



*African Governance*

# **POLITICAL CHANGE AND CONSTITUTIONALISM IN AFRICA**

## **EMERGING TRENDS**

Edited by  
Okon Akiba



# Political Change and Constitutionalism in Africa

*Political Change and Constitutionalism in Africa* examines the complexities of government and the obstacles facing constitutional democracy in transitional African societies.

The chapters provide a critical, conceptual framework to probe, interpret and understand the dimensions of current and impending challenges to constitutional government on the African continent. The contributors explain why deep inequalities and harsh repression persist in most transitional African countries, despite constitutionally guaranteed rights and the ongoing, practical efforts to expand participation through political liberalisation. The book demonstrates the importance of sustaining public confidence in democracy and provides provocative ideas about how to deal with new, prodigious configurations of power that are stubbornly resisting real institutional change.

*Political Change and Constitutionalism in Africa* will be of interest to scholars of African politics and constitutional democracy.

**Okon Akiba** is Professor of Comparative and International Politics at York University, Toronto, Canada.

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Okon Akiba**

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# Preface and acknowledgments

I began writing this book three years ago, although I had it brewing in my mind much longer. In fact I had it in mind since the publication of my other book, *Constitutionalism and Society in Africa* (Routledge, 2004). Scholarly reviews of the work suggested that a companion volume would be a good idea to elaborate additional issues such as the constitutional treatment of women's human rights. And I was instantly captivated by the prospects of incorporating gender in a principal follow-up study of constitutionalism in Africa.

But delivering a book of high comparative quality requires much more than inspiration, bolting enthusiasm and streams of consciousness. It demands, as well, an exhaustive reading of diverse literature on African politics and an extensive search not simply for qualified researchers but also scholars interested and willing to collaborate on a book proposing to address constitutionalism. I was fortunate to acquire scholars in a timelier manner through chance and personal connections. After years of dialoguing with the invited scholars on the subject via mini-workshop sessions and telephone conversations, those whose interests and work touched on law and comparative social science analysis were selected to develop and move the project forward. They agreed to devote a section of the book entirely to the interrogation of "women and constitutionalism" in Africa, and recommended additional lines of research investigation into the complications plaguing democratisation and constitutional government on the continent.

Inevitably, then, this study is an attempt to capture and explain the troubled outcomes of democratic governance in Africa. It more narrowly focuses on constitutionalism, seeking to show in part how and why anti-democratic energies persist and continue to threaten democratisation in Africa, despite the escalation and spread of enlightened popular pressures for human liberation and political change. Scholars speak of this dynamic as one embedded in and reflecting the universally acknowledged *mixed fortunes of democracy*, whereby the collective struggle by indigenous civil society to cultivate and secure the habits and traditions of constitutional government oft-times is neutralised and undermined by opposite conservative forces and heaviness.

As might be expected, those spirited debates during workshop deliberations have vastly broadened our perception and outlook concerning the pace, scope and limits of *Political Change and Constitutionalism in Africa*. They naturally have served

also to enhance our insights into the numberless nuanced and complex values that distinguish and help prioritise *democracy* as a unique system of governance. Each of the researchers has contributed a distinctive chapter rooted in considerations about the inherent dignity and equality of all persons, under the law. They have written in defense of civil liberties with striking single-mindedness and from a strong conviction that the rule of law is a logical, practical solution to the problem of order. I use this medium to express my thanks for their thoughtful reflections on the issues, and forbearance in awaiting the publication of the product of our collective enterprise.

I am particularly grateful also to the Ford Foundation (New York, USA) for supporting my initial projects together with the international conferences on constitutionalism and society in Africa, through which I was able to meet and develop lasting professional acquaintances—and many of them are contributors to the present volume. In this connection, I express my gratitude to Professor Julius Ihonvbere (formerly program officer at the Ford Foundation), for encouragement throughout the frequently hard journeying through tough terrains from conceiving and reconceptualising the main research problem to the writing of the research report and delivery of the book. I have received much support from friends and faculty associates too numerous to name, at Ohio University (Athens) and American University of Central Asia (Bishkek) where I previously resided and taught political science. I owe each and every one a debt of gratitude. My special regard also goes to Mba Atinga for helping me unite and advance the overall flow of argumentations in the works on women's human rights, and for writing a chapter that adds considerable comparative value to the volume.

# Prologue

## The essence of political change

*Okon Akiba*

Each generation must discover its mission, fulfill it or betray it...

(Franz Fanon)

The generation of Africans rising from the democratic revolution of the 1990s is possibly the most enlightened that has ever been. Our appreciation of human rights and civil liberties is remarkably deep and ingrained, and the proliferation of tireless normative organisations is working with amazing grace and speed to ensure that our destiny is established and that we are in control of our common future. But are we also the storied underachievers? We are not doing our best at maximising the dividends of political change brought about by the combination of preeminent transnational forces. We have not been successful in cultivating peace and making ourselves happy, if we are to judge by the scale of systemic contradictions that persist everywhere on the continent. Africa remains the epicenter of willful wars exemplified by the crisis in Democratic Republic of the Congo (DRC). And socioeconomic recovery has been noticeably slow in African societies encumbered to date with searing and galvanising ethno-religious tensions or xenophobic violence. Rwanda, Liberia and Sierra Leone—these are still saturated with the legacies of prolonged wars that became hellish from the mid-1990s onward. The pusillanimous Boko Haram wages insurgent campaigns at soft targets in Northern Nigeria, raids secondary schools and seizes hundreds of young Chibok girls for hostage. The ordinary folk are ensconced in mayhem. And we are jammed at the cusp of change.

Even South Africa, which had achieved comparably stable and fruitful democratic transition beginning from 1994, soon was found, roughly 20 years later, in the throes of a leadership crisis made worse by instability brought forth by unfathomable poverty in marginalised communities.<sup>1</sup> The throng of disenfranchised South African youths is possessed of the habit of displacing its sporadic frustration on foreign migrants and resident petty traders. Across the spectrum of social groups in Africa's urban centers, inequality and youth unemployment are fermenting and distilling unabated troubles. Edward Azar<sup>2</sup> speaks about these in terms of protracted social conflict that soon transforms into violence and the genres of explosive disorder. Nothing in these circumstances can be more urgent

than to seal all burnable cleavages, and good leadership is indispensable for this purpose. But public officials are failing to mitigate hardship and to restore popular confidence in government.<sup>3</sup>

On another level, the campaigns for change by zestful reformers have not fully and effectively contained, let alone eliminated, older and more customary subversive threats that are resurfacing to undermine and reverse democratic gains. The personalisation or concentration of state power by audacious executives<sup>4</sup> is a legacy of preceding authoritarian regimes that has reemerged to form overt, formidable structural hindrance to democratisation.<sup>5</sup> Genuine political pluralism is severely degraded when sham elections are initiated and used as the preferred mechanism to build hegemonic political parties that imperil the health of the transitional society everywhere on the continent. They serve in principle and practice to distort governance by undermining the separation of powers and overwhelming civil processes. The strength and independence of the judiciary, legislature and national bureaucracy are severely compromised when archaic, restrictive traditions of the dominant single-party state are foisted upon unwilling citizens. Effectively also the attribute of competitive multiparty politics is debased where opposing political parties are merely tolerated, allowed symbolic presence and are starved of resources and physical space in which to operate freely and with effect. Minority parties are commonly refused official allocation of campaign funding, which they are constitutionally entitled to receive from the majority government. Competition is placed under siege when threat, intimidation and thuggish tactics are used by the ruling political organisation to coerce and force rival politicians underground.<sup>6</sup>

Worst still, Independent National Electoral Commissions have not been particularly strong or effectual in discharging the tasks of supervising and producing free and fair elections. In Kenya, for example, the Supreme Court had to intervene and declare the highly disputed presidential elections of August 2017 “invalid, null and void”; and this was the very first time in the history of electoral politics in Africa that a Supreme Court had to intervene and nullify the decision of an electoral commission. After ordering fresh elections (October 26), the judges sitting in Nairobi unanimously upheld the reelection of Uhuru Kenyatta as president. At the center of the electoral problem was an incompetent and politically compromised Interim Electoral Commission.<sup>7</sup>

Deep worries about the durability<sup>8</sup> of the African political experience and experimentations are therefore justified, given institutional weaknesses and the rising animus on the part of an increasing number of would-be autocrats against the culture of multiparty democracy. Quite a few scholars now speak of the specter of an evolving, mild and protracted democratic recession, and others warn about the possible morphing of dominant parties into one-party autocracies. Plainly, most of the central political institutions of democracy, including the judiciary and parliament in many countries, are unhinged from their moral moorings and are floating away from the probity and virtue that undergird the rule of law. Into the bargain is bureaucratic corruption, which is channeling despair and amplifying alienation in the relations of state and society. The overall condition of dissoluteness especially in societies facing difficult democratic transitions explains why

thoughtful minds are fast losing hope<sup>9</sup> and now are anxious or terrified that the prophetic promise of constitutional government in Africa's immediate political future might remain a pipe dream.<sup>10</sup> The profile of challenges at the moment can generate little or no warm comfort among the campaigners for democracy; protagonists of change wanting to extend the common good face daunting obstacles, despite their indisputable and true attempts at the grass roots to facilitate democratic change. Much more work is required for that reason to escalate human rights and richen local environments with essential mechanisms to defend civil liberties and entrench the traditions of constitutionalism.

### **The humanist government: learning curve**

I think that any attempt to resolve these problems can be made only and precisely in the context of clear-mindedness about the meaning of change, the value of democracy and the rule of law. There are signs, fortunately, that society in Africa has been on a steady learning curve. New knowledge about the principles of good government acquired during initial democratisation has been internalised by citizens, and now in many cases the people are vociferously and volubly seeking to scale all odds in order to attain improvements in their livelihoods. Many Africans have been further conscientised by the increasing convergence of thought among activists, that democracy is essential for political stability, and that it is possessed of universally shared norms. More specifically, democracy is shown to be the system of administration whereby "rulers are held accountable for their action in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives."<sup>11</sup> Democracy is accepted as the most hard-wearing currency of political transaction; it is closely associated with "constitutionalism,"<sup>12</sup> which slowly began to rise as an idea in value and to reenter the public lexicon during the turn of events at the end of 1989. Constitutionalism now is used properly by reformers to educate the citizenry about the efficacy of limited self-government. Such a government is logically and always anchored in an ensemble of norms, predicates and traditions that are then codified into the body of well-articulated laws generally known as the *written constitution*. Those norms—together with the entire system of legal rules—are made of exceptional moral fiber. Certainly, not all constitutions are written documents. Quite a few Western European constitutional governments, most prominently the British government, are charged and operated largely by informal standards of governance rooted in time-honored prudence and forethought.

The people along with the new politicians have also learned quite a bit about the need for enforcement of liberal democratic rules including the necessity to implant in society the ideas of equality, civic responsibility and the duty of the citizen to the modern democratic state.<sup>13</sup> Most ordinary folk know that the role of democratic leadership must remain essentially constant in its transparency: The democratic statesman in the good society accepts restrictions on the exercise of supreme power, and he/she imbibes the habits of democracy, including the unambiguous commitment to service to the community.<sup>14</sup> Parallel institutions

of governance exist in the modern democratic society to moderate the exercise of executive power and prevent excesses. And strategic constitutional provisions implore public officials not to succumb to the temptation of exercising arbitrary power, but to lead with humility and charitable candor; the humane leadership must neither place restrictions on franchise nor scrap eligibility from the qualified citizen wanting to serve in public office.<sup>15</sup> The modern democratic government is required to create the vibrant *public realm*<sup>16</sup> for citizens to mobilise, further their rights and seek to influence public policy for their own interests.

Classic expressions of the spirit of the future are to be found in the already demonstrable capacity of the “masses” of Africans in the emergent political environment to rise up in protest against autocracy and democratic relapses: The Crowd chased Burkinabe president Blaise Compaore from power (October 2014) after 27 years; and popular uprisings in Khartoum brought Omar al-Bashir’s 30-year-long rule to an end (April 2019). Grassroots organisations have been practical and relentless in their opposition to resurgent military putsches.<sup>17</sup> As well, informed circles have continued to loudly protest all attempts at the unconstitutional amendment of the constitution to prolong the tenure of already long-serving African leaders. Ordinary citizens understand that the law protects community values, and so in the present circumstances the people are pressuring their political representatives in parliaments to materialise and uphold the contents of the democratic social contract. They want their leaders to build and reinforce the foundations upon which the viable constitutional government has been built in advanced and established democracies.<sup>18</sup>

Real constitutional reform must be geared toward social justice. And as conscious social beings, I believe that we are bound by those moral ideals, including the doctrine of immanence, to support all political campaigns on the continent for change. We must keep pressing to attain and consolidate the just society. It is imperative that we also endorse the verdict against violence and despotism, as spelled out in the Constitutive Act of the African Union, as well as in the Economic Community of West African States (ECOWAS) Protocol on Good Government and Democracy. In this case also the South African paradigm of transformative constitutionalism<sup>19</sup> is relevant to inform reformers about how best to achieve reconciliation and post-conflict rebuilding in those multiracial, multi-ethnic polities.

In this connection, I think I would be inattentive or remiss if I did not attempt to forward additional thought on the role of regional institutions in nurturing the kernel of democratic change. Indeed, regional organisations<sup>20</sup> have erupted to life and they are demonstrating exemplary energy to drive much more than regional economic integration and trade expansion. They have been remarkable historical markers of the times<sup>21</sup> by virtue of their roles in democracy promotion. The African Union (AU) and the ECOWAS have acquired and nowadays are self-invested with legitimate authority to intercede and restore order where the basic tenets of the constitution are violated or face threats of contravention. The organisations at the moment routinely intervene when defeated

incumbents become recalcitrant and will not transfer power, in spite of free elections. And member countries are monitored by subcontinental agencies and specialised regional institutions to determine how well the standards of democracy are being maintained and respected by the government. The power and command of the emergent consensus on democracy is evident mostly in the positive outcomes from the AU's interventions in places where disruptions to the constitutional order occurred such as Cote d'Ivoire, Guinea, Guinea-Bissau, Mali, Niger, Togo and more dramatically the Gambia.<sup>22</sup> New governments in all democratising African republics are required to accommodate diverse interests of the citizenry, guarantee the independence of the judiciary and subordinate security forces to civilian authority. Those in power are beseeched and entreated to protect civil liberties, and to ensure that every citizen in the open society draws unhindered benefits from the free exercise of the vote in elections that are regular and credible.

These are some of the foundational *elements* of good government that also presently undergird the AU Constitutive Act (Lome, July 11, 2000). In practical terms, the AU leadership adopted (2007) and ratified (2012) the African Charter on Democracy, Elections and Governance in Addis Ababa. Transformative in character, the contents and purposes of the said documents today stand as innovative norms of transnational governance. They are extraordinary groundbreakers when viewed against the backdrop of decades of assumptions and stipulations on the continent about the inviolability of *sovereignty* and the sanctity of *non-interference* in internal affairs of the other independent state. The documents are critically important because they also iterate respect for the rule of law with emphasis placed on the *separation of powers* and the safeguarding of human rights.

## Regarding the problem and core issues

Our stand against abusive rule, and for the enhancement of democratic constitutionalism in Africa, is made fresh in the questions posed as follows: How might regional and subregional organisations further expand and deepen their ongoing campaigns for democracy in Africa? Can domestic opposition forces in alliance with regional normative partners protect the fledgling democratic social order against inauspicious incumbents seeking illegal term elongation? To what extent does the resurfacing of “one-party syndrome” threaten to undermine true, valid pluralism? How might society inoculate its institutions of democracy, including the national electoral commissions, against corruption and partisan politics? Can constitutionalism prevent sudden breakdowns in democratisation? What kinds of institutional change are most likely to facilitate human security and nudge balanced development?

*Political Change and Constitutionalism in Africa* is largely a search for answers to the density and involvedness of government. In this respect it looks at the problem of order in all its legal and normative ramifications. The work admits that many of the emergent, fledgling African democracies are tending at the moment to be



illiberal and unstable. *Competitive authoritarianism*<sup>23</sup> is the label given to a hybrid-type government representing the incremental and incipient decline in democracy. Despite this, and far from it, we are not experiencing a massive “third reverse wave”<sup>24</sup> of democracy. Chronicles and annals have frequently failed to make the grade when it comes to predicting the direction of change in the transitional society. And we are yet to fully understand the meanings of development and the destiny of human history. This study proceeds in the understanding that significant mental shifts and patient anticipation are required (in the science of human inquiry) to make sense of and explain both the obvious and the subtle implications of epical transformative moments. It provides a conceptual framework critical to probe, interpret and explain the diverse dimensions of current and impending challenges to constitutional government. We strive always to bring to mind familiar themes that never rust and are likely to sustain popular optimism for positive change, as such: Restrictions on civil society and censorship of the media by authoritarian regimes<sup>25</sup> most certainly will deepen instead of eliminate protest; restraints and painful control will reignite and intensify rather than terminate revolt against audacity. Dictatorships are the blindest. They have been throughout time traditionally blind to the truism that popular pressure for constitutionally protected rights is ultimately irrepressible.

Viewed less theoretically, constitutionalism is tied to the rule of law, to the development of legal measures for the protection of citizens’ economic and political rights, and to the strengthening of civil society. A vital civil society that is conscious of its role and obligation to the people would ensure that public authority and the institutions of government respect rather than undermine human dignity. The dignity of women, marginalised ethnic groups, racial minorities and the economically downtrodden are commonly protected in constitutional governments. Certainly, liberty and the rule of law are meaningless in theory and practice without popularly based institutions.<sup>26</sup> This study explains why deep inequalities and harsh repression persist in most transitional African countries, despite constitutionally guaranteed rights and the ongoing, practical efforts to expand participation through political liberalisation. This central theme is treated in the introduction and elaborated in later chapters through case study analysis.

The comparative methodological tradition is adopted by the contributors to define the character of argumentations; firmly rooted in this intellectual tradition, manifestations of progressive change and continuities in structures of government steeped in debauchery are carefully compared among select transitional polities. It is held that in a number of places (Botswana, Cape Verde Mauritius)<sup>27</sup> political conduct is undergoing substantive change in terms of the government’s accountability to the citizenry and improvements in economic management of national resources. Economic success underwrites national stability and deepens the legitimacy of established governments. Furthermore, national objectives that are stipulated in several new constitutions are laid bare in each of the chapters—and differences of opportunities to materialise core constitutional objectives (such as the fulfillment of the material needs of the people and the promotion of civil,

political and cultural rights) are analyzed in their specific national, regional and cultural contexts. This comparative character is intrinsic in all the chapters and it enriches the empirical quality of the book.

Our chapters are original compositions that underscore the breadth of imaginative scholarly leanings from sociology, anthropology, history, economics, law, religion and so on. Despite differences in the contributors' orientation and training, there is similarity or congruence of thought on important themes. All agree that the moral appeal of human rights, an appeal undergirding constitutionalism, can mobilise social action against abusive rule; and that the basic tenets of democracy are not culturally bound but universal. It is emphasised that human agency should play a more important part in the task of building a better political future for Africa; specifically, that mutual accommodation among elites and opposition is required to ease domestic tension and minimise conflict in the competition for power and resources. Politicians in legislative assemblies and technocrats in the bureaucracies can achieve and preserve the integrity of democratic institutions by collaborating intelligently to negotiate consensus on political structures appropriate for governance in diverse settings. Arrangements to accommodate ethnic and cultural difference in plural societies should include power sharing, such as consensual decision-making by the executive, proportional representation of groups in civil service appointments and the promotion of cross-ethnic coalitions in federal structures.<sup>28</sup> By extension, the purpose and functions of public administration will have to be defined in line with the rule of law and with an eye to maintaining professional standards and public sector probity including accountability and transparency.

The core chapters identify state-society encounters and capture the push and shove of human relations, as follows: (1) Constitutionalism as the Striving for Good Government; (2) Constitutional Treatment of Women's Human Rights; (3) Structures of Constitutional Government: Histories of Unyielding Struggles for Freedom; (4) the Epilogue (Günter Walzenbach) was commissioned specifically to show how political experiences from other regions apply to Africa. It explores constitutionalism in the European Union and draws comparative perspectives on international trade, constitutional law and economic development. On the whole, the narratives and analyses in the contributed essays aspire to sustain public confidence in democracy and provoke independent thought about how normative leadership in emergent democracies might deal with new, prodigious configurations of power that are stubbornly resisting real institutional change.

If this book is offered to any groups in particular, it would include the comparativist researcher and advanced graduate students in the social sciences needing to engage and draw knowledge from the field of African politics for comparative purposes. The work will attract and sustain general public interest in ongoing debates on constitutionalism, and serve as a reference resource for a diverse and wide body of students across the disciplines. It should help policymakers understand the measures and methods by which certain human problems, ambitions and goals are expressed and treated in different African constitutions.

**Notes**

- 1 Linda Kasonde, "Don't Let the Sun Set on Democracy: As the Rule of Law and Democracy Come under Increasing Pressure across the Continent," *African Business*, 445 (2017): 28.
- 2 For interpretative work, see Oliver Ramsbotham, "Analysis of Protracted Social Conflict: A Tribute to Edward Azar," *Review of International Studies* 31, no. 1 (January 2005): 109–126.
- 3 See Richard Sandbrook, "Transitions without Consolidation: Democratization in Six African Cases," *Third World Quarterly* 17, no. 1 (1996): 69–87.
- 4 President Idris Deby of Chad and the unfathomable (now displaced) Bashir Ahmed of Sudan assumed power in 1990 and 1989 respectively. And they famously brandished superficial democratic credentials when entering office, falsely also promising to deliver their citizens from poverty. Other long-serving executives have failed to improve livelihoods in their countries: Robert Mugabe of Zimbabwe ruled for over 37 years, until deposed in 2017. Yoweri Museveni of Uganda (31 years in office), Dennis Sassou Nguesso of Congo Brazzaville (25 years of rulership), and President Faure Eyadema of Togo are still in office. Faure inherited his father's 38-year presidency in 2005. Elsewhere, in Rwanda, President Paul Kagame has been in power since 2003.
- 5 Denis M. Tull and Claudia Simons, "Institutionalization of Power Revisited: Presidential Term Limits in Africa," *Africa Spectrum* 52, no. 2 (2017): 79–102.
- 6 Willa Friedman, Michael Kremer, Edward Miguel and Rebecca Thomson, "Education as Liberation?" *Economica* 83, no. 329 (January 2016): 1–30.
- 7 Francis Fukuyama, *Political Order and Political Decay: from the Industrial Revolution to the Globalization of Democracy* (London: Profile Books, 2014).
- 8 Charles Monga Fombad, "Some Perspectives on Durability and Change under Modern African Constitutions," *International Journal of Constitutional Law* 11, no. 2 (2013): 382–413.
- 9 Kelvin Ashindorbe, "Electoral Violence and the Challenge of Democratic Consolidation in Nigeria," *India Quarterly* 74, no. 1 (2018): 92–105.
- 10 Nic Cheeseman, *Democracy in Africa: Successes, Failures and the Struggle for Political Reform* (Cambridge, UK: Cambridge University Press, 2015).
- 11 Philippe C. Schmitter and Terry Lynne Karl, "What Democracy Is ... and Is Not," *Journal of Democracy* 2, no. 3 (Summer 1991): 76.
- 12 Richard S. Kay, "Constitutional Change and Wade's Ultimate Political Fact," *University of Queensland Law Journal* 35, no. 1 (June 2016): 31–45.
- 13 Chris Pierson, "Democracy and Citizenship: Theory and Practice," *Political Studies* 65, no. 1 (2017): 3–13.
- 14 Vicki C. Jackson, "Pro-constitutional Representation: Comparing the Role Obligation of Judges and Elected Representatives in Constitutional Democracy," *William and Mary Law Review* 57, no. 5 (April 2016): 1757–1768.
- 15 Donna Podems, *Democratic Evaluation and Democracy: Exploring the Reality* (Charlotte, NC: Information Age Publishing, 2017), chaps. 1, 3 and 4.
- 16 Renske Doorenpleet, "Where Are the People? A Call for People-Centered Concepts and Measurements of Democracy," *Government and Opposition* 50, no. 3 (July 2015): 469–494.
- 17 Christopher Williams, "Political Imperatives and Military Preparations: New Insights into Why South Africa's 1998 Intervention in Lesotho Went Awry," *South African Journal of International Affairs* 26, no. 1 (January 2019): 25–51.
- 18 Andrew Arato, *Adventures of the Constituent Power: Beyond Revolution* (Oxford, UK: Oxford University Press, 2017), intro.; chaps. 1, 2 and 5.

- 19 Karl E. Klare, "Legal Cultures and Transformative Constitutionalism," *South African Journal of Human Rights* 14, no. 1 (April 7, 2017): 146–188.
- 20 Patrick Glenn, "Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Elections and Governance," *African Journal of Legal Studies* 5, no. 2 (2012): 119–127.
- 21 On this, see Abraham Lowenthal and Sergio Bitar, "Getting to Democracy," *Foreign Affairs* 95, no. 1 (January–February 2016): 134–144.
- 22 Thomas Bassett and Scott Straus, "Defending Democracy in Côte d'Ivoire: Africa Takes a Stand," *Foreign Affairs* 90, no. 4 (July–August, 2011): 130–140.
- 23 Claire Metelits and Stephanie Matti, eds., *Democratic Contestations on the Margins: Regimes in Small African Countries* (Lanham, MD; Boulder, CO: Lexington Books, 2015).
- 24 Larry Diamond, "Facing Up to the Democratic Recession," *Journal of Democracy* 26, no. 1 (January 2015): 142–155.
- 25 Authoritarianism kills creative genius and undercuts citizens' incentive to aspire and achieve. Lucy M. Abbott, "International Democracy Promotion and Democratization in the Middle East and North Africa," *Democratization* 25, no. 1 (January 2018): 178–184.
- 26 Sophie King and Sam Hickey, "Building Democracy from Below: Lessons from Western Uganda," *The Journal of Development Studies* 53, no. 10 (October 2017): 1584–1599.
- 27 Drawing from case studies, see Amelia Cook and Jeremy Sarki, "Is Botswana the Miracle of Africa? Democracy, Rule of Law and Human Rights vs. Economic Development," *Transnational Law and Contemporary Problems* 19, no. 2 (Spring 2010): 453–489; also Bruce Baker, "Cape Verde: The Most Democratic Nation in Africa," *Journal of Modern African Studies* 44, no. 4 (2006): 443–551.
- 28 Grant Huscroft, Bradley W. Miller and Grégoire Webber, eds., *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (Cambridge, UK: Cambridge University Press, 2014), introd.



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## **Part I**

# **Constitutionalism in theory and practice**



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# 1 Constitutionalism as the striving for good government

*Okon Akiba*

A government of laws and not of men.

(John Adams)

This volume is composed of original essays that I commissioned specifically to address critical experiences in the development of constitutionalism and constitutional government in contemporary Africa. Contributors are leading scholars who anticipate that their discussions will help uncover teachable lessons revolving around citizenship and the status of specific rights; overall, the task has been to explore the direction of political change and where African constitutionalism is headed. Furthering the concerns and inquiry, the authors were asked to reflect carefully upon a set of questions considered most likely to illuminate and extend our understanding about the prospects of constitutional government, as follows: How might transitional countries successfully promulgate enforceable constitutions? What are the principal challenges to democratic consolidation and political change? To what extent is the actual practice of politics in emerging states consistent or out of pace with the letter and spirit of constitutionalism and the liberal constitution in advanced democracies? How might the judiciary and courts further accountability in emerging transitional African societies? What are the main obstacles to answering growing popular demands for the protection of rights? How might constitutionalism regulate the use of political power? Can constitutionalism guarantee political stability, gender equality, freedom of religion and ethnic pluralism? How are we best to explain the meaning of colonial inheritance in the context of postcolonial political relations?

A distinctive approach is discernable and it recurs throughout the work, even as our contributors emphasise different problems, use their own analytical tools and draw on diverse country cases. On the quality of leadership and questions related to stability in systems of governance, they concur that unconstitutional change of government is rooted in the culture of entitlement to power; and that indiscipline and uncontrolled competition for access to material wealth and its accumulation are principal causes of crisis that undercut constitutionalism.<sup>1</sup> The durability of democratic institutions is assessed by reference to their effectiveness (or lack thereof) in the protection of rights and the bridging of inequalities in society. It is shown that domestic conditions of conflict and accommodation vary sharply from