



ESSAY

A FALSE DAWN? *Africa's Post-1990 Democratization Waves*

NJUNGA M MULIKITA

This article argues that whereas the waves of democratization which enveloped the continent in the early 1990s following the collapse of Eastern European one-party socialism generated expectations of a 'new dawn' for 'good governance' and sustainable human development on the continent, one wave after another appears to have suffered serious setbacks. Indeed, a decade later, some of the most articulate pro-democracy leaders, who came into office on the crest of the democratic waves of the 1990s have sought to manipulate their countries' constitutions in order to perpetuate their presidential tenure. Such undemocratic behaviour will only fuel speculation in the industrialized world that the New Partnership for Africa's Development is just another decorative blue-print drawn up by beleaguered African despots in order to obtain new resource inflows at a time the international community under the hegemonic leadership of the United States will be wholly preoccupied with rebuilding post-Saddam Iraq and the Israeli-Palestinian roadmap.

Introduction

Constitution-making and constitutionalism in Africa have today assumed a greater prominence than at any time before in the struggle for democracy. The last decade has witnessed an ever-increasing number of constitutional processes taking place, particularly in Africa. The issue of constitution-making for the purpose of entrenching democratic governance could be viewed as a consequence of turbulent political developments, which rocked Eastern and Central Europe following the Glasnost and Perestroika reforms initiated by former Soviet

leader Mikhail Gorbachev in the late 1980s. In late 1989, two events both of which had a great deal of significance for Africa occurred within a few days of each other. One of these was the opening of the Berlin Wall, leading to a collapse of the one-party states of Eastern Europe. Particularly important for Africa was the massive international publicity given to the fate of the most prominent Eastern European opponent of the Weberian/liberal conception of 'good governance', Nicolae Ceaucescu of Romania¹. African heads of state and their publics did not fail to see the parallels.

DR NJUNGA M MULIKITA is vice chairperson of the board of the Southern African Centre for the Construction of Disputes (SACCORD).

Democratic governance

A second key event which occurred at almost the same time was the publication by the World Bank of its Report, *Sub-Saharan Africa: From Crisis to Sustainable Growth*, in which the Bank for the first time linked aid flows to what it called 'governance', which it defined as the 'exercise of political power to manage a nation's affairs'.² Although the World Bank and most donor governments were careful to avoid connecting 'Good Governance' with multiparty systems, it was a clear implication of their argument as they referred to the desirability of freedom of speech, transparency of decision-making and open political debate.³ Western politicians and academics likewise pointed out that 'Good or Democratic Governance' involves much more than elections-regardless of how free and fair they might be perceived; Good Governance was recognized to be an integral part of peace building and conflict resolution.⁴ The United Nations Development Program has broadened the World Bank's definition of good governance by characterizing it as the 'exercise of political, economic and administrative authority in the management of a country's affairs at all levels'.⁵ In this definition, governance includes but goes beyond the state. It encompasses the private sector and civil society. The UNDP believes that all three sectors are critical for sustainable development. The state creates a conducive political, legal and institutional environment, while the private sector generates jobs and incomes. Civil society, by contrast, facilitates political and social interaction by acting as watchdogs and by mobilizing groups to participate in economic, social and political activities.

Any government that fails to take adequate cognizance of any of these three sectors will find the realization of good governance difficult. The collapse of the 'iron curtain' economies in the autumn/winter of 1989 reinforced this point. In the ultimate analysis good governance is the pivot around which other factors of development revolve, particularly as development is no longer being measured solely in terms of per capita income or GDP growth rates. Other indices of human

development include equity in resource allocation, observance of the rule of law, respect for human rights, personal/human security and environmental sustainability.⁶

Good governance ensures that political, social and economic choices/decisions are made on the basis of broad consensus in society through elected representatives. Good governance should among other things be participative, transparent, equitable and accountable. Good governance should enhance institutional effectiveness and generate economic growth, which can lead to improve living standards for the majority of any country's population.

An African context

Following the wave of democratizations that overwhelmed Eastern and Central Europe, pressure mounted in Africa for the introduction of constitutional reforms, which would provide the legal and institutional framework for democratic governance all over the continent. Indeed citizens began to entertain the possibility, unthinkable earlier that single party regimes might be forced to expose themselves to multiparty elections. A major breakthrough occurred with the advent of national conferences.⁷ Under the format of national conferences, African rulers conceded that elites drawn from civil society organizations could gather in an open national forum to propose solutions for a country's political and economic crisis.

National Conferences were ad-hoc assemblies comprising a wide range of individual and corporate interests that lasted from a few days to several months, contained several hundred to several thousand delegates and were often chaired by a nominally neutral church leader.⁸ The Benin National conference attracted some 500 hundred delegates, but subsequent conferences were larger with 1,200 participants at the Congo Brazzaville sessions and as many as 4000 delegates in Zaire (DRC).⁹ Occurring in 11 countries between 1990 and 1993, national conferences were a largely francophone phenomenon (occurring in Benin, Chad, Comoros, Congo Brazzaville, Congo Kinshasa, Gabon, Mali, Niger and Togo).

As an original form of political association, national conferences amounted to an indigenously generated African contribution to constitution-making and regime transition.¹⁰ Their large size and broadly representative character have been variously interpreted as an updated version of government by a traditional village assembly. On a formal level, some national conferences were highly successful at rewriting constitutions. In a common sequence of events, the conferences seized the function of constitution making by declaring themselves sovereign. Using these newly claimed powers, they went on to abrogate existing constitutions, dissolve the sitting legislature, and establish a transitional government. Even if the President was not replaced as Head of State, he was required to work with an interim Prime Minister selected by the conference and to surrender powers over key portfolios such as Finance, Defence and Foreign Affairs.¹¹ The conference then proceeded to draft a new constitution, or established an independent commission to do so, submitting this document to a national referendum.

In countries, which did not hold national conferences, governments sought other avenues towards constitutional reform. In some cases, the incumbent Head of State encouraged a top organ of the ruling party to pressurize a sitting legislature to amend key clauses of an existing constitution. In other cases, incumbent rulers found it necessary to appoint a non-partisan constitutional review commission whose membership included at least a token opposition presence. In Tanzania it will be recalled that the commission appointed by former President Ali Hassan Mwinyi to ascertain national opinion on multiparty-ism, drew most of its membership from the ruling Chama-cha Mapinduzi.¹² In Zambia, the government's revisions to the constitution in 1991 proved unacceptable to the crystallizing opposition, which threatened to boycott the elections unless further concessions were secured.

In almost all African countries, a similar set of constitutional reforms was introduced in quick succession. First opposition political parties were legalized often accompanied by the simple expedient of repealing the clause in the national constitution that accorded the

single ruling party with a monopoly status.¹³ In Cote d' Ivoire, Kenya and Zambia parliaments took the necessary action after the leaders of these countries signalled that they would not resist. The new wave of constitution reformulation introduced a fertile landscape, which spawned a proliferation of political parties in Africa. Whereas in 1975, the number of registered political parties in sub-Saharan African countries averaged 1.9, by 1993 this figure had risen to 15.9, in a range from two registered parties in Nigeria to 62 in Burkina Faso.¹⁴

Secondly, reformers sought to establish the constitutional separation of powers. In legalizing opposition political parties, ruling parties accepted the inevitability of severing linkages between ruling parties and the state and the repeal of constitutional provisions for party supremacy in political decision-making. In Zambia, article 4, which accorded supremacy to the United National Independence Party (UNIP) over all state institutions, was repealed late in 1990, thus delinking the ruling party from state assets and resources.¹⁵ In neighbouring Angola, not only was the party separated from the state, but also the army was separated from the party.¹⁶ Moreover the new constitutions reinvigorated parliaments vis-à-vis the Presidency-for example, introducing powers to confirm presidential appointees and investigate the financial performance and overall institutional effectiveness of government departments. Constitution makers also adopted limits on the number of terms that African Presidents could serve, usually requiring them to step down after two five year terms. Of the 37 African constitutions that were in force by 1994, all but four contained provisions for term limits.¹⁷ The introduction of term limits went to the core of regime transitions in Africa. These transitions were predominantly driven by the wish of the majority of Africa's people to remove leaders who had not only overstayed their welcome, but were adept at manipulating elections to ensure that they perennially secured 99% of the vote in presidential elections and referenda.¹⁸ It may therefore be appropriate to note, as Dennis Venter advises that constitutional liberalism is about the limitation of power; democracy, in

its oversimplified form, about the accumulation and use, or misuse, of power.¹⁹ Shadrack Gutto builds upon Venter's assertion by pointing out that constitutionalism is 'both the letter and spirit' of a constitution. In other words, constitutionalism is about fidelity to the letter of the constitution and the core values and principles upon which a constitution. The spirit of a constitution is expressed in amongst others manifest deeds, policies, laws, regulations and the manner of their implementation or practical realization'.²⁰

Third, it was within the context of this fluid scenario that most African governments announced dates for multiparty presidential and parliamentary elections. The wave of popular demand and international pressure for political reform compelled several ruling parties to hold elections, which were scrutinized by highly visible contingents of foreign observers. In this scenario, which characterized the 1990s, a levelling of the playing field was achieved and not surprisingly a number of long reigning 'African founding fathers' were removed from the Presidential Palace through the mechanism of the ballot box.²¹

Africa's democratic transitions

After having removed autocratic one-party systems or military regimes under the guise of civilian systems, the euphoria that enveloped the continent in the early 1990s has given way to an 'Afro-pessimism' as one government after another has sought to water down the democratic content of constitutions which were enthusiastically adopted a decade ago. Democratic Reversals have manifested themselves in democratically elected governments being ousted by the military in a number of countries, the enactment by multiparty parliaments normally under the overwhelming grip of one party, of constitutional amendments intended to prevent certain personalities from taking part in presidential elections because one or both of their parents were not born in the country, manoeuvres engineered by leaders who claim to have brought democracy to Africa to remove constitutional limits to their presidential terms, the flagrant abuse of state resources by leaders, who whilst in the opposi-

tion pledged that they would maintain the distinction between party and state, and the rapid enrichment of individuals who, prior to ascending political office just over a decade ago, led very modest lives.

Take the example of Zambia, which led the so-called democratization wave in Anglophone Africa in terms of carrying out a smooth transfer of power from the founding 'father of the nation', Kenneth Kaunda to the highly eloquent trade unionist Frederick Chiluba in 1991. Upon assuming power Chiluba masked his dictatorial leadership style in his 'rhetoric of good governance and democratization', whilst he slowly got rid of influential members of his party who politely tried to remind him of the commitments he had made in the run-up to the 1991 elections. The crowning absurdity occurred in 1996, when Chiluba's rubber stamp parliament enacted a clause that barred Kaunda from contesting the Zambian presidential elections on the ludicrous grounds that his parents originated from neighbouring Malawi. Chiluba was to further use a botched *coup d'état* against his government in October 1997 as a pretext to arrest and imprison Zambia's first President on the basis of unproven allegations that he had been privy to the coup plot. Only the sustained pressure of regional leaders and the international community forced Chiluba to remove Kaunda from the notorious Mukobeko Maximum Security Jail in central Zambia to be placed under house arrest in the Zambian capital of Lusaka.²²

The situation in Zimbabwe does not equally portend well for the future of Africa's democratization waves. It will be recalled that between June 2000 and the presidential election in March 2002, President Mugabe's violent campaign to suppress political dissent in Zimbabwe had to be cranked up several notches. The constitutional changes rammed through parliament after February 2000 endowed Mugabe with overweening powers, probably making him the most powerful president in the world. That explains why he did not have to consult any of his cabinet ministers, and even parliament, before he made the controversial decision to deploy a third of Zimbabwe's armed forces in the DRC. It also explains why Mugabe could, over the last two-and-a-half years, rule Zimbabwe under an

unofficial state of emergency, issuing decrees to override the courts, firing judges, and usurping the role of the legislature. By declaring an end to market reforms, he abandoned an IMF and World Bank-sponsored economic structural adjustment programme and returned the country to a Marxist command economy (which he originally pursued in the early 1980s), imposing price controls and a fixed exchange rate system, and nationalising large-scale commercial farming enterprises, effectively turning Zimbabwe into a peasant economy.²³

In the aftermath of the election, Mugabe has systematically proceeded to consolidate his grip on power by destroying the institutions of democracy: what is left of a free press, an independent judiciary, and bipartisan civil society organisations – indeed, it is “doubt[ful] whether it is within Mugabe to relinquish power; he wants to rule in perpetuity.”²⁴ The personality cult built around Mugabe and his personality make-up (extreme arrogance and vanity) argues against national reconciliation and an externally propagated government of national unity. In fact, a recent psychometric study has found that Mugabe suffers from a ‘bureaucratic-compulsive’ syndrome, and that he is likely to become more and more dogmatic (self-righteous and impervious to correction), inflexible (thin-skinned and vengeful), and paranoid (increasingly suspicious). Leaders with this syndrome are noted for their ‘officious, high-handed bearing; intrusive, meddlesome interpersonal conduct; unimaginative, closed-minded cognitive style; grim, imperturbable mood; and scrupulous, if grandiose, sense of self’.²⁵ But, amid Zimbabwe’s slide into political and economic oblivion, the brethren leaders of the African continent cajoled Mugabe, cautioned him in private, and publicly defended their virtual complicity in the systematic retrogression of the country into an ‘Orwellian-style’, totalitarian state. This runs the risk of encouraging a pessimistic investment world to stop taking issues of good governance and democracy in Africa seriously, with negative repercussions for the entire continent and for the New Partnership for Africa’s Development (Nepad). The US and the EU have broadened the ‘smart sanctions’ that they already had in place against Mugabe and his major henchmen; and, in addition, the

Commonwealth troika of John Howard (Australia), Olusegun Obasanjo (Nigeria) and Thabo Mbeki (South Africa) decided to suspend Zimbabwe for a period of one year, but not to impose economic and other sanctions. Quite predictably, none of these actions is likely to be a major constraint, or have any persuasive effect, on the Mugabe regime.

Clientilism has proved difficult to eradicate, liberalisation has weakened the regulatory capacity of the state, ‘bandit privatisation’ has afforded opportunities for the political elite to acquire public assets cheaply or fraudulently, and market forces have not measurably reduced the charging of gate-keeping rents or bribes.²⁶ In short, whilst, the new governments which ascended to power in the early 1990s on the crest of the democratic wave which swept the whole continent pledged their commitment to the democratic constitutions that had superseded the discredited pre-1990 one party arrangements, it became painfully clear that without a home grown political culture supportive of the rule of law and a militant broad based civil society, genuine democratic governance would remain an elusive mirage on the continent. Indeed the periodic holding of multiparty elections by itself is no guarantee for the entrenchment of democratic governance.

Democratic constitutions and multiparty elections

A Democratic constitution is absolutely imperative in a democracy because not only does it enshrine the principle of free, fair and transparent elections, but makes a smooth transfer of power from one government to another possible. A constitution build on democratic pillars can also contribute to ensuring that there is a healthy separation of powers between the three arms of government thus guaranteeing that the Presidency will not slowly encroach on the turf of the legislature and judiciary. A democratic constitution may also help to prevent the growth of a personality cult in the person who occupies the Presidency thus forestalling any hidden ambitions on the individual to doctor the constitution to prolong his lease on the Presidency. The regular holding of free and fair elections may help to

deter misconduct and abuse of office of the government of the day because such manifestations of bad governance would ensure that the electorate would elect an opposition party to take over government and rule in accord with the norms and standards demanded by democratic governance.

Unfortunately, African experience with modern governmental systems has known little else but Presidents, Prime Ministers and supreme one-party leaders so powerful that their claims to democracy, even "African" democracy, commands little credence. Many African leaders accepted and participated in the democratic process after the collapse of the one party systems of government as a means to an end: a vehicle or conduit for personal power. The situation is compounded by poverty. Most politicians in Africa see the state as the primary source of accumulation of personal wealth. This economic interest motivates the drive towards the monopolization of power by a ruling party, a multiparty framework notwithstanding and a narrow and egoistic clique of elites. In this context it should be easy to understand how incumbent governments have used governmental resources such as transport, the public media and public security legislation to attain undue advantage over financially feeble and institutionally weak opposition parties during elections.

Further afield, perceived manipulative practices that sometimes occur during multiparty elections have, in certain instances, instigated tension, and in certain instances precipitated serious confrontation or conflict between incumbent power holders and opposition groups. In this situation, the challenge of embracing democracy has become a difficult experience. Indeed, the process of rooting democratic practices and traditions on the continent has understandably generated fears particularly among strategically positioned segments in the population who feel that the wholesome implementation of democratic reforms might imperil their positions of privilege in the national power structure.

However the overall picture is not totally bleak for the continent. The recent elections in Kenya which saw a smooth transfer from the ruling Kenya African National Union (KANU)

to the National Rainbow Coalition (NARC), the peaceful transfer of power from President Abdou Diouf to President Abdoulaye Wade in Senegal in 2000 has proven to the world that African countries notwithstanding formidable constraints and difficulties are able to peacefully elect into office new governments without resorting to violence. In Zambia, the role of the civil society coalition known as the OASIS forum played a pivotal role in thwarting a bid by certain sections of the ruling Movement for Multiparty Democracy (MMD) to remove the two term limitation on the Presidency as enshrined within Zambia's 1996 constitution. The Zambian experience may indicate that a new commitment to constitutional governance as opposed to the bemusing practice of tailoring constitutions to suit the whims of certain individuals is on the rise in Africa.

Entrenching constitutionalism and democratic governance

One major problem that African countries must overcome in the quest to formulate constitutions that will guarantee democratic governance is to ensure that such constitutions will stand the test of time. All too often, when there is a change of government, the incoming leaders tend to initiate a constitutional review process intended to remedy clauses, which may be perceived to be inconsistent with a democratic dispensation. The reality that the process of rewriting the basic law/constitution is an expensive undertaking, which most donor dependent African countries can hardly shoulder, need not be belaboured here. It is therefore a matter of paramount importance that African countries give sufficient consideration to the following issues and challenges if the continent is to move away from the bemusing practice of initiating a constitutional review exercise every time there is a change of government. Constitutions should be framed in such a manner that enables them to stand the test of time.

Legitimacy

The legitimacy of constitution making process is fundamental. Legitimacy is also dependent upon an unequivocal commitment by the rul-

ing party to a constitution that is owned by the people.²⁷ However, this principle will invariably be fashioned by the domestic social and political realities within which the process takes place. Many African countries have experienced constitutional instability since independence because constitutions have lacked or moral authority.²⁸ All too often, when a constitutional review commission is set up, governments have tended to appoint commissioners who are sympathetic to the government of the day. If the general public takes the view that the commissioners are sympathetic to the ruling party, they will shun the constitution-making exercise as a government stage-managed charade. Beyond this point, when a constitutional review body submits its findings and recommendations, sitting governments have chosen to accept only those recommendations which they find to be politically expedient. In some cases, governments have been known to ignore about 70% of original submissions in the white paper that normally forms the blueprint around which the evolving constitution is to be finalized.²⁹

Inclusiveness

The principle of inclusiveness in constitution making is important as it ensures broad public participation and helps to build legitimacy and broad based ownership for the final product. Inclusiveness ensures that all the major social and ethnic categories in the country are given ample opportunity to participate in the process of giving submissions to the statutory body or commission charged with collecting views and opinions on what shape the constitution should take as well as the mode which will be used to enact the new constitution into law.

A critical point to bear in mind is the importance of incorporating a gender dimension in the process of constitution making. All too often marginalized and disempowered groups such as women, children and poor and illiterate rural dwellers have not been accorded the opportunity to fully participate in the process of constitution making. The use of languages such as English, French and Portuguese as the medium of debate in the process of constitution making, alienates the bulk of the popula-

tion who are not comfortable in expressing themselves in these foreign media.

In this scenario, constitution making can boil down into an exercise restricted to a narrow urban-based elite conversant with the legal jargon that tends to mystify constitution making in Africa. The mode of enacting the constitution into law needs to be scrutinized in terms of whether it enhances or negates the principle of inclusiveness. When the constitution is to be enacted by a parliament in which the ruling party commands a built in majority of say 80% and the requirement for enacting a constitution is a simple two thirds majority, it is obvious that a constitution which may not be broadly representative of the wishes and aspirations of the majority can be easily promulgated into law by a parliament with a skewed distribution of seats favourable to the ruling party.³⁰ It is in this context that in some countries, calls have been made to establish a more all embracing constituent assembly encompassing all the major social and ethnic groups, interest associations, civil society etc to adopt the constitution. A constitution that is so adopted on the basis of a consensus within the Constituent Assembly will then be passed to the National Assembly to be enacted into law.

By paying attention to the principle of inclusiveness, a constitution so enacted will enjoy broad based good will and legitimacy. When constitutional arrangements are perceived to discriminate against certain minority groups on racial, ethnic, religious or other grounds such groups can easily fall prey to the incendiary rhetoric of 'messianic demagogic figures' who will exhort the 'oppressed' to rise against a 'repressive' political order.³¹ Such uprisings have been known to plunge seemingly calm countries into senseless civil wars. The case of the Ivory Coast is instructive. There is near universal consensus that it was the constitutional manoeuvring of President Laurent Gbagbo through his misguided policy of 'Ivoirite', which triggered the rebellion on the part of the of a large fraction of that country's population with ancestral roots in neighbouring countries who feel excluded from the country's governance process by this doctrine of 'ethnic purity'.³² It should also not be forgotten

that Foday Sankoh, once the charismatic leader of Sierra Leone's much maligned Revolutionary United Front (RUF) was able to unleash the decade long horrendous civil war that traumatized this West African country on account of his cleverly tapping into the resentment and bitterness of ethnic groups who felt excluded and marginalized by a self aggrandizing and arrogant elite in the capital of Freetown. It will also be recalled that the brutally violent 1980 coup in Liberia which thrust into power Master Sergeant Samuel Doe was triggered by the discriminatory governance and constitutional arrangements which accorded exclusive political and economic privileges to a tiny 'Americo-Liberian' elite at the expense of an indigenous majority that was despised and downtrodden. The instability, which currently reigns, in Liberia and the wider Mano-River Basin could in large part be explained by this inequitable distribution of economic and political resources among the people in the region

Empowerment of civil society

Civil society should be empowered to articulate the views and concerns of the 'voiceless majority' in the process of constitution making. Care must be taken to guard against 'brief case' non governmental organizations whose members simply wish to receive donor money to purchase themselves luxury four wheel drive vehicles, on the pretext of accessing disadvantaged rural dwellers they seldom visit. Genuine civil society organizations, if properly capacitated can articulate the views and concerns of the majority of citizens to ensure that the constitution making process is not an exclusively elite driven process. It is imperative that a strong civil society and independent media are permitted to take root if corruption and bad governance are to be effectively combated in Africa. Civil society organizations in Zambia played a pivotal role in not only defeating manoeuvres to amend the Zambian constitution to remove term limitations on the Presidency, but have been vocal in exposing sleaze and corruption in government.³³ Independent news media can also play a major role in sensitizing the public to the dangers of corruption and gross misconduct in high places.

The role of political parties

The role of political parties in promoting democracy cannot be over-emphasized. Political parties are the very *raison d'être* of multiparty democracy. Without parties a country cannot be said to be democratic. Political parties put into words the desires and felt needs, fears and expectations of their members and demand that these be translated into specific legislation, policies and programmes or any other government action. Thus parties may also play a watchdog role in society. A multiparty political system ensures that the people have an opportunity to choose between different sets of political leaders from a variety of political parties. It also ensures that a change of government takes places peacefully and predictably. However, the mere existence of political parties does not in itself mean democracy. The opposition parties must be equipped with the physical, human and financial capacities to enable them to play a meaningful role in representing societal interests and holding the government accountable.³⁴ Unless, opposition parties are urgently equipped with these capacities, one African country after another will drift back into de-facto one party dictatorships shrouded by a smokescreen of multiparty democracy wherein corrupt and power hungry power holders can plunder public resources with impunity. Serious thought must therefore be given to the possibility of donors providing capacity support to opposition political parties to enable them play a more meaningful role in the constitution making and overall governance processes. One has to be however mindful of accusations from the government of the day that opposition parties benefiting from external capacity support are puppets of foreign donors

Looking ahead

Africa has been free from the burden of colonial domination for approximately four decades. There is a new set of challenges that the continent must rally around. Some of the most pressing challenges are: poverty, HIV/AIDS, regional conflict, and globalization.³⁵ Each of these requires radical and urgent responses. At a

regional level, the transformation of the Organization of African Unity into the African Union in South Africa in 2002, as well as the adoption by the African Union of the New Partnership for Africa's Development (NEPAD) as a core program of the Commission of the African Union, represents a concerted attempt by Africa to strengthen its bargaining position with the rest of the world.

The evolving African Union needs to create an environment that will end regional conflicts and dictatorships, establish participatory democracies, allow constitutionalism to prevail, fundamental rights to be secured, and a comprehensive set of developmental policies that will ensure a better life for all.³⁶ While this may be easier said than done, it is nonetheless the context within which the debate on the question of constitutionalism and constitution making in Africa ought to be firmly anchored.

It is the view of this paper that the process of constitution making must be located within the context of the new dynamics imposed on the continent by the inexorable process of globalization. In this regard, sub-regional and continental unity and cohesion are vital prerequisites. It is therefore absolutely imperative that the continent is not oblivious to the impact of globalization in developing strategies for promoting constitutionalism in Africa. By the same token, it is also necessary for the continent to consider strategies that would empower structures of civil society and provide them the space they need to thrive. This is a basic ingredient of a vibrant democracy.

A further challenge is the continuing struggle to extend basic human rights and freedoms. In addition to this, it is extremely important that the entrenchment of socio-economic rights is vigorously pursued. Here too, structures of civil society have an important role to play. The non-domestication of several international instruments and conventions African countries have ratified has continued to constrain the speed at which the needed internal reforms are effected regarding the rights enjoyed by the people of Africa. It is therefore a matter of the utmost urgency that African countries rapidly incorporate into

their constitutions key human rights conventions and instruments in their constitutions if the majority of the people of Africa are to enjoy the basic rights and freedoms enshrined in these instruments. In this quest, civil society has a pivotal role to play in mobilization and advocacy.

Unless these international conventions are domesticated in the context of constitution making in Africa, African constitutions will be little more than a noble statement of intent rather than an expression of the soul of the nations and peoples of Africa.

Conclusion

It must be painfully conceded that the optimism, which accompanied the wave of democratizations on the continent in the early 1990s, has not been fully translated into governance arrangements that can improve the living standards of the majority of the people of Africa.³⁷ Compounding this generally poor governance profile has been the onset of the inexorable process of globalization, which has marginalized the continent to the outer periphery of the international system. Whatever the motivations for the US's decision to unleash war on the Iraqi regime of Saddam Hussein in the spring of 2003, the principal loser in the aftermath of the conflict is sub-Saharan Africa. The United States will coerce the major powers on the UN Security Council as well as other major donors to pour resources into the UN system drive to provide humanitarian relief in Iraq and neighbouring countries. It is not unlikely that the ominous whispers of Africa being the continent 'where nothing works' will become louder in the corridors of UN system agencies and capitals of major donor nations as resources that should be directed towards supporting NEPAD are rerouted to the Middle East. When all is said and done, if African countries fail to institute the necessary measures to entrench constitutionalism and democratic governance, all the publicly stated commitments and pronouncements about good governance and 'peer review mechanisms' as embodied in development blueprints such as the New Partnership for Africa's Development (NEPAD) may not succeed in reversing the

continent's marginalization in an increasingly globalizing world.³⁸ Africa's leaders particularly those of Nigeria and South Africa must therefore face up to the potential reality that in the aftermath of the Iraqi war the New Partnership for Africa's Development (NEPAD) might be dismissed by a cynical international community as just another unproductive decorative blueprint, which will be quietly jettisoned

Notes

1. NM Mulikita, 'Democratization & Conflict Resolution in Africa: The Role of International Election Observers', *Peacekeeping & International Relations*, Vol.28, No.3, May-June 1999, p 3.
2. World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth*, (Washington DC, The World Bank, 1989), pp 60-61.
3. Former French President, Francois Mitterand congratulated African countries that had committed themselves to *democratization* in his opening address to the fourth Summit of the *Francophone Nations* in November 1991. See *Africa Research Bulletin*, 31st November, 1991, p 10293.
4. Mulikita, op cit, p 3.
5. NM Mulikita, 'Entrenching Good Governance in Zambia's Public Administration: Challenges & Opportunities', *African Administrative Studies*, African Training & Research Center in Administration for Development (CAFRAD), Issue 59, December 2002, pp 2-3.
6. Ibid.
7. Michael Bratton & Nicholas Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, (Cambridge University Press, Cambridge, 1997), p 111.
8. See Njunga M Mulikita, 'After the euphoria... democratization and opportunism' *E-Africa: Journal of Governance & Innovation*, NEPAD Project, South African Institute of International Affairs (SAIIA), University of the Witwatersrand, South Africa 2003, forthcoming.
9. Ibid.
10. Ibid.
11. Ibid.
12. See Paschal Mihyo, 'Chama Cha Mapinduzi: A Revolutionary Party in Transition, Tanzania' in M.A. Mohamed (Editor), *African Political Parties, Evolution, Institutionalization & Governance*, (Pluto Press, London, 2003) p 68.
13. Ibid.
14. Bratton, Op cit., p 113.
15. Jotham C Momba, 'Democratic Transition & the Crises of an African Nationalist Party, UNIP, Zambia', in M.A. Mohamed (Editor), *African Political Parties, Evolution, Institutionalization & Governance*, (Pluto Press, London, 2003) p 48.
16. Michael Bratton & Nicholas Van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, (Cambridge University Press, Cambridge, 1997), p111-113
17. Gisbert H Flanz, *Constitutions of the Countries of the New World*, (Dobbs Ferry, NY, Oceana Publications, 1995)
18. See Chris Bakwesegha, 'Conflict Resolution in Africa: A New Role for the Organization of African Unity? In G Sorbo and P Vale (eds). *Out of Conflict: From War to Peace in Africa*. Uppsala: Nordiska Afrikainstitutet, 1997, p 89.
19. Dennis Venter, 'Democracy and Multiparty Politics in Africa: Recent Elections in Zambia, Zimbabwe, and Lesotho', paper presented to an Organisation for Social Science Research in Eastern and Southern Africa (OSSREA) workshop on 'The Sustainability of African Political Parties', 6 to 8 May 2002, Addis Ababa, Ethiopia, p 3.
20. Shadrack BO Gutto, 'Constitutionalism, Elections and Democracy in Africa: Theory & Praxis', paper presented to the *Africa Conference on Elections, Democracy and Governance*, 7-10 April, 2003, Pretoria, South Africa, p 4.
21. See Severine Rugumamu, 'State Sovereignty and Intervention in Africa: Nurturing New Governance Norms', *Discussion Paper*, International Commission on Intervention & State Sovereignty, Round Table Consultation, Maputo, 10 March 2001, p 5.
22. President Robert Mugabe who was then Chairperson of the SADC Organ for Politics, Defense and Security dispatched former Tanzanian leader, the late Mwalimu Nyerere, a close friend of Kaunda's to intervene diplomatically in Zambia's political crisis.
23. See Dennis Venter, op cit, p 21.
24. Ibid, p 22.
25. Ibid.
26. Dennis Venter, op cit, p 4.
27. Hassen Ebrahim, 'Constitution Making in Africa- Challenges for the New Millennium', John F Kennedy School of Government, Harvard University, 9th-11th May, 2002, p 17.
28. Opening a Women's conference on the Zambian constitution, Chairman of Zambia's umbrella Civil Society forum, Reverend Japhet Ndhlovu observed that 'Zambia like many African countries had experienced constitutional instability since independence because constitutions have lacked legitimacy or moral authority', see Larry Monze, 'Constitutions in Zambia have been imposed on people-Rev. Ndhlovu', *The Post*, Thursday, March 20, 2003, p 5.
29. Ibid.
30. The disturbing issue of incumbent regimes stage managing constitutional review processes is adequately dealt with by Otive Igbuzor and Omano Edigheji in their paper entitled 'Constitutions, Electoral Process and the future of Democratic Governance in Africa' presented to the *Africa*

- Conference on Elections, Democracy and Governance*, 7–10 April, 2003, Pretoria, South Africa, p 10.
31. For an in-depth treatment on the conflict generating potential of 'dysfunctional governance systems' See Sam Amoo, *The Challenge of Ethnicity and Conflicts in Africa: The Need for A New Paradigm*, Emergency Response Division, UN Development Program, New York, January 1997.
 32. See Gladwell Otieno 'Security Brief', in *African Security Review*, 11(4), 2002, p 50.
 33. In 2001, Zambian Civil Society groups came under an umbrella organization known as the OASIS Forum in resisting maneuvers to change the republican constitution to allow former President Chiluba run for a 'Third Term'.
 34. NM Mulikita, 'Political Parties & The Unfinished Quest For Democratic Governance In Zambia' Paper presented to the *ISS/OSSREA Workshop on the Sustainability of African Political Parties*, Addis-Ababa, Ethiopia, 6th–10th May, 2002, p 12–13.
 35. Hassen Ebrahim, 'Constitution Making in Africa- Challenges for the New Millennium', John F. Kennedy School of Government, Harvard University, 9th–11th May, 2002, p 32.
 36. See Tiyanjana Maluwa, ' Re-imagining African Unity: Preliminary reflections on the Constitutive Act of the African Union', *The African Yearbook of International Law*, Volume 9, 2001, pp 3–38.
 37. Gutto warns that the, 'the so-called waves of democratization in Africa in the last ten to fifteen years seem to be too thinly spread on the surface and do not go deeper than political pluralism and regular elections.' See Gutto, op cit, p 4.
 39. Richard Cornwell, 'A New Partnership for Africa's Development?' *African Security Review*, 11(1), 2002.