

CONSTITUTIONALISM AND THE CRISIS OF DEVELOPMENT IN AFRICA

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ABSTRACT

The consequences of undermining constitutionalism in the post-independence African states, are too grim to be ignored. This paper examines the effects of constitutionalism on development in the continent. It argues that Africa's obvious inability to achieve sustainable development since independence, is much due to the widespread unpopular practice of imposed and authoritarian constitutions, as well as endemic abuse of executive powers, contrary to the principles of constitutionalism in a democratic governance. For sustainable development to be attained in Africa, therefore, certain fundamental changes in the structure of political governance, necessary to promote constitutionalism in governance in the continent, are suggested in the paper. These include, a participating approach in constitution-making that involves the people in the process, a framework of constitutional literacy for the people to know their rights and seek redress, a limited government that respects the rule of law, the recognition of the right to free and fair elections, and the incorporation of socio-economic rights of the people into the constitutions.

Keywords: *Constitutionalism, Constitution, Authoritarianism, Development, Democratization.*

INTRODUCTION

The importance of constitutionalism for good governance in a democracy cannot be over-emphasized. Philosophers, political scientists and jurists often regard societal development as the product of constitutionalism in any democratic society. Fundamental to the idea of constitutionalism is constitutional legitimacy, where the constitution truly represents the people's wishes and aspirations. Another is, a limited government, where the government's powers are strictly subject to the rule of law. Notably, with colonialism came the introduction of the modern form of governance requiring the modern and written form of constitution adopted today in many African states. However, since good and constitutional governance that respects the principle of constitutionalism mattered less for the colonial masters than their despoliation and appropriation of Africa's resources, it is hardly surprising that under no colonial rule in Africa was such principle of constitutionalism part of governance. Rather, governance was based on the odious constitutional imposition, abuses and arbitrariness, tyranny, exploitation and repression unrestrained exploitation.

Perhaps, nothing would be surprising to many than the fact that several decades after independence from the colonial rule, governance in Africa still follows this gravely bad culture of the colonial tyrannical imposition, arbitrariness and abuses, repression and exploitation. It is a painful fact, the absence of constitutionalism, which was the hallmark of colonialism, did not just survive after colonialism, but prospered in Africa, constituting a major challenge to development in the continent. Despite their claim to democracy today, many African governments are nothing but very repressive and authoritarian regimes, administered with brute force and hatred for democratic ideals. Over the years, this has triggered a succession of sustained socio-political and economic crises with far-reaching implications of development in the continent.

That Africa today faces the big challenge of establishing constitutionalism as a way of life in her political culture, is, therefore, a *res ipsa loquitur* (a case that speaks for itself). And that Africa has severely lost count on development through the undermining of constitutionalism in political governance, is a reality ominously staring us the face like the sword of Damocles. A flurry of concerns has been engendered by this unfortunate situation, especially from within the academia, prompting a variety of theoretical political options seeking to establish the process of effective democratization in Africa for a sustainable development. In furtherance of such attempts, this paper reveals how the undermining of constitutionalism has largely characterized the post-independence African political experience, and the hindrances it poses to development in the continent. It suggests certain fundamental adjustments in Africa's political governance to promote constitutionalism in governance, as a way towards sustainable development in the continent.

CONSTITUTION AND CONSTITUTIONALISM

For effective discussion, it is pertinent to distinguish between constitution and constitutionalism. A constitution is a fundamental system of law by which a people in a given sovereign society are governed. It may be written or unwritten, and *ala* James Curry, it functions as a 'power map' (qtd. in Fombad 1012), in that, it creates, states and delineates the powers of the various organs of government as well as regulate the behaviours of the citizens, be it in relations to themselves or to the state (Olasunkanmi 272). Benedict Nchalla sees the essence of a constitution as "the distribution of power among the state and society as well as among the various branches of government" (19). For De Smith and Brazir, "the constitutions are primarily about political authority and the location of power, conferment, distribution, exercise and limitation of authority and power among agents of a state" (qtd. in Olasunkanmi 272).

What stands out from the foregoing is that a constitution is a supreme law of the land, established or accepted as a guide for governing the state. It sets up the basis for government in the state – so as prevent anarchy – by establishing, limiting and defining the relations of the legislative, executive and judiciary powers of the state.

The constitution declares the sovereignty of the people and derives its authority from the will of the people. It prescribes a blueprint for representative government responsible and accountable to the people through universal suffrage at periodic elections. Governmental authority is to be exercised only in accordance with law established pursuant to constitutional processes and consistent with constitutional prescriptions and limitations. Government is for the people, but is limited by a bill of individual rights. Many constitutional systems fractionate governmental authority by some separation of powers or other checks and balances (Henkin 12). Besides, it also provides for the explicit guarantee of the rights and freedom of the people – in order to prevent tyranny in governance. The constitution also incorporates the ideological pronouncements by which the state ought to aspire as well as obligations of the citizens to the state towards these aspirations. It may also reflect a country's historical experiences, culture, tradition and hope for the future. Hence, in a democratic society, the constitution, "is not just a political document but also an instrument for development" (Ihonvbere 343).

However, since political ideas and aspirations of the people are not always the same for all times; and the conditions met by the government are also not always the same too, regular constitutional reforms or reviews is necessary for effective democratic processes in line with contemporary realities. In Nchalla's view, "the term constitutional reform has become commonplace when referring to the process of constitutional review, analysis, revision, amendment and adoption of a new constitution" (24). Constitutional reform may culminate in a completely revised constitution or one that is amended to make its original form unrecognizable. Hence, any form constitution reform necessarily involves the process of 'constitution-making', which according to Issa Shivji, embraces "both amending an existing constitution as well as making new constitutions" (47).

In any democracy, the process of constitution-making is key, because it is from the constitution that the rulers claim to derive their authority and legitimacy to operate. This claim by the rulers, "cannot hold if the process of constitution-making did not involve the people" (Shivji 47). Hence, any constitution-making or reform demands that

the process be given as much importance as the substance or content of the constitution itself, especially by ensuring popular participation of the people in it; for as Nchalla says, “popular, inclusive, participatory and democratic are all key aspects of a successful process that bestows both legitimacy and credibility on the constitution of a country” (24). This sort of process contributes to making the constitution a living document by taking it to the people so that they are in a position not just to access it, but also to understand it, claim ownership of it, respect and obey it. A constitution becomes devoid of legitimacy, if it lacks such popular participation of the people in all the processes of making it, that is, from the social and political debates at all levels to its eventual adoption. A constitution without legitimacy is no constitution at all; and it is the foundation of absence of constitutionalism in governance. L. Bucker says that such a constitution “is outside the law in the sense that it ought not to be respected by community against which it is applied” (671). Thus, legitimacy is a function of value for a constitution, which serves as the foundation of constitutionalism in a democratic or constitutional government.

A constitution is a condition precedent for the development of constitutionalism. constitutionalism implies a government subject to the constitution; a limited government; government subject to the rule of law; and fractionalized authority to prevent concentration of power and danger of tyranny in governance. Constitutionalism implies also that the constitution “cannot be suspended, circumvented or disregarded by political organs of government, and that it can be amended only by procedures appropriate to change of constitutional character and that give effect to the will of the people acting in a constitutional mode” (Henkin 12). According to Fombad, constitutionalism “encompass the idea that a government should not only be sufficiently limited in a way that protects its citizen 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 operate within its constitutional limitations” (1013-1014). In this sense, constitutionalism can be seen as a legal and political idea, based on the primacy of the constitution, which incorporates the idea of a limited of a limited government, adherence to the rule of law and the

protection of human rights. It combines the idea of a limited government and an accountable government; and it implies that “public authority can legitimately be exercised only in accordance with the constitution. There can be no extra-constitutional government, no exercise of public authority by any person or institution not designated pursuant to the constitution” (Henkin 12). There can be no continuation in office beyond the term for which officials were elected or appointed.

It rests on two main pillars: The fact that limitations are imposed on government when it is based on certain core values like individual or group rights and freedoms; and the ability of citizens to legally compel government to operate within these limitations. The fundamental idea behind constitutionalism is the need to prevent arbitrariness or tyranny in government, by ensuring that the constitution does not become an ornamental document or a sham that politicians can either ignore and violate with impunity or deploy as an instrument of oppression and repression against the people in a democratic society. Thus, in specific terms, among other things, constitutionalism denotes effective restraints upon the powers of those who govern; genuine periodic elections by universal suffrage; a guarantee of individual fundamental rights; the existence of an independent tribunal to enforce these rights; and generally, the enthronement of the rule of law, that is, the absence of any form of arbitrariness, and equality of all before the law (Friedrich 318). Constitutionalism, thus, serves as a means of evaluating the form (legitimacy) and substance (contents and implementation) of a constitution in a democratic government.

A constitution of any state will serve no useful purpose in a society without constitutionalism. A society marked by constitution without constitutionalism is often characterized by widespread impunity, disdain for the rule of law, arbitrariness, and weak democratic institutions. Often, these provoke socio-political instability and economic crisis, with severe consequences on development in the society. By development here is meant the efficient management of the resources of the society in such a way as to positively enhance the living standard of the people through sustained socio-economic and

political changes and the qualitative transformation of productive structure of social institutions. It can also mean, “the process of de-alienation, that is, liberation from all inhibitions derived from the structure and superstructure of the society that thus dehumanize its broad masses and present them from consummating their full potential” (Adewole 131). According to Akin Mabogunje, “development is essentially a human issue concerned with mobilizing communities and the whole society to engage in the task of self-improvement with the resources available to it” (26).

The primary objective of development is thus, the creation of a material and cultural environments that is conducive to the self-fulfillment and creative participation of people in the society. It makes sense, therefore, to see development as the qualitative and quantitative positive transformation of the lives of a people that does not only enhance their material well-being, but also their social well-being, including the restoration of human dignity. Constitutionalism is so fundamental for development in the society that it can only be sacrificed at the expense of underdevelopment, as evident in most post-colonial African states.

CONSTITUTIONALISM IN POST-COLONIAL AFRICA

A recurrent theme in the history of post-colonial Africa has been instability due to political upheavals, ethno-religious and allied social conflicts and economic crisis. The cause of this endemic instability has largely been the lack of constitutionalism in political governance since independence (Adewoye 136). It would be recalled that, at independence, most African countries adopted the first generation of African constitutions, crafted mainly by the departing colonial powers; for “none of the African countries under the colonial rule had the opportunity of substantial popular participation of the people in the constitution-making process” (Olasunkanmi, *Constitutionalism and the Challenges of ...* 2). In other words, almost all independence African constitutions were more or less imposed, since the people, apart from a few elites, had not been involved in the constitution-making process (Ndulo, 101). Nonetheless, these constitutions introduced some elements of European liberal democracy and constitutionalism, including important features such as

the separation of powers, checks and balances, limited government and the protection of individual and minority rights. This unfortunate trend of ‘imposed constitutionalism’ and not allowing a substantial local participation or public involvement in constitution-making process, has largely characterized the post-colonial African constitutional experience till date. This net result of this is the endemic constitutional crisis in the continent.

Additionally, the colonial powers, who hastily departed the African colonies, committed into the hands of the emergent African leaders at independence, states deposing enormous powers, but with little or no virile institutions to check the abuse of such powers. Such immense and almost raw powers once available to the colonial masters were now at the disposal of these African leaders, who were not loath to use them as their colonial predecessors did. And under many pretexts such as the pursuit of national unity and economic development, many of the democratic principles in the independent constitutions were progressively repealed in the wave of constitutional amendments that suddenly overtook many of the post-independence African states. This rush in constitution amendments, undertaken mostly through a variety of undemocratic processes, eventually produced various forms of authoritarian constitutions with high concentration of power in the executive. In many of the African countries, the then existing national assembly quickly transformed themselves into constituent assemblies to whimsically amend and enact new constitutions for the people. All these, “watered down the essence of constitutionalism and democratic governance in the continent” (Mbondeniyi and Ojienda 4).

With such brazen political mentality, the immediate post-independence constitutions were quickly turned into instruments of oppression and repression, and the immediate independent African states were characterized by gross violation of human rights, despite the bill of rights or constitutional provisions purported to recognize and protect human rights. The pledge of multiparty democracy eventually became a byword as opposition parties were repressed with maximum state force and regarded as “clogs in the wheels of progress”. The newly-independent countries became one-party states.

They banned opposition parties and blamed multi-party system for undermining national unity. This kind of situation prevailed in Africa in the 1960s, 70s and 80s. Most of the parties that took political power after independence were liberation parties, which claimed that they represented the will of the people. As a result, the boundaries between a party and a state structure remained blurred and “the party-state system” became the norm (Teshome 809).

The repressive rule had a very significant impact on the opposition parties. It led to the absence of legally registered opposition parties in many African countries. In this period (1960s-1980s) the only option the opposition groups had was armed struggle to topple the incumbents by force. At the end of the 1980s, the end of the Cold War brought many changes to Africa. This change was visible in the 1990s. The new democratization wind gave rise to the flourishing of multi-party systems in the continent. With dire consequences on the continent’s socio-economic and political development, this ugly trend increasingly became a template of action in the post-independence African political history, which H. Okoth-Ogendo’s says is characterized by “constitutions without constitutionalism” (qtd. in Fombad 1013). In the light of this, C. Odinakahi rightly submits that, “most of the laws, institutions and repressive attitudes and violation of rights that characterized colonialism did not just survive independence, they prospered” (35). All the instances that have arisen in line with the breach of constitutionalism and abuse of power in Africa since independence may be far too much for the limited space here to capture. However, a few instances here would suffice to buttress our point.

For instance, shortly after independence in 1957, Ghana under Kwame Nkrumah became highly intolerant to opposition. In a move to destroy the opposition United Party (UP), the government in 1958, arbitrarily abrogated all regional assemblies in the country. Later in 1964, through a whimsical constitution amendment, the government decreed Nkrumah’s ruling Convention Peoples’ Party (CPP) as the only legal political party for the country. Kofi Quashigah adds that the amended constitution also gave the president the power to appoint and remove judges at will (118). This repressive and authoritarian political atmosphere prevailed in Ugandan, where in 1966, the then Prime

Minister, Milton Obote, assumed absolute powers in the country, through a series of autocratic actions such as arbitrary abolition of all the kingdoms in Uganda and their constitutionally-guaranteed regional statuses, as well as the institution of a unitary state (Doornbos 317). In the same autocratic and authoritarian manner, the government of Julius Nyerere, crushed all oppositions and established a single party regime in Tanzania in 1967. Nyerere defended his actions and his executive presidency with enormous powers with the following words: “Our constitution differs from the American system in that it... enables the executive to function without being checked at every turn....” (qtd. in Shivji 25).

His *Ujamaa* village ideology, became another coercive attempt by his government to overcentralize the economy. Theoretically, an *Ujamaa* village is one “in which the group spontaneously and collectively work in unity, and each has necessities before anyone receives extra” (Adewoye 141). But this failed because it was not founded in on spontaneity, voluntariness and a strong sense of community. According to Allan McChesney “the ‘villagization’ program of *Ujamaa* was imposed from above” (186). Hence, between 1973 and 1978 about 11 million peasants were forcefully removed from their locations, a number being pushed from areas of permanent water to arid regions. Many were rounded up without notice and dumped on the village site (McChesney 186). And through the ideological coercion by which *Ujamaa* work ethics was promoted, “an Area Commissioner or Magistrate could imprison an unemployed person for a month or until work was found for him. ‘Operation Maduka’ was designed to close down private shops. Private medical practice was banned” (Adewoye 141).

Also, at shortly after independence in 1958, the government of Guinea, proclaimed the country to be “the most socialistic, radically independent, revolutionary country in sub-Saharan Africa” (Adewoye 139). It went ahead to erect a political structure that made the ruling Democratic Party of Guinea (DPG) synonymous with the state and dominated practically all facets of life in the country. To heighten the force of repression in the country, then President Sakou Toure abolished and dismissed the legal profession in the country, as “a

legalistic formalism which is not only useless, but also incompatible with the social realities of the young African nation” (Nwabueze 276). With the establishment of a High Court, manned by his political associates in 1961, and the reign of impunity that followed, the voice of opposition and dissent were ruthlessly suppressed together with incalculable human rights violations. By the 1970s, Guinea had emerged a full-fledged totalitarian state.

In the same line of totalitarian action, Mobutu Sese Seko of the Democratic Republic of Congo created one party state when he took over power in 1965. His highly centralized power allowed him the room to loot the coffers of the state with impunity and his long reign was characterized by human rights abuses and killings of political opponents. The situation was by no means different in the Nigerian state. In Nigeria, the period from October 1, 1960 to January 14, 1966, (before the first military coup and takeover of power by the military in January 15, 1966), is generally regarded as “a dark period for democracy in Nigeria” (Sasime 154). This is because, during this period, anti-democratic forces launched a determined assault on democratic values and constitutionalism in the country. For instance, in spite of its parliamentary majority, the Northern People’s Congress and the National Council of Nigeria and the Cameroons coalition federal government led by the Prime Minister, Abubakar Tafewa Balewa soon “showed itself unwilling to have or live with the opposition” (Ademoyega 12). As I. Nicolson observes, ‘their item of agreement was on the destruction of the opposition government of the West and on the dismembering of that region’ (308).

The NPC/NCNC coalition federal government, therefore, saw the opposition Action Group (AG) as a confrontational group and made deliberate effort to stifle and wipe it out in the country. One of such steps taken to neutralize the opposition AG was to set up a partisan Sir Bairamian’s Commission of Inquiry and Tribunals of Enquiry Act in 1961, to conduct inquiry into the affairs of the National Bank (Nwabueze 276), from which the AG was believed to receive financial support to “mount such a gargantuan country-wide campaign during the 1959 general election” (Awolowo 147). The government took several steps to undermine the judiciary when the Supreme Court later invalidated the inquiry. As Ademoyega captures

it, “within a short time, the judiciary had ceased to be a force that could stand for the rights of the people in the face of the obvious governmental high-handedness and tyranny” (10). The Action Group crisis of 1962, which eventually led to the arrest of Awolowo and thirty of his AG party lieutenants, and the charged of treasonable felony against them, was believed to have been hatched by the Balewa-led government, which also “afforded the federal government the opportunity to deal with the Action Group and the Western Nigerian government controlled by it” (Sasime 156).

Examples could be multiplied in other places about the immediate post-independent Africa where leadership quickly turned into autocracy and dictatorship due to the barefaced undermining of constitutionalism. As evident from our discussion so far, the problems were not caused by the absence of constitutions. Rather, it was the case of the African leaders’ deliberate rendering of the constitutions dysfunctional by regularly undermining their provision or by arbitrarily amending them to suit their selfish political ambitions. The general trend in the continent had been in the direction of whimsical amendment of constitutions to concentrate power on the executive and to abridge local autonomy in favour of the central government; to undermine opposition parties and establish a one-party state, using all manners of repression and suppression including detention trial, torture and murder.

These inevitably bred patrimonialism, nepotism, tribalism and unprecedented level of corruption in the continent. Thus the immediate post-independence African states were as oppressive as their colonial precursors. They could not provide the essential foundation for the pursuit of public benefits – peace, welfare and the opportunity for individuals to pursue their own happiness” (Christopher, 92). This become a recipe for the massive civil unrests, ethnic rivalry, political instability, economic decline, as well as the genesis of the misrule and instability in the continent that became an excuse for the military foray into politics in the 1960s, with all the negative consequences this has had on the development in the continent (Akintola 27).

With the 1963 Togolese coup d'état leading the pack, a wave of coups d'états swept across the continent with the military taking over government, purporting to clean the socio-economic and political mess left by the civilian governments. Through their reign of suffocating impunity, suspension of constitutions, dissolution of parliament and unreserved looting of public treasury, the military destroyed every democratic structure they encountered and further set the continent on an incredibly backward trajectory of constitutional crisis and socio-economic and political decline. However, from the early 1990s, there was a gradual return to civil rule in many of the African states. Along with this came the third wave of constitutional reforms in the continent, "designed to introduce constitutions that promote constitutionalism and good governance" (Fombad 1007). In all but two countries (Botswana with its 1966 constitution and Mauritius with its 1968 constitution), new and substantially revised constitutions were adopted across the continent from the 1990s.

Thus, the 1990s began with a slow and painful move toward what many optimistically hoped would usher in a new era of democratic governance and constitutionalism through the constitutional reforms. But this never happened, due to the resurgence of authoritarian rule under the guise of democracy in the continent. In fact, from the 1990s, Africa has produced some of the worst dictators in history. The reforms did not go far enough to adequately address the institutional weaknesses that made dictatorship and the concomitant repression, corruption and economic mismanagement in the continent inevitable. Many of the new constitutions merely paid lips service to issues of separation of power and executive dominance in government and the abuses of power that go along with it. Hence, under most of these constitutions, overbearing and imperial presidents continue to reign and dominate the legislature as well as controls the judiciary. The traditional checks and balances are "either absent or too weak and ineffective" (Cranenburgh 443). Hence, the system of governance in Africa in the post 1990s constitutional reforms, has become even worse; for the so-called 'democratic leaders have turned out to be more corrupt, power-drunk, manipulative and inefficient than their predecessors (Fombad 1024). What has aggravated the problem of executive dominance in Africa today is the issue of the so-

called presidential immunities in the constitutions, which enables the incompetent and corrupt leaders to get away with their crimes while in office.

Another issue more troubling, is the fact that many of these constitutions were never subjected to popular debates or referenda, whereby through such avenues of open and democratic process, attention could be paid to the dreams, pains and aspirations of the ordinary Africans in drafting the constitutions. Some of the constitutions were simply packaged by the military and imposed on the people as a condition for handing back power to the civil rule. Whenever they were subjected to public debates, such debates were carefully monitored, controlled and manipulated by the ruling elites, and the results skewed to reflect their narrow, selfish political interests. In some cases, the reports of constitutional conferences or commission which truly reflected the desires and aspirations of the people – were rejected or set aside by the state. This is why the question of legitimacy has remained an albatross around the neck of many of the post-1990s African states constitutions.

Furthermore, the resurgence of dominant party dictatorship in the continent, which uses the ‘multi-partysm’ provisions of the 1990s constitutional reforms as a convenient smokescreen behind which to practice dictatorship which has made a total mess of the practice of constitutionalism in Africa. Wondwosen Toshome concedes that, “opposition political parties, considered to be an essential structural characteristic of modern liberal democracy, are barely tolerated in the continent” (811). All that appears to have happened from the 1990s is that, “the old monolithic one-party dictators ... simply made way for multiparty ‘democratic’ dictators, who have maintained the inherited repressive, exploitative, and inefficient structures installed by their predecessors” (Fombad 1024). Disquiet with what most therefore perceive as ‘authoritarian constitutions in their countries, coupled with general detest for the massive abuse of executive powers, have triggered not only to an unprecedented tsunami of socio-political upheavals, wars, and revolutions across the continent today, it has also led to agitations for effective constitutionalism in Africa, believed to be crucial for the continent’s development.

In Nigeria, for instance, the current 1999 constitution, faces a challenge of legitimacy, as it is believed to “lack the will and consent of the people” (Chima 135). Crafted under the ‘shadow of the gun’, during the Gen. Abdulsalami Abubakar’s military regime, without involving the people, the constitution was imposed on the country as a condition for the return to civil rule after over three decades of military dictatorship. Besides the challenge of legitimacy is disaffection the constitution has induced in the country, due to its obvious deficiency in democratic values, fully justifiable human rights provision, and clear governmental structures that can ensure effective constitutional governance (Igbuzor 22). Hence, notwithstanding the 2010 amendments made to the 1999 constitution, it is considered highly impotent for governance for many other reasons as structural imbalances in the composition of the country’s 36 federating states, lack of inclusiveness and accountability in governance, and devolution of powers in the federation (Igbuzor 22). This explains why nepotism, electoral frauds, institutional failure, large-scale corruption, ethnic agitations for self-determination, ethno-religious violence, banditry, agitations for a new constitution that truly represents the wishes and aspirations of Nigerians, are the order of the day in the country. Dejo Olowu’s remarks poignantly describes the situation: “the best Nigeria has achieved since independence has essentially been constitution without constitutionalism, elections without democratic culture” (330).

Also, Zambia’s record of democracy in the 1990s under President Frederick Chiluba has been much criticized for perpetuating the tyrannical structure of the *de jure* one-party state that has trailed the country shortly after independence. His party, the Movement for the Multi-Party Democracy (MMD), became synonymous with the state, leaving no room for the opposition. This sad tyrannical trajectory is said to continue with the current ruling party, the Patriotic Front, under President Edgar Chagwa Lungu. Similarly, President Nicephore Soglo of Benin Republic, shortly after assuming office in 1990, turned the country into a single-party state with his party, *Parti de la Renaissance du Benin* (Renaissance Party of Benin) at the centre of all governmental affairs. For reason of this characteristics intolerance to opposition parties in the continent, the common strategy

has been for the ruling party to manipulate the electoral process to constantly exclude or disadvantage the opposition parties, in order to perpetuate themselves in power. In fact, despite claims to multi-party system from the 1990s, the prospect of opposition parties winning elections in African states, have progressively diminished as more and more sophisticated means of rigging elections have been device by the parties in power.

Such sophisticated means of elections rigging are what sustained the life presidency ambitions of such tyrannical and dictatorial figures in Africa as, Mobutu Sese Sekou of Zaire, Eyadema of Togo, Banda of Malawi, Robert Mugabe of Zimbabwe, Paul Biya of Cameroun, President Toedoro Obiang Mbasogo of Equatorial Guinea, etc. Of particular note is President Toedoro Obiang Mbasogo of Equatorial Guinea, who has held unto power with iron fist since 1979 and remains the longest serving president of a country in the entire world! He continues to win elections by fraudulent means and refused to step down from office despite term limits in the 2011 constitution. Today the country is a dominant-party state, where his Democratic Party of Equatorial Guinea (DPEG) hold virtually all governing powers. And although opposition parties were legalized in 1992, the legislature remains dominated by Mbasosgo's DPEG, and there is almost no opposition to his decisions within the body. Like in many African states today, the one-party dominated parliament, merely rubber stamp the bills and requests put before them by the president.

The problem cuts across many African countries today, including and Botswana – a country that has gained international reputation as the “Miracle of Africa” and “a success story on the Africa continent” (Cook and Sarkin 453). Since it achieved independence in 1966, Botswana has, undoubtedly, maintained high economic growth, sound fiscal policies, and regular elections, which have fed this image. However, this designation has been called to question, especially because of the one-party dominance in the state, with the Botswana Democratic Party (BDP) as the only party in power since the country's independence in 1966. Oppositions parties are widely considered to have no real chance of gaining power in the

country because of the intolerant attitude of the government in power. Hence, Cook and Sarkin submit that:

This label of success has led to inadequate questioning of what occurs beneath the façade in Botswana. Inequality, discrimination, the dominance of a single political party, the government's aversion to criticism, and an array of human rights abuses are among the many problems afflicting Botswana. The country has made especially slow progress toward improving many social and cultural rights. Achievements such as Botswana's noteworthy economic growth, political stability, and regular elections often eclipse issues like human rights, which remain on the periphery of most analyses of Botswana. However, human rights issues present a significant threat to Botswana's positive reputation. One of these issues concerns the long and complicated relationship between a minority ethnic group, the San, and the ruling elite, who mostly come from the Tswana ethnic group (455).

Based on these baleful and questionable records, they conclude that, "Botswana cannot serve as an example for Africa unless it confronts these fundamental failures" (489). And, "until the country takes action to address these essential shortcomings, the international community should refrain from referring to Botswana as the —Miracle of Africa" (489). This same attitude was the source of civil unrest and political instability in Liberia, especially under President Charles Taylor, who even created his own private army and used it against his political opponents. Besides arbitrary arrests of citizens, disrespects for the rights of habeas corpus, systemic police brutality, imprisonment without trial, denials of freedom of movement, mass arrest and detention, and the whole apparatus of violent repression by many African governments, the increasing threats to media freedom, has not only deepened the bore of threats to freedom in Africa, but also poses a serious challenge the constitutionalism in the continent. In their 2020 Press Freedom Index, involving a survey of 180 countries, for instance, Reporters Without Borders, ranked Eritrea, one of Africa's newest countries 178th position, remarking that the country, "is run like a vast open prison because the media are totally subject to the

whim of President Issayas Afewroki, a press freedom predator, guilty of ‘crimes against humanity’” (RWB, 2020 World Press Freedom Index).

These issues pose serious problems to entrenching constitutionalism and the rule of law in Africa, as misuse of state funds and clientelism have intensified in the continent as the incumbents do everything inhumane, undemocratic and unconstitutional with all amount of impunity to acquire and remain in power; while the promises of a better life made in the 1990s regarding food sufficiency, water, shelter, healthcare, employment, better wages and increased accountability remain only but a mirage. And since the performance of the new democrats have been so disappointing, many now feel that the third wave of democracy in the continent amounts to nothing more than a third wail for Africans” (Ihonvbere, *A Balance Sheet* ... 35).

IMPACTS ON DEVELOPMENT IN THE CONTINENT

The foregoing simply affirms the fact that the crisis of governance in Africa arises not due to the absence of constitutions that ought to regulate governance, but due to “the absence of constitutionalism in governance” (Aime 163). Certainly, this comes with such dire consequences constituting massive impediments to development in the continent. To be sure, no society can make pretension to good governance and development under the prevailing political atmosphere of lack of constitutionalism in Africa. The World Bank’s assessment of major impediments to Africa’s development alludes to this: “underlying the litany of Africa’s development crisis is a crisis of good governance....” (60). The crisis of good governance follows from the crisis of constitutionalism, which, as shown above, have bedeviled many African since independence, turning the continent into “a faraway place, where people go hungry, bad people run government, chaos and anarchy are the norm” (Thomson 56).

The net result is that, today, the continent as a whole is confronted with the disappearance of the basic state functions that ought to serve the fundamental needs of the people to live and exist as human beings. This includes collapsed infrastructure, total paralysis of

the health and educational sectors. According to M. Sinjela, lack of constitutionalism in Africa has precipitated not only widespread corruption and erosion of the possibility of good governance, but also weak political institution and economic stagnation (24-25). For Fombad, the consequence is that, “the African economy has remained depressed and health shocks, such as the HIV/AIDS pandemic, have further diminished the ability of many people to support themselves, work, or even provide for their families” (1033).

This explains why the continent frequently ranks low in all indices of human development; and why African nations constantly occupied top positions in the Transparency Internationals list of most corrupt nations in the world. It is hardly surprising why African countries typically fall towards the bottom of any list measuring small size economic activity such as income per capita or Gross Domestic Product (GDP) per capita, despite the enormous resources the continent is blessed with by nature. From the statistics provided by the World Bank, for instance, the GDP of sub-Saharan Africa has continued to dwindle by the years from about 54% in 1965 to 3.2% by 2018 (qtd. in Held 6). And according to the 2016 World Bank data, the Island Seychelles was the only African country in 2016 with a GDP per capita above 10,000 US Dollar per year (2012 Report). Also in 2019, the World Bank report shows that, “the extreme poverty in sub-Africa translates primarily into 85% of Africans living on less than 5 US Dollar per day (World Bank Report, 2019).

Moreover, Africa’s primary commodity trade and her share of foreign direct investment, according to the World Bank Development reports of 1986 and 2000, are said to have dropped from 7 and 13 percent in 1970s to less than 0.5 and 5 percent, respectively in the late 1990s (qtd. in Hoogwelt 174). And a recent data released by FDI Intelligence and EY Africa Attractiveness Report, shows that, there has been a steady decline in the number of foreign investors and projects in the continent over the years, due to socio-economic and political instability. Besides, Africa’s share of income has continued to drop over the past few decades, and according to the PROSI Magazine, “nowadays, the average European income is twenty times what an average African earns as income” (1998 Report). Moreover, in 2006, 34 of the 50 nations on the United Nations List of Least

Developed Countries were in Africa (UN, LDC, 2006). In 2009, 22 of the 24 countries of the world identified by the United Nations as having “Low Human Development” were in sub-Saharan Africa (UN, HDI, 2009). And currently, 31 of the 47 countries in the United Nations 2018 List of “Least Developed Countries”, are African countries (UN, LDC, 2018).

These shows the close relationship between constitutionalism and quality of life in the society. This explains why, besides mass poverty and diseases ravaging the continent a greater majority of Africans suffer from illiteracy, despite the preachments about education as the bedrock for development in the society. According to Joseph Omoregbe writes that, “... over 70% of the population of these countries are illiterate, over 80% of them live in abject poverty while corruption permeates every aspect of life” (22). There are also the aggregation and complexification of armed conflicts, wars and banditry, caused by the endemic abuse of power, disregard for the rule and reign of impunity, which have made living in the continent today a rather dreadful experience.

By these, the continent has been turned into a theatre of endless strives, political instability and bloodshed. For this reason, African countries constantly remain among the top places for on-going conflicts and wars in the world. Currently, there are over fifteen countries involved in wars, or which are experiencing post-war conflicts and tensions in Africa such as, Mali, Cote d’Ivoire, Guinea, Liberia, Nigeria, Libya, Sierra Leone, Togo, Eritrea, Ethiopia, Somalia, Sudan, and Uganda. Mugabe graphically catalogues the sad consequences situation thus: “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 a theatre of endless conflicts, civil strife and gross human rights abuse....” (qtd. in Igbafen, *Theories and Issues* ... 99).

This is what happens when constitutionalism is banished from political governance in a society: Development becomes impossible. In its 2018 Annual Survey of Global Political Rights and Civil Liberties, Freedom House, classifies the system of governance in Africa as autocratic and hybrid regimes, since “the majority of the

sub-Saharan African states are not free as a result of steady decline in the basic tenets of democracy” (2018 report). Bad governance, which makes a mess of constitutionalism has reduced Africa into a continent where human freedom is seriously threatened. The quality of human rights protection on the continent, from most international indicators, shows a steady decline over the years. What all these conduce to is the fact that, due to absence of constitutionalism in governance Africa has been robbed of vast opportunities for development, as she has not been able to reconstruct her society in a manner that empowers her people to realize human potential in a significant manner” (Oladipo 114).

CONCLUSION

The regressive impacts of absence of constitutionalism on development in Africa is unmistakable. As evident in our discussions above, development in the continent has not been tenable, much due to authoritarian constitutions, abuse of executive powers, and autocratic rule that totally disregard the doctrine of constitutionalism. For Africa to experience sustainable development, there is therefore, the strong need to decisively embrace constitutionalism in political governance. From our discussion, it is clear that a constitution has meaning and legitimacy and comes to life if the citizens are not only involved in the constitution-making process, but are also sufficiently enlightened about their constitutional rights and are able to invoke them in case of any violations.

For this reason, a participating approach to constitution making and reforms that involves the people in the entire process, in fidelity to the principles of constitutionalism, is here advocated. Active participation in the constitution-making process provides the opportunity for citizens to become familiar with the nature, content and purpose of a constitution. This is essential for the legitimacy of a constitution and its binding effect on the people. Besides, for Africans to be able to defend their constitutions and resist the present efforts by opportunistic leaders to derail the present fragile transitions to genuine democracy and constitutionalism, a sustained and vigorous programme of constitutional literacy and citizenship education is necessary. Government must be limited in the exercise of its powers

and follow due process and the rule of law. African government must not amend constitutions in order to adapt them to their political ambitions. On the contrary, it is the government that must adapt to the constitution, as a condition for peace, progress and development in the society.

Furthermore, African countries cannot become economically viable and socially and politically stable and developed or hope to reduce the scourges of poverty, hunger and disease in the continent, until certain crucial reforms, which can truly promote constitutionalism are made to the present constitutions. Such reforms include, the recognition of the right to free and fair elections, key principles and institutions of accountability, the reduction presidential powers, the removing of immunity clause from the constitutions, and a firm commitment to poverty reduction through the incorporation of socio-economic rights for the people in the constitutions.

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