election in which a candidate that will run in general elections is chosen. Victory in a primary elections usually results in candidate being nominated or endorsed by a political party for the general elections.

(b) General Elections: This is an election held to choose among candidates nominated in primary election (or by convention or caucus) for federal, state or local government office. The purpose of general election is to make a final choice among the various candidates who have been nominated by parties or who are as independents in some countries. In addition, many states provide for a special election, which can be called at any time to serve a specific purpose such as filling an unexpected vacancy in an elected office.[38]

The conduct of free and fair election in every country Nigeria inclusive involves the interest of certain entities which need to be protected. Examples of these entities are:

[37]Idike A. N, *Democracy and the Electoral Process in Nigeria: Problems and Prospects of the E-Voting Option*, www.ajhss.org, accessed, 19/10/2016

[38]*Types of Elections in US.* Available at: www.photor.state.gov.

2.4.4 Interests of Political Parties

Political party includes any association of persons whose activities includes canvassing for votes in support of a candidate for election under Electoral Act and registered by the Independent National Electoral Commission (INEC).[39] In Nigeria, only a political party can canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.[40] Political party is an organization that seeks to achieve political power by electing members to public office so that their political philosophies can be reflected in public policies.[41] The Nigerian Constitution provides that only a political party can introduce a candidate during election, canvass for votes and fund itself or the election expenditure of its candidate.[42]

Democratic political parties and candidates seek to win elections in order to manage governmental institutions in ways that advance public policies and allocate resources to achieve policy objectives. They contest elections by aggregating the votes of citizens who somehow believe that the policy objectives benefit their interests and/or those of society at large. To compete effectively, parties, candidates and those supporting or opposing referenda and other ballot initiatives must know the rules for competition, the legal framework for elections including the avenues for seeking redress if the rules protecting their rights are violated. The electoral contestants must analyze the legal framework to determine whether the rules actually ensure a genuine chance to compete fairly. Political parties and other electoral contestants should be prepared to advance initiatives to defend and maintain elements of the legal framework that

[39]Section *156 Electoral Act*, 2010.
[40]Section 221, 1999 CFRN (As amended).
[41] Kingsley A. K. (2013)Political Party Ideology and Legislation for Good Governance. In Azinge E. and Adediran A. (eds) *Legislating for Good Governance*, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, p 233.
[42] Section 221, Constitution of Federal Republic of Nigeria 1999 (as amended) cap C20 L.F.N 2004

they deem essential for fairness, as well as to advocate for modifying the legal framework in order to remove impediments to fairness and to improve their chances of winning office.[43]

This requires knowing how the legal framework for elections can be changed, both substantively and procedurally. A thorough understanding of the principles for democratic elections is required along with knowledge about various elements of the legal framework, how those elements can differ and the ways they can be put together to promote efficiency and integrity of election processes. Knowing how legislative changes can be achieved through parliamentary procedures and how administrative rules can be modified is essential.[44]

Party leaders and candidates must be knowledgeable about legal frameworks for elections, and practice demonstrates that it is necessary for them to establish expert teams that can provide analysis and advice concerning legal frameworks. Party expertise has to encompass a number of elements:

1. Constitutional provisions concerning the nature and type of electoral system (e.g., Parliamentary or Presidential or hybrids of the two systems and the corresponding offices to be elected; the type of proportional or plurality/majoritarian or mixed systems to employ; periodic timing of elections and terms of office; levels or tiers of elections, such as national, provincial and local).
2. Constitutional and legislative provisions concerning civil and political rights relating to elections (e.g., concerning the rights to vote and to be elected, political expression, access to information, peaceful assembly and movement, equal protection of law).
3. Legislative and administrative provisions concerning: party legal recognition and party/candidate ballot qualification; voter registration procedures; standards and means

[43]Marloe, P.(2008) *Promoting Legal Frameworks for Democratic Election,* www.eods.eu/.../Accessed, 2/12/2016.
[44]Ibid

for delimitation of election districts; qualifications, powers and means for selecting members of election management bodies; access to media for electoral contestants; campaigning issues; party and candidate financing; party, candidate, citizen and election observer access to polling stations and voting, counting and tabulation procedures; and access to and functioning of electoral complaints and appeals procedures. Parties need to be able to analyze legislation and regulations and advocate for appropriate provisions on each of these subjects. They also have to be able to monitor implementation of provisions and take steps to ensure that they are enforced effectively and impartially.[45]

Assembling expert teams solely at the leadership or party headquarters level therefore is insufficient. Parties must develop expertise at intermediate and local levels as well, if they are to ensure that the legal framework for democratic elections is properly implemented. For example, drawing boundaries for election districts that respect equal suffrage, by including approximately the same number of citizens for each elected representative, and drawing boundaries that do not improperly discriminate against minority populations and do not discriminate on the basis of political opinion are not simply abstract considerations.[46]

Parties need to be able to analyze legislation and regulations and advocate for appropriate provisions cited illustrating the importance of developing expert teams at intermediate and local party levels that are linked to headquarters teams. Building capacities to implement legal frameworks for democratic elections requires internal education and the establishment of local expertise on framework issues by making use of linkages among party expert teams, Safeguarding the integrity of election day, voting and counting of votes. Party and candidate expert teams are needed to evaluate such information to determine how to inform the public

[45]Jega A. M.(2015) Party Politics and Elections In Nigeria: Election Management in Nigeria,Safari BOOKS Ltd, Ibadan.

[46]*Political Parties and Interest Group*, www.wwnorton.com, accessed on 15/11/2016, 11:45am

about electoral problems as well as to employ complaint processes and seek redress. In addition, once a decision is taken to file electoral complaints before administrative bodies and/or courts, legal representatives must be fully versed in proper procedures for pursuing remedies, including timing, burdens of proof, types of remedies to be sought and techniques for effective argument of the case, as well as appeal procedures. Pursuing effective remedies, including before available international tribunals when domestic channels are exhausted, is a critical part of promoting for democratic elections.[47]

2.4.5 Interests of Civil Society

Elections are organized to determine accurately and honestly the people will concerning who shall occupy governmental office for a periodic term. *Referendum* and other ballot initiatives are organized to determine accurately and honestly the people's will concerning the issue presented for their vote. In both types of elections, how the people's will is determined has a crucial effect on whether their will is fully ascertained and honored. How the people's will is measured depends on the legal framework for elections and how that framework is implemented. Citizens and civil society organizations therefore need to be knowledgeable about legal frameworks, engage in their development and monitor their implementation.[48]

Democratic legislative and regulatory processes present opportunities for individual citizens to review existing legal frameworks and comment on proposed changes, as well as to suggest modifications. In order to ensure that citizens are guaranteed their right to vote and have a genuine opportunity to exercise that right, and for citizens to ensure that they are presented with a full range of electoral choices and the ability to make an informed choice among them,

[47]Marloe, P.(2008) *Promoting Legal Frameworks for Democratic Elections*, www.eods.eu/.../ Accessed on 2nd December, 2016.
[48] Ibid

they must to be aware of legal framework, issues and the processes surrounding their formulation and execution. Learning about those processes requires a degree of direct investigation, though most citizens become aware of such matters through the media and civic organizations.[49]

Journalists and other representatives of the media have important role to play in a democratic elections. Therefore, they have a responsibility to become knowledgeable about legal frameworks for democratic elections and to inform the population about related issues that deserve public attention and debate. This could range from fairness of requirements in candidate qualification to whether the use of electronic electoral technologies allows for appropriate verification of their accuracy and timely remedies of any related problems. A wide range of issues is presented by the various elements of an overall election process and framework provisions concerning them. Specialists, such as political scientists, law professors and information technology experts can contribute to the public debate about these issues, particularly if the media and civil organizations make use of their expertise and publicize their views.[50]

Civil society organizations (Hereinafter referred to as CSOs) including election monitoring organizations, human rights groups, lawyers associations, technology expert organizations, civic education groups and others play particularly important roles in analyzing legal frameworks for elections, offering recommendations for improving them and monitoring the processes surrounding them.[51] CSOs thereby assume the responsibility of articulating fairly the public's interest and the responsibility for developing the expertise and resolve to faithfully protect that interest. Leaders of CSOs concerned with protecting civil and political rights,

[49] Huda S. (2014) *The Role of Civil Society in Strengthening Electoral Democracy*, www.eci.nic23/11/17,
[50] Jega A. M.(2015) Prospects of the Media in Elections Deepening our Democracy: Election Management in Nigeria,Safari BOOKS Ltd, Ibadan. P.110
[51] Huda S. (2014) The Role of Civil Society in Strengthening Electoral Democracy, www.eci.nic,accessed on 23/11/17,

ensuring electoral integrity and promoting citizen participation in elections and broader public affairs have to develop expertise concerning legal frameworks for democratic elections.

CSOs need to develop expert groups at their headquarters, intermediate and grassroots levels and develop effective communication mechanisms among them. Education, training, accurate monitoring of various elements of the election process, information gathering and reporting on findings and recommendations for improving legal frameworks and electoral practice depend on developing such expertise. Where legal frameworks permit individual citizens to file complaints and/or petitions before administrative or judicial tribunals to seek redress for violations of electoral related rights, CSOs concerned with electoral integrity may take on a special responsibility of informing and even assisting citizens in complaint and appeals processes. Whether seeking to correct faulty entries on voter registries, provide access to polling stations for persons with physical challenges, ensure that citizens are allowed to cast ballots or challenge other faults in the electoral process.[52]

The civil society constitutes the underbelly of the society, an intermediary force and Social agent between the individual and the state. The civil society is generally conceived to be an organ for democracy, good governance and development, which presses for civil and political rights, institutional reforms, economic concessions and welfare for the people and socio-economic empowerment.[53]

2.4.6 Role of International Community and International Organizations

Citizens possess an internationally recognized fundamental right to genuine elections. Countries both create and accept international obligations to organize democratic elections by

[52]Marloe, P.(2008)*Promoting Legal Frameworks for Democratic Elections*, www.eods.eu/.../ Accessed on 2nd December, 2016.
[53]Adejumobi S. (2000) *Africa and the Challenges of Democracy and Good Governance in 21ts Centuary*, www.upan.un.org., accessed on 1/10/2016

entering into treaties and other agreements. Intergovernmental organizations and certain international nongovernmental organizations and associations concern themselves with promoting democratic election, as well as broader human rights and democratic development. These organizations are often requested by governments, political parties and/or citizen groups to assess the character of their national election processes and offer recommendations and assistance in promoting genuine elections. This includes addressing legal frameworks for democratic elections. While intergovernmental organizations typically require an invitation or request from member governments before they can engage in such matters, international nongovernmental organizations usually do not require a governmental request or invitation. Foreign governments frequently offer bilateral assistance in promoting legal frameworks for democratic elections and other matters concerning democratic development. International news media also make assessments concerning the nature of electoral processes in various countries.[54]

Those involved in each of these types of international engagements should be knowledgeable about legal frameworks for democratic elections and about issues concerning their implementation. Whether making direct assessments of electoral laws, regulations and related framework issues, engaging in international election observation, which must address legal frameworks in an overall approach, assisting political party or civil society development or helping legislatures to strengthen their role in governance.[55]All activities by international actors concerned with promoting legal frameworks for democratic elections and related democratic development need to conform to ethical standards that respect sovereignty which belongs to and flows from the people of a country through the following:

[54] Ibid
[55] National Democratic Institute (2015) International Observer Mission to 2015 Nigerian General Elections, www.ndi.org, accessed on25/11/2016

1. Basing activities on international law particularly the normative processes developing in international human rights law
2. Understanding that activities must serve the interests of the people of the country, rather than the interests of those who may be presently in power, who may be seeking it or other private interests
3. Employing best practices and lessons learned in offering knowledge, techniques and advice so that domestic actors can make the best decisions
4. Ensuring transparency in the activities so that citizens may have trust and confidence that those receiving assistance are being empowered to act in the public's interest and those providing it are acting in accordance with international principles.[56]

2.5 Governance

Governance, simply put, is the process of decision-making and the process by which decisions are implemented or not implemented[57]. Since decisions made can be good or bad, the analysis of the process by which we arrive at decisions is important in governance. This also requires that we understand who the actors are in governance. These actors include government, and depending on the level of government under discussion, other actors such as: Non-Governmental Organizations (NGOs), political parties, the military, the police, farmers' organizations, religious leaders, the media, multinational corporations, lobbyists and many others. All the other actors, apart from government and the military or security agencies, are called civil society.

[56] United Nations(2015), Declaration of Principles for International Elections, www.certercenter.org, accessed 24/11/2016

[57] Ogundiya I. S.(2010) Democracy and Good Governance Nigerian Dilemma, *African Journal of Political Science and International Relations*, www.academicjournal.org, 20/11/2016

The concepts of Governance and good governance are being increasingly used in the recent times in development literature. Scholars and institutions alike advanced different definitions of governance. For instance, United Nations Economic and Social Commission for Asia[58] defines governance as "the process of decision making and the process by which decisions are implemented or not implemented" involving both the formal and informal actors. It also asserts that good governance depends on the extent to which it is participatory, consensus oriented, transparent and accountable. The term good governance focuses on the responsibility of government and governing bodies in meeting fairly, the needs of the governed. Its basics principles of selflessness, objectives, integrity, accountability, openness, or transparency and leadership are well established[59]. Good Governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption and respectful of the rule of law[60].Therefore, good governance can be said to be the observance of rule of law and a just management of public resources by institutions of government.

2.5.1 Systems of Democratic Governance

There are basically two types of democratic governance which are parliamentary system and the presidential system. There is one "system" that is a subcomponent of the direct type, which is mixed regimes. The factors that distinguish one system from another are electoral procedure, the distribution of power between the executive and the parliament, and the role of political parties. All systems have fully functioning legislatures that specialize in the following

[58] Here in after referred to as UNESCAP 2010

[59] Bappah A.A (2015) The Application of the Rule of Law, Democracy and Good Governance in Nigeria Challenges and Prospects. In Danladi K. M (ed) *Law Making, Challenges and Good Governance in Katsina State,* Clear Resolution, Abuja,(2015) p. 11-12

[60] Ibid

tasks: managing the budget, helping to form public opinion, representing the public at large, and controlling the government.

(a) The Parliamentary System

As the name suggests, parliamentary systems are distinct because of the power that they place in the hands of the legislative branch. Example of this type is found in United Kingdom.This institutional configuration involves voters selecting parliamentary representatives. The party that wins the largest number of congressional seats then selects the head of government also known as the Prime Minister, Chancellor, or Premier[61]. One characteristic that is specific to this system of government is the split executive. The split executive consists of the head of government and the head of state. As a member of parliament, the head of government controls the legislative process and sets the policymaking agenda. Conversely, the head of state serves as the ceremonial representative of the country.[62]

The electoral process in parliamentary systems influences the power dynamic between the executive (head of government) and the legislature. The members of council are the members of legislature. While these branches of government are distinct entities, in many ways, they are fused together. Because the Prime Minister is placed in power by members of his own party or a coalition containing his party, there are always commonalities in opinion across various policy areas. The legislature is neither the Commander in Chief nor does it have the ability to appoint and dismiss members of the cabinet. These are executive responsibilities. What is important here is the common party affiliation. This commonality leads to a mostly cooperative relationship.

[61]Nwabueze B. (2003) *Constitutional Democracy in Africa*, Spectum Books Ltd, Ibadan.
[62] Ibid.

When disagreements arise between the legislature and the Prime Minister, which is inevitable, the power of the parliament reigns supreme.[63]

The electoral system in parliamentary democracies is based on proportional representation. Proportional representation means that parties win seats based not on a majority vote, as is the case in presidential systems (see below), but based on the proportion of votes that they win. For example, a party winning 35% of votes from the electorate is allocated approximately 35% of the seats in the congress. Such an arrangement ensures that parties are presenting smaller portions of the constituency are given a chance to influence policy. What the parliamentary system gains in representation, it loses in efficiency and stability.[64]

The large number of parties sometimes makes it impossible for a single party to gain the majority that is needed for them to select the Prime Minister. As a result, it is often necessary for parties to form coalitions with one another. The diversity of opinion created by a large coalition often makes it difficult for its members to come to a consensus on policy decisions.[65] When there is a majority party that places the head of government into office, there is a lower likelihood of conflict both within the parliament and between both branches of government. However, in a broad coalition situation, the Prime Minister has more interests to represent, making it difficult for him to make decisions that are agreeable to the coalition. This is where the power of parties is an important variable. When the majority party or the coalition (when there is one) is profoundly displeased with the executive's performance, they can issue what is called a "vote of no confidence," removing the Prime Minister from office.[66]

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[63] Hans India,(2017) *Differences Between Parliamentary and Presidential Form of Government,*www.thansindia.com, 20/10/2017,
[64]Saylor, F. *Types of Democracy* www.saylor.org., accessed, 25/11/2016
[65] Ibid
[66] Ibid.

The ability of the legislature to select the Prime Minister, in most cases, creates common policy preferences between both branches of government. While the functions of both entities are distinct, the likelihood of cooperation is much higher. Another benefit of the system is that the legislature is a more approximate representation of the diverse political interests that are present in society. A disadvantage to this arrangement is that the diversity of parties is sometimes so extreme that it creates significant internal dissension in the legislature, which then strains the fused relationship between the parliament and the executive. Disagreement within parliament can lead to deadlock or a situation where the policymaking process is brought to an abrupt halt until the conflict is resolved. Additionally, internal dissension in the parliament strains its relationship with the executive, sometimes leading to a vote of "no-confidence."[67]

(b) The Presidential System

There are fewer presidential democracies in the world, and they are centrally located in the Americas (North America, Central America, and South America) and some countries in Africa like Nigeria. Scholars claim that while parliamentary democracies are more representative, they are also less stable for many of the reasons cited above. Conversely, presidential systems, which concentrate power in the executive branch, tend to be less representative and more stable.[68]

Nigeria will be used as example to describe and understand this system of democracy. Unlike parliamentary democracies where elections happen in stages, in presidential system in Nigeria theConstitution of the Federal Republic of Nigeria 1999 (as Amended) (Here in after referred to as the Constitution) provides that the voting public selects members for both the executive and legislative branches at the same time. The results of the legislative elections have

[67] Ibid.
[68] Ibid.

no bearing on the composition of the executive branch[69]. For example, in the Nigeria, it is entirely possible for one party to gain a majority in National Assembly (both the House of Representatives and the Senate) and for the other party to win the presidency.

The potential for a "split government" increases the likelihood for disagreement and can make the policymaking process difficult. The fusion of power that is so characteristic in parliamentary systems is not present in presidential democracies. Presidential systems operate under a very distinct separation of powers. The legislature examines and accesses the budget, proposes and passes policy, approves appointments to the cabinet positions, and ratifies foreign treaties. The executive serves as Commander-in-Chief of the national armed forces, appoints executive cabinet members and representatives of the Federal Courts (after his appointments are approved by the Senate), and serves as the head of state and the head of government. It is important to note that the executive is not split in this system.

The National Assembly cannot remove the president from power through a "vote of no confidence." In fact, National Assembly cannot remove the president from power at all. The only exception is in cases of criminal misconduct or circumstance provided by Constitution.[70] Likewise, the president cannot dissolve Congress. The performance of members in both branches of government is evaluated by the voting public. One of the distinct powers available to the executive is the presidential veto. In order for a bill to become a law, it must be approved by a majority in both Houses. Failure of approval in the Senate pushes the bill back to the House of Representatives. A cycle of disagreement will continue until both houses are able to modify the bill in a way that is mutually acceptable. Once a bill is cleared in both the houses (Senate and the

[69]Chapter V and VI of the Constitution, precisely s. 47, 48, 65,130 and 132 which create the National Assembly and qualification for being its member, the office of the President qualification and procedure for election in to the office.

[70]S.143 &144, *Constitution of the Federal Republic of Nigeria 1999 (as Amended)*, Cap. C 23, LFN, 2004.

House of Representatives), it is presented to the president, who has the power to assents or veto (overturn) the law. The Presidential veto has long been a topic of debate among scholars, policymakers, and the voting public. According to critics, the ability of one man to overturn a policy, which has been approved by electorally appointed representatives, undermines the spirit of democracy. In the event that the president rejects a bill in its entirety, the two Houses have the ability to reverse the veto by achieving a 2/3 majority of votes in favor of doing so.[71] This vote is very difficult to achieve because of the majoritarian nature of the electoral system. In parliamentary democracies, parties win seats based on the proportion of the vote that they win. While in presidential democracies, parties win seats when they secure a majority of votes in local and state elections.

The separation of power weakens political parties relative to the executive. Political parties do not appoint the executive (though they do select a candidate to run for president). The President must establish a relationship of cooperation across both houses, but his survival in office does not depend on it. The majoritarian electoral system also has important implications for the ideology and level of representativeness of political parties. In parliamentary systems, the fact that appointment is based on proportional wins allows parties to refine their political message and focus on a very specific portion of the population.

In presidential systems, the fact that a majority is required means that parties must make themselves appealing to large swathes of the population, more specifically 50% +1 of the voting public and subject to the provisions of sections 133, 134 and 179 of the constitution[72]. Alternatively, the absence of coalition politics and the ability of the president to exercise his veto

[71] S. 58,*Constitution of the Constitution of Federal Republic of Nigeria 1999 (as amended*), Cap C 23, LFN, 2004.
[72] S. 69, *Electoral Act*, 2010 (as amended).

make the policy process relatively less complicated in presidential systems. Finding a consensus between parties is a less daunting task than achieving consensus across four or five parties.[73]

(c) Mixed Systems

Finally, there are some states that practice a form of democracy that does not fit into either the presidential or parliamentary prototype but contains elements of both. These systems are called "mixed" systems. For example, in some semi-Presidential democracies, the president is elected according to rules of direct democracy. In this system, the executive exercises a broad range of powers. However, just as in the parliamentary system, he or she can be removed from office. In Switzerland, the president is quite powerful, and he cannot be removed from office by the legislature. Likewise, the president cannot dissolve the parliament. There are numerous other examples of mixed regimes where people have attempted to take the best attributes of each system and combine these attributes into one form of government.[74]This system is also found in some African countries. For example, in Malawi, the President can appoint any number of ministers from outside and such ministers by virtue of their appointment become members of the National Assembly.[75]In some countries like Kenya, Botswana and Uganda membership in parliament is requirement for executive office. In Kenya the President is a member of the National Assembly under the constitution even though in practice he does not attend and participate in its proceedings.[76]The president membership is therefore only nominal.

[73]Mathias K, *Concepts and Principles of Democratic Governance and Accountability*, www.kasde.com, accessed, 19/10/2016
[74]Ibid.
[75]Nwabueze B. (2003) *Constitutional Democracy in Africa*, Spectum Books Ltd, Ibadan.p174
[76] Ibid

2.6 Conclusion

The conclusion to be drawn from the discussions in this chapter is that history of Nigerian Democracy and Election can be traced back to period of colonialism and pre-colonial era though with limited freedom of choice for the citizens. After the attainment of independence Nigerian Democracy and Election, experienced different interruptions by the military until in year 1999 when Nigeria returned to Democracy to date. The chapter also discussed the various types/forms of Democracy, Election and Governance we have. Finally the chapter also highlighted some bodies whose interests in democratic election are enormous and unless they are protected Good Governance can hardly be achieved in democratic government.

CHAPTER THREE

LEGAL FRAMEWORK OF DEMOCRACY, ELECTION AND GOVERNANCE IN NIGERIA

3.1 Introduction

Ever since the existence of man on earth, it has been natural that whenever two or more people live in an environment, they agree on certain terms or norms that regulate their conducts. These norms are called in a modern society as laws which violation attracts sanction. The body responsible for the application and maintenance of laws and orders in the society is called government. In the modern society, Democracy has been recognized as one of the most acceptable systems of government in the world. To this end, African Union (A.U)[1] in 2007 adopted the African Charter on Democracy Election and Governance (Hereinafter referred to as the Charter on Democracy)in order to promote democratic system of government at the continental and/or regional level.

Democracy is more likely to promote good governance and development only if democratic institutions such as INEC, Legislature, Executive, Judiciary, Police etc. are strengthened to carry out their functions properly in the conduct of elections[2] in Nigeria in accordance with the African Union's Declaration on the Principles Governing Democratic Election in Africa[3] and also certain domestic laws. Political parties play an important role in democratic election, unless internal democracy within political Parties is well established they can hardly sponsor a good candidate that represents the general interest of the people when elected as political office holder.Observance of rule of law and protection of human rights are

[1] Hereinafter referred as the AU

[2] Esene, G.D. (2014) *Democracy, Democratic Institutions and Good Governance in Nigeria*, www.covenantuniversity.edu.org. Accessed on 2/12/2017

[3] Article 17 of the Charter on Democracy.

pivots to good governance in a democratic government. For democracy to yield good governance it must be constitutional where conducts of government officials are guided by laws and adequate sanctions are provided for deviators. Constitutional Democracy recognizes elections as only means of assuming leadership positions. It therefore disapproves any unconstitutional change of government.

Nigeria as a member of the AU has been operating democratic system of government since 1999 to date. However, corruption, insincerity of purpose, lack of accountability etc. are common traits of many Nigerian leaders. Consequently, the enjoyments of democratic dividends become difficult for Nigerians. Observance of the rule of law in Nigeria becomes difficult. Nigerian citizens do not receive equal treatment and some of the political office holders do not obey court orders as the true independence of the Judiciary is wanting. This is a serious challenge to rule of law in Nigeria. Human rights abuse by some of the Security agents is another threat to Rule of law and the Personal liberty. Insecurity in some parts of Nigeria warrants some unscrupulous people to form illegal society, thereby endangering the rights to life and to own property of citizens among others.

This Chapter would examine the roles of various democratic institutions in Nigeria with a view to determine whether or not they are in consonance with the Charter on Democracy. The Chapter would also evaluate the performance of Nigerian democratic government in the promotion of Rule of Law and the protection of Human rights which are the keys of achieving political, economic and social governance and to suggest other possible ways of promoting good governance. The Chapter would therefore make an examination of the Democracy, Elections and Governance in Nigeria under the Charter on Democracy in order to achieve the aforementioned objectives.

3.2. Democracy, Rule of Law and Human Rights under the Charter on Democracy

Article 4 paragraphs 1 of the Charter on Democracy provides that: "State parties shall commit themselves to promote Democracy, the Principles of the Rule of law and Human Rights*"*[4].

3.2.1 Democracy

The Charter on Democracy obliges its state parties to commit themselves to promote Democracy which is the government put in place by the people, which upholds the spirit of social contract between the state and the people, ensures equitable distribution of the state resources and equal opportunity for all its citizens, and whose operations are based on the rule of law. In every democratic system of government people must be given rights to freely make choice of their leaders. Article 4 Paragraph two of the Charter on Democracy provides that: "State parties shall recognize popular participation through universal suffrage as the inalienable right of the people".[5] This part of the Charter on Democracy makes it mandatory to its State Parties to devise means of guaranteeing rights to people including vulnerable members of the society like physically challenged persons to participate in electing their leaders.

Nigeria has signed and ratified the Charter on Democracy in the year 2012 and therefore becomes its state party and has been operating under Democratic system of Government from 1999 to date with successful transition from one civilian regime to another. Though, the Charter on Democracy has not yet been domesticated in Nigeria, it provides that: "State parties shall take all appropriate measures to ensure constitutional rule, particularly constitutional transfer of power."[6] Section 14 of the Constitution of Federal Republic of Nigeria[7] provides that: "the

[4] Article 4, Paragraph 1 of the Charter on Democracy
[5] Article 4, Paragraph 2, Ibid
[6] Article 5, Ibid

Federal Republic of Nigeria shall be a state based on the principles of the democracy and social justice"[8]. This section of Constitution makes it clear that the government of Nigeria must be democratic or Nigeria must be governed by a democratic system of government. S.14 (2) paragraph (a) provides that: "Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority." Paragraph (c) provides that "the participation by the people in their government shall be ensured in accordance with provisions of this Constitution"[9]. These Constitutional provisions recognize the rights of the people in deciding who should govern them in accordance to the law. Nigeria therefore complied with provision of the Charter on Democracy relating to democratic processes of assuming leadership.

The body responsible for organizing and conducting elections in Nigeria was also established by the Constitution.[10] This is the Independent National Electoral Commission (INEC) which is empowered by the Constitution in the Third Schedule to organize and conduct the elections into the office of President and his Vice, Governor and his Deputy, Membership in the Senate, the House of Representatives, and the House of Assembly of the each state of the federation.[11] While For the elections into the office of Local Government Chairman and Councilors, it is organized by State Independent Electoral Commission that may be created by a law enacted by the State House of Assembly[12]. However, in the Federal Capital Territory, INEC

[7]Constitution of Federal Republic of Nigeria, 1999 (as amended). Hereinafter referred to as the Constitution
[8] S. 14 (1) Constitution
[9] S. 14 (2), Ibid
[10] S. 153(1)(f), Ibid
[11] Part 1, Paragraph f, third schedule, Ibid
[12] S. 7(4) of the Constitution

is also empowered to organize, conduct and supervise elections into the offices of Chairman, Vice Chairman and members of an Area Council.[13]

For democracy to be given life people must participate, political parties play a critical role in the participating process, providing the main organizational link between Politian who runs for office and mass public. To this end, the Charter on Democracy obliged State party to provide means of "Strengthening political pluralism and recognizing the role, rights and responsibilities of legally recognized constituted political parties, including opposition political parties, which should be given a status under national law.*"*[14] In compliance with the aforementioned Article, INEC has been empowered to register any political party that satisfied the requirements of the law. The Electoral Act provides that:

> Any political association that complies with the provision of the Constitution and this Act for the purpose of registration shall be registered as a political party. Provided however, that such application for registration as a political party shall be duly submitted to the Commission not later than 6 months before a general election.[15]

In Nigeria only the candidates who are sponsored by a political parties recognized by INEC can contest into an election.[16] In most democracies, the link provided by political parties may be indirect at best. Usually the public has very little connection with parties except on election days, internal party affairs tend to be controlled by professional politicians and their staff or through delegate system in some of the political parties. However, some parties in the democratic world allow its members to take part in meeting to discuss policy, issues and perhaps vote for the party's top leader or its candidates for office. Such parties provide a space for political

[13] S. 103 (1) and (2), *Electoral Act*, 2010 (as amended)
[14] Article 3,Para. 11 of the Charter on Democracy
[15] S. 78(1), Electoral Act, 2010
[16] S. 31, Ibid.; *Amaechi v. INEC* (2008) ALL FWLR pt 407

participation by ordinary citizens at the grass root level.[17] Thus parties remain indispensable to democracy because they enable citizens to play a role in policy making and are then principal means for the representation of electors in both national and local government.[18] Political parties also mobilize voters by informing and energizing their members through media, campaigns, visitations etc. individual candidates can do the same thing but parties maintain elaborate network of the state and local offices that can be immediately made available in the services of candidate once the party nomination is secured. Additionally, parties have fund raising apparatuses in place that simplify their candidate's ability to fund their campaigns[19].

Political parties therefore, facilitate governance by bringing order to the process of policy making. Party's members, individual politicians have an existing group of allies that usually cooperate with their efforts to enact and implement legislations. More so, party alliances close the gap between the legislature and other branches of government. However, most of the political parties in Nigeria lack internal party democracy. It is delegates that vote during party convention and these delegates in most cases are compromised by wealthy members rather than representing the interest of their people. Hence, the role played by political parties in the realization of good governance is drastically diminishing. Democracy therefore, is the government put in place by people, which upholds the spirit of social contract between the state and people and ensures equitable distribution of state resources and equal opportunity for all its citizens and it operates in rule of law.[20]

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[17]Bappah, A.I (2015), The Application of the Rule of law, Democracy and Good Governance in Nigeria Challenges and Prospects. In Danladi K. M (ed)*LawMaking, Challenges and GoodGovernancein Katsina State* , Clear Resolution, Abuja, p. 9

[18]Anele, k. k. (2013) Political Party Ideology and Legislation for Good Governance. In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. P. 239

[19] Ibid

[20]Charlie, N.*The Rule of Law, Democracy and Good Governance in Nigeria*, www.eajournals.org.Accessed on 12/9/2017.

In every election there must be a winner and defeated candidate. Where any candidate is aggrieved by the election results, the Charter on Democracy obliged its state parties to "Establish and strengthen national mechanisms that redress election related disputes in a timely manner."[21] In Nigeria the law recognized Courts and Election Tribunal as the avenue for resolving election related disputes.[22] This would bring about peace and sanity in the democracy and respect for the law.

3.2.1Rule of law

The second attribute of Article 4 of the Charter on Democracy is to the effect that "state parties shall commit themselves to promote democracy, the principle of rule of law and human rights." The rule of law is generally the supremacy of the law in the states. This means only law counts in the society as everything, everybody is subject to the same law. Both the ruler and the ruled are not only subject to the rule of law but are also equal before the law[23]. This will bring a constitutional democracy into existence. The Charter on Democracy provides that: "State Parties shall take all appropriate measures to ensure Constitutional rule, particularly constitutional transfer of power." Even prior to the idea of rule of law as postulated by Dicey who became the popular proponent of rule of law, in Greece around 399-470 B.C. the idea of rule of law has been applied based on the dictate of reason as propounded by the natural law philosophers who agreed that all individuals are endowed by nature with certain claims and right.[24] In very recent, the work of an English law professor, Albert Venn Dicey becomes popular in the study of the Rule of Law where he posits that rule of law relates to three different meaning. The Dicey's conceptions of Rule of Law were also encapsulated in the Charter on Democracy.

[21] Article 17 para. 2 of the Charter on Democracy.
[22] S. 133, Electoral Act, 2010; S. 239,285 and 246 of the Constitution
[23] Ibid
[24] Danlad, K. M. (2012) Outline of Administrative Law in Nigeria, A.B.U Press Ltd, Zaria. P.78

First, Rule of Law means absolute supremacy of the law as opposed to the influence of arbitrary power.[25] This was provided by the Charter on Democracy that: "State Parties shall entrench the principle of supremacy of the constitution in the political organization of the State.[26]"

Second, Rule of Law is equality before the law[27]. The Charter on Democracy also provides that: "State Parties shall protect the right to equality before the law and equal protection by the law as fundamental precondition for a just and democratic society"[28].

Third which is the last ingredient of Rule of Law is on the protection of Human Rights.[29] The Charter on Democracy provides thus: "State Parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility.[30]"

No democratic government can be effective when it is devoid of rule of law. In other words, rule of law is a veritable aspect of every democratic system of government throughout the world.[31] The three conceptions of Rule Law propounded by Diecy and also encapsulated in the Charter on Democracy would now be examined under Nigerian Democratic government.

3.2.2(a) Application of Rule Law in Nigeria

The impact of rule of law is so reckoned to the extent that even the military dictatorial governments always try to claim to assert the application of rule of law in their governance when

[25]Mafuyai, M.W (2015). The Rule of Law and Challenges of Electoral Process in Nigeria. *B.U.K Journal of International Law and Jurisprudence*, Vol. 1, No. 1, P. 144
[26]Article 10, Para. 1 of the Charter on Democracy
[27] Danladi, K.M (2012)Outline of Administrative Law in Nigeria. Op. cit. P.80
[28] Article 10 Para. 3 of the Charter on Democracy.
[29]Mafuyai, M.W (2015)The Rule of Law and Challenges of Electoral Process in Nigeria. Op. Cit. P.145
[30] Article 6 of the Charter on Democracy
[31] Danladi, K.M..(2012)Outline of Administrative Law in Nigeria. Op. Cit. P.84

they take over government through coup's de 'tat[32]. Nigeria now operates a democratic system of government as the Constitution which is the ground norm of the land provides that: "the federal republic of Nigeria shall be a state based on the principles of democracy and social justice."[33] No democratic government can survive and be effective without rule of law. In Nigeria the Constitution which set out the legal framework for democratic government recognizes the Dicey's exposition of the general principles of the rule of law and also provided in the Charter on Democracy. These would be examined below:

i. **Absolute Supremacy or Predominance of Regular Law as Opposed to the Influence of Arbitrary Power in Nigeria**.

The supremacy of the Constitution as expounded by A.V Dicey is enshrined in the provision of Section 1 (1) of Constitution of Nigeria which provides thus: *"*This Constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria*".*[34] The application of the above provision is that powers must be exercised in accordance with provision of Constitution which is the basic law of land.[35] The Supreme Court of Nigeria, per sir Udo Udoma J.S.C in the case of *Nafi'u Rabi'u v State*[36] while commenting on the provision of Section 1 (1) of the 1979 Constitution which is *perimaterae* with the provisions of Section 1 (1) of 1999 Constitution held thus.''…the present Constitution has been proclaimed the supreme law of the land, that it is a written, organic instrument meant to serve not only the present generation, but also several generation yet unborn*…'*'The exposition of Dicey shows that power must be exercised in conformity with the basic and ordinary laws of the land. It also presupposes that there must not be executive lawlessness in the country where

[32] Ibid.
[33] S. 14 (1) Constitution
[34] S. 1 (1), Ibid.
[35]Haruna, B. A. and Yusuf A. M. (2015) Conceptual Analysis of the Rule of Law in Nigeria.*B.U.K journal of International Law and Jurisprudence*. Vol. 1 No 1, P.118
[36] (1981)2NCLR p 293 at 326

the rule of law is in operation.[37] The law must be allowed to reign freely and every action must be done according to the law. To this end, the 1999 Constitution provides that "any law that is inconsistent with the provision of Constitution it must be void and the Constitution shall prevail."[38]

The concept of rule of law as opposed to rule of arbitrariness has received judicial interpretations in many of Nigerian cases.[39] In the case of *Military Governor of Lagos State v. Ojuku,*[40]the Supreme Court stated that "…the essences of the Rule of Law are that it should never operate under the rule of force or fear. To use force to seek court's equity is an attempt to infuse timidity into court and operate a sabotage of cherished rule of law." The court further stated that the rule of law presupposes that the state is subject to the law. The judiciary is the necessary agency of the rule of law. Government should respect the rights of individual citizen under the law. The judiciary is assigned both by the rule of law and by the Constitution the determination of all actions and proceedings relating to matter in dispute between parsons and between government and any parson in Nigeria.[41] Suffice is to say that the 1999 Constitution upholds the rule of law and recognizes various Constitutional principles in that regard.

However, several instances in Nigeria have warranted the questioning of the scope of the application of the rule of law. This may be attributed to the Nigerian state and character of its elites. It is therefore, even very difficult to classify Nigerians government as a democracy founded in the ideals of rule of law. For instance, in the heat of political tussle and the struggle for the control of power in Rivers state between the wife of the former President and the former

[37]Haruna B. A. and Yusuf A.M. (2015)Conceptual Analysis of the Rule of Law in Nigeria. Op. Cit. P.119
[38] S.1 (3) Constitution
[39]*Aok v. Fagbemi* (1961)1 ALL ER 400; *Salawu v. Sanusi* (1961) FNLR p 1996; *Shugaba Abdurrahman Darman v. Minister of Internal Affairs* (1981) 1NCLR p1
[40] (1986) 1 NWLR 621 (pt 1)
[41]Haruna, B. A. and Yusuf A. M. (2015)Conceptual Analysis of the Rule of Law in Nigeria. Op. cit. P.119

Governor of the State Rotimi Amaechi, he was prevented from accessing his office by the state Commissioner of Police on the instruction of order from above in the year 2013.[42] Also in the same 2013, the Lagos state government in ambush and to overreach a pending court judgment of the legality of imposing tolls on road in Lagos commenced the collection of tolls on one of the bridge it built before the date fixed for the judgment. These actions have clear implication on the rule of law in Nigeria.[43]

ii. **Equality Before the Law in Nigeria**

The 1999 Constitution makes provisions that establish the doctrine of rule of law such as prevention of arbitrary exercise of power, equal subjection of persons to the law, equal treatment as well as social justice and freedom from discrimination.[44] In consonance with contemporary notions of the rule of law that focused on substantive social justice as encapsulated in Chapter two of 1999 Constitution which identifies the concept of governance as social contract with fundamental purpose of ensuring substantive justice to the people of Nigeria without discrimination. Though the provisions of Chapter two are non-justiciable but they can be enforced through political machinery and by pro-action public interest lawyering and judicial activism.[45]

Despite the Constitutional provisions that ensure equality before the law in Nigeria certain instances tend to show that it is more of theory than practice. One of which is an aberration to the rule of law is that there is a law for the rich and another for the poor. The immunity clause also of section 308 of the Constitution which ought to be a shield is now becoming sword for some governors in Nigeria where they openly break the law or go contrary to the court's order. The

[42]Ibid. p. 120
[43] Ibid.
[44] See generally Chapter iv of the Constitution
[45]Mafuyai, M.W (2015*The Rule of Law and Challenges of Electoral Process in Nigeria*. Op. Cit. P.149

cost of attaining justice using the formal adversarial process is so prohibitively expensive that the ordinary man would choose to sleep on his right or watch it go by than dream of suing to secure such especially in civil matters.[46]

iii. **Rule Law as Human Rights Protections**

This aspect of the rule of law as propounded by A.V Dicey reiterated the fact that human rights as judicially enforced by the court are not created by the Constitution but are naturally inherent in all human being. However, the Constitution gives legal backing to the right against infraction by anybody or authority.[47] Nigeria operates under a Written Constitution where the fundamental rights of individual are enshrined in the Constitution.[48]Hence, as opposed to the position in the United Kingdom where the Constitution is unwritten, a citizen whose fundamental rights are infringed in Nigeria seeks redress in a court of law relying on the Constitution and not ordinary laws.[49] Though, the provisions of Chapter two and four of 1999 Constitution reflect a significant re-enactment of the Dicey's conception of the rule of law. The non-justiciable nature of the provisions of Chapter two of the Constitution has to a greater extent reduced the practical impact of the rule of law. This is because the provisions of Chapter two are indispensably linked to Chapter four.[50]

3.2.3 Human Right

The last attribute of Article 4 of the Charter on Democracy is on human right, where it provides that: "State Parties shall commit themselves to promote democracy, the principle of the

[46]Haruna B. A. and Yusuf A.M. (2015)Conceptual Analysis of the Rule of Law in Nigeria. Op. cit. P.121
[47]Abdullahi, S. (2015).A Critical Appraisal of the Application of Rule of Law in Local Government Administration in Nigeria. In: Danladi, K. M. (ed) *Law Making Challenges and Good Governance in Katsina State*, Clear Resolution, Garki, Abuja. P. 408
[48]Chapter iv of the Constitution
[49]Haruna B.A and Yusuf A.M (2015)Conceptual Analysis of the Rule of Law in Nigeria.Op. cit. P.124
[50]Ibid

rule of law and human rights.*"*[51] The Charter on Democracy makes provisions for the protection of Human Rights in order to attain good governance. For instance it provides that: "State Parties shall ensure that citizens enjoy fundamental freedoms and human rights taking into account their universality, interdependence and indivisibility.[52]*"* This provision of the Charter on Democracy makes it mandatory to its State Parties to ensure the protection of the rights and freedoms of its citizens which all humans are entitled, such as civil and political rights which include: the right to life and liberty, freedom of thought and expression, equality before the law. There are also Social, Cultural and Economic rights. These include the right to participate in culture, the right to food, the right to work and the right education.[53]

Democracy and Human Rights are inseparable. Every Democratic Government should treat its people indiscriminately. The Charter on Democracy provides further that:

1. State Parties shall eliminate all forms of discrimination, especially those based on political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance.
2. State Parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social group.
3. State Parties shall respect ethnic, cultural and religious diversity which contributes to strengthening democracy and citizen participation.[54]

These provisions obliged State Parties to indiscriminately protect the rights of their citizens regardless of their political opinion, gender, cultural or religious differences. The cultural practices which are not repugnant to Democracy should also be respected. Rights of vulnerable social group like women, people with disabilities, refugees etc. should also be protected by

[51] Article four of the charter on Democracy
[52] Article 6 of the Charter on Democracy
[53] Izuoma , E. (2013) Human Rights Legislations and Good Governance, In: AzingeE.andAdediram. A (eds) *Legislating For Good Governance*, NIALS Press, Abuja. P.175
[54] Article 8, paras. 1,2 & 3 of the Charter on Democracy

adopting legislative and administrative measures to ensure their protection. Notwithstanding the fact that the Charter on Democracy has not yet been domesticated in Nigerian, most of its provisions relating to protection of human rights are provided for under the African Charter on Human and people's rights[55] which was domesticated in Nigeria[56] and the Constitution of Federal Republic of Nigeria 1999 as amended which also complement the Charter on Democracy. The peculiarities of ACHPR include the concept of people Right which it declares to existence[57]. The colonial history of Africa reveals denial of that right to indigenous people. Contemporary African history is punctuated by genocidal propensities as in the ethnic conflicts between certain groups in the part of the continent.

The mechanism used for the enforcement of human rights legislations in Nigeria is the domestic court of the country. For example,until the decision in *Inspector General of Police v. All Nigerian People Party and Ors*[58], itwas illegal to hold a public meeting or protest peacefully against the government in Nigeria without a written permit from police authorities under obnoxious Public Order Act[59]. The Court of Appeal apparently relying on the interpretation of the African Commission on human and peoples' right in the Civil Liberties Organization case that the ACHPR is now part of the domestic laws of Nigeria by virtue of the ACHPR (Ratification and Enforcement) Act and like all other laws, the Court must uphold it though its provision will prevail over those of any other statute for the reason that it is presumed that the legislature does not intend to breach international obligation. Further that the public order Act cannot be used to attain unconstitutional result of deprivation of right to freedom of speech and

[55] Herein after referred to as ACHPR
[56] ACHPR (Ratification and Enforcement) Act, Cap. A9 Laws of Federation of Nigeria, 2004.
[57] Article 20(1) of ACHPR
[58] (2007)18 NWLR
[59] Cap. P 382, Laws of Federation of Nigeria, 2004.

freedom of assembly.[60] This compliments the provision of the Charter on Democracy where it provides that: "State Parties shall take all necessary measures to strengthen the Organs of the Union that are mandated to promote and protect human rights and to fight impunity and endow them with the necessary resources[61].

The Constitution has created or established the High Court in each State of the Federation, Federal High Court and the High Court of Federal Capital Territory Abuja.[62] In order to ensure the observance, respect and enforcement of the fundamental human rights guaranteed by the Constitution as well as to enforce the obligation or engagements undertaken by Nigeria under Regional and Universal Human Right Treaties, particularly under the African Charter on Human and peoples' right. The Constitution vested the jurisdiction for the enforcement of Fundamental Right in the High Court. Thus "Any person who alleges that any of the provision of the Chapter four has been is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress".[63] The proceedings before High Court are guided by the Fundamental Right (Enforcement procedure) Rules, 2009 made by Chief Justice of Nigeria.

Moreover, in line with the resolution of the General Assembly of the United Nation which enjoins all member states to establish Human rights Institution for the promotion and protection of human rights, Nigeria established the National Human Right Commission by virtue

[60]Achi, D. T. (2011). Human Rights in Africa: Critical Examination of the African Charter on Human and Peoples' Right.In: Dankofa, Y. (ed) *Human Rights Reviews*, Faith Printers International, Zaria. P. 80
[61] Article 7 of the Charter on Democracy
[62] Ss. 249, 255 and 270 of the Constitution
[63] S. 46(1) Ibid

of the National Human Right Commission Act[64]. It complements the work of courts in Nigeria as it was established for the purpose of promoting, and protecting human rights in Nigeria.[65]

Despite all these, certain obstacles use to prevent the enjoyment of these rights. These include traditional or cultural belief where for instance in some cultural jurisdiction the widow of a deceased is discriminated against and not considered as a member of the family in sharing the properties left by her late husband.[66] Another obstacle is the impunity of security personnel where for instance Police, soldiers and other law enforcement officers in Nigeria commit serious human Rights violation including arbitrary arrest and detention, torture and other forms of abuse. They do all this with impunity. In some cases their action lead to death more worrisome is that their action are often not investigated and they go scot free.[67]

Moreover, lack of security is another threat to the enjoyment of fundamental right in Nigeria crime and violence is prevalent in Nigeria. Cases of kidnapping, cattle rustling, armed robbery and tribal crises have become like wild fire in Nigeria. The right to life is therefore under a serious danger. These are just few example of the threat to human rights in Nigeria which implies that there is still need to strengthen or employ other measures for the protection of human Rights so that to ensure full and proper implementation and compliance with provision of the Character on Democracy.

3.3 The Culture of Democracy and Peace

Democratic governance is irrelevant where its culture is wanting in society. A culture of democracy must reflect norms and values that place a premium on the freedom of the individual.

[64] National Human Rights Commission (Amendment) Act, 2010
[65] Ornguga, Y.(2011). Op. Cit P.562
[66] *Suberu v. Summonu*&ors (1957)1 NSCC 4
[67] Adekoyo, C. O. (2008). Criminalization of Torture and Right of Private Person to Prosecute as Antidotes to Police Torture in Nigeria,*Journal of Public and International Law, Ahmadu Bello University,* Zaria. Vol. 1 No *2, 129*

Freedom from state and from infringement of rights by other individuals, which will further guarantee equality before the law as well as providing opportunities for all citizens to have equal access to the material and cultural resources that guarantee their basic livelihood.[68] Chapter five of the Charter on Democracy is about the Culture of Democracy and Peace where it provides that: "State Parties to undertake to develop the necessary legislative and policy framework to establish and strengthen a Culture of Democracy and Peace."[69] Article 12 also provides that:

> State parties undertake to implement programs and carryout activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace.[70]
> To this end state parties shall
> 1. Promote good governance by ensuring transparent and accountable administration.
> 2. Strengthen political institution to entrench a Culture of Democracy and Peace.
> 3. Create conducive conditions for civil society organization to exist and operate within the law.
> 4. Integrate civic education in their educational curricula and develop appropriate programs and activities.

The above provisions of the Charter on Democracy which aim at promoting good governance would be briefly discoursed and relate them with Nigerian Democratic government.

3.3.1, Good Governance

Article 12 paragraph 1 of the Charter on Democracy obliged state Parties "to Promote Good Governance by Ensuring Transparent and AccountableAdministration." Good Governance is accountable and effective ways of obtaining and using public power and resources in the pursuit of widely-accepted social goals. It has been suggested that in Nigeria context, good governance

[68] Dankofa, Y. (2008). The Fallacy of Democracy in the Absence of Development and Rule of Law in Nigeria. Op. Cit. P.165
[69] Article 11 of the Charter
[70] Article 12 of the Charter

aims at achieving the ideals enumerated in the Fundamental Objectives and Directive Principles of State Policy provided in the Constitution.[71] In Nigeriaalso there are muchlegislation that seek to promote good governance. For example, the Freedom of Information (FOI) Act 2011, Fiscal Responsibility Act 2007, Independent Corrupt Practices and other related Offences Commission (ICPC) Act 2000 and Economic and Financial Crimes Commission (EFCC) Act.Good Governance has been characterized with participation, rule of law, transparency of decision making, accountability, predictability or coherence and effectiveness etc. Some features of Good Governance would be briefly discussed below:

a. Participation

This involves the input of both men and women and it could be direct or through legitimate intermediate representatives. Participation needs to be informed and organized creating an avenue for freedom of association and expression and an organized civil society.[72] The Charter on Democracy encouraged the State Parties to create room for citizen participation in Governance. For example, It provides that State parties shall ensure "Effective participation of citizens in democratic and development processes and in governance of public affairs"[73] The Charter on Democracy also obliged State parties to ensure participation of social group with special needs where it provides that: "State Parties shall promote participation of social groups with special needs, including the youth and people with disabilities in the governance process."[74] This is also provided for under freedom from discrimination of Nigerian Constitution.

[71] Ofuani, S. O. (2013). The Role of the National Assembly in Legislating for Good Governance. In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. P. 195
[72]Nwamu , G. K (2013) Good Governance and Law Making in Nigeria. In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. P. 212
[73] Article 3 para. 7 of the Charter on Democracy.
[74] Article 31 para. 1 Ibid

Participation of both men and women is the key for the realization of good governance. It is important to point out that representative democracy does not necessarily mean that the concerns of most vulnerable in society would be taken into consideration in decision making, but rather they would not be undermined in decision making. Participation needs to be informed and organized. This means freedom of expression, association on the one hand and an organized civil society on the other hand[75]

b. Accountability

This is fundamental requirement of good governance, and requires the responsibility of not only governmental institutions but also the private sectors and civil society organization in general must be accountable to the public whose interest would be affected either directly or indirectly by their decisions or actions.[76] The Charter on Democracy has enormous provisions on virtually all principles of democratic governance Accountability inclusive. For example, it provides that "State Parties shall promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs"[77]

Accountability is dependent on whether decisions or actions taken are internal or external to an organization or institution. In general an organization is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.[78] The Freedom of Information Act was signed into law to make public records and information freely available to any interested party, private or civil society, to access record

[75]Ajanwachuku, O. (2013) Legislation and Good Governanac: A Critical Analyses of Extant of Legislations on Good Governance, In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. p 315
[76] Ibid
[77] Article 2 Para. 10 of the Charter on Democracy
[78]Ajanwachuku, O. (2013). Op. Cit. p.318.

to public institutions.[79] It therefore came to guarantee access to data held by the state. It establishes right to know to the citizens.[80] To ensure accountability of political office holders in Nigeria, the Constitution requires persons elected as President and Governor to declare assets and liabilities and to take and subscribe to oath of allegiance and oath of office before they begin to perform their functions.[81] The same thing also applies to the persons appointed to the office of the Ministers and State Commissioners.[82]

c. Transparency

This requires that decision taken and its enforcement are done in a manner that follows rules and regulations. Legislation should not impose undue hardship on the people whom the legislation regulates their lives and conducts. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement.[83] It also means that enough information is provided and that it is provided in easily understandable form and media. The Charter on Democracy provides that State Parties shall institutionalize good economic and corporate governance through: "Promoting transparency in the public finance management.[84]

Transparency is also strict adherence to rules and regulations while decisions are being taken and enforced. This is the idea the Nigerian freedom of Information Act 2011 and other countries that have implemented their freedom of information laws seek to encourage. To ensure access to information is freely given when needed by those who will be affected by government

[79]S. 2(7) of the Freedom of Information Act 2011.
[80]Ajanwachuku, O. (2013) Legislation and Good Governance: A Critical Analyses of Extant of Legislations on Good Governance, In: Azinge, E. and Adediran, A. (eds). *Legislating for Good Governance*, NIALS Press, Abuja. P. 318
[81]S. 140(1) and 185(1) of the Constitution
[82] S. 149 and 194 Ibid.
[83]Ajanwachuku, O. (2013) Op. Cit. p 318
[84]Article 33, para. 2 of the Charter on Democracy

policies[85]. Where a public institution denies an application for information or a part thereof on the basis of a provision of this Act, the court shall order the institution to disclose the information or part thereof to the applicant.[86] The Charter on Democracy obliged State Parties to ensure "…regularly holding transparent, free and fair election..."[87]

d. Responsiveness

This refers to the accessibility of government official and leaders. Unnecessary and burdensome bureaucracies should be done away with to ensure that request and concerns are dealt with speedily and effectively. Proper channels of communication should be established and made readily available to members of the public in order to address issues that arise in the daily course of affairs.[88]

Good Governance requires that Institutions and processes try to serve all stakeholders within a reasonable timeframe.[89] Unless the government officials and leaders are accessible good governance cannot be attained. This would make them abreast about the needs and the demands of the citizenry. Where they distance themselves from people, they hardly know their problems and provide for their possible solutions. Responsiveness also requires that needs of the people which require urgent attention should be attend to as quick as possible. The Charter on Democracy on responsiveness of a government provides thus: "State parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace".[90]

[85]Namu, G. k. (2013) Good Governance and Law Making in Nigeria. Op. Cit. P. 213.
[86]. 25(1) of the Freedom of Information Act 2011.
[87]Article 17 of the Charter on Democracy.
[88]Ajanwachuku, O. (2013). Legislation and Good Governance: A Critical Analysis of Extant Legislations on Good Governance. In: Azinge, E. and Adediran A. (eds)*Legislating for Good Governance*, NIALS Press, Abuja. P. 317
[89] Ibid. P. 316
[90]Article 13 of the Charter on Democracy.

e.Effectiveness and Efficiency

Good governance also means that process and institution produce results that meet the needs of society while making the best use of resources at their disposal. The concept of Efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of environment.[91] Effective and efficient results are provided to be produced by various institutions charged with responsibilities to meet the needs of members of the society and ensure the judicial and judicious use of resources available to them.[92] The Charter on Democracy obliged State Parties to ensure "Efficient management of public debt; prudent and sustainable utilization of public resources; and equitable allocation of nation's wealth and natural resources"[93] Other features of Good governance include Equity and Inclusiveness, Rule of law and Consensus oriented. The Culture of Democracy therefore can only be achieved when the democracy is constitutional. The Constitutional Democracy requires the elected government be responsible to the needs of the people, their rights wellbeing and safety. It also place limits on government powers. At the same time it involves in a democratic context and is a way of life based on a democratic culture.[94] This is what would make both the government officials and the ordinary citizens to live in peace and harmony.

The Culture of Democracy which the Charter on Democracy obliged its state parties to establish and strengthen through legislative and policy framework acquires legal recognition in Nigeria. Certain legal frameworks were established in Nigeria for the purpose of proper implementation of concept of governance. This includes legislative oversight vested in the National Assembly to check or control the exercise of the Constitutional powers of the executive.

[91]Ajanwachuku, O. (2013). Op. cit. P. 317
[92]Nawamu, G. K. (2013). OP. Cit. P. 213
[93]Article 33, paras. 4,5 and 6 of the Charter on Democracy
[94] Dankofa, Y. (2008). The Fallacy of Democracy in the Absence of Development and Rule of Law in Nigeria. Op. Cit. P. 161

The Constitution provides a wide range of oversight functions which include the powers to approve political nominees made by the executive, power to impeach,[95] power to control fund and conduct investigation.[96] One of the benefits of having an oversight function vested in the legislature is to keep the executive establishments responsible and accountable.[97] Where the legislature fails to dutifully and critically exercise its oversight function, room is created for the entrenchment of poor democratic values which suppress the whole concept of good governance.

3.3.2, Political Institutions

Paragraph two of Article 12 of the Chapter on Democracy obliges the state parties to "strengthen political institution to entrench a Culture of Democracy and Peace."[98] This can be achieved through viable institution of Political Parties and Labor or Trade Unions and Civil Society Organization.

i. Political parties

Democracy depends generally on political parties to offer the electorate choices among competing candidates alternative policies at election time. Political parties enable citizens to play a role in policy-making and are the principle means for the representation of electors in the national and local government. They also mobilize voters by informing and energizing their members through brochures, media, campaigns etc.[99] It is obvious that for political parties as political institutions to be able of entrenching and promoting the Culture of Democracy and peace they must develop political ideology. This means parties should work toward democratic

[95] Ss. 86, 231(1), and 238 of the Constitution
[96] S. 143 Ibid
[97] Eruaga, O. O (2013).The Role of Legislature in Good Governance.In: Azinge, E. and Adediran A. (eds) *Legislating for Good Governance*, NIALS Press, Abuja. P.339
[98] Article 12 of the Charter.
[99] Anele, K. K. (2013). Political Party Ideology and Legislation for Good Governance. In: Azinge, E. and Adediran A. (eds)*Legislating for Good Governance*, NIALS Press, Abuja. P. 239

consolidation, rather than democratic reversal. They should pay attention to generation and articulation of ideas and ideals to creation of cogent electoral agenda and programs and registration of members who are genuinely interested in what they stand for as political parties.[100] Political parties should also promote and deepen internal party democracy. This is because once people form a party and become owners of the party obviously they should dictate the tune.[101]

In order to actualize the role played by political parties in promoting good governance, the Charter on Democracy obliged State Parties to provide room for "Strengthening political pluralism and recognizing the role, rights and responsibilities of legally recognized constituted political parties, including opposition political parties, which should be given a status under national law."[102] The legal framework or legal regime of political parties in Nigeria is found in the Constitution and Electoral Act of 2010. The Constitution provides that: "No association, other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election."[103]

The Constitution also creates the Independent National Electoral Commission (INEC) and empowers it to register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly.[104] The Electoral Act, 2010 also empowers INEC to monitor critical activities of parties including candidate's nomination procedures by stating that:

> The Commission (INEC) shall monitor and keep record of the activities of all the registered political parties. The Commission may seek information or clarification from any registered political parties which may be contrary to the provisions of the Constitution or any other law,

[100] Jega, A. M. (2015). *Political Parties and Election in Nigeria*, Safari Books Ltd., Ibadan. P. 80
[101] Ibid.
[102] Article 3,Para. 11 of the Charter on Democracy
[103] S. 221 of The Constitution
[104] Para. 14 Part I of third Schedule of the Constitution.

guidelines, rules or regulations made pursuant to an Act of the National Assembly.[105]

The Electoral Act also empowers INEC to place limitation on the amount of money other assets which individual or group of persons can contributes to a political party. Also the candidates and the parties shall campaign for elections in accordance with such rules and regulations as may be determined by the INEC.[106] From these above provisions, it is possible for INEC to introduce rules that will engender the use of ideology in party campaign and therefore encouraging parties to formulate ideology that will bind members together in their bid to take over government.[107]

3.3.3. Other ways of Achieving Culture of Democracy

The Character on Democracy also mandates State Parties to "integrate civic education in their educational curricula and develop appropriate programs and activities."[108] This would make students to be knowledgeable about the norms and values of their community/society, citizenship, right and duties of citizens, human rights, democracy and its pillars, arms of governments, level of governments, respect for constituted authority, orderliness etc. And for those who do not attend schools they can also be educated through media like programs in Radio and Televisions stations about virtues that a citizen is expected to practice and vices he is to abstain. Those programs also will educate him about his duties and rights as a citizen.

Finally, relating to Culture of Democracy, the Character on Democracy encourages "State Parties to take measures to ensure and maintain political and social dialogue as well as public trust and transparency between political leaders and people, in order to consolidate

[105] S. 86 Electoral Act, 2010 (as amended).
[106] S. 90 Ibid.
[107] Anele, K. K. (2013). Political Party Ideology and Legislation for Good Governance. In: Azinge, E. and Adediran A. (eds)*Legislating for Good Governance*, NIALS Press, Abuja. P. 243
[108] Article 12 Para. 4 of the Charter on Democracy.

democracy and peace."[109] This means government should engage in public hearing before implementing some of its policies. For example, in 29th May, 2012 during President Goodluck Jonathan's administration in his democracy day national broadcast announced the renaming of a prominent national institution (University if Lagos) after the name of Chief M.K.O Abiola.[110] There was however no process of consultation with the public about merits of this policy and the appropriate manner of its implementation. The students of the University of Lagos were very unhappy with the renaming of their school without prior consultation and rose up in mass protest. Academics activities were paralyzed and the Institution shut down for a while. In the end, the policy was abandoned because it lacked legitimacy with the people.[111]

Another example is the plan of Central Bank of Nigeria governor to introduce N5000 note to convert N50 and N20 note to coins was vehemently opposed by citizenry and had to be abandoned.[112] These and many others show that absence of transparency between political leaders and the people in public policies would make the policies to suffer the crisis of legitimacy in Nigeria. The provisions of Chapter two of the Constitution if properly implemented by government would no doubt establish and strengthen the Culture of Democracy and Peace in compliance with provisions of the Charter on Democracy. Also allowing people free access to media to express their views about the policies of government and also their need and expectations from government would make the government more democratic.

3.4 Democratic Institutions

It has been argued that for democracy to achieve its goals there is need for the government to put in place measures to strengthen the nations democratic institutions and

[109] Article 13 Ibid.
[110] Ngwaba, U. (2013). Public Policy and Good Governance. Op. Cit. P. 51
[111] Ibid.
[112] Ibid.

intensify political education amongst politicians and citizens as precursor to good governance and development in Nigeria.[113] The control of armed and security forces by Constitutional civilian government ensures the consolidation of democracy and constitutional order. This would prevent military coup and suppress insurrection. The Character on Democracy provides that:

> 1. State parties shall strengthen and institutionalize Constitutional civil control over the armed forces and security force to ensure the consolidation of democracy and constitutional order.
> 2. State parties shall take legislative and regulatory measures to ensure that those who attempt to remove an elected government through unconstitutional means are dealt with in accordance with the law.
> 3. State parties shall cooperate with each other to ensure that those who attempt to remove an elective government through unconstitutional means are dealt with in accordance with the law[114].

The above provisions of the Charter on Democracy relating to Democratic Institutions would now be examined briefly.

a. Security Agencies

In Nigeria the Constitution and certain Acts of the National Assembly make provisions for the establishment and composition of the numerous security agencies and their control is vested in the President at Federal level and Governor at state level. In line with aforementioned Provisions of the Charter on Democracy the Nigerian Constitution while enumerating the functions of Armed forces provides that they should be "Performing such other functions as may be prescribed by an Act of National assembly.[115] The above provisions of the Constitution subjected the powers and functions of the armed forces to the Constitutional civilian control as

[113]Gberevbie, D. E. *Democracy Democratic Institutions and Good in Nigeria*, www.covenantuniversity.edu.org. Accessed on 24/10/17
[114] Article 14 of the Charter on Democracy
[115] S. 217(2) d of the Constitution

they must be consistent to the Act of National Assembly which is the legislation made by the representatives of the people or directives of the president who is also a civilian elected to govern the country. Even though, the Armed forces have no role to play in democratic government but their functions have been subjected by the Constitution to the directives of elected civilian Government as the Constitution also makes the President the Commander-in-chief of the armed forces who also has the power to determine the operational use of the armed forces of the federation. This is in compliance with Article 14 paragraph 3 of the Charter on Democracy mentioned above.

The Nigeria Police Force is another security agency in Nigeria which is an institution vested with power to enforce law and order, prevent and detect crimes, to apprehend offenders.[116] The institution of police force was an establishment of Constitution.[117] The Constitution subjects the duties of the police force to the Act of National Assembly.[118] The appointment of Inspector General of Police shall be made by the President on the advice of Nigeria Police Council from among the serving members of the Nigerian Police Force.[119] The Nigeria Police Force shall be under the command of the Inspector General of Police at the Federal level and at a state level under the Commissioner of Police of that state.[120] The Inspector General of police (I.G) is to receive directions with respect to the maintenance and securing of public safety and public order from the President or such other ministers as he may be authorized in that behalf. The I.G is to comply with those directions or cause them to be complied with.[121]

[116] S. 4, Police Act, Cap. P 359 *Laws of the Federation of Nigeria*, 2004
[117] S. 214(1) of the Constitution
[118] S. 214(2), Ibid
[119] S. 215(1),Ibid
[120] S. 215(2), Ibid
[121] S. 215(3), Ibid

These above legal framework highlighted indicates that Nigeria is not in contravention with provision of the Character on Democracy where it obliged State Parties to ensure constitutional civilian control over Armed and Security forces to ensure the consolidation of Democracy and Constitutional order. The Nigerian police force as an institution of government is vested with power to enforce law and order including during the period of elections in Nigeria. The major functions of the police at elections include: guaranteeing safety and peace throughout the election process, safeguarding the security of personnel, materials and venues for voter registration; safeguarding the security of the life and property of citizens during voters' registration, political campaign and voting and ensuring the safety of electoral officers before, during and after elections.[122] However, in spite of these able functions of the police in the electoral process there have been several complaints by members of the public and politicians that the police force in the country does not maintain impartiality in dealing with all political parties. In some instances the police often issue instruction against the opposition by not granting them permit to hold political rallies encourage policemen on electoral duty to intimidate and harass people on the day of polling.[123]

b. **National Institution for Legislative Studies (NILS)**

Article 15 of the Character on Democracy mandates state parties "to establish public institutions that promote and support Democracy and Constitutional order" which would be independent and autonomous.[124] The institutions are to be accountable to a competent national organ and resources to be made available for them to efficiently perform their assigned mission. To this end, former President Goodluck Jonathan signed into law the National Institute for

[122]Gberevbie, D. E. *Democracy Democratic Institutions and Good in Nigeria*, www.covenantuniversity.edu.org. accessed on 24/10/17
[123] Ibid
[124] Article 15 Para. 1 and 2 of the Charter on Democracy

Legislative Studies Act 2011 on 2nd March, 2011 following the passage of the same by the Senate and the House of Representatives. This is an organ of the National Assembly of Nigeria established by an Act of parliament. It builds on the success of the Policy Analysis and Research Project (PARP) established in 2003 as a capacity building institution of the National Assembly with the financial support of the African capacity building foundation (ACBF). For about seven years of PARP has helped to strengthen the capacities of Legislators and ensure that the positions and proposals advanced by the National Assembly are informed by requisite research and analytical support. The NILS offers professional and academic training in legislative studies, parliamentary administration and legislative drafting as part of its mandate to provide opportunities for continuing education in Democracy and Legislative processes and improvement of the capacity of Legislators and legislative staff in their practice and procedure.[125] This is in line with provision of the Charter on Democracy which provides that: "State Parties shall establish institution that promote and support democracy and Constitutional order."[126] The Nigerian National Assembly under its general power to conduct investigation[127] is the competent body capable of conducting investigation into affairs of NILS. Nigeria is in compliance with afore mentioned Article by establishing the NILS.

3.5 Democratic Elections and Other Related Norms

Elections are central institutions of democratic representative governments. In democracy, the authority of the government is derived solely from the consent of the people. The principal mechanism for translating that consent into government authority is the holding of free

[125] Ibid.
[126] Article 15 para. 1 of the Charter on Democracy
[127] S. 88 of the Constitution.

and fair election.[128]All modern democracies hold elections but not all elections are democratic. Jeanne Kirkpatrick, a scholar and former U.S ambassador to the United Nations defines Democratic Elections as"the elections that are competitive, periodic, inclusive, definitive election in which the chief decision-makers in government are selected by citizens who enjoy broad freedom to criticize government, to publish their criticism and present alternative"[129]

The Charter on Democracy therefore, encourages state parties to:

> "…re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with African Union's Declaration on the principles governing democratic election in Africa."[130]
>
> To this end state parties shall:
>
> 1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of the election.
> 2. Establish and strengthen national mechanisms that redress election related disputes in a timely manner.
> 3. Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.
> 4. Ensure that there is binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the elections or challenge them through exclusively legal channels.[131]

In line with aforementioned provisions, the following bodies were established for management of elections and election disputes resolution in Nigeria.

[128]*The Benchmark of Elections*. Available at www.usa.usembassy.de Accessed on 10/11/2017
[129] Ibid
[130]Article 17 of the Charter on Democracy
[131] Ibid

a. Independent National Electoral Commission (INEC)

The Independent National Electoral Commission is the mechanism put in place by Nigerian Constitution for the smooth conduct and enthronement of political leaders through periodic elections.[132] This is in line with article 17 paragraph 1 of the Charter which provides that"States Parties shall establish and strengthen independent and impartial national electoral bodies responsible for the management of elections"[133]

The independence of the electoral body must be a reality not only in name. Therefore, INEC in Nigeria must be seen as independent of partisan bias or control, even of the incumbent administration. This relates to the selection of its members, the autonomy of its budget and the authority it exerts to enforce the election laws and regulations. The reforms must extend down through the state and local government levels. The system for counting and aggregation of votes must be made more transparent and verifiable. There must be evidence of prosecution of violators. A climate of impunity will undo the best rules or regulations.[134]

The INEC is made-up of the Chairman 12 Commissioners at the federal level and a Resident Electoral Commissioner for each state of the federation and Federal Capital Territory, Abuja.[135] The appointment of the INEC Chairman and its members is to be made by the President subject to the confirmation by the Senate.[136] However, the danger in this arrangement is that where a ruling political party secures majority of seats at the Senate, the President's choice of nomination of candidates in to the INEC could easily be approved to support the course

[132] S. 153(1) of the Constitution
[133] Article 17para. one of the Charter
[134] Frances, O.I. (2013). The Role of INEC in Fostering Good Governace. In: Azinge E. and Adediran A. (eds) Op. Cit. P. 278
[135] S. 14(1) and (2) Third Schedule, pt. 1 of the Constitution
[136] S. 154(1) of the Constitution

of the ruling party at subsequent elections.[137] This would eventually robe the INEC its feature as independent of partisan bias or control. This in fact was the case with People Democratic Party (PDP) when it was the ruling party during the approval of the appointment of Professor Morris Iwu as the Chairman of INEC by the former President Olusegun Obasanjo. The scenario actually played out in the conduct of the 2007 general election that was widely acclaimed to have been rigged in favor of the ruling party and acknowledged by the then elected late President Musa Yar'adua, and local and international communities.[138] INEC has also been classified by Constitution as a Federal Executive Body.[139] This brings it under the over sight of the executive arm of government. The funding of INEC unlike the Judiciary, the funds needed for elections and running of the commission are not charged on the consolidated fund. The INEC has to submit its budget to the executive for approval after which they are passed with the national budget.[140]

INEC as the electoral body vested with the duty of ensuring that elections are conducted as at when due and has a major role to play before, during and after the elections. Some of these duties provided by the Constitution include:-

a) Organize, undertake and supervise all elections to the office of the president and vise-president, the governor and deputy governor of a state, and the membership of the senate, the House of Representatives and the House of Assembly of each state of the federation.
b) Register political parties in accordance with provision of the Constitution and an Act of National Assembly.

[137] Gberevbie, D. E. *Democracy Democratic Institutions and Good in Nigeria*, www.covenantuniversity.edu.org. 24/10/17
[138] Ibid
[139] S. 153 of the Constitution
[140] Frances, O.I. (2013). The Role of INEC in Fostering Good Governace. In: Azinge E. and Adediran A. (eds) Op. Cit. P.278

c) Monitor the organization and operation of the political parties including their finances.
d) Arrange for the annual examination and auditing of all funds and accounts of political parties and publish a report on such an examination and audit for public information.
e) Arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this constitution.
f) Monitor political campaigns and provide rules and regulations which shall govern the political parties.
g) Ensure that all electoral commissioners, electoral and returning officers take and subscribe the oath of office prescribed by law.
h) Delegate any of its powers to any Resident Electoral Commissioner and it carry out such other functions as may be conferred upon it by an Act of the National Assembly.[141]

The roles of INEC in promoting the legitimacy of elections by reducing political corruption is further elaborated by the Electoral Act 2010 which states that INEC shall have power to: - (a) Conduct voter and civic education, (b) Promote knowledge of sound democratic election processes and (c) Conduct any referendum required to be conducted pursuant to the provision of the 1999 Constitution or any other Law or Act of the National Assembly.[142] The above provisions of the Constitution and Electoral Act are all meant to protect and preserve the integrity of the electoral body in Nigeria (INEC) with aim of achieving free and fair election which end is having competent, credible and responsible persons as leaders of the country who ensure good governance and development.

[141] S. 15(a-i) 3rd Schedule, pt 1 of the Constitution
[142] S. 2, Electoral Act, 2010

b. Establishment of Election Tribunals or Courts

The Charter on Democracy under Article 17 paragraph two obliges the state parties to "establish and strengthen national mechanism that redress election related disputes in timely manner."[143] In Nigeria regarding elections' disputes resolution the electoral Act provides that:

> No election and return at an election under the Electoral Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return presented to the competent Tribunal or Court in accordance with the Constitution or Electoral Act, and in which the person elected or returned is joined as a party.[144]
> The Tribunal or Court means Court of Appeal in case of Presidential election and election Tribunal established under the Constitution or Electoral Act in the case of any other election. [145]
> The election tribunals shall be constituted not later than 14 days before the election and when constituted open their registries for business 7 days before the election. [146]

The Courts with original jurisdiction to hear and determine election dispute in Nigeria are:

> The Court of Appeal shall to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question or to whether:
> Any person has been validly elected to the office of President or Vice President under the Constitution or The term of office of the president or Vice President has ceased or that office becomes vacant.[147]

The Constitution also establishes National and State House of Assembly Election Tribunals for each state of the federation and Federal Capital Territory Abuja and Governorship Election Tribunal. It provides thus:

> There shall be established for each state of the federation and Federal Capital Territory Abuja one or more election tribunals to be known as the National and State House of Assembly Election Tribunals which shall to the exclusion of any other court or tribunal have original jurisdiction to hear and determine petitions as to whether:

[143] Article 17 paragraph two of the Charter on Democracy
[144] S. 133(1), Electoral Act, 2010
[145] S. 133(2), Ibid
[146] S. 133(3), Ibid
[147] S. 239 of the Constitution

a. Any person has been validly elected as a member of the National Assembly or
b. Any person has been validly elected as a member of the State House of Assembly of a state.[148]

The Constitution also provides thus:

> There shall be established in each state of the federation an Election Tribunal known as Governorship Election Tribunal which to the exclusion of any other court or tribunal shall have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a state.[149]

The Constitution vested jurisdiction in the Court of Appeal in Nigeria to hear and determine appeal on election matters where it provides that: "The Court of Appeal has power to hear and determine appeal from decisions of the National and State Houses of Assembly Election Tribunal and decision of the Governorship Election Tribunals."[150]

The Supreme Court of Nigeria has power to hear appeal as to whether any person has been:

i. Validly elected to the office of the President or Vice President
ii. Whether the term of office of President or Vice President has ceased or his office has become vacant.
iii. Whether any person has been validly elected to the office of Governor or Deputy Governor or his term of office ceased or his office becomes vacant under the Constitution.[151]

The above courts are recognized by the Constitution to resolve election matters. Other courts may also be established to resolved election matters. For examples the Electoral Act of 2010 provides that:

> The shall be established for the Federal Capital Territory one or more Election Tribunal which shall to the exclusion of any other court or

[148] S. 285(1) Ibid
[149] S. 285(2) Ibid
[150] S. 246(2) b and c Ibid
[151] S. 246(1) b and c Ibid

> tribunal have original jurisdiction to hear and determine any question as to whether:
> Any person has been validly elected to the office of Chairman, vice chairman or councilor, or their term of office ceased or the seat of a member of an Area Council has become vacant.[152]

The above provisions of Constitution and the Electoral Act 2010 are meant to ensure that there is a binding code of conduct and laws governing legally recognized political stakeholders, government and other political actors prior, during and after elections. And those political stakeholders are to accept the results of election or challenge them in through exclusively legal channels in line with requirements of the Charter on Democracy. [153] For example, in the case of *Amaechi v INEC*, [154] the Supreme Court of Nigeria held that the substitution of Omehia for Ameachi was not done in accordance with law and consequently he was the candidate of the People's Democratic Party (PDP) for whom the party campaigned in the April 2007 election and since PDP was declared to have won the said election Amaechi must be deemed the candidate that won the election for the PDP in the eyes of law Omehia was never a candidate in the election much less the winner. Also in *Peter Obi v INEC*[155] the Supreme Court of the land held that with reference to sections 184 and 285 of the Constitution that the four years term of office of the plaintiff commenced on 17/3/2006 when he first took the oath of office. His term will not expire until 17/3/2010.

c. Media, National and International Observers

Transparency is an essential attribute of democratic Elections. Media play an important role in making elections more transparent. In order to ensure freedom of expression and equality before the law of all legally recognized political parties, the Charter on Democracy obliges the

[152] S. 135(1), *Electoral Act*, 2010
[153] Article 17 para. 4 of the Charter on Democracy
[154] (2008)ALL FWLR pt 407
[155] (2007)11 NWLR pt1046

state parties to "ensure fair and equitable access by contesting parties and candidates to state controlled media during elections."[156] While seeking the establishment or strengthening of national electoral bodies, mechanisms to settle contested elections, free and equal access for all candidates to media outlets, and a code to govern the conduct of elections, including processes for post-election issue.[157] This can be found also in Nigeria under section 39 of the Constitution which provides for the freedom of expression and the press.

The Charter on Democracy obliges the "state parties to inform the African Union Commission of scheduled elections and invite it to send an electoral observer mission. The state party shall guarantee conditions of security, free access to information, non–interference, freedom of movement and full cooperation with the electoral observer mission."[158] It also provides that "State parties shall create conducive environment for independent and impartial national monitoring or observation mechanisms." [159]Before the commencement of each election, "state parties must negotiate with legally recognized political parties and other political players about adopting a code of conduct by means of which they will promise to accept the result of the election or contest them by exclusively legal means."[160] The participation of African Union (AU) in the electoral process is done through the Department of Political Affairs of the Commission. The state parties are to inform the executive body of AU about the date of the election and to invite them to send observer mission to that country. Once the invitation is accepted, a

[156] Article 17 para 3 of the Charter on Democracy
[157] Glean, P. J (2012) *Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Election and Governance*, African Journal of Legal Studies, www.bril.nl/ajls. Accessed on 22/1/2018
[158] Article 19 of the Charter on Democracy
[159] Article 22 Ibid
[160] Article 17 para 4 Ibid

memorandum of understanding is signed with commission of AU in accordance with its principles and relevant laws of the host state.[161]

The Department of Political Affairs must place the necessary materials and human means for their proper management at the disposal of the observation mission. In particular it must ensure that the electoral battles are conducted in an objective, impartial and transparent manner. At the end of the observation mission, draws up a report which it submits to the chairman of the Commission within a reasonable period. The Chairman also prepares a report on the election and the following activities suggested by the observer mission which is then communicated to the member states of the AU and made public.[162] The Charter on Democracy also obliges the state parties to allow independent and impartial national monitoring or observation mechanism. This gives room to Non-Governmental Organizations and other civil societies to participate in the observation and monitoring of an election.

Relationship between Elections and Democracy

In Democracy, the authority of the government is derived solely from the consent of the people. The principal mechanism for translating the consent in to the government authority is holding of free and fair Elections periodically. Every Democracy as a political system employs Elections as part of the Democratic Processes. However if the Elections are corrupt in the process, it is clear that Democracy based on the Elections may be fraud. Elections require the existence of multiparty system so that citizens make a political decision by voting among the competing

[161] Sakai, I.(2007). A *Critical Look at the Charter on Democracy, Election and Governance*, www.sarpn.org. Accessed 25/10/2017

[162] Ibid

candidates fielded by various political parties holding divergent views and presenting different alternatives.[163]

The Relationship between Elections and Democracy provided under the Charter on Democracy can be seen under the following items:

i. Citizens' participation. Article 4 Paragraph two of the Charter on Democracy provides that: "State parties shall recognize popular participation through universal suffrage as the inalienable right of the people".[164] This means people are allowed under democratic government to freely participate in decision making about their leaders that best represent their collective interest.

ii. Equality, there shall be equality before the law and equal opportunity to vote and to be voted for without regard to one's race, gender, ethnic or religious background.[165]

iii. Political tolerance. Ruling class should be mindful of the interest of minority. To ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.[166]

iv. Regular free and fair Elections. In Democratic system of government, leaders are elected for a certain period. This means at the expiration of the period citizens will be given another opportunity to vote out the incompetent

[163]Mesfin, B. (2008) *Democracy, Elections and Political Parties*, www.issafrica.org. accessed on 11/3/2021:4:50pm
[164] Article 4, Paragraph 2, Charter on Democracy
[165] Article 8, Ibid
[166] Article 17 paragraph 3, Ibid

leaders.The Charter on Democracy obliged state parties re-affirm their commitment to regularly holding transparent, free and fair elections…[167]

v. Multiparty system. In representative Democracy, there shall be more than one political party. This will give people room for voting candidates of their choice among the various contestants. Political parties offer the electorates choices among competing candidates alternative policies at election time.[168]

3.6 Political Economic and Social Governance

The Charter on Democracy under Chapter Nine, Articles 27 to 43 makes provisions for political, Economic and Social Governance. The centrality of elections to democratic process cannot be over-emphasized, but democracy is not wholly centered in election for democracy to evolve good governance, it must be liberal and participatory. Only in a free society with opportunity of free participation and respect for citizen right can good governance be achieved.[169] Good governance includes the capacity to formulate and implement sound policies, and the respect of citizens and the state for the institutions that govern economic and social interaction. Good governance has been closely linked to the extent to which a government is perceived and accepted as legitimate, committed to improving the public welfare and responsive to the needs of its citizens, competent to assure law and order and deliver public services able to create an enabling environment for productive activities and equitable in its conduct.[170]

[167]Article 17 of the Charter on Democracy.
[168] Article 3 paragraph 11, Ibid
[169]Arowole, D. E. and Aluko O. A. Democracy Political Participation and Good Governance in Nigeria, *International Journal of Development and Sustainability*, www.isdnet.com. Accessed on 15/11/2017
[170] Ibid

Moreover, the governance should create an environment that would allow local and foreign investors to participate in the economy of the country through enabling legislative and regulatory framework which will generate productive employment and mitigate or eradicate extreme poverty. The governance should be mindful in the integration of traditional authorities in some of its policies particularly in rural communities and also ensuring the literacy of rural inhabitants including citizens above compulsory school age.[171] It is against this background that the Charter on Democracy makes provisions obliging the state parties to promote and advance political, economic and social governance.

3.6(a). Political Governance

In order to promote political governance in Africa, the Charter on Democracy obliges the state parties to "strengthen the capacity of parliament and legally recognized political parties to perform their functions."[172] Parliament is the body that comprises representatives of the communities from different parts of a nation. The parliament in Nigeria is known as National Assembly which comprises the Senate and House of Representative at the Federal level while at the state level it is known as State House of Assembly. The compositions, qualification for election into the National Assembly are provided for in the Constitution. It is also the body vested with legislative power at the Federal level in Nigeria.[173] The Charter on Democracy also provides that:

> State parties shall strive to institutionalize good political governance through:
> 1. Accountable, efficient and effective public administration;
> 2. Strengthening the functioning and effectiveness of parliament;

[171] Ibid
[172] Article 27 para. 1 of the Charter on Democracy
[173] S. 4 of the Constitution

3. An independent judiciary
4. Relevant reforms of public institutions including security sectors;
5. Harmonious relationship in society including civil-military relations;
6. Consolidating sustainable multiparty political system;
7. Organizing regular, free and fair elections; and
8. Entrenching and respecting the principle of the rule of law.[174]

This postulates that the state is not a natural institution, but an artificial device invented by men for their mutual benefit it is intended to serve the interest of citizens since it is the product of the society.[175] The society is dynamic and therefore, the legal and justice system require regular reforms in order to meet the current need of the society. The Charter on Democracy obliged the state parties to undertake that reforms. [176] The Charter on Democracy also obliges state parties "to protect human rights, promote strong partnership and dialogue between government, civil society and private sectors."[177] State parties are also to promote citizen participation in the development process through appropriate structures. The government therefore, must be responsible to the needs of the people, their rights, wellbeing and safety. The government should be constitutional and it evolves in democratic context and is a way of life based on a democratic culture.[178] State parties must commit themselves to strengthening the capacity of parliaments and legally recognized political parties to perform their core functions, fostering popular participation and partnership with civil society. They should also undertake regular reforms of the legal and justice systems. Improving public sector management,

[174] Article 32 of the Charter on Democracy
[175] Musa, I. (2015) An Appraisal of Public Policy and Good Governance in Nigeria.In: Danladi, K. M. (ed) *Law Making Challenges and Good Governance in Katsina State*, Clear Resolution, Garki, Abuja. P. 162
[176] Article 27 para. 3 of the Charter of the Charter on Democracy
[177] Article 28 Ibid
[178] Dankofa Y. (2008) The Fallacy of Democracy in the Absence of Development and Rule of Law in Nigeria. Op. Cit. p 156

Improving efficiency and effectiveness of public services and combating corruption should also be ensured by state parties. They should also ensure promoting the development of the private sector through enabling legislative and regulatory framework. Promoting freedom of expression, in particular freedom of press and fostering a professional media, Harnessing the democratic values of the traditional institutions, Preventing the spread and combating the impact of diseases such as Malaria, Tuberculosis, HIV/AIDS, Ebola fever, and Avian Flu[179].

The Charter on Democracy also recognizes the importance of dialogue and partnerships between all components of society, including between public and private sectors and civil society, and encourages interactions between these different groups as a way to further the goals of democratic governance. A broad inclusion within this dialogue is also important, and the Charter contains specific provisions mandating the inclusion within the political sphere of groups traditionally left on the outside looking in, including women, youth, and the disabled.[180]

The Charter on Democracy encourage the state parties to generally be mindful about the basic needs of the society by ensuring human rights, preventing the spread and combating the impact of diseases such as malaria, HIV/AIDS, Ebola, etc. consolidating sustainable multiparty political system and strengthening the capacity of legally recognized political parties to perform their function. By political governance therefore, the people will feel a sense of belonging.[181]

[179]Kane, I. The Implementation of the African Charter on Democracy and Governance, www.mercury.ethe.ch, accessed on 12/4/2018

[180] Ibid

[181] Glean, P. J (2012) Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Election and Governance, *African Journal of Legal Studies*, www.bril.nl/ajls. Accessed on 22/1/2018

3.6(b) Economic Governance

The growth and stability of economic institutions of a state determine its development and sustainability. The Charter on Democracy obliges the state parties to institutionalize good economic and corporate governance through:

i. Effective and efficient public sector management
ii. Promoting transparency in public finance management
iii. Preventing and combating corruption and related offences
iv. Poverty alleviation
v. Enabling legislative and regulatory framework for private sector development
vi. Providing a conducive environment for foreign capital inflow.
vii. Elaborating and implementing economic development strategies including private – public sector partnership.
viii. An efficient and effective tax system premised upon transparency and accountability.[182]

What this implies is that state parties must ensure that measures to combat business-related corruption are part of corporate governance structure systems and processes. As such, anti-corruption mechanisms must not only check public sector corruption but also focus on private sector activities.[183] The effect of corruption in developing economy is increase in poverty, illiteracy, insecurity, failure of institutions and generally lack of development.[184] In Nigeria, the Constitution in its preamble among others states '…promoting the good governance and welfare of all persons in the country on principles of freedom, equality and justice…' In Nigeria prior to the adoption of Charter on Democracy by AU there has been many laws aiming at abrogating corruptions and corrupt practices. For example, Money Laundering (Prohibition) Act 2004,

[182] Article 33 of the Charter on Democracy
[183] Adeola, R. (2017) Business and Corruption in Africa: The Relevance of Charter on Democracy. In:Matlosa, k. (ed)*African Governance Architecture*, Lotus Printing, Addis Ababa, Ethiopia. P. 34
[184] Abdulkarim, S. B. (2015) Administration and Good Governance as Impetus for Development in Nigeria.In: Danladi, K. M. (ed) *Law Making Challenges and Good Governance in Katsina State*, Clear Resolution, Garki, Abuja. P. 53

Advance Fee Fraud & Fraud Related Offences Act 2006 and EFCC Act among others. The EFCC is empowered to investigate, prevent and prosecute offenders who engage in money laundering, embezzlement, bribery, looting and any form of corrupt practices[185]. Those ideals were a mirage for majority of Nigerians. Corruption is the greatest obstacle to economic and social development.[186] In Nigeria, the Constitution provides for the economic objectives and the state shall "control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity."[187] However, research reveals that on the ability of periodic elections to curve corruption found out that the electoral system is inefficient and the Economic and Financial Crime Commission (EFCC) is not an unbiased. It has been revealed that over N148 billion was an illegal profit from sales of kerosene bid by the department of Petroleum Resources between January and September 2014 only. The illegality was raised by the former governor of the Central Bank of Nigeria (CBN). This was assumed to be the cause of his suspension from office.[188]

Therefor to achieve economic governance in line with provisions of Charter on Democracy, government must create job opportunity by allowing private sectors to freely participate in the economy and deal with corrupt practices among private and public sectors indiscriminately.

3.6(c). Social Governance

A society devoid of laws and regulation governing its conduct and a body responsible for the implementation of those laws is liable to decay and it will also be in a state of anarchy.

[185]Art. 46 EFCC Act 2004
[186]Abdulkarim, S.B. (2015) Op. Cit. P 53
[187] S. I6(1)b of the Constitution
[188]Abdulkarim, S. B. (2015) Administration and Good Governance as Impetus for Development in Nigeria. Op. Cit. p53

Government must introduce different policies backed by laws and ensure their fair and proper implementation for the preservation and good being of the society. To this end, the Charter on Democracy encourages the state parties to "promote peace, security and stability in their respective countries, regions and in the continent by fostering participatory political system with well-functioning and if need be inclusive institution."[189] The Charter on Democracy further obligates states to take measures on other social issues, including the promotion of free, universal, and compulsory primary education, improving literacy rates, increasing access to basic social services, the protection of the environment, alleviation of poverty, and the implementation of health programs to combat the scourges of disease in Africa.[190]

State Parties shall "promote a culture of respect, compromise, consensus and tolerance as a means to mitigate conflicts, promote political stability and security and to harness the creative energies of the African peoples."[191] State parties shall undertake to provide and enable access to basic social services to the people and to "provide free and compulsory basic education to all especially girls, rural inhabitants, minorities, people with disabilities and other marginalized social groups." To achieve social governance, state parties shall generate employment opportunities and meet the basic needs of the people, achieve food security by massively investing in agriculture, investing in education, establish an effective macro-economic framework that attracts investment and effective public service.[192]

[189] Article 38 para. 1 of the Charter on Democracy
[190] Glean, P. J (2012) *Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Election and Governance*, African Journal of Legal Studies, www.bril.nl/ajls. Accessed on 22/1/2018
[191] Article 39 of the Charter on Democracy
[192] Dankofa Y. (2008) The Fallacy of Democracy in the Absence of Development and Rule of Law in Nigeria. Op. Cit. p 157

The provision for social governance is provided for under chapter two of the Nigerian Constitution under the social objectives,[193] and also educational objectives. [194] It is also provided for under the general provisions of Chapter four of the Constitutions which is on human rights. In making of rules for socio-political governance in Nigeria, political leadership specifically has a positive duty to always make a judicious use of what is popularly regarded in moral and political philosophy as public reason. Public reason requires that the moral or political rules that regulate common life of the people be in some sense justifiable or acceptable to all those persons over whom the rules purport to have authority.[195]

The social governance is premised on provision of social amenities by the government through policies which are backed by laws that provide the social needs of the people of the state. Thus Nigerian legislators have a positive duty to make laws that all things considered, have a high propensity of extending the course of greater good in society, or a positive duty to modify appropriately, if need be, existing laws such that they come to promote the course of the greater good in the society.[196]

3.7 Rights to Democracy and Elections

International community has recognized rights to Democracy and Elections to be part of enforceable rights under International Laws. In Africa, the Charter on Democracy has made provisions relating to Unconstitutional Changes of Government and their Sanctions. Democracy and peace are both prerequisite for sustainable development. The mutually reinforcing inter-linkages between democracy and peace in Africa are indisputable. However, support for

[193] S. 17 of the Constitution
[194] S. 18, Ibid
[195][195] Badru, R. O and Ayobani, J. O (2017) Political Ethics and Democratic Sustainability in Nigeria: Exploring a Constructive Synergy, *African Journal of Democracy and Governance,* Vol. 4, No 1 p.159
[196] Ibid

democracy and sustainable peace in some African countries is hindered by protracted and violent conflict including civil war mostly resulting from unconstitutional changes of government.[197] In its mission of Democracy promotion and Peace building, the African Union (AU) has built an expansive and robust normative framework, coupled with mechanism and institutions to implement this framework. Unlike the Organization of African Unity (OAU) Charter[198] which embraced the doctrine of non-interference in the internal affairs of member states, the AU Constitutive Act[199] embraces a new doctrine of non-indifference to human rights abuses within the territory of AU member states. This doctrinal shift has emboldened the AU in its democracy promotion and peace building mandate especially in fragile and conflict affected states.[200] The African Union Constitutive Act together with the 2000 Lome' Declaration and the African Charter on Democracy, Election and Governance of 2007 constitute the building blocks for the protection and promotion of Democracy. African Union (AU) has developed a specific institutional set-up the Peace and Security Council, which deals with conflict prevention and Unconstitutional changes of government in a systematic and firm manner.[201]

3.7.1 Unconstitutional Changes of Government and its Sanctions

The Charter on Democracy prohibits unconstitutional change of government with aim of preserving the constitutional order of contracting states and particularly to put an end to the seizing of power by the army or other non-state groups. It specifies that any amendment or revision of Constitutions or legal instrument, which affects the principles of democratic

[197] *Promoting Democracy and Peace in Africa: The Role of African Union.* www.idea.int. Accessed on 20/11/2017
[198] OAU Charter, 1963
[199] AU Constitutive Act, 2000
[200] *Promoting Democracy and Peace in Africa: The Role of African Union.* www.idea.int. Accessed on 20/11/2017
[201] Ibid

changeover also constitutes an unconstitutional change of government.[202] The Charter on Democracy considers the following means of accessing or maintaining power to constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union. It provides thus:

> 1. Any putsch or coup d'état against a democratically elected government.
> 2. Any intervention by mercenaries to replace a democratically elected government.
> 3. Any replacement of a democratically elected government by armed dissidents or rebels.
> 4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular election or
> 5. Any amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government.[203]

The Charter on Democracy also provides that:

> When a situation arises in a state party that may affect its democratic political institutional arrangements or the legitimate exercise of power, the Peace and Security Council shall exercise its responsibilities in order to maintain the constitutional order in accordance with relevant provisions of the protocol relating to the establishment of the Peace and Security Council of the African Union.[204]

A careful look at the above provisions of the Charter on Democracy reveals that it contains a broader conception of what will constitute an "unconstitutional change" in government and this language hopefully signals an intent to more actively pursue autocrats that hold power through unconstitutional means such as by the elimination of term limits or the manipulation of election not just those who come to power through coups d'état. Moreover, with advent of the Peace and

[202] Kani, I. (2007) *TheImplimentation of the African Charter on Democracy Election and Governance*. www.mercury.ethe-ch. Accessed on 15/10/2017
[203] Article 23 of the Charter on Democracy
[204] Article 24 Ibid

Security Council, the Charter on Democracy wisely places determinations of actions to be taken in the hands of that body.[205]

The Charter on Democracy also is heavily focused on Constitutionalism, grounding state authority in written constitutions and binding future action by that constitution. It requires the A.U members to entrench the principle of the supremacy of the constitution in the political organization of the state. And it requires that no amendment or revision of the constitution be made except on the basis of consensus and places special emphasis on referendum as the vehicle for amendment.[206] This means that the whims of a sitting autocrat are insufficient to effect this change and if the attempt is made to alter the constitutional scheme of the state, that will provide grounds for sanctions by the AU against the offender. The AU and its member states are moving away from a conception of sovereignty that will bar outside intervention in all circumstances as the Charter on Democracy contemplates an activist role for the Peace and Security Council in not only restoring democratic governance but also in ceasing any moves towards an Unconstitutional changes in government.[207] Even though, there was no any of the forms of unconstitutional change of government experienced in Nigeria between the period of 2011 to 2o15, but it occurred in some few African countries which may be discussed below. Legal framework also was made available for dealing with unconstitutional changes should in case happen in Nigeria.

3.7.2 Forms of Unconstitutional Change of Government

The Unconstitutional changes of government in Africa which is repugnant to democratic consolidation and peace take three forms namely:

[205] Glen, P.J. (2012) *Institutionalizing Democracy in Africa: A Comment on African Charter on Democracy, Election and Governance*. www.georgetown.edu. 23/10/2017
[206] Ibid
[207] Ibid

i. Military coups

The Charter on Democracy considers military coup as an Unconstitutional Change of Government. It provides thus: "Any putsch or coup d'état against a democratically elected government."[208] The military coup proper is unconstitutional change of government. It is where members of the army depose the incumbent political leader and put in place a military led government. For example, in Guinea Bissau it took place in 2009 and 2012, Niger in 2010 and Mali in 2012.[209] The responses and sanctions by African Union in the above countries are: In the case of Niger, the AU responded immediately by suspending the country. The intervention by AU in Niger led to appointment of transitional authority under M. Danda on 1st March, 2010 and it was followed by appointment on 7th April, 2010 of transitional council to organize election and it was held in January 31, 2011.[210]

ii. Tenure Prolongation Through Constitutional Revisions

This is another strategy often employed in African leaders to disguise Unconstitutional change of government which also Charter on Democracy prohibit as thus: "Any amendment or revision of the constitution or legal instruments which is an infringement on the principles of democratic change of government."[211] For example, in Nigeria Olusegun Obasanjo attempted constitutional amendment for his third term agenda in 2006 but it was failed. But in Cameroun, PaulBiya successfully amended the Constitution in 2008 and eventually his tenure was prolonged. Similarly, in 2010 Isma'il Omar Guelleh of Djibouti was successful in tenure elongation through constitutional revision.[212] The response of AU in this regard is uninterested.

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[208] Article 23 para 1 of the Charter on Democracy

[209] Ayele, D. S. *Unconstitutional Change of Government and Constitutional Practices in Africa*. www.sites.tufts.edu. Accessed on 22/11/2017

[210] Omotola, J. S. *Unconstitutional Change of Government in Africa.* www.files.ethz. Accessed on 22/11/2017

[211] Article 23 para 5 of the Charter on Democracy

[212] Omotola, J. S. (2011) *Unconstitutional Change of Government in Africa.* www.files.ethz. Accessed on 22/11/2017

For example, in Niger when president Tanja unilaterally dissolved constituted parliament in 2009 in order to facilitate constitutional amendment removing term limit, AU did not intervene until the military trapped the government.[213] Another example is found in Burundi, President Pierre Nkurunziza revised the country's Constitution in April 2015, to run for a disputed term continued through 2017. This led to political crises in Burundi resulting in numerous killing, disappearances, and abductions, acts of torture, rapes and arbitrary arrest.[214]

iii. Failure to Concede Power to Wining Party

Some incumbents lost elections in Africa but refused to accept defeat and concede power to their opponents. They therefore, deliberately engineer post-election violence that will help them remain in power at any cost. This led to one of the emerging mechanism for resolving post-election conflicts in Africa as power sharing. This was the case in Kenya and Zimbabwe. In Kenya post-election violence in 2008 called the attention of foreign dignitaries to restore stability and resolve political impasse between the disputing parties. The negotiation ended with establishment of coalition government that created the position of prime minister from opposition party between 2008 and 2013.[215] Similarly, in year 2008-2009, negotiation between leading party and opposition party led to power sharing between two disputing parties in Zimbabwe.[216] The post-election violence in Co'te d Voire appeared for a time to confirm to this pattern until the final forceful removal of Gbagbo from power by the French/UN and Republican

[213] Ibid
[214] *We Will Beat YOU to Correct You: Abuse Ahead of Brundi's Constitutional Referendum.* Available at www.hrw.org. Accessed on 8/8/2018
[215] Jeremy, H. (2013) *Kenya's Experience with Power Sharing*, www.dartmouth.edu. Accessed on 12/7/2018
[216] Noack, R. *How Zimbabwe's Mugabe Clung to Power almost 40 Years*. www.washingtonpost.com. Accessed on 10/8/2018

forces.[217] Another example is that of Gambia where the president Jammeh refused to accept defeat and it led to post election crises.[218]

In Nigeria, the Constitutional Supremacy has been provided in section one, it also provides that "the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution."[219] The Constitution also provides that the Federal Republic of Nigeria shall be a state base on principles of democracy and social justice.[220]To this end, the Constitution provides for the election to be means of acquiring power as a President or Governor of a state.[221] It also provides that a person can only be a legislative member through elections.[222] Therefore, taking over the government in Nigeria through the form of war or trying to overthrow the government of the day is unconstitutional and in Nigerian law is categorized under the offence of treason. Also performing acts that are related to treason is regarded as treasonable felony. The former carries death sentence while the latter is punished by life imprisonment.[223]

The law provides that anyone who levies war against the state in order to intimidate or overthrow the president or government of a state is guilty of treason and should be punished by death. It is also treason to conspire with others, either within or outside Nigeria to levy war against Nigeria,[224] or instigate a foreigner to invade Nigeria with an armed force[225]. While with

[217]Ayele, D.S. *Unconstitutional Change of Government and Constitutional Practices in Africa*. www.sites.tufts.edu. Accessed on 22/11/2017
[218] Jaw, S. M. (2017) The Gambia's Post-Electoral Crises and Lesson for Africa, *African Governance Newsletter*, V. 4. NO. 1 P. 18
[219] S. 1 of the Constitution
[220] S. 14(1) Ibid
[221] S. 131 and 177 Ibid
[222] S. 47 and 65 Ibid
[223] S. 37 to 43, *Criminal Code Law*
[224] S. 37 Ibid
[225] S. 38 Ibid; *EnahoroVs Queen*(1965)1 ANLR

regard to treasonable felony, the law provides that anyone who becomes an accessory after the fact to treason or has its knowledge but did not report to the appropriate authorities is guilty of treasonable felony and would be punished by life imprisonment.[226] This indicates that Nigerian laws also prohibits unconstitutional changes of government and also provide punishments for its perpetrators.

3.7.3 Sanctions for Unconstitutional Change of Government

The Charter on Democracy provides for various types of sanctions to be imposed on the offender of Unconstitutional Changes of Government either on the State or individuals that are responsible for that reprehensible act. They include:

A. Suspension from AU

The African Union has been empowered by the Charter on Democracy to terminate membership of a State party responsible for Unconstitutional Change of Government. The Charter on Democracy provides thus:

> When the Peace and Security Council observes that there has been an Unconstitutional change of government in a state party and that diplomatic initiatives have failed, it shall suspend the said state party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of Articles 30 of the Constitutive Act and 7 (g) of the protocol. The suspension shall take effect immediately.[227]

The impact of this stand can be seen clearly in the case of Niger Republic, where some members of army overthrew political leader and put in place military led government, the AU responded immediately by suspending the country. The intervention by AU in Niger led to appointment of transitional authority under M. Danda on 1st March, 2010 and it was followed by appointment on 7th April, 2010 of transitional council to organize election and it was held in

[226] S. 40 of *the Criminal Code*
[227] Article 25 para. 1 of the Charter on Democracy

January 31, 2011.[228] Another instance is Madagascar, where in 2009, President Marc Ravalomana announced transfer of power to the military. The military then transferred power to an unelected candidate, Andry Rajoelinroma. The AU suspended Madagascar from participating in AU activities on the next day.[229] Participation in election is the means of assuming leadership position in a Democratic government. For purpose of dealing with and avoiding unconstitutional Change of government, the Charter on Democracy Provides for disallowing perpetrators to participate in subsequent election. It provides thus: "the perpetrators of Unconstitutional change of government shall not be allowed to participate in elections held to restore the democratic order or hold any position of responsibility in political institutions of their state."[230] All this is meant to restore Constitutional Democratic Governance.

B. Trial in African Court of Justice

In its effort to deal with Unconstitutional Change Government, the Charter on Democracy provides for the trial of perpetrators before court of law. It provides that: "The perpetrators of Unconstitutional change of government may also be tried before the competent court of the union.[231] For example, in Ivory Coast's, the Independent Electoral Commission of the Country and international observers proclaimed Alassane Ouattara to be winner of December, 2010 Election and Mr Gbagbo refused to step down. This led to five months of violence and armed conflicts at least 3,000 people were killed and more than 150 women raped. This drew the attention of international community to intervene in the situation. Consequently, Mr. Laurent

[228]Omotola, J. S. (2011) *Unconstitutional Change of Government in Africa.*www.files.ethz. Accessed on 22/11/2017
[229]Dube, R. (2010) Fighting *Unconstitutional Change of Government or merely politicking?A Critical analysis of AU responses*. https;/repository.up.ac.za. accessed on 10/8/2018.
[230]Article 25 para 4 of the Charter on Democracy
[231] Article 25 para 5 Ibid

Gbagbo was arraigned before International Criminal Court for the alleged offences of rape and murder resulting from his refusal to accept defeat.[232]

C. Punitive Economic Measures

Another sanction provided by the Charter on Democracy is punitive economic measure where it provides thus: "The assembly of AU may decide to apply other forms of sanctions on perpetrators of unconstitutional change of government including punitive economic measures."[233] For example, in August 2008, Mauritanian President Sidi Mohamed was ousted in a military Coup led by General Muhammed Abdel Aziz. The AU immediately condemned the coup and demanded a restoration of Constitutional order. The AU applied sanctions to members of the high council of the state, the government and any other person whose conduct supported the coup government. The sanctions include travel bans and freezing of bank assets of the perpetrators.[234] The Charter provides that "where the Peace and Security Council is satisfied that when the situation that led to the suspension is resolved, it shall lift the sanction."[235] By conceiving of infringements of constitutional governance as crimes or legal violations, the Charter on Democracy thus lays the groundwork for pursuing autocrats and dictators for the political crimes they commit, not merely the human rights abuses and crimes against humanity that are well-known for perpetrating.

Conclusion

Considering the provisions of the Charter on Democracy discussed in this Chapter, the AU provides legal framework for the promotion of Democracy, Election and Governance. The

[232] Mike, C. *Former Ivory Coast Leader Gbagbo Appears at ICC in Hague*. www. Independent.co.uk
[233] Article 25 para 7 of Charter on Democracy
[234] Dube, R. (2010) *Fighting Unconstitutional Change of Government or merely politicking?A Critical analysis of AU Responses*. https;/repository.up.ac.za. Accessed on 10/8/2018
[235] Article 26 Ibid

Charter on Democracy also aims to push States to promote healthy competitive environment allowing for democratic changes of government. The unconstitutional change of government was frown at by providing classes of sanction for perpetrators. Nigeria being a state party to the Charter on Democracy though, did not domesticate it, the Constitution and many domestic laws make provisions for democratization and Constitutional change of power.

The attitude of some African leaders of remaining in power till their death through frequent changes in their national Constitution or refusal to acceptdefeat in Election or challenge the election results in a legal way have also been taken care of by the Charter on Democracy by empowering Peace and Security Council of AU to apply one of the mechanisms of restoring Constitutional order. Democracy is also expected to promote good governance and lead to development in the society. The Charter on Democracy also provides for how state parties can advance political, social and economic governance.

CHAPTER FOUR

DOMESTICATION AND IMPLEMENTATION OF AFRICAN CHARTER ONDEMOCRACY, ELECTION AND GOVERNANCE IN NIGERIA

4.1 Introduction

International treaties and or regional instruments will continue to be mere documents in countries who are signatories to them if their significance is not felt by the people in those countries. Mere ratification is not enough but the most important is for the state to adopt the treaty into her domestic law.[1] The Constitutional mechanism of domesticating international treaties into National Laws varies from one country to another. For example, in the United Kingdom the court held in *R. v. Keyn*[2] that "International Law is only part of English Law in so far as it is incorporated into English Law by a decision of the courts or by an Act of Parliament." The courts in the United States tried making a distinction on whether a treaty is self-executing or not. In *Diggs v. Dent*[3] it was held that. "Treaties do not confer upon citizens' rights which they may enforce in the courts. It is only when treaty is self-executing that individual drives enforceable rights from the treaty without legislative or executive action ..."

In Uganda by the provision of Ratification of Treaties Act, 1998, Cabinet is responsible for the ratification of all treaties except those which may require Constitutional amendment of the country. All the treaties ratified by cabinet, the parliament would then be informed about the status of the treaties and perhaps initiate action to make the treaty applicable in Ugandan Law.[4] In Nigeria, the implementation or enforcement of any treaty is dependent on its re-enacted as an

[1]Rotimi O. (2018) *Domesticating International Treaties in Nigeria*, www.theogleonline.com. Accessed on 15/4/2028
[2] (1876)2 Ex. D 63
[3]Reported in Compilation of International Human Rights Instruments and Articles. Women's Aid Collective Series, 2003.
[4] Gama, J. O. (2000) *The Application of International Law into National Law, Policy and Practice*, www.who.com. 15/1/2018

Act of the National Assembly.[5] Therefore, it is clear from the above that legislative or judicial backing is necessary to make treaties executable in some countries while in some other countries executive also can ratify a treaty or convention depending on the National Law or Constitution.

The African Union (AU) sought to consolidate all past commitments that unequivocally aimed at establishing a culture of democracy and peace, premised on among other things the holding of regular, free, fair and transparent elections, respect for human rights; rejection of unconstitutional changes of government and strong institution and therefore, on 30th January, 2007 during the 8th Ordinary Session of the Assembly of the African Union (AU) adopted the African Charter on Democracy, Elections and Governance[6]and came into force on 15th February, 2012[7] at regional level. It is against this backdrop that this chapter aims at examining the domestication and implementation of the Charter on Democracy in Nigeria and other selected African countries. The chapter would also examine the challenges of the domestication and implementation of the charter and finally examined some obligations of the state parties to the charter on Democracy.

4.2: DOMESTICATION AND IMPLEMENTATION AT NATIONAL LEVEL

The legal framework for domestication of international instruments into National Laws differs from one country to another. It therefore, depends on the constitutional provisions of the domesticating country. For example, in United Kingdom international treaties or instruments are only part of English Law in so far as they are incorporated into English Law by a decision of the courts or by an Act of Parliament. [8] The courts in the United States tried making a distinction on

[5] S. 12 (1) CFRN 1999 as amended. Hereinafter called the Constitution
[6] Hereinafter referred to as the Charter on Democracy
[7] Africa's Democratic Devident and Deficits, Expert Seminar, Pretoria , S/Africa. www.oga.platform.org. 10/2/2018
[8] *R v.Keyn* (1876)2 Ex. D 63

whether a treaty is self-executing or not. In *Foster v. Nielson*[9], the U.S court in giving effect to Article VI Section 2 of the U.S Constitution held that "It is only when a treaty is self-executing when its prescribed rules by which private rights may be determined that it may be relied upon for the enforcement of such rights." Also in *Diggs v. Dent*,[10] it was held that "Treaties do not confer upon citizens' rights which they may enforce in the courts. It is only when a treaty is self-executing that enable individuals derive enforceable rights from the treaty without further legislative or executive action ..."[11]In Uganda by the provision of Ratification of Treaties Act, 1999, cabinet is responsible for the ratification of all treaties except those which may require constitutional amendment of their country. All the treaties ratified by cabinet in Uganda, the parliament would then be informed about the status of the treaty and perhaps initiate action to make the treaty applicable in Ugandan Law. [12]

4. 2, a Domestication and Implementation of the Charter in Nigeria

Nigeria has been a very active member of the international community since gaining independence and joining the United Nations in October, 1960. Thus, Nigeria remains active within the United Nations and African Union system and demonstrated commitment to and acceptance of the International and Regional political and legal system embodied in various universal multilateral treaties, Conventions and Charters instituted under the guidance of United Nations and African Union.[13] Being Nigeria a member of the International Community makes it capable to enter into international treaties. In fact, Nigeria is a signatory to a good number of

[9] Reported in "Incorporation of International Treaties into national Law", Compilation of Human Rights Instrument and Articles, Women's and Collective Seminar publications, 2003

[10]Reported in Compilation of International Human Rights Instruments and Articles. Women's Aid Collective Series, 2003.

[11]Abdu, A.I, (2004) *Domestic Implementation of International Instrument for Combating Terrorist Financing and Money Laundering in Nigeria*, www.seahipaj.org. 8/1/2018

[12] Gama J. O. (2000) *The application of International Law into National Law.* Op. cit

[13]Aliyu, A. (2016) *The Challenges of Implementing International Treaties in Third world Countries: The cae of Maritime and Environmental Treaties Implementation in Nigeria.*www.iiste.org. 21/1/2018

treaties. According to a report of House Committee on Treaties and Bilateral Agreements, Nigeria signed over 200 treaties as of 14th November, 2013.[14]

Nigeria is a federal state as such treaty making is within the jurisdictional purview of the federal government. According to Nwabueze, the Law and Procedure on treaty making capacity is not documented under Nigeria Constitution. What is visible in the constitution is treaty implementation. The President as the executive of the Federal Government is designated Head of State as such he represents the country in the totality of its international relations. He acts for his state in international intercourse with the consequence that all his legally relevant international acts are considered to be acts of his state.[15]

In Nigeria, mere signing an international instrument by the President or his representative(s) does not make it enforceable in Nigerian courts. The treaty or international instrument must first be domesticated to be part of municipal law. The laws governing domestication and implementation are provided under the Constitution and Treaties (Making Procedure etc.) Act.[16]The Constitution of the Federal Republic of Nigeria 1999 as Amended addressed the issue of treaty making and its implementation under Section 12 of the Constitution. The Section provides thus:

> (1) No treaty between the federal and any other country shall have the force of Law except to the extent to when any such treaty has been enacted into law by the National Assembly.
> (2) The National Assembly may make law for the federation or any part thereof with respect to matter not included in the executive legislature list for the purpose of implementing a treaty.
> (3) A bill for an act of the National Assembly passed pursuant to the provision of subsection (2) of this section shall not be

[14]Flora A. O. (2016) *A Re-Examination of the Requirements of Domestication of Treaties in Nigeria.* www.ajol.infor. 15/2/2018
[15]Nwabueze, b. O. (1985) *Federalism in Nigeria Under the Presidential Constitution*, Sweet and Maxwell, London
[16] Cap. T16 LFN 2004

> presented to the president for assent, and shall not be enacted unless it is ratified by a majority in the federation.[17]

Nigeria is a state party to the African Charter on Democracy, Election and Governance as she signed and ratified it and deposited her instrument for ratification with Chairperson of African Union on 9th January, 2012, which makes Nigeria bound by provisions of the Charter on Democracy.[18] Therefore notwithstanding, the Constitutional provision which requires for domestication of a treaty before it can become enforceable in the Nigerian courts, at the international level, Nigeria is under obligation to perform her duties in accordance with provisions of the Charter on Democracy following its ratification. Article 26 of Vienna convention on the Laws of Treaties is to that effect.[19] The Vienna Convention on the Laws of Treaties also provides that: "Once a country adopted a treaty, it cannot also rely on any of domestic law to go contrary to the provisions of the treaty."[20] The Nigerian courts provide many decisions on relationships between treaty and Nigerian Law. In *Oshevire v. BritishCaledonia Airways Ltd.*[21]Ogundere JCA held that "...any domestic legislation in conflict with the convention is void." The implication of this decision is that such a convention or treaty is treated higher in status than a municipal legislation.

This issue also came before Supreme Court of Nigeria for examination in the case of *Fawehimi v. Abacha.*[22] In that case the applicant (Chief Gani Fawehimi) a legal practitioner was arrested without warrant at his residence by men of the State Security Service (SSS) and policemen. He sought to enforce his fundamental rights pursuant to the Fundamental Rights (Enforcement Procedure) Rules 1979 and in accordance with Articles 4, 5 and 12 of the African

[17] S. 12 of the Constitution
[18] Available at www.au.org. Accessed on 18/3/2018
[19] Article 26, Vienna Convention on Laws of Treaties 1969
[20] Article 27 Ibid
[21] (1990) FWLR (pt 163) p.507 at 519 - 520
[22] (2000) FWLR (pt 4) p.533

Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[23] The respondent argued that the various Decrees of the then Federal Military Government ousted the jurisdiction of the court while the trial court upheld the ouster clause. Both the Court of Appeal and the Supreme Court rejected the clause. The area that became source of worry was the court's decision per Pats Acholonu (JCA) when he posited that: "... by not merely adopting the African Charter, but enacting it into our organic law, tenor and intendment of the preamble and section seem to vest that (i.e. African Charter) with a greater vigor and strength than mere Decree for it has been elevated to a higher pedestal."The question that readily comes to mind is by which court and by what law was it so elevated? The position adumbrated by Acholonu (JCA) was seriously criticized by the learned writer Babatunde, I. O.[24] the decision could not stand the test for a revisit of the decision by the apex court on this decision of utmost legal importance. Ogundare JSC varied the matter differently when he held that:

> No doubt, cap 10 is a statute with international flavor. Being so, therefore, I would think that if there is a conflict between it and another statute, its provisions will prevail over those other statutes for the legislature does not intend to breach an international obligation. To this extent I agree with their lordships of the court below that the charter possesses a greater vigor and strength than any other domestic statute. But that is not to say that the charter is superior to the constitution.[25]

This position of law is true in part and that is in respect of the supremacy of the Constitution which provides for its binding over all persons and authority throughout the federation and where

[23] Cap. A9 Laws of Federation of Nigeria, 2004.
[24] Babatunde, I. O (2014) *Treaty Making and its Application under Nigerian Law: The Journey so far*, www.ijmi.org. 12/2/2018
[25] Emphasis added (2000) FWLR pt 4 p.533

there is a conflict between it and any other law such law would be void.[26] The dissenting opinion of Achike JSC is however preferred to the view expressed by Ogundare JSC[27] He held that:

> …the general rule is that a treaty which has been domesticated and incorporated into the body of the municipal laws ranks at par with the municipal laws. It is rather startling that a law passed to give effect to a treaty should stand on a higher pedestal above all other municipal laws, without more in the absence of any express provision in the law that incorporated the treaty into the municipal law.[28]

The above views examined of the learned justices of Court of Appeal and the Supreme Court indicate that no matter how relevant the provision of a charter or treaty is in Nigeria, it cannot enjoy judicial enforceability unless it is domesticated and incorporated into municipal law.[29] And where same is done it ranks higher than other municipal laws with exception of Constitution. The decisions of these courts no doubt are in accordance with Vienna Convention on the law of treaties.[30]

4.2, b Procedure of Domesticating a Treaty or Charter into Municipal Law

The Constitution provides that: "No treaty between the federation and or any other country shall have the force of the law except to the extent to which any such treaty has been enacted into law by the National Assembly."[31] In Nigeria therefore, by virtue of the above provision of Section 12, courts do not have the power to apply the provision of a treaty without prior legislative approval. In addition to being a signatory to a treaty, such a treaty will have to be enacted by the National Assembly before it can have the force of law before the Nigerian

[26] S. 1 (1) of the Constitution
[27] Babatunde, I. O (2014) Op. cit.
[28] *Fawehinmi v. Abacha.*(Supra). P.613
[29] The Constitution uses word "shall" which connotes in Nigerian legislation means must or mandatory: *Kere v. Kalba* (2004) ALLF.WLR pt221. P1479
[30] Article 26 Vienner Convention; op cit.
[31] Section 12 of the Constitution

court.[32] This means that only the National Assembly is empowered to domesticate treaties on matters on the exclusive legislative list. This was aptly reflected in Section 12 above and for emphasis subsection two (2) provides that: "this power of making laws in respect of implementation of treaties shall also include treaties dealing with issues not included in the exclusive legislative list."[33] If the matter falls within the concurrent or residual list the treaty also requires the approval of the majority of the State House of Assembly.[34]

The provision of the Charter on Democracy, therefore, before its enactment into law, it has no such force of law as to make its provisions justiciable before the Nigerian courts. In *Mhwun v. Minister of Health & Productivity &Ors*,[35] the Court of Appeal held that the provisions of the International Labor Convention cannot be invoked and applied by a Nigerian court until same has been re-enacted by an act of the National Assembly. His Lordship, Muntaka Coomassie JCA as he then was had this to say on domestic application of International Labor Convention in Nigeria:

> ...there is no evidence before the court that ILO Convention, even though signed by the Nigerian government, has been enacted into law by the National Assembly. In so far as the ILO Convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and it cannot possibly apply...

Section 12 (2) of the Constitution provides that: "The National Assembly may make laws for the federation or any part thereof with respect to matters included in the Exclusive Legislative list for the purpose of implementing a treaty." The intendment of this section is that the legislative competence of the states would be interfered with where the proposed legislation seeks to implement a treaty, and where there is a conflict between the position of the National Assembly

[32]Ononrerhinor, F. A, (2016) *A Re-Examination of Treaties in Nigeria*.www.ajol.infor. 13/2/2018
[33] I bid
[34]S . 12 (3) of the Constitution
[35] (2005) 17 NWLR pt 953 p.120

and any State House of Assembly that bother on implementation of a treaty or any law whatsoever, Section 4 (5) of the Constitution empowers the federal law to prevail and that the state law to be void.[36] The provision of Section 12 (2) is however qualified by Section 12 (3) which requires that a bill for an Act of National Assembly passed pursuant to S.12 (2) shall not be presented to the President for assent unless it is ratified by a majority of all the Houses of Assembly in the federation.[37] From the position of S. 12 implementation of treaties in Nigeria can be divided into two major headings. First, are those that deal with matters in the exclusive legislative list governed by Section 12 (1) and the one that deals with concurrent legislative list governed by Section 12 (2) and (3) of the Constitution.[38]

Besides the Constitution, the Treaties (Making Procedure etc.) Act,[39] is another law that governs the implementation of Treaties in Nigeria.The Nigerian National Assembly enacted this Act to provide among other things, for treaty making procedure and the designation of the Federal Ministry of Justice as the depositing of all treaties entered into between the Federation and any other country. The Act makes procedure to be binding and applicable for making of any treaty between the federation and any other country on any matter on the exclusive legislative list contained in the Constitution.[40]The Act also provides that all treaties to be negotiated and entered into for and on behalf of the federation by any ministry, governmental agency, body or person, shall be made in accordance with the procedure specified in this Act as may be modified, varied or amended by an Act of the National Assembly.[41]

[36] Babatunde, I. O (2014) *Treaty making and its Application Under Nigerian Law*. Op. cit
[37] I bid
[38] I bid
[39] Cap. T. 20 vol. 15 LFN, 2004
[40] S. 1 (1) I bid
[41] S. 1 (2) I bid

Where the treaties are law making, being agreements constituting rules which govern interstates relationship and cooperation in any area of endeavor and which have the effect of altering or modifying existing legislation or which affects the legislative powers of National Assembly,[42] these agreements or treaties must be enacted into law[43] for agreements which impose financial, political and social obligations on Nigeria or which are for scientific or technological important. Such agreements need to be ratified,[44] but for agreements which deal with mutual exchange of cultural and educational facilities, these agreement or treaties may not be ratified.[45] Whether the last categories of treaties mentioned can possess a force of law is very doubtful, as in international law for a treaty to have a force of law, it must not only be signed but must be ratified by parties to the Convention or Treaty.[46]

In Nigeria, it can be authoritatively stated that treaties or charters are not part of the sources of Nigerian law. Nigeria follows the dualist theory for the implementation of international law at domestic level.[47] It requires the process of transformation which entails clothing them domestically by making them part of the statutes of the country, but does not entail subjecting treaties to the vicissitudes of municipal politics.[48] Transformation may be achieved through two methods: by re-enactment and by reference. The former is when the implementing statute directly enacts specific provisions or the entire treaty usually in the form of a schedule to the statute whereas the latter is usually contained either in the long and short titles of the statutes or in the preamble.

[42] S. 3 (1)a, Ibid
[43] S. 3 (2) a, Ibid
[44] S. 3 (2) b – I bid
[45] S. 3 (1) c, Ibid
[46] Babatunde, I. O. (2014) *Treaty Making* … op. cit
[47] I bid
[48] I bid

The African Charter on Democracy, Elections and Governance falls under the categories of law making treaty which the Treaty (Making Procedures etc.) Act[49] requires its type to be enacted into law before it can be applicable in the Nigerian courts.[50]Nigeria has since 9th January, 2012 ratified the African Charter on Democracy, Elections and Governance and hence she becomes a state party. The Charter on Democracy defines state party as any member state of African Union which has ratified it and deposited the instrument for ratification with Chairperson of the African Union Commission.[51]The Charter on Democracy also provides that: "The Charter shall enter into force thirty (30) days after the deposit of fifteen (15) instruments of Ratification."[52] This has been achieved in January 16, 2012 where Cameron happened to be the fifteenth state to ratify the Charter on Democracy and therefore it came into force on 15th February, 2012.[53]

Therefore, by ratification of the Charter on Democracy, Nigeria becomes bound by its provisions at International level. However, by the combined provisions of section 12 of the Constitution and the Treaties (Making Procedures etc) Act, since the provisions of the Charter on Democracy may change or alter the legislative powers same cannot be applicable and enforceable in Nigeria unless domesticated to be part of the domestic laws of the country. Despite the facts that it has not yet been domesticated in Nigeria, as it has been examined in chapter three of this work, some of its provisions can be found in the Constitution and other federal legislations like Electoral Act, African Charter on Human and Peoples Rights Act etc.

[49] Cap T. 20 Vol. 15 LFN. 2004
[50] S. 3 (1) a I bid
[51] Article One of the Charter on Democracy
[52] Article 48, Ibid
[53] *Ratification Status of Charter on Democracy.*Available atwww.au.org. Accessed on 13/4/2018

4.3 Domestication and Implementation of the Charter at State Level in Nigeria

Nigeria operates federal system of government which is an arrangement whereby powers of government within a country, comprising a large territory and/or diverse nationalities, are shared between a national, countrywide government and a number of regionally based governments in such a way that each exist as a government separately and independently from the others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs and with an authority in some matters exclusive of others.[54] The Constitution empowers the various States Houses of Assembly to make laws for their states.[55] The House of Assembly of a state in Nigeria therefore has been empowered to make laws for good governance of their states and this includes ratification and domestication of treaties or charter at their state level after it has been duly ratified and domesticated at National level by the National Assembly. Section 12 (1) of the Constitution on the implementation of treaties vested the powers of domesticating of treaties into the National Assembly.[56]It also provides that:

> Where a bill for an Act of National Assembly passed in respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty, it shall not be presented to the president for assent and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the federation. [57]

The above provisions show that making a treaty is the exclusive prerogative of the federal government in the federal system of government. Therefore, a constituent state not being a sovereign state as required by international law is incapable of entering into international

[54]Jibril, M. T. (2015) Federalism and National Question. A Study of the Application of Federalism in Nigeria. In Danlaki K. M. (ed) *Law making Challenges and Good Governance in Katsina State,* Clear Resolution, Garki, Abuja. P324

[55] S. 4 (6) of the Constitution

[56] S. 12 (1), Ibid

[57] S. 12 (2) & (3), Ibid

agreements without prior approval of federal government.[58] This was beautifully captured by *Ogundare JSC in A. G. Federation v A. G. Abia State and 35 ors*,[59] thus:

> … Nigeria as a sovereign state is a member of the international community... defendant states not being a sovereign are not either individually or collectively. In the exercise of its sovereignty Nigeria from time to time enters into treaties both bilateral and multilateral. The conduct of external affairs is on the exclusive list. The power to conduct such affairs is therefore in the government of the federation to the exclusion of any other political component unit in the federation.

Therefore since the African Charter on Democracy, Election and Governance is an International Instrument aiming at promoting Democracy, Elections and Governance at Regional level, its provision also cannot be ratified or domesticated at various states level to enable state courts apply its provisions without prior ratification and domestication at federal level. However, most of the structures required under the Charter are provided by State laws.

5. 4 Problems and Challenges of Implementation and Domestication of the Charter on Democracy

Except under customary international law most of the international obligations are created between states through treaties, conventions and or charters.[60] The African Charter on Democracy, Election and Governance is one of such international agreements that create obligations on its states parties regarding Democracy, Election and Governance in the African Continent (Region). Nigeria being a member of the African Union (A.U) has since signed and ratified the Charter on Democracy. The Vienna Convention on the Law of Treaties, recognizes the rights of states and permit them to choose freely to become a party to a treaty but once a state becomes a party to a treaty and thereby assumes obligations under the treaty, such a state is

[58] Babatunde, I. O. (2014) Treaty Making … op. cit
[59] (2002)161 WRN
[60] Article 38 of the Statute of International Court of Justice (ICJ)

bound to observe and discharge such obligations. [61]As it has been highlighted in this work, Nigeria has ratified the Charter on Democracy since 9th January, 2012 and therefore at international level she becomes bound by its provision. However, at National level it remains just a mere instrument incapable of creating legal obligations that are enforceable in Nigerian courts. Non-Domestication of the Charter on Democracy and lack of political will in our political leaders pose a challenge in the implementation of the provisions of the charter. The challenges are:

a. Non-Domestication of the Charter on Democracy

A treaty or any international instrument that creates international obligation between Nigeria and some other states which has been duly signed and ratified by Nigeria no matter how good or relevant it is in Nigeria, it has no force of law except it has been domesticated to be part of Nigerian Laws by the National Assembly.[62] This has received judicial backing in *Mhwun v. Minister of Health and Productivity &ors*.[63]The Constitutional limits relating to the application of treaties in Nigeria therefore is the major challenge of the Implementation and Domestication of the Charter on Democracy as the processes are rigorous. Consequently, it makes the implementation of the Charter difficult in many instances, due to unenforceability nature of undomesticated Charters in Nigerian courts.

b. Lack of Political Conviction and Sincerity of Purpose amongst Nigerian Political leaders

Since becoming a member of the United Nations as an independent sovereign state in October, 1960, Nigeria has actively participated in various international treaties making fora. It has also participated in and become party to numerous other international treaties that has been concluded since 1960. The country has equally participated with and sometimes led other

[61]Article 18 & 26 of Vienna Convention on Law of Treaties 1969
[62] S. 12 of the Constitution
[63] Supra

countries within the West African Sub-region and the African continent in shaping and concluding major international treaties and conventions.[64] In general terms, Nigeria could be said to be a compliant member of international community as far as participation and discharge of obligation under international treaties is concerned.

However, curiously Nigeria has had questionable record with respect to certain treaties which by their nature and subject matters are considered critical.[65] For example, The African Charter on Democracy, Election and Governance has been adopted by the African Union in the year 2007 which Nigeria also signed.[66] However, Nigeria did not express its intention to be bound by the provisions of the Charter on Democracy until almost five years after signing it, when Nigeria ratified it in January, 2012. Also about six years of the ratification of the Charter on Democracy, the country is yet to domesticate it so that it can have force of law in Nigeria.[67] This slow in the ratification and domestication of the Charter on Democracy is not unconnected to what the writer observes as lack of political conviction and insincerity of purpose. Because the Charter on Democracy aims at creating enabling environment that would promote democracy, security and wellbeing of the citizens of its state parties. Members of the National Assembly both Senate and the House of Representative neglect to domesticate it due to what has been observed above in Nigeria. This is another challenge in the implementation of the Charter on Democracy in Nigeria. At the same time there was no attempt from the part of the Nigerian executive to submit a presidential bill aiming at domesticating it.[68]

[64] Aliyu, A. (2016) *The Challenges of Implementing International Treaties in the Third World*. Op. cit
[65] Ibid.
[66] *Ratification Status of Charter on Democracy.Available* at www.au.org. Accessed on 11/2/2018, 3:30pm
[67] Oral interview with HarunaEsq, Legal Department, National Assembly, Abuja. On 26/3/2018, 4:30pm
[68] Ibid

4.5 Domestication and Implementation of the Charter on Democracy in some Selected African Countries

It is a firm principle of international law that every sovereign state is competent to enter into treaty regarding matters that fall within its sovereignty.[69] International treaty remains mere document if their significance is not felt by the people of those countries. In some countries mere ratification is not enough but the most important is for the state to adopt the treaty into her domestic law.[70] In its effort to promote democratic governance and human rights, the African Union adopted the African Charter on Democracy, Elections and Governance in 2007 and it would only enter into force thirty (30) days after the deposit of fifteen (15) Instruments of ratification by its members.[71] This was not achieved until in the 2012 nearly five (5) years after its adoption by AU General Assembly.

The process of implementing international treaties varies from one country to another, in some countries mere ratification of a treaty by a country does not make it enforceable in its court, it must be followed by domestication while in some other countries once a treaty is ratified it becomes enforceable. For example, in Nigeria ratification must be followed by separate act of domestication.[72]In South Africa the position is not different from Nigeria. *In Azaman Peoples Org. (AZAPO) &Ors v. President of the Republic of South Africa*,[73] the court stated that: "International convention do not become part of the municipal law in our country, enforceable at the instance of private individuals in courts until and unless they are incorporated into municipal law by legislative enactment."While in Kenya the situation is different, S. 2 (6) of the Kenyan

[69] See the winbledon case (1923) pclj series No. I; Babatunde I. O. Treaty Making and its Application Under Nigerian Law. Op. cit.
[70]Rotimi, O. (2016) *Domesticating International Treaties in Nigeria*.www.theagle.com. Accessed on 20/3/2018, 10:30am
[71]Article 48 of the Charter on Democracy.
[72] S. 12 of the Constitution
[73](1996) 8ECLR 1015 para 26.

Constitution provides that any treaty or convention ratified in Kenya shall form part of the law of Kenya. This has done with issue of domestication of treaty, before ratification, its provisions will be debated by the legislature, voted for its ratification then executive proceeded to ratify it and it automatically becomes law of the land. This indicates that domestication in Kenya goes along with ratification. In *East African Community v. Republic*,[74] it was held that the provisions of a treaty entered into by the government of Kenya do not become part of the municipal law of Kenya save in so far as they are made such by the law of Kenya. The position in Uganda is hybrid of the above two countries because by the provision of Ratification of Treaties Act 1999, the cabinet is responsible for the ratification of all treaties except those which may require constitutional amendment of the country. All the treaties ratified by the cabinet the parliament then would be informed about the status of the treaty and perhaps initiate action to make the treaty applicable in Ugandan law.[75]

These differences revolve around the relationship between international law and the municipal law where two schools were propounded in that regard. These are dualists and monist. According to dualists, the rules of international law and municipal law exist separately and cannot purport to have an effect on or overrule the other. Being separate systems, international law does not as such form part of the municipal law of a state. When in particular instances rules of international law may be applicable within a state, they do so by virtue of their adoption by the internal law of the state and apply as part of the internal law and not as international laws. Therefore, the question of the supremacy of one system of law over the other is avoided since they share no common field of application. Each is supreme in its own sphere.[76]

[74](1970) G. A 457
[75] Gama, J. O. (2000) *Application of International Law into National Law, Policy and Practice*. O p. cit
[76] Gama J. O. (2000) Op. cit

According to monist, the various national systems derive from the international legal system. Since international law can therefore be seen as essentially part of the same legal order as municipal law, and as superior to it, it can be regarded as incorporated in municipal law. Consequently, there would be no difficulty in its application as international law within states.[77] Most of the African countries go by the dualists view and as such mere ratification of an international treaty does not make it applicable in the municipal courts of the state. Same must be followed by a separate act of transformation and domestication, and the research shows that no state party to the Charter on Democracy commenced or implemented it by an act of transformation and domestication.[78]

4.6 Obligations of the State Parties to the Charter on Democracy

Every sovereign state has right to choose freely to become a party to a treaty[79] and once she becomes a party to a treaty and assumes obligations under the treaty such a state is bound at international level to observe and discharge such obligations.The general rule is that a state which has broken a rule of international law cannot justify itself by referring to its municipal law, otherwise international law would be evaded by passing appropriate domestic legislation.[80]

1.*PactaSuntServanda*: Under this principle, a state is under the duty to honor its international obligations even if it means changing its municipal law.[81]This view has been applied in various international cases. The British in the Alabama claims Arbitration[82] sought to rely on lack of domestic legislation to avoid liability. Their defense was defeated on the ground that the British

[77] I bid
[78] Mail Communication with brother Yusuf, a Staff of AU, Department of Political Affairs Addis Ababa, Ethiopia. On 14/1/2018
[79]Article 18 of Vienna Convention oon the Law of Treaties. 1969
[80] Gama, J. O. (2000) op cit
[81] Article 27 of the Vienna Convention on the Law of Treaties
[82](1872)1 Int. Arb. 495

government could not justify itself for a failure in due diligence on the plea of insufficiency of the legal means of action it possessed.

There is a general duty to bring municipal law into conformity with obligations under international law. As decided in the Exchange of Greek and Turkish Populations case[83] a state which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfillment of the obligations undertaken. If it does not do so, a state cannot rely on her own legislation to limit the scope of her international obligations.[84] It is a generally accepted principle of international law that in relations between states who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty,[85] even if that municipal law is the state's own Constitution. Likewise a state once it has ratified a treaty cannot successfully amend its domestic legislation with a view to evading obligations incumbent upon it under international law. The 30 African states that signed and ratified the African Charter on Democracy, Election and Governance having subjected them to be bounded by its provisions have the duty at the international law to ensure the implementation in their various states.

2.Domestication: Considering the fact that most African countries go by dualist school of thought that international instrument only gains force of law where it has been domesticated into municipal law by the parliament or legislature. The state parties therefore have obligation to employ means of domesticating the Charter on Democracy for its full implementation within their respective states. The Charter on Democracy provides thus:

i. "State parties shall initiate appropriate measures including legislative, executive and administrative actions to bring

[83] (1925) Permanent Court of International Justice Reported Series B. No. 10
[84] The Free Zones Case (1932) P. C. I. J Series A/B No. 46
[85] The Greco – Bulgarian Communities Case (1930) P. C. I. J Series B. No. 94

state parties' national laws and regulations into conformity with this charter."[86]

ii. State parties shall take all necessary measures in accordance with constitutional provisions and procedures to ensure the wider dissemination of the charter and all relevant legislation as may be necessary for the implementation of its fundamental principles.[87]

3. Promotion of political will: The Charter on Democracy provides that: "State parties shall promote political will as necessary condition for the attainment of the goods set forth in the charter."[88] The state party therefore, have obligation to promote political will amongst their citizenry by making them abreast about policies of their government and also allowing them to freely participate in their government.

4. Incorporation of the Principles of the Charter on Democracy: It provides that: "State parties shall incorporate the commitments and principles of the Charter in their national policies and strategies."[89] These principles are many, they relate to democratic elections, good governance and avoidance of unconstitutional change of government.

4.7 Conclusion

The rule in international law is that every sovereign state has right to enter into international agreements with other states and also to refuse. But once the agreement has been concluded and it was duly ratified by the states then the states owe international obligations not to go contrary to the provisions of the agreement entered into. The African Charter of Democracy, Elections and Governance which was adopted in 2007 by the African Union and by now it has been duly ratified by 30 member states of African Union Nigeria inclusive.

[86] Article 44 (1) para (a) of the Charter on Democracy
[87] Article 44 (1) para b, Ibid
[88] Article 44 (1) para c, I bid
[89] Article 44 (1) para d

The policies of implementation of a Charter or other international instrument vary from one country to another in Africa depending on the constitutional provisions of the country relating to international law. Non-domestication of the Charter on Democracy in Nigeria and most of the African countries denies the Nigerian citizens and citizens of most African countries right to apply for the enforcement of the provisions of the Charter on Democracy in their domestic courts of law. However despite the no domestication of Charter on Democracy in Nigerian most of its provisions are found in the Nigerian Constitution and other domestic laws as discussed in Chapter three. Finally, the duties and obligations of the state parties to the Charter on Democracy which includes initiating measures of domesticating same within their countries has not yet been achieved, though some of its provisions are being practiced in many of the countries.

CHAPTER FIVE

SUMMARY/CONCLUSION, FINDINGS AND RECOMMENDATIONS

5.1 Summary

Democracy as a political system in which the people in a country rule through any form of government they choose to establish. It is essential to rule by the representative of the people, without any form of discrimination among the leaders and the followers. Central to the concept of democracy therefore are wishes and the will of the people. Election which is the mechanism through which modern representative democracy operate determines whether democracy yields to good governance or otherwise, depending on the role played by the stakeholders responsible for organizing, monitoring and conducting the elections.

Nigeria is currently operating under democratic system of government and prior to its attainment of independence from England or even before the arrival of English colonial masters, there existed in the different regions we had, a political system with elements of democratic system of government. For instance, in the Northern region of the country certain numbers of people were responsible for the selection of King or Emir Known as Kingmakers. Also in Western region of Yoruba *Oyomessi* were responsible for the selection of Oba.

In its quest to promote democratic system of government in the African Region, the African Union (A.U)[1] adopted in 2007 the African Charter on Democracy, Election and Governance (Charter on Democracy)[2] which came into force in the year 2012. The Charter on Democracy aims at promoting adherence by each state party, to the universal values and principles of democracy and respect for human rights. Promote and enhance adherence to the

[1] Hereinafter referred to as A. U.
[2] Hereinafter referred to as the Charter on Democracy

principles of the rule of law premised upon the respect for and the supremacy of the constitution and constitutional order in the political arrangements of the state parties. Promote the holding of regular, free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of government. Prohibit, reject and condemn unconstitutional change of government in member state as a serious threat to stability, peace, security and development of the African nation.

Nigeria is a signatory to the Charter on Democracy and since 2012 ratified it and therefore becomes bound by its provisions. Though, it has not been domesticated in Nigeria, most of the legal framework provided for by the Charter on Democracy relating to democratic elections and good governance are provided for in the Constitution of the Federal Republic of Nigeria 1999[3] and some other National legislations. For example, the Constitution which is seen as the supreme law of the land recognizes democracy as the only political system in the country. It also vested in the Independent National Electoral Commission (INEC) power to organize, monitor and conduct elections into the offices of legislature and executive heads of government. This is in line with provision of the Charter on Democracy which requires its State parties to promote democracy and also establish and strengthen independent electoral body.[4] The Constitution also recognizes courts as the only avenue for challenging the election results and not the weapon. The Electoral Act of Nigeria 2010 which is another legal mechanism for promoting election and democratic governance provides for the process of election and process of challenging election result in the courts which the Charter on Democracy also provides for.

Another objective of the Charter on Democracy is to ensure respect of human rights during, before and after elections and the Nigerian Constitution make provision for their

[3] Hereinafter referred to as the Constitution
[4] Article 4 and 17 of the Charter on Democracy

protection. It is impossible to attain good governance where the government and its agencies are characterized with acts of corruption. The Charter on Democracy makes provisions for economic governance and obliged State parties to do away with corruptions. Nigeria has put in place legal mechanism for tackling the menace of corruption. For example, Economic and Financial Crimes Commission Act[5] which established Economic and Financial Crime Commission as the body responsible for tackling corruption in public and private sectors. These legal instruments both National and International are all meant to promote good governance in democratic settings and also to preserve the integrity of government. However, notwithstanding the above, the period of 2011 to 2015 in Nigeria has been characterized with certain threats to democracy, security and governance. For example, Election malpractice, the Nigerian general election of 2011 which result was not accepted by many Nigerians claimed the lives of many people in the country. Book Haram crises also claimed a lot of live. Corruption in public sectors is another threat to democracy, where many public officers misused public office for their selfish interest.

Many African countries make provision relating to application and enforcement of international treaties or charters. However, certain limitations relating to mod of application in their domestic laws make the international instrument a mere document. Notwithstanding the principle of international law that provides that: "state cannot rely on its domestic law to evade international obligations,"[6] some international instruments suffer legitimacy test in domestic courts. Nigeria is yet to domesticate the Charter on Democracy but it has ratified it. About 30 member states have ratified the Charter on Democracy and 18 signed but did not ratify it. In most of the countries in Africa, mere ratification does not make the charter or any international

[5] Hereinafter called EFCC Act
[6] Article 26 of Veinna convention on law of treaties of 1969

instrument enforceable in their domestic courts. This has the effect of lack of commitment in the international obligations.

The Charter on Democracy provides for certain obligations on the state parties relating to Democratic elections and good Governance which violation attracts sanction by A.U. Where unconstitutional change of government has been made, the Peace and Security Council of the A.U has been empowered by the Charter on Democracy to maintain the constitutional order in accordance with relevant provisions of the protocol relating to the establishment of the Peace and Security Council of the African Union.

5.2 Findings

The research has the following findings:

1. The international community frowns at dictatorship or autocracy and remaining in power for life. Democracy as the liberal political system which allows people to determine who to govern them for a certain period of time has legal backing in Africa by the Charter on Democracy as the most acceptable political system to AU. Nigeria also followed the suit as Nigerian Constitution and some domestic laws provided for the legal framework for democratic elections and good governance. However the Constitution categorized INEC under Federal Commissions which means all money needed for the conduct of election has to be submitted to the President for the finance. Hence! The independence of INEC is doubtful.
2. There is no internal democracy in most of the political parties in Nigeria. The party members are mostly represented by delegates who are usually compromised to the highest bidder in the selections of candidates who contest at the general elections. Elections in Africa is one of the weakest link in democratic process turning down to be

democratic liabilities instead of assets as most at time it claims the lives of people where the results are marred or incumbent refused to accept defeat. For example in Nigeria, 2011 post electoral violence claimed the lives of many people due to rejection of elections results and people took laws into their hands.

3. There are many laws for the promotion of democracy and rule of law and human rights in Nigeria that would ensure good governance, but people in authority hardly obey court order and obedience to court's order do the foundation of a rule of law and democratic culture. The level of official corruption in Nigeria, suggest that Rule of Law is a myth than reality. Some perpetrators have been taken to court but the cases are standstills due to interventions of certain forces, while some cases were never investigated. Impurity of some security personnel where for instance police, soldiers and other law enforcement officers commit human rights violation including arbitrary arrest and detention, torture and other forms of abuse. In some cases their actions led to death. Insecurity is another threat to human rights issues of kidnapping, cattle rustling and armed robbery have become like wildfire in some parts of Nigeria, mostly instigated by poverty and unemployment among the youth associated with bad governance. The right to life is therefore under a serious danger.

5.3 Recommendations

The research has the following recommendations:

1. The Constitutional provision categorizing INEC under federal commissions shall be amended so that the independence of INEC should be a reality in the selection of its members autonomy of its budget and the authority it exerts to enforce election laws and regulations. This will make our laws to be in line with the Charter on Democracy where it mandated state parties to establish and

strengthen independent and impartial national electoral bodies responsible for the management of elections. This should also extent to the various states Independent Electoral Commissions (SIECOMS) all over the federation. The realization of this recommendation requires amendment of the other legislations establishing the INEC and SIECOMS.

2. INEC should be strengthened legally and practically in order to enable it performs its legal duties and responsibilities regarding monitoring the activities of political parties. This is to enable them have internal party democracy and to avoid the tendency of subjecting delegates to the highest bidder in the selection of party candidate for general elections. It can also prosecute any political party found to be responsible for encouraging political thuggery and engineering political crises.

3. The people in authority should observe the principles of rule of law and obey courts order.Every citizen should be treated equally in accordance to the law. The practice of favoring few people at the expense of the general public should be frown at. The practice of inhumane treatment by some of the law enforcement agents which constitutes human rights abuse should be thoroughly investigated and the guilt be adequately punished. To deal with insecurity like armed robbery, kidnapping, cattle rustling and crises more security personnel need to be trained, employed and also to be well equipped with modern weapons. Government should also provide more employment opportunities, not necessarily in public sectors. Therefore anti-corruption laws and human rights laws shall be indiscriminately and efficiently applied.

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