

CONSTITUTIONALISM IN CONTEMPORARY AFRICA: MYTH OR REALITY

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ABSTRACT

Constitutionalism is portrayed as the ideal that every state strives to achieve. The term is often bandied about as a must for good governance and used alongside terms such as ‘democracy’ and ‘human rights’. It is used by politicians – elected and unelected. But in an African context, it appears to remain elusive. This is due to the continuing corruption, mismanagement, inefficiency, concentration of resources in a few locations, the manipulation of ethnicity and the pathological fixation of raw power by politicians in Africa. There is in existence the politics of illusion and the arrogance of power, killing of innocent lives, and trivialization of the rights of the people. In fact, it is only the continuing courage and determination of civil society groups and human rights activists that has prevented the so-called leaders from going overboard. To buy legitimacy for the governance process, African leaders have tried to use a new approach to constitution making to redesign, redefine, repackage and reallocate power. Regretfully, in many parts of Africa, the constitution - which is supposed to play a key role in guiding the various actions, reactions, and pro-action of the various political cleavages, is slowly losing its authority as a “map or diagram purporting to outline the fundamental nature of the state as it exists and operates. This Article discussed recent developments in constitution making in several African nations to uncover lessons learned, where African constitutionalism is headed, and what we might expect in the future.

INTRODUCTION

African states have witnessed a constitutional renaissance encumbered by neither the direct exploitation of colonialism nor the manipulation of the cold War. African nations have been as free to define their own state, nation, and constitutional character as any time in recent memory. South Africa, Namibia, Ghana and Nigeria are commonly cited as positive examples for their constitution making processes, while in some countries, such as Cote d'Ivoire and Kenya, the failure of constitutional reform has been linked to political violence and instability. This event explored the continuing evolution of constitution making and constitutionalism in Africa. Furthermore, the growth in size and complexities of African states as well as the increase in number of African countries defining their political system as liberal democracies, constitutions have become key elements in organizing the polity. In addition, unlike the immediate post independent constitutions with one party monopolizing the interpretation and implementation, the multiparty environment has pushed many politicians, scholars, journalists, and citizens to look at the constitutions with keen interests.

MEANING OF CONCEPTS

Constitution

Constitution is the rule that determines the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state.ⁱ Constitution may be defined as the fundamental and organic law of a nation or state that establishes the institutions and aspirations of government, defines the scope of governmental sovereign powers and guarantees individual civil rights and civil liberties.ⁱⁱ

The constitution of a nation is the body of the key rules governing the country. These rules outline the structures of power and authority, and the relation power and authority share with the governed.

Before going in depth into describing the aspects supporting the belief that in many parts of Africa there are constitutions without constitutionalism, let's first of all look at some of the importance of constitutions in modern democracies.

For scholars like Fombadⁱⁱⁱ constitutions are usually designed in order to ensure political stability. The overwhelming majority of African countries claim to be democracies. This implicitly brings in mind the relationship between the executive, the legislative and judiciary.

Constitutionalists say constitutions may serve the following function:

- describing the relationships between the various primary institutions and office of the state;
- defining who exercises authority and what type of authority is involved;
- In addition, constitutions may, but not obligatorily, divide jurisdictions between levels of government and relationships between them;
- They may also outline the rights of citizens and steps to take to repair any violation of their freedom.
- Constitution helps each and every one to understand who makes the decision, how the decision will be made and which decision can be made
- A constitution thus helps to make sure the rules are clear, and that what dominates is the rule of law, not the rule of force.

From the above outline, it is clear that a constitution is a fundamental piece in any modern democracy. It may be written, as in many African countries and some old democracies in Europe, or, simply not written as in the United Kingdom.

Constitutionalism

Constitutionalism is the quality or state of being constitutional.^{iv} It implies supremacy of the rule of law and protection of the fundamental human rights as well as checks and limits on the powers of the leaders. A society in which the observance of the law is not assured nor the separation of powers defined, has no constitution at all.^v

Constitutionalism entails the protection of human rights; limitations on majority rule in so far as it negatively affects human rights, especially minority rights; separation of church and state; limitation on the powers of the state; checks and balances between institutions; the formalization of all the foregoing principles into a higher law through a process which has been inclusive and consultative; and the constitutional principles must be maintained by the political

institutions as the poor maintenance of the constitution may otherwise bring sooner a breakdown of the constitutional order.^{vi}

According to Rosenfeld, constitutionalism is “a three-faceted concept”, as it requires imposing limits on governmental powers, adherence to the rule of law, and the protection of human rights.^{vii} Constitutionalism is the antithesis of arbitrary rule. Its opposite is despotic government, the government of will instead of law.

Constitutionalism connotes a form of government designed to protect principles of liberty whether or not they were supported by public opinion or elected representatives of the people.

As Schochet has pointed out,

There is a closeness between constitutionalism per se and the having of a Constitution, a closeness that is behind the easy and frequent slippage from one to the other.^{viii} Yet, constitutionalism and constitutions should be distinguished. While, constitution refers to the form, that is the document itself, constitutionalism relates to the substance, to values embedded in the constitutional provisions.

The concept of constitutionalism today can be said to encompass the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate efficiently and in a way that it can be effectively compelled to govern within its constitutional limitations. In other words, constitutionalism combines the idea of a government limited in its action and accountable to its citizens for its actions. The modern concept therefore rests on two main pillars. First, the existence of certain limitations imposed on the state particularly in its relations with citizens, based on certain clearly defined core values. Secondly, the existence of a clearly defined mechanism for ensuring that the limitations on the government are legally enforceable. In this broad sense, modern constitutionalism has six core elements: i) the recognition and protection of fundamental rights and freedoms; ii) the separation of powers; iii) an independent judiciary; iv) the review of the constitutionality of laws; v) the control of the amendment of the constitution; and vi) institutions that support democracy.

According to Wormuth,

The great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. To these auxiliary precautions, we give the name constitutionalism.^{ix}

Constitutionalism is embedded in the idea that the government should be limited in its powers and that its authority depends on it observing these limitations. The attempt to limit governmental arbitrariness, which is the premise of a constitution, has several times met with failure. This failure has had a negative effect on both human and material development of Africa.^x Enthronement of constitutionalism has remained practically impossible in most African state; despite the fact that many constitutional conferences had been held and many constitutional drafting committees have been set up and completed their job; yet the idea of constitutionalism has remained a day dream in many African countries.

Democracy

Democracy as a system of government have four major elements, namely; a political system for choosing and replacing the government through transparent, free and fair elections, the active participation of the people as citizens in politics and civic life, Protection of the human rights of all citizens, and a rule of law, in which the laws and procedures apply equally to all citizens.

While regular elections is one of the necessary prerequisites for creating and sustaining a democratic regime, however, democracy is “more than just holding elections”.^{xi} According to Clapham, it is not sufficient to measure democracy by simply looking at whether elections are held regularly and according to national standards. Clinton and Clapham are of the view that, in order to ensure good and sustained governance, a true democratic system needs more than regular election.^{xii}

In practice, democracy involves promoting the rule of law, tolerance of minority and opposition groups, transparent political processes, an independent judiciary, an impartial police force, a

military that is strictly subject to civilian control, a free press, vibrant civil society institutions, meaningful elections and above all, good respect for human rights.^{xiii}

Rule of Law

In every society, the rule of law is very essential. Onwanibe defines the rule of law as that aspect of law which envisages a political system where life is organized according to laws that guarantee a good degree of objectivity in dispensing justice, defending freedom, promoting peace and prosperity because law is a reasonable expression of integrity.^{xiv} According to Black's Law Dictionary, the rule of law is defined as 'a legal principle of general application sanctioned by the recognition of authorities, usually expressed in the form of maxim or logical proposition'.^{xv} The rule of law is sometimes seen as the supremacy of law. It provides that decisions be made by the application of known principles or laws, without the intervention or discretion in their application. It is doubtful whether democracy can be obtained without the consent of the electorate. For anything short of the consent of the masses, what would be operational will be mere authoritarianism. The rule of law as was formulated by Dicey^{xvi} has three basic interpretations:

1. There is the absolute supremacy of regular laws as opposed to the influence of arbitrary power.
2. The rule of law clearly stipulates common equality before the law of the land administered by the ordinary law courts.

According to John, the rule of law is very necessary for justice to prevail in the society.^{xvii} Falaiye^{xviii} submits that "the corollary of this will be stability, peace and good government" in democratic institutions. One more fact is that it is only when the courts are independent of the government, and thoroughly committed to enforcing the obedience of the government to the law of the land, can the rule of law be meaningful.

CONSTITUTIONALISM IN AFRICA

Nowadays, there is practically no African country without a written constitution and whose leaders do not profess their faith in the ideals of constitutionalism and democracy. This article

revisits the concept of constitutionalism. It also reflects on whether this concept is a myth or a reality in Africa. Against this background, it highlights the current state of constitutionalism in Africa and stresses some challenges that need to be overcome to ensure the establishment and consolidation of constitutionalism on the continent.

Constitutional government is a form of limited government based on a prescribed division of powers among public officials. Its leading principle, by which it is often defined, is known as the rule of law, which signifies that no political authority is superior to the law itself. When and where the rule of law obtains, the rights of citizens are not dependent upon the will of rulers; rather, they are established by law and protected by independent courts. With respect to democracy and constitutional government, it can be said that they are like love and marriage and you cannot have one without the other. In other words, democracy or constitutional government cannot be fully attained in practice in isolation of the other.

Similarly, rulers everywhere are tempted to disregard the rule of law in the name of national security or public emergency. In countries that have new and relatively weak systems of constitutional government the dangers of arbitrary and despotic rule are never far removed from the surface of political life. But this does not mean that constitutional thought and practice in those countries lack either vitality or genuine promise. As in the case of democracy, the elements or “fragments” of constitutional government coexist with their antitheses.^{xix} The challenge for constitutional thinkers in Africa is to identify the forms and methods of government that both minimize the threat of dictatorship and protect the rights of citizens.

One of the mistakes generally made by some politicians, and even by some intellectuals, has been to indulge in the confusion between constitutionalism and written constitutions. Grey^{xx} and Olukoshi^{xxi} rightly deplore such confusion between constitutionalism as defined earlier and constitutions, or between constitutionalism and the constitution-making process. The constitution is not a novelty in Africa. Many African countries had constitutions even before gaining their independence. Except for those people who embarked on a struggle for independence in countries like Guinea, Algeria, and the former Portuguese colonies, these constitutions were received from the former colonial powers and imposed on African people. Coups d'état and violent changes of government followed that honeymoon of constitutions in Africa and were characterized by the repeal of the previous constitutions and by the adoption

of the new ones, which were to be repeatedly amended and violated. Unfortunately, this proliferation of “constitutions” throughout Africa did not usher in a paradise for constitutionalism.

Furthermore, the current constitutional crisis in Nigeria, where several states of the Nigerian federation have adopted the legal system of Islam, known as Shari’a, as the official legal system in those states. Opponents of this action, including Christians and civil libertarians regardless of religious affiliation, contend that Sharia mandates punishments for criminal offenses that are incompatible with “fundamental rights” protected by the constitution. Examples include flogging in a public place for the new offence of drinking an alcoholic beverage in public; amputation of a hand for the crime of theft; compulsory prayer at regular daily intervals; behavioral restrictions on women, including a prohibition against travel in public conveyances with men, other than family members. The proponents of Shari’a argue that it would not be applied to the Christian residents of those states; but a person’s religious identity may not be obvious to the enforcers and officials who apprehend suspects. In any event, the introduction of Shari’a for Muslims means that there would be two categories of citizens in the state concerned, each category based on religion; each with its own set of rights and penalties.^{xxiii}

Although many African leaders were eager to adopt new “constitutions”, to amend, abrogate or replace the old ones in order to consolidate their personal powers, with countries such as the Democratic Republic of the Congo (DRC) beating the world-record of one “constitution per year” in its 46 years of independence, the actual situation has been painted by Okoth-Ogendo as one of “constitutions without constitutionalism”.^{xxiii} Instead of limiting the powers of the government, establishing the rule of law, protecting human and people’s rights and fostering democracy, most constitutions were enacted to rather remove any checks on governmental power, to limit the power of the sovereign people, to subject them to the will of the president and his government, and to restrict or deny them most fundamental human rights.

The consequence of this tendency is the growing number of hereditary democracies, where constitutions are modified overnight, most often against popular will, to make way for the president’s son or daughter. Moreover, according to constitutionalists, there are at least four ways a constitution can be amended: legislative revision, by a periodic replacement of the entire document, by formal amendment process and judicial interpretation.^{xxiv}

Regretfully, according to many observers of the political scene in Africa, many constitutional modifications are done solely to satisfy the lust for power of a few, thus undermining the backbone of constitutionalism, that is, the willingness to abide by the rules set in place by the constitution, not changing the rules overnight to stay in power or favor one group. Banjo, an expert in African development, cited by Ighobor, says without the rule of law, there can be "constitutional somersaults which bear all the hallmarks of what ridicules Africa before the world."^{xxv}

In most African countries, judicial decisions that threaten the political and economic survival of incumbent leaders are not respected. Judges in Africa are increasingly becoming political cadres working to serve the interests of political leaders in powers. Opposition politicians and political activists are always in and out of court answering trumped up charges like disrupting law and order, which incumbent leaders use to cripple their political aspirations.

In countries like Egypt, journalists are always harassed, tortured, imprisoned and killed on trumped up charges, while others have had to flee the country. The situation is no different, in Eritrea, Sudan, Angola, Rwanda and others, where writing an article or airing out views perceived to be challenging the top leadership earns one an automatic imprisonment. Media owners in these countries operate under constant fear and harassment and are forced to disseminate content that pleases those in authority.^{xxvi}

More so, lack of adherence to the rules and regulation laid down in the constitution has led to the emergence of ethnic militias in some countries in Africa, for example in Nigeria; the ethnic militias converse verbally and even openly on the state of nation. Some even went to the extent of engaging in confrontation with the state security forces in pursuance of their goals and objectives; they have different goals and aspirations.^{xxvii} For example, the movement for the survival of Ogoni people (MOSSOP) is out to protect the interest of the Ogoni, most especially the oil exploitation and environmental degradation of their land. The Odua People's Congress (OPC) emerged in August 1994 to challenge the annulment of the June 12 presidential election won by late Chief MKO Abiola, as well as ensure the restructuring of the Nigeria federation. The Indigenous People of Biafra (IPOB) is out to protect the interest of the south-east people. In the same view, some other countries in Africa do have rebels' movement; the groups came into being as a result of one or two exploitations that could have been normalized if the

government danced to the dictate of the constitution of the countries concerned. But because the ruling government failed to do the right thing the next thing for the rebel is to take arms against the ruling power. This has resulted into serious war in many countries in Africa. The aggrieved individuals felt marginalized and they thought that the best way to make their grievances known to the public is through violence. Robert Mugabe gave a vivid description of the situation in this way;

Africa is now home to the world's largest number of least Developed Countries. The continent further boasts of the largest refugee population, in the world. Furthermore, it is the theatre of endless conflicts, civil strifes and human right abuses. Whereas standard of living in other continent have risen over time, in Africa, present standards of living are not better than they were two decades ago. High unemployment, inflation, civil strifes, poverty, refugee crises, desertification, disease, and malnutrition-the list is endless- appear to be the only legacy the continent is capable of passing on from one generation to the other.^{xxviii}

CHALLENGES OF CONSTITUTIONALISM IN AFRICA

Constitutions are by no means a new phenomenon in African politics. Even the Apartheid state had a constitution. General Sani Abacha of Nigeria, Idi Amin of Uganda, Jeane Bedel Bokassa of the Central African Empire (now Republic), Marcias Nguema of Equitorial Guinea as well as Gnassingbe Eyadema of Togo all have or had constitutions in one form or the other. But as we all know; these so-called constitutions were not even worth paper on which they were written. These challenges include the following:

- 1.) Many people found themselves with a document of which they knew nothing and which was imposed on them by some political leaders as well as by some leaders within the international community, who made it crystal-clear that they did not expect anything other than a massive “yes” vote. It is difficult to build a sustainable constitutionalism on the basis of a constitution adopted in such a way.

2.) Bad and Oppressive Leadership: Immediately after the independence, the post-colonial Africa leaders are visibly and notoriously oppressive. They acquired absolute power, which made it possible for them to ensure that the people adjust to the structure of oppression and exploitation which they inherited. This trend has taken a new dimension today, according to Ajayi^{xxix} the urban political elite has alienated itself from its own people such that in those states which purport to maintain a measure of representative government, the political leaders only go to their supporters during election when they need votes.

Chinua Achebe^{xxx} opines that most Africa leaders are not morally upright. They characteristically coerce all personnel and other arms of government to work in their interest. The consequence of this is that, the post colonial state and institutions were as oppressive as their colonial precursors. They were exploitative to the extent that they serve as avenue for capital accumulation and status attainment by the leaders. Thus post-colonial African state could not guarantee freedom and justice for ordinary Africans. It could not provide “the essential foundation for the pursuit of public benefits- peace, welfare and the opportunity for individuals to pursue their own happiness”.^{xxxi}

In an ideal society, leaders are expected to be role model. But the problem with Africa has been the issue of bad leadership. Our leaders lack discipline and the citizens are following suit. African leaders have always been known for not obeying the constitution, since the constitution itself lacks merit. Africa lacks good leadership that will take Africa out of its debilitating condition. Leadership is observed to be the most critical, such that many depict the continent as “a faraway place where good people go hungry, bad people run government, and chaos and anarchy are the norm”.^{xxxii} More so, it has been rightly observed that under “the various oppressive authoritarian regimes which African countries have had the misfortune to chafe under for the greater part of its post-colonial history, Africans have been treated to a bastardization of constitutionalism and growing impotence of the judiciary in the face of countless acts of impunity, executive lawlessness and economic brigandage by praetorian guards that had imposed themselves on the political landscape of the nation”.^{xxxiii}

3.) Unavailability of the constitution to all citizens as well as lack of institutions for translating the constitution into different languages and free distribution of same.

- 4.) Absence of deliberate efforts and programs by the government to make the constitution a living or practical document.
- 5.) Lack of commitment by the judiciary, legislature and executive to use the constitution as the basis of governance, protecting the weak and rectifying decades of oppression and injustice.
- 6.) Inadequate provisions on minorities, language, women, disabled, children, rural areas, devolution of power as well as non-justiciability of social-economic rights justice.
- 7.) Lack of democratic mechanisms for a regular monitoring, review or amendment of the constitution in the larger interest of democratic participation and consolidation.
- 8.) Lack of acceptability of the constitution by the people due to the fact that the draft was never widely debated, seen or voted upon by the people. In an open demonstration of military arrogance and insensitivity to the popular will, the General Abdulsalami Abubakar junta refused to release the constitution even after the military ruling council spent three days “putting finishing touches” to what was supposed to be a people’s document.

RECOMMENDATIONS

1. Constitution Reform Should involve the Public

While constitutions in Africa are routinely changed, completely revised or abruptly shut down, like recently in Mali, scholars agree recommend more public involvement so constitutions can have more lasting power. According to Ian Shapiro^{xxxiv}

A good part of the reason all of these countries turned into dictatorships in the 1960s when the European powers left was that they simply created democratic institutions on the way out that did not have any kind of support or buy-in from the populations, and so most of them did not last very long.

Timothy Longman^{xxxv} also stresses public participation. Too often, he says, this crucial component is not taken seriously. Longman said.

2. Reduction of Excessive Presidential Powers

These excessive powers can be curbed in a number of ways. First, there is need in many countries for devolution or decentralisation of power in order to establish new centres of authority and policy-making in order to enhance the quality and practice of democracy and accountability, as well as recognise cultural and ethnic diversity.

Second, term prolongations do not only threaten the budding seeds of democracy and constitutionalism but often drive power drunk presidents to extremes. Two terms are long enough for any exceptional leader to leave indelible foot prints without sowing the seeds of dictatorship.

3. Need for African Leaders to Change their Mindset

As earlier, the rule for many African presidents is that they cannot lose elections organised by themselves. Presidents Bongo (Gabon), Paul Biya (Cameroon) and Deby (Chad) managed to succeed themselves. Another tendency among African leaders is to reject the results of any election when they are not declared winners. So far, the few heads of state to have conceded defeat without resorting to armed conflict or a coup d'état include president Abdou Diouf who officially congratulated Aboudlaye Wade on his election as the new Senegalese president and in Nigeria where Dr, Goodluck Jonathan, congratulated General Mohammed Buhari.

4. Addressing Poverty through the Effective Recognition of Socio- Economic Rights

Constitutional reforms, however extensive in their scope and however well intentioned, are unlikely to provide a solid foundation for constitutionalism if they fail to address the needs of the weak and vulnerable in society. Whilst no constitutional design or principle can on its own eradicate poverty and unemployment, it can nevertheless do two things that may considerably improve the conditions of the poor. First, it can reduce the endemic “quiet corruption” that is a major cause of failure to deliver goods and services paid for by the government through the constitutional entrenchment of accountability principles and institutions. Second, ensure that government resources are used judiciously and equitably for the common benefit of all. Contrary to the widely held fear that the entrenchment of socio-economic rights will impose an unreasonable burden on the state, the South African constitution and the jurisprudence of the South African Constitutional Court has shown how this can be done. Such provisions on

their own will not necessarily improve the conditions of the poor and marginalised unless the judiciary adopts a more progressive and imaginative approach to constitutional interpretation. This brings into focus the important role that the judiciary has to play in the new constitutional dispensation.

5. *Need for Continuity*

People should come to expect certain continuity. There is value there as many countries have learned, the United States, for example, which has had a constitution amended slightly but still essentially the same constitution as 1787.

6. *The Independent Judiciary as a Promoter and Defender of Constitutionalism*

The judiciary in most African countries had been reduced to the handmaiden of the various dictatorial regimes in place and was thus incapable of operating effectively either as a guardian of the constitution, the protector of human rights or an impartial enforcer of the law.

Because of the important role that judges in a constitutional system firmly rooted on constitutionalism have to play, it is inevitable that the prospects for deepening constitutionalism on the continent would require more serious measures to enhance the judicial role. Three main issues are critical to this: i) the strengthening of judicial independence and judicial competence, ii) the expansion of the scope for judicial intervention and iii) the judiciary acting as agents of constitutional change and development.

This leads to the issue of judiciary as active agents of change, If constitutionalism is to survive in Africa, then judges must be ready to play a more proactive role than they have played so far; they must be ready to use their powers to negate the continuous authoritarian impulses of elected politicians.

An excellent example of what many call judicial activism or progressive judicialism, a clear example is the South African Constitutional Court.^{xxxvi} To some extent, this is not necessarily synonymous with progressive judicialism; nevertheless, it does make it much easier than not, for a judge to adopt a progressive stance. There are good number of cases decided since 1996 where the judges can be said to have adopted a progressive judicialist stance, they have

frequently invoked expressions such as “constitutional values,” and “the spirit, purport and objects of the Bill of Rights,” which appear in section 39 of the Constitution.

7. Need to Implement Rule of Law

Scholars also agree that much more important than the path to constitutionalism is the path to actually implementing the rule of law. To make this happen, parliaments across Africa need to be strengthened, citizens must be given access to lawyers, the quality of policing has to improve and judiciaries need to be independent and autonomous. The rule of law should be established and prevail under a supreme constitution freely accepted by the people themselves and providing for the separation of powers and the protection of human and people’s rights. A good example in this regard came from Benin, South Africa, and Tanzania where Presidents Soglo and Kerekou, Mandela and Mkapa did not even attempt to launch a campaign to have the constitution amended. Furthermore, in African multi-ethnic and racial societies, during the election, the candidates of the different parties should be treated equally and a climate of political tolerance and non-intimidation should be established among candidates and their respective supporters. The media should also be independent and impartial.

8. Neutrality of the Military

The critical role of the army and other security forces cannot be ignored. Constitutionalism and democracy itself are compromised if the army and other security forces are not impartial and in the service of the entire nation. When the army and other security forces pledge support to the ruling party and to the incumbent president, as they did during the run-up to the last presidential election in Zimbabwe, where the chief of staff openly declared that they would not accept any government other than one led by President Robert Mugabe, the prospects are bad for democracy.

CONCLUSION

Constitution and constitutionalism are distinct but related concepts. While constitutions are instruments of constitutionalism, they cannot be confused. The lack of constitutionalism is a serious setback to the democratization process in many African countries. The history of post-

colonial Africa has hardly been a success story for constitution and constitutionalism. Regrettably, many postcolonial constitutions in Africa are simple photocopies of the constitutions of the former colonial powers, with or without any significant effort to adapt the said constitutions to the diverse socio-political, cultural and linguistic particularities of the independent countries. For this to be redressed, political egoism should give way to real democracy, with strong and independent institutions. African leaders should stop taking advantage of the fragile transitional process, institutional voids, as well as some of the flaws in their constitutions to make changes that seek to perpetuate their hold on power.

ENDNOTES

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- ⁱ Elizabeth, A. M., *Oxford Dictionary of Law*, 5th edition, Oxford University Press, 2003, 108.
- ⁱⁱ Bryan, A.G., *Black's Law Dictionary*, 9th edition, West Thomson Reuters business, 2009, 353.
- ⁱⁱⁱ Fombad, C. M., 'Limits on the Powers to Amend Constitutions: Recent Trends in Africa and their Potential Impact on Constitutionalism' *Paper Presented at the World Congress of Constitutional Law*, Athens, Greece, 11 -15 June 2007.
- ^{iv} *Ibid*, 354.
- ^v Article 16 of the French Declaration of the Rights of Man and of the Citizen of August 26, 1789.
- ^{vi} Carlo, F., 'Constitutionalism in Africa and Constitutional Trends: Brief Notes from a European Perspective', <http://www.carlofusaro.it>, accessed on 6/8/20.
- ^{vii} Rosenfeld, M., 'Modern Constitutionalism as Interplay between Identity and Diversity', in Rosenfeld, M. (ed) *Constitutionalism, Identity, Difference, and Legitimacy. Theoretical Perspectives*, Durham & London: Duke University Press, 1994, 27-28
- ^{viii} Schochet D. J., 'Introduction: Constitutionalism, Liberalism, and the Study of Politics', in Pennock, J.R. & Chapman J.W. (eds) *Constitutionalism*, New York: New York University Press, 1979 , p 11.
- ^{ix} Wormuth, F. D., *The Origins of Modern Constitutionalism*, New York, Harper and Brothers, 1949, 3.
- ^x Olasunkanmi, A., 'Constitutionalism And The Challenges of Development In Africa' [2014] *International Journal of Politics and Good Governance*, (Vol. 5, No. 5.) 4.
- ^{xi} Uwizeyimana, D. E., 'Law Democracy & Development' [2012], (Vol. 16), www.Dx.Doi.Org, accessed on 6/8/20.
- ^{xii} *Ibid*.
- ^{xiii} Kofi, A., *Preventing War and Disaster*, Annual Report on the Work of the Organization, 1999.
- ^{xiv} Onwanibe, R. C., 'The Rule of Law and the Rule of Man' in O. C. Eze (Ed.). *Society and the Rule of Law*. Owerri: Totan Publishers. 1989, 171-189.
- ^{xv} Garner, B. A., *Black's Law Dictionary*, 8th ed. Minnesota: West Publishers, 2004, 1359.
- ^{xvi} Dicey, A. V., *Introduction to the Study of the Law of the Constitution*, 9th ed. London, The Macmillan, 1939, 2.
- ^{xvii} John, E. O., *Man and the State: Issues in Socio-political Philosophy*, Uyo, Afahaide and Sons Publishers, 2009, 2.
- ^{xviii} Falaiye, O. A., 'Socialism in Africa: Problems, Prospects and Perspectives' [1993], *Journal of African Philosophy*.
- ^{xix} Richard, L. S., *On the Study of Constitutional Government in Africa*, Los Angeles, University of California Press, 2001, 1.
- ^{xx} Grey, T.C., 'Constitutionalism: An Analysis Framework', in Pennock, J.R. & Chapman, J.W., *Op.cit.*, 189.
- ^{xxi} Olukoshi, A., 'State, Conflict, and Democracy in Africa: The Complex Process of State Renewal', in Joseph, R. (ed), *State, Conflict and Democracy in Africa*, London, Lynne Rienner Publishers, 1999, 453.
- ^{xxii} Richard L. R., *Op.cit.*, 5.

- ^{xxiii} Okoth-Ogendo, H.W.O. ‘Constitutions without Constitutionalism: Reflections on an African Paradox’, in Zoethout, C.M. et al (eds), 1996, 1.
- ^{xxiv} Fombad, C. M., *Op.cit.*
- ^{xxv} Ighobor, K., ‘Politics of Succession: Coping When Leaders Die’, Africa Renewal’, [2013], www.un.org/africarenewal, accessed on 6/8/20.
- ^{xxvi} Fye, A., ‘ Democratic Governance in Africa...’ *American Scientific Research Journal for Engineering, Technology, and Sciences*, [2015], (Vol. 14, No. 1), 39.
- ^{xxvii} Olasunkanmi, A., *Op. cit.*, 6.
- ^{xxviii} Robert, M., ‘Africa in the New World Order: Europe 1992 and Beyond”, a Daily Times (Nigeria) *Special Lecture delivered on January 9*, Published in Daily Times, January 10 1991, 22.
- ^{xxix} Ajayi, J. F., ‘Development is about People’s View Point: A Critical Review Of Culture and Society’, [1992], (Vol.1, No. 51-52), 9.
- ^{xxx} Chinua, A., *The Trouble with Nigeria*, Enugu, Fourth Dimension, 1985, 1.
- ^{xxxi} Christopher, C., ‘The Africa State’ in Douglas, R., (ed) *Africa : 30 Years On*, London, Heinemann Educational Books Inc., 1991, 92.
- ^{xxxii} Thomson, A., *An Introduction to African Politics*, 2nd ed., New York, Routledge , 2002, 25.
- ^{xxxiii} Oyeboade, A., ‘The Challenges of Building a Virile Democratic Nation in Critical Issues on Sustainable Development: Nigerian Perspective’, [2005], *Leadership Watch*, 49.
- ^{xxxiv} A professor of political science at Yale University and a South African
- ^{xxxv} The director of the African Studies Center at Boston University
- ^{xxxvi} The cue for this is laid down in *Section 39* of the 1996 Constitution of South Africa although this section merely requires the South African judge “when interpreting” the Constitution to do what judges should normally do when interpreting a Constitution, that is, to give effect to its values.