

## **CONSTITUTIONALISM AND THE CHALLENGES OF DEVELOPMENT IN AFRICA**

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### **ABSTRACT**

The work focuses on constitutionalism and the challenge of development in Africa. The absence of the culture of constitutionalism affected in a very substantial way African's efforts toward development. That is the reason why primary task of this work is to investigate the state of constitutionalism in Africa and the reason why most African countries have not entrenched the practice of constitutionalism in their countries. It further probes into the nature and reasons for the past failure of constitutionalism and its effect on development of most countries in Africa. The work then concludes that the entrenchment of a culture of constitutionalism in Africa is the basis of the moral bound that can bring the citizens and the state together. Once this is actualised, then Africa can talk of a meaningful development.

**Key words:** Africa, Challenge, Constitution, Constitutionalism, Development, Entrenchment

### **Introduction**

Constitutionalism is embedded in the idea that the government should be limited in its powers and that its authority depends on its observing these limitations. These limitations are in the form of individual or group rights against government, such as rights to free expression, association, equality and due process of law. 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. By development we mean a "more inclusive concept with its social, political and economic facets. It is the qualitative and quantitative positive transformation of the lives of a people that does not only enhance their material well-being but also ensures their social well-being including the restoration of human

dignity” (Osagie1985). In other words, development should be “a warm, gradual and considerate process in its attempt to alleviate man’s economic and technological standard or conditions without disregarding or disrespecting any aspect of man’s existing social, cultural and political values” (Ifeyinwa 2004). Development is about human, development cannot be divorced from the peoples. Any reasonable developmental efforts must have roots in the people it is meant for, before it can be successful. The adherence to the dictate of constitutionalism means limiting the arbitrariness of governmental power and failure of it means the entronement of arbitrariness of governmental power. In that regard, this work set out to examine the reason why entronement 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 being set up and completed their job; yet the idea of constitutionalism has remain a day dream in many African countries.

### **Constitutionalism and Africa**

The advent of colonialism in Africa and the subsequent taken over of African states brought about the introduction of modern forms of governance that necessitate modern form of constitution which is written and documented. The introduction of this constitution into the colony is regarded as an imposed constitutionalism. Schepple, K. L (2003) made a distinction between constitutionalism and imposed constitutionalism. According to him; constitutionalism is legitimate, but the imposed constitutionalism is not. Imposed constitutionalism is illegitimate because it is being drafted “in the shadow of the gun”. None of the African countries under the colonial rule has the opportunity of substantial local participation in the constitutional process. Rather, they have seen substantial intervention and pressure imposed from outside to produce a constitutional outcome preferred by the colonizer. Even after independence, we discovered that almost all the constitutions drafted by African states still follow the same pattern of not allowing a substantial local participation. A noticeable negativity of this imposition is the crisis of legitimacy of the constitutional outcome.

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 Ade Ajayi (1992) “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”. The situation has gone worst to the extent that, many people have lost confidence in the democratic process, because;

The elite, like the colonial state, which they inherited, has grown apart from the society. Increasingly the state and the elite who control the state, have become predators of the society (Ade-Ajayi, J. F.1992)

The emphasis here is that, these leaders do not see themselves as statesmen who are expected to develop “a keen awareness of collective responsibility in the long term” (Joseph, K. 2000), but “are like colonial administrators, overseers who are in power to ensure that the people adjust to the structure of oppression and exploitation which they manage”( Oladipo, O. 1998). Chinua Achebe (1985) 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. This being the case because 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” (Christopher, C. 1991).

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. The colonialists have already set in place a bad example of governance, but Africa lacks good leadership that will confront this dilemma and thus take Africa out of its

debilitating condition (Afolayan. A. 2009) 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.”(Alex Thomson 2002) 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”(Oyebode 2005). The dearth of good leadership in postcolonial Africa “is inversely proportional to the widespread poverty, not only of ideas about running the societies and states, but also the impoverishment of the populace.” (Afolayan. A.2009). More crucially, however, the failure of the African state to properly manage its affairs is partly responsible for its inability to participate meaningfully in global processes.

### **Impact on Africa Development**

Most African countries gained their independence from the British, the French, the Italians, the Portuguese, the Spanish, and the Belgians, among others in the early 1950s, 1960s till 1970s. The nationalist that took over the mantle of leadership from the colonialist were not only “interested in replacing European in leading positions of power and privileges”( Nzongola, N. J. 1984) but they also created opportunities for themselves and their cronies that enable them to plunder the economy and make sure that existing opportunities and benefits in the state were reserved for themselves and people from their ethnic groups that are fortunate to hold key positions that have also been found vacant in this regard. According to the “western Nigeria white paper of 1964, an easterner (Dr Ikejiani) who was the chairman of the Nigeria railway corporation was responsible for the fact that, of the 431 senior posts, 270 were manned by Ibos”( Bamisaye, A.1976). It was also reported that Chief Obafemi Awolowo, used his closeness to general Yakubu Gowon the then Nigerian Head of State between 1967-1976 to further “advance the educational, economic, industrial and bureaucratic interest of the Yoruba people”( Adesina, O. C.1998). As these leaders created opportunities and benefits for themselves and members of their ethnic groups, other ethnic groups that were not so placed or that were not represented in the scheme of things

felt alienated from the State and consequently the State becomes an arena of ethnic conflict; social relationship can no longer generate “important common goals, interests and values in terms of which a sense of neighbourliness can be developed among them and national identity forged”( Oladipo, O. 1998). In a situation of complete disregard for state authority or lack of confidence in the state, there used to be an expression of hostility and violence between and among the beneficial and those that are not benefited in the scheme of things. This type of hostility and violence is not good enough for the sustainability of an ordered society in Africa.

There is also a disappearance of basic state functions that serve the people, including collapsed infrastructure, total paralysis of the health sector at all levels, constant nationwide power failure and the attendant negative effects on all sectors of the economy; pervasive unemployment, thereby generating increased armed robbery cutting across all ages of our people, debilitating homelessness; retrogressive educational programmes and policies. Also using the state apparatus for agencies that serve the ruling elites such as; the security forces, presidential staff, central bank, diplomatic services, and customs and collection agencies, these are currently the norm in many countries in Africa. There are more policemen protecting politicians in Africa than are available for normal police duties. The civil service has been destroyed by turning it into an instrument in the hands of politicians by making the top post political appointment. Every change in the civil service has been to increase the power of politicians over civil servants and bring them under their control to remove the valuable role they play in checking corruption and maintaining probity in public offices.

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. 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 Egbesu boys of Africa came up to fight the environmental degradation and exploitation of the Niger Delta by the multinational oil corporations. The failure of the police to check the menace of armed robbery in the south-east led to the formation of Bakassi Boys. The Arewa people's congress was principally set up to counter OPC which was alleged to have master minded most of the ethnic clashes in the South West. In the same view, some other countries in Africa do have rebels' movement; the group 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. It happened in Liberia, Libya, Sierra Leone, Burundi, Malawi, Central Africa republic, Congo DCR and presently in Sudan. 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 continents 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(Robert, M.1991).

Furthermore, this laxity also laid emphasis on market economy in most countries in Africa. Market economy is when goods and services are exchanged in the market place, which is either physical or ideal. Capitalism is a form of market economy, a situation where the market place decides what goods and services to produce, how to manufacture, sell and their prices through the forces of supply and demand. This is what colonialism introduced to Africa. Colonialism "thrust Africa into the world capitalist system dominated by metropolitan forces that operate

under harsh individualism” and by so doing created a new world (economic) order in which Africans were (and still, are) ill equipped to compete”(Sogolo, G. 1993). But most African states have not even developed to the level that can sustain aggressive individualism. The level of development here is very low and the expectations after independence have been dashed due to lack of durable constitutional government. For instance, the North-South Round Table in its review of the region’s economic and social performance declares that:

Africa’s economic and social performance during the 1980’s...  
was predominantly negative. This was manifest within Africa by severely depressed economic growth rate, stagnant agricultural production, deteriorating social services and a decline in living standards. Externally it was marked by a rising debt burden, inadequate resources flows and a sharp fall in commodity prices for African’s key exports (North-South Round Table. 1991).

The consequence of this is poverty. Poverty has remained Africa’s problem. The effect is so devastating that nearly half of the continent’s population lives below \$1 per day. “34 of the world’s 49 least developed countries are in Africa” ( Kamaran, M. 2005). It was discovered that only three countries Mauritius, South Africa and Botswana have made progress so far, the existence of high level of abject poverty have made it practically impossible for other countries to progress, talk less of giving peace a chance.

## **Conclusion**

There is the need for social reconstruction in Africa. Africa “has not been able to reconstruct her society in a manner that can empower her people to realize their human potential in a significant manner” (Oladipo, O. 2007). An individual cannot significantly actualize her capacity for self-expression due to lack of coherent structure or institution of good government. The entrenchment of constitutionalism in Africa is the basis of the moral bond that can tie the citizens to the state, and the basis upon which the government can justify its control over the citizens. It is only when this is actualised that a meaningful development can take place in Africa.

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