

APPRAISING CONSTITUTIONALISM AND GOOD GOVERNANCE IN AFRICA

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ABSTRACT: *This work interrogates constitutionalism and good governance in Africa. Constitutionalism is a form of political thought and action that seeks to prevent tyranny and guarantees the liberty and rights of individuals within the state. It is also an essential tool to achieve public accountability, the end of which is good governance. While good governance entails efficient and effective use of power and resources. In this paper, the researcher studies the governance in Africa with the hope of finding out whether the system fits in with what is called good governance as it has been championed all over the world. In the course of this research we discovered that a lot of hindrances are on the African way to the realization of good governance, colonialist and African leaders bear the blame. The work concluded that; since colonialists are at the fore front of propagation for good governance, it is very important for them to correct the wrong of the past and where they are still serving as hindrances; they should endeavour to make an amendment for the good of mankind. And at the same time the African leaders should be ready to learn from the past and make necessary amendments so that Africa can move forward.*

KEYWORDS: Accountability, Africa, Constitutionalism, Governance, Propagation, Tyranny.

INTRODUCTION

Constitutionalism is the idea, often associated with the political theories of John Locke and the "founders" of the American republic, that government can and should be legally limited in its powers, and that its authority depends on its observing these limitations (Waluchow.W. 2010). Adewoye (2005) also observes that the philosophy of constitutionalism is traceable to the natural rights doctrines of the Greek Stoics, the medieval Church and the Magna Carta. Its development took a rapid turn from the 17th century English revolution and spread to many countries in Western Europe during the 19th century.

In his descriptive definition of constitutionalism, Adewoye (2005) says that, it denotes a set of principles in the governance of the polity. According to him, constitutionalism entails the following attributes: effective restraints upon the powers of those who govern, the guarantee of the individual fundamental rights, the existence of an independent judiciary to enforce these rights, genuine periodic elections by universal suffrage, and the enthronement of the rule of law as reflected in the absence of arbitrariness and equality of all before the law (Adewoye. O. 2005).

More so, constitutionalism helps to ensure that civil officers fulfil their duties and protect the rights and personal liberties of each citizen in the state (Fichte. J. G. 1970). Constitutionalism is not merely a method of limiting political tyranny or abuse; it also ensures that power in the state is not used in a capricious manner. To be genuinely constitutional in character, a government must comply with two fundamental legal requirements, which are also essential features of constitutionalism. First, the government must operate in accordance with the

provisions of the constitution. Second, it must not exceed the authority granted to it by the constitution. A constitution on the other hand is a charter of government deriving its whole authority from the governed and sets out the form of government. It specifies the purpose of the government, the power of each department of the government, the state-society relationship, the relationship between various governmental institutions, and the limits of the government. The constitution is premised on the principle that the people are the real rulers and that certain rights are inalienable such as liberty of thought and expression, freedom from government's invasion of privacy, freedom from arbitrary confiscation of property, freedom from arrest without warrant, freedom of association and assembly. In short, these rights would give rise to a society with a free press, wherein, every person's home is respected and trials are fair, where all the citizens enjoy their equal rights.

Having done with constitution, the most important question that may arise is this: how can a government be legally limited by a law that is its own creation? Put differently, how can the constitution which is the creation of the government limit it? Responding to these question, Waluchow (2010) is of the opinion that when the idea of constitutionalism is espoused, what is meant is not merely that there are rules creating the legislative, executive or judicial powers in the state, but that these rules impose limits on those powers. Very often, these limitations are in the form of individual or group rights against some actions of government such as, the right to free expression, the right to fair hearing, the right to association or equality before the law, etc.

Both constitutions and constitutionalism remain fundamental important in governance. Measure and ideals for government practice must ideally be embodied in a constitution. While on the other hand, Constitutionalism helps in the transformation of these measures and ideals into reality (Kay, R. S. 1998). Constitutionalism and good governance are intimately interlinked. This interconnectivity is not the subject of controversy, because Constitutionalism is a crucial component in the drive towards entrenching good governance.

Understanding the Idea of Good Governance

What is good governance? "Good governance is understood to denote: a system of values, policies, and institution by which a society manages its economic, political, and social affairs through interaction within and among the state, civil society, and private sector" (Dwiredi, O.P. 2004). According to Hatchard, (2004) good governance extends beyond the traditional focus on regulation of state exercise of authority to include the involvement of the citizenry in the promotion of social welfare.

Therefore governance involves a full range of activities involving all stake holders in a country such as all governmental institutions, political parties, interest groups, and nongovernmental organisations including the civil society, the private sector and the public at large (Frederickson, G.H 1997). Good governance also implies a complexity in organisational context, empowering the weaker sections of society and geared to achieve the general accepted common good. (Frederickson, G.H 1997)

In an attempt to explain the idea of good governance, Kiyaga-Nsubuga (2006) stated thus;

Good governance' entails efficient and effective use of power and resources, constitutionalism and rule of law, justice and equity, electoral and participatory democracy, security of person

and property, promotion of human rights, transparency and accountability (political, managerial and financial), exemplary and inspirational leadership, and popular participation in social and economic processes. Its facilitating conditions include a strong state, a robust and dynamic economy, a vibrant civil society and informed and empowered citizenry. (Kiyaga-Nsubuga 2006)

The characteristics of good governance include;

a professional civil service, elimination of corruption in government, a predictable, transparent and accountable administration, democratic decision-making, the supremacy of the rule of law, effective protection of human rights, an independent judiciary, a fair economic system, appropriate devolution and decentralization of government, appropriate levels of military spending, and so on. (Mueller, D.C. 1991)

Good governance remains a useful concept for obvious reasons. Doorknobs, M. (2000) rightly posits that, the concept of good governance “could be used to invite judgement about how the country...concerned is being governed: it enables the raising of evaluative question about proper procedures, the quality and process of decision making, and other such matters” (Kiyaga-Nsubuga, J. 2006). In fact, “it helps to differentiate the professed or actual self-understanding of the ruling groups from their real causal contribution to the prosperity or misery of their subjects” (Linda, C. R 2000). Moreover, good governance has been closely linked to the extent which a government is perceived and accepted as legitimate, committed to improving the public welfare and responsive to the needs of its citizens, competent to assure law and order and deliver public services, able to create an enabling policy environment for productive activities in its conduct” (Doorknobs, M. 2000) .

The World Bank has offered a more comprehensive explanation of good governance. It defines ‘governance’ as “the means by which power is exercised in the management of a country’s economic and social resources for development” and takes ‘good governance’ as synonymous with “sound development management”(Simbine, A. T. 2000) It encompasses a broad sphere of public sector management: accountability; legal framework for development; information and technology; the legitimacy of government; the competence of governments to formulate appropriate policies, make timely decision; implement them effectively and deliver services(Simbine, A. T. 2000). However, there is a significant degree of consensus that good governance relates to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. It has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The true test of "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.

Problems Militating against Good Governance in Africa

Good governance as discussed above is desirable. But, a lot of problems militate against its realization in Africa.

Colonialism

The African continent has a history of authoritarian rules since most African countries gained their independence from the British, the French, the Italians, the Portuguese, the Spanish, the Belgians, among others in the early 1950s, 1960s till 1970s. This political independence has never helped the Africans, but led them to 'Neo-colonialism' which was rejected by many leaders in Africa. Any leaders that fail to dance into the dictate of the colonialist are either remove or make his government uneasy for the people. For instance, the Republic of Guinea which became independent in 1958 under the presidency of Ahmed Sékou Touré voted against the neo-colonial arrangement known as the French Community. The move has precipitated the deterioration of the French–Guinean relations which led the French to cease assistance to Guinea. Patrice Lumumba of the Congo was assassinated by the CIA with the assistance of the Belgians because he rejected the exploitation of the natural resources of the Congo (Ibrahim, 2008). It happened in Libya in 2012 when revolutionary forces with the assistance of NATO killed and toppled Gaddafi government. Even those that were not toppled, violence were intentionally instituted in such state; for example 1914 amalgamation of Southern and Northern protectorate that brought about the existence of Nigeria which has brought in an uneasy and unresolved tension between the North and the South in all ramification.

More so, in all the colonies, the colonialist make sure that traditional forms of government been practised before their advent were jettisoned. The traditional institution that has been put in place by the African was abolished and a new system of government was put in place. In some instances the colonizers foist on them a different worldview and cultural mindset that made them to lost total confidence in themselves and today almost all the countries in Africa have secured their independence, yet the independent African state still follow the authoritarian foot step of their colonial master. What we have in Africa today is constitution that lack constitutionalism thus make the leader to be above the law.

Since a government can only be founded on the consent of the people, there is a critical need to understand and appreciate the need for dismantling the structures of the neo- colonial states and building new structures that enhance democracy, participation, inclusion and social justice. While multi-partism on its own cannot guarantee constitutional development, it provides a framework for the struggle and expansion of democratic freedom, to further enable the citizenry to interact at various levels in a secure, and mutually-acceptable, political environment (Uroh, C. O. 1989).

Ethnicity

Ali A. Mazrui (2008) claimed that the most lethal of all wars in post-independence Africa has been those fought between the Africans, the root causes of these wars lie in the colonialist legacy. This could be attributed to the scrabbling for partition of Africa at Berlin conference of 1884 that led to the creation of political boundaries without giving attention and respect the cultures, traditions as well as the blood linkages among the African ethnic groups. For instance, as Martin Meredith (2006) has argued, in the Sahel, new territories were established across the great divide between the desert regions of the Sahara and the belt of tropical forests to the South–Sudan, Chad and Nigeria –throwing together Muslim and non-Muslim peoples in latent hostility.

Furthermore, The heterogeneous ethnic groups were forced together by the colonialists to co-exist and remain as state. The different ethnic groups become polarize rather than unite.

Another ethnic related issue is the fear of domination usually expressed against the majority ethnic groups by the minority groups. This is also a patent problem in the contemporary plural African states. In fact, this problem has substantially generated concerns by African leaders with respect to how to deal with the national questions. The consequence of this has resulted into serious war in many Africa countries. It happened in Burundi, Rwanda, Liberia, Sierra Leone, Malawi, and Central Africa republic, Congo DCR, Nigeria and Sudan. Under the atmosphere of violence, no good government is possible.

Kleptocracy

Furthermore, kleptocratic governments are very common in most countries in Africa. Kleptocracy is a government characterized by greed and corruption. Though many African states claim to be democratic, the political policy makers and the civil servants that implement their policies are corrupt. African politicians are well known for causing violence because of corruption. They are ready to do anything to acquire power. They put their puppets in power so as to have unfettered access to the wealth of the nation. One could not dispute the fact that the level of corruption of most politicians in Africa is very high. On the level of moral decadence in Africa, Nkeoye submits that:

Really, the rate of corruption, bribery, indiscipline, immorality, cheating, idleness, and other vices have assumed alarming proportions. As it were, it seems that everything has simply gone upside down, in order to negate and thwart the legitimate aspiration of the common (Nkeoye, O. 1983).

In addition, lack of good leaders is another issue militating against good governance in Africa. Many of them are inefficient, though they seek all means to perpetrate themselves in office. Many of the rulers have used the constitution as a tool to entrench themselves in power or have totally disregarded its existence. Although, in some instances, the rulers have followed the constitution to the letter, where they are frustrated by the constitution, amendments have been engineered (Agere, Sam 2000). Constitutionalism has been readily adopted as opportunistic strategies to close democratic space, curtail popular rights and negate even traditional cultures, tolerance and popular involvement in decision-making. The rulers have perfected the art of brutal and inhuman politics with a desire to retain power and keep the citizens out of politics and constitutional development. For example, In Cote, de voire, the incumbent leader lost an election and decided to install himself into power.

Another version of state violence is that, African leaders have assumed the exclusive mandate to speak for and on behalf of the people, even where that mandate has been fraudulently secured. Where civil society engages in advocacy that challenges the status quo, the Government has effectively used law as a tool of oppression and issued threats, instituted diversionary cases against activists and, in some instances, detained them. Again, some countries have legislation to control the actions of NGOs, with express prohibitions on political activities. As a result, many human rights and pro-democracy NGOs have shunned activism. Rather, they work quietly behind the scene, or engage in non-controversial issues (Ihonvber, J. O. 2000).

Prolong Military Rule

Furthermore, the prolonged rule of the military in many countries in Africa has had a profoundly negative effect on constitutional development. Not only did the military usually suspend the constitution and rule by decrees, they also attempted a constitutional engineering, which was usually a critical element of their civil-transition programmes, were known to have fallen short of acceptable standards. Moreover, the blatant disregard for constitutionalism has somehow created a negative image in the minds of the people, especially the civilians counterfeiting of the military administrators.

Another fundamental factor working against good government in Africa is various forms of violence orchestrated by the state against the people. A good example of the state violence against the common people was what happened during Abacha's military regime in Nigeria. During this period, a lot of prominent Nigerians were assassinated for maintaining what the government of the day called open criticism of the military leadership.

The implication of this is the collapse of community shared values, beliefs and practices, which were the cement that provided the framework for the realization of individual potentials, goals, happiness and the common good (Richard S. K. 1998). The effect of this is that the state has failed and the citizens had to seek social fulfilment outside it (Oloka-Onyango, J. 2001). And when this happens, the moral bond that ties the citizens to the community, the real basis upon which the community could justify its control over the citizens, has slackened. This has been responsible for the withdrawals of individual from anything called shared values (Adejumobi. S, 2002). As a result of this, many people have secured their social fulfilment within their primordial groupings especially among their kins and "they have become patrons of ethnic cleaves and protagonists of their parochial interests" (Ebijuwa. T, 2000).

CONCLUSION

Honest relationship between constitutionalism and the constitution produce good governance. There is no doubt that in Africa today, this relationship is just not there; many of the blame have been placed on the colonialist as well as the African leaders. Incidentally today the colonialists are at the fore front of propagation for good governance to be realising among the nations of the world. As they are doing this, it is very important for them to correct the wrong of the past and where they are still serving as stumbling blocks; they should endeavour to make an amendment for the good of mankind. And at the same time the Africa leaders should be ready to learn from the past and make necessary amendment so that Africa can move with the dictate of the moment.

REFERENCE

- Adewoye O " *Constitutionalism and Economic Integration* " (online) .<http://web.idrc.ca/en/ev-68408-201-1-DO-TOPIC.html> [accessed 2 May 2005].
- Adejumobi. S, 2002 "The Military and the National Question" In A.Momoh and J.S Adejumobi(eds) *The National Question In Nigeria: Comparative Perspectives*. Aidershort: Ashagate.
- Agere, Sam 2000. *Promoting good governance*. Commonwealth secretariat

- Doorknobs, M. (2000) "Good Governance: The Rise and Decline of a Policy Metaphor" *Development Studies*, Vol. 37, No. 6,
- Dwiredi, OP (2004) "on common good and good governance: An alternative approach" in D.Olowu & S.Sako (eds) *Better governance and public policy: Capacity building for democratic renewal in Africa*
- Ebijuwa. T, (2000) Libertarianism, Self-Detachment and Shared Values in *Ela Journal of African Studies* Nos 7&8. P 59-68.
- Fichte, J. G.1970) *Science of Knowledge*. Edited and Translated by Peter Heath and John Lachs (New York: Meredith Corporation), pp. 218-219.
- Frederickson, G.H. (1997) the spirit of public administration 86 quoted by OP Dwivedi on common good and good governance: an alternative approach in D Olowu and s sako(ed)39 *Better governance and public policy: Capacity building for democratic renewal in Africa*
- Hatchard, J.(2004) *Comparative constitutionalism and good governance in the common wealth: An Eastern and Southern Africa perspective*.
- Ibrahim, J. Gassama. 2008. Africa and the Politics of Destruction: A Critical Re-examination of Neocolonialism and Its Consequences, *Oregon Review of International Law*, Volume 10, Number 2, pp. 327–360.
- Ihonvbere, J. O. (2000) Towards a New Constitutionalism in Africa, CDD Occasional Paper Series 4 pp10-11
- Kay, RS. (1998) " American constitutionalism" in L Alenxandra (ed) *Constitutionalism: Philosophical foundation*. 17-25.
- Kiyaga-Nsubuga, J.(2006). Commonwealth Secretariat, Local Democracy, Good Governance and Delivery of MDGs in Africa p57.
- Linda, C. R (2000). Building Democratic Institutions: The Role of National Human Rights Institutions in *Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. I p 16-17
- Martin Meredth. (2006) "The fate of Africa" *Public affairs*. June.
- Mazrui, Ali. 2008. "Conflict in Africa: An Overview".*The Roots of African Conflicts: The Causes and Costs* (eds). Addis Ababa: Published in association with OSSREA.
- Mueller, D.C. (1991) "Choosing a Constitution in East Europe Lessons" from *Public Choice* p348
- Nkeonye, O. (1983) "On Nigeria Ethical Revolution and all that" in *Uche journal of philosophy* university of Nigeria Nsukka Vol2. P 1
- Oloka-Onyango, J. "Ed",(2001) *Constitutionalism in Africa Creating Opportunities, Facing Challenges*, (Kampala, Fountain Publishers) pp 2 – 3.
- Olowu, D. and Sako (eds) *Better governance and public policy: capacity buildings for democratic renewal in Africa*)35-37.
- Richard S. K. (1998) American Constitutionalism, in *Constitutionalism: Philosophical Foundations*16. Cambridge: Cambridge University Press.
- Simbine, A. T.(2000) "Citizen's Disposition Towards Governance and Democratic Rule in Nigeria", *NISER Monograph Series* , No, 15.
- Uroh, C. O. 1989 "Beyond Ethnicity: The Crisis of the State and Regime Legitimizing in Africa". In Oladipo, O. (ed) *Remaking Africa: Challenge of the Twenty-first Century*.Ibadan Hope Publication's Nigeria.p 95.
- Waluchow, W. (2010)"Constitutionalism," In: *Standford Encyclopedia of Philosophy*. Availableat :<http://www.plato.stanford.edu>(accessed on October 4, 2010).