STATE OF CONSTITUTIONALISM IN EAST AFRICA: ECLECTIC THOUGHTS

NOTES BY:

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CONFERENCE ON THE CONSTITUTION HELD AT THE SHERATON HOTEL IN KAMPALA, UGANDA

Friday, the 15th day of November, 2024

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"…When we look at African independence explosion we must take into consideration that not one African nation came to power using a conventional African structure of government. Every one used an imitation parliamentary procedure taken from Europe… Africa will never succeed using European parliamentary techniques…"[1]

(John Henrik Clarke)

A) INTRODUCTION

The subject of constitutionalism in East Africa evokes a curious paradox; one captured elegantly by Professor HWO – Okoth Ogendo in his seminal work 'Constitutions Without Constitutionalism' in which argued, with the lucidity and precision of a scholar intimately familiar with the soul of African governance, that our continent having written constitutions often fails to embody the spirit of constitutionalism; constitutions, he contended, are not mere documents of legal jargon and lofty promises but are or ought to be living frameworks and sacred covenants through which power is both structured and restrained, through which liberty is guaranteed and justice pursued relentlessly.[2]

East Africa is a region where, more often than not, constitutions are constructed as instruments of convenience rather than enduring compacts of governance; they are treated as relics to be adorned but seldom obeyed - where governments praise democratic values with loud declarations while enacting policies that betray their essence; these founding documents serve as political ornaments rather than binding blueprints as regimes stretch, amend and ignore them to fit transient interests.[3]

B) CONTEMPORARY CONSTITUTIONS IN EAST AFRICA

The constitutions of East African nations stand as monuments to the struggle for self-governance, a people's desire for self-determination, a declaration of sovereignty and an attempt to enshrine justice, liberty and unity within the bounds of law.

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[1] John Henrik Clarke cited in Ahati N. N. Toure, John Henrik Clarke and the Power of Africana History: Africalogical Quest For Decolonisation and Sovereignty, Africa World Press, Inc. New Jersey/Asmara 2009 p.168.

[2] Hastings Wilfred Opinya Okoth Ogendo, 'Constitutions Without Constitutionalism' <http://erepository.uonbi.ac.ke/handle/11295/46431> accassed 26th October 2024.

[3] ibid.

1) Kenya

Kenya's constitutional journey began in the shadow of colonial rule.[4] The country's initial constitutional frameworks were instruments of British governance, marked by the colonial administration's efforts to suppress indigenous communities while exploiting resources. Resistance and nationalist movements gained momentum in the early 20th century led by figures like Jomo Kenyatta, who demanded self-governance and equality.[5]

Upon independence in 1963 Kenya adopted the Lancaster House Constitution which was a product of negotiations between the British colonial government and Kenyan nationalists. The Independence Constitution established a parliamentary system with a bicameral legislature and a Prime Minister as head of government.[6]

Almost immediately after independence, Kenya's political landscape shifted as the independence government sought to consolidate power. In 1964, Kenya became a Republic through a constitutional amendment that created an executive presidency with Jomo Kenyatta as the first President; the abolition of the bicameral parliament in 1966 further centralised power.[7]

The most significant constitutional amendment occurred in 1982 making Kenya a *de jure* one-party state under the Kenya African National Union (KANU). This period saw widespread suppression of political dissent, rampant corruption and increased human rights violations. The judiciary lost its independence and political freedoms were severely curtailed.

[4] Luis Franceshi & PLO Lumumba, The Constitution of Kenya: A Commentary (Strathmore University Press) page 9.
[5] Prof Yash Pal Ghai and Jill Cottrell Ghai, 'Kenya's Constitution: an Instrument for Change' <https://katibainstitute.org/wp-content/uploads/2021/08/Kenyas-Constitution-Instrument-for-Change.pdf> accessed 27th October 2024.
[6] ibid.
[7] ibid.

Mounting domestic and international pressure forced President Daniel Arap Moi's government to repeal Section 2A of the Constitution in 1991 which reintroduced multi-party democracy; however, the 1992 and 1997 general elections revealed deep-seated flaws in the political and electoral systems characterised by violence, electoral fraud and ethnic tensions.[8]

The clamour for comprehensive constitutional reforms intensified leading to the formation of the Constitution of Kenya Review Commission (CKRC) in 2000 chaired by Professor Yash Pal Ghai. The Bomas Draft (named after the Bomas of Kenya) emerged reflecting popular demands for decentralisation, checks on presidential power and a robust human rights framework; however, political disagreements and vested interests led to a contested constitutional referendum in 2005 in which the proposed amendments were rejected.[9]

The disputed 2007 presidential election precipitated a devastating wave of violence, leaving over 1,000 people dead and displacing hundreds of thousands. The crisis underscored the urgent need for a new constitutional order to address ethnic divisions, electoral injustice and institutional weaknesses and through the mediation of the former Secretary-General Kofi Annan of the United Nations (UN) a coalition government was formed spearheading which renewed constitutional negotiations and culminated in the promulgation of the 2010 Constitution.[10]

Kenya's 2010 Constitution promised to be a transformative charter aiming to reconfigure the relationship between the state and its citizens. The Constitution established devolved governance, a restructured judiciary and a bill of rights that espoused the principles of social, economic and cultural justice; however, the path to full realisation of its potential has been obstructed by political inertia, a reluctant executive and attempts at opportunistic amendments. The judiciary, while more assertive and independent, has faced both direct

[8] ibid.
[9] ibid
[10] ibid.

and subtle encroachments particularly when its decisions threaten political interests. Kenya's experience reflects the arduous task of maintaining the sanctity of a progressive constitution within a political environment that often seeks to subvert it.[11]

2) Uganda

Uganda's constitutional journey began under British colonial rule which imposed administrative frameworks aimed at consolidating the colonial state. The struggle for independence led by nationalist leaders such as Benedicto Kiwanuka and Milton Obote intensified in the 1950s culminating in Uganda's independence on October 9, 1962. The Independence Constitution established a parliamentary system with the Kabaka of Buganda as a ceremonial president and Milton Obote as the Prime Minister.[12]

The independence constitutional framework reflected the country's ethnic and regional complexities including a semi-federal arrangement that granted significant autonomy to traditional kingdoms like Buganda. However, the constitutional balance of power proved fragile as regional tensions and political power struggles quickly emerged.[13]

In 1966, Prime Minister Milton Obote suspended the Independence Constitution and declared himself President after a violent confrontation with the Buganda Kingdom. The 1966 Constitution, often referred to as the "Pigeonhole Constitution," was adopted without parliamentary debate and concentrated executive power in the presidency marking the beginning of a centralised and authoritarian regime, eroding democratic institutions and fueling ethnic and regional tensions.[14]

In 1967, Obote enacted a new Republican Constitution that abolished the traditional kingdoms and consolidated all power within the central government. This period was

[11] ibid.
[12] George W Kanyeihamba, *Constitutional and Political History of Uganda: From 1894 to Present* (2nd edn, Law Africa Publishing (K)Limited 2010).
[13] ibid.
[14] ibid.

characterised by the suppression of political dissent and the erosion of human rights, laying the foundation for future political turmoil.[15]

In 1971, Idi Amin seized power in a military coup ushering in a brutal dictatorship that suspended the 1967 Constitution and replaced parliamentary democracy with military rule.[16] The country descended into a state of terror, marked by gross human rights violations, extrajudicial killings and economic mismanagement. Amin's reign created a constitutional crisis, as governance was dictated by military decrees rather than any constitutional framework. The collapse of Amin's regime in 1979, following a Tanzanian-led military intervention, marked a turning point in Uganda's constitutional development.[17]

Following Amin's ouster, Uganda embarked on a turbulent journey to restore civilian governance. The 1980 general elections, won by Milton Obote's Uganda People's Congress (UPC), were marred by allegations of massive electoral fraud, triggering a five-year civil war led by Yoweri Museveni and the National Resistance Army (NRA). The conflict exposed deep constitutional weaknesses, including the inability to ensure free and fair elections, protect human rights and manage political transitions peacefully.[18]

Obote's second term was marked by continued instability and human rights abuses leading to his eventual overthrow in 1985. After a brief military government led by Tito Lutwa Okello, Museveni's National Resistance Army seized power in 1986 promising to restore constitutional order and democratic governance.[19]

After years of civil conflict and authoritarian rule, Uganda embarked on an inclusive constitutional reform process in the 1990s. The Constitutional Commission, chaired by Justice Benjamin Odoki engaged in extensive consultations with the public culminating in

[15] ibid.
[16] Professor Ben Nwabueze, *Constitutionalism in the Emergent States* (East African Bureau, 1973) page 219.
[17] George W Kanyeihamba, *Constitutional and Political History of Uganda: From 1894 to Present* (2nd edn, Law Africa Publishing (K)Limited 2010).
[18] ibid.
[19] ibid.

the adoption of the 1995 Constitution. The new Constitution was hailed as a democratic milestone, incorporating principles of human rights, checks and balances and decentralisation.[20]

Uganda's 1995 Constitution was conceived with the promise of political renewal after years of authoritarian rule and internal strife. It emphasised principles of democratic governance, human rights and term limits to avoid the pitfalls of its turbulent past; however, Uganda's constitution has been weakened by a series of amendments that reflect the enduring grip of executive power. Uganda's experience is a cautionary tale demonstrating how constitutional provisions, even when well-intentioned, can be stripped of their meaning when political interests supersede the rule of law.[21]

3) Tanzania

Before independence the regions of Tanganyika and Zanzibar were under separate colonial administrations. Tanganyika was a German colony until the end of World War I after which it became a British mandate. Zanzibar, on the other hand, experienced centuries of Arab dominance and later became a British protectorate.[22]

The struggle for independence in Tanganyika was led by the Tanganyika African National Union (TANU) under the leadership of Julius Nyerere. After years of activism and negotiations Tanganyika gained independence from British rule on December 9, 1961. The country adopted a Westminster-style parliamentary constitution which provided for a multi-party system and parliamentary democracy.[23]

[20] ibid.
[21] Aili Mali Tripp, 'The Politics of Constitution Making in Uganda' <https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter6_Framing.pdf> accessed 26th October 2024.
[22] Alexander Makulilo, 'Constitution-Making Process in Tanzania (2011-2014): A New Era for Women Political Participation?' (2020) 27 (2) HJ < file:///C:/Users/USER/Downloads/ajol-file-journals_235_articles_225905_submission_proof_225905-2797-550864-1-10-20220531.pdf> accessed 26th October 2024.
[23] ibid.

A major milestone in Tanzania's constitutional history occurred in 1964 when Tanganyika united with Zanzibar to form the United Republic of Tanzania. The union was formalised through the Articles of Union signed by Julius Nyerere and the then President of Zanzibar Abeid Amani Karume. The Union was seen as a pragmatic move to foster regional stability and unity, but it also presented unique constitutional challenges.[24]

Tanzania's 1964 Interim Constitution established a dual government system: a Union Government responsible for issues affecting both Tanganyika (later Mainland Tanzania) and Zanzibar and a Revolutionary Government for Zanzibar handling internal matters.[25]

In 1965, Tanzania adopted a new Constitution that established a one-party state. Under this framework Tanganyika African National Union became the sole political party in Tanganyika while the Afro-Shirazi Party (ASP) held the same status in Zanzibar. The ideology behind this shift was rooted in Nyerere's philosophy of Ujamaa (African socialism), which emphasized unity, self-reliance, and collective ownership.[26]

Nyerere argued that a one-party system was necessary to prevent ethnic and political fragmentation, promote national unity and facilitate the implementation of socialist policies. The Constitution of 1965 granted extensive powers to the President, who served as both head of state and head of government, and limited the role of Parliament to an advisory one.[27]

The current Constitution of Tanzania, adopted in 1977, was designed to further entrench Nyerere's vision of Ujamaa. It institutionalised the one-party state under the leadership of Chama Cha Mapinduzi (CCM) formed through the merger of TANU and ASP in 1977. The 1977 Constitution emphasised national unity and development through socialist principles giving the President sweeping executive powers and reducing the independence of the

[24] ibid.
[25] ibid.
[26] ibid.
[27] ibid.

judiciary and Parliament;[28]however, by the late 1980s, Tanzania's experiment with socialism faced severe economic challenges: Structural Adjustment Programs (SAPs) imposed by international financial institutions along with growing domestic discontent put pressure on the government to embrace political and economic reforms.[29]

The early 1990s marked a turning point in Tanzania's constitutional history. Influenced by the global wave of democratisation and mounting pressure from civil society the government appointed the Nyalali Commission in 1991 to explore the possibility of political pluralism. The Commission's Report recommended the introduction of a multi-party political system and highlighted the need for extensive constitutional reforms.[30]

In 1992, the Constitution was amended to allow for multi-party democracy fundamentally amendment altering Tanzania's political landscape, leading to the establishment of multiple political parties and more open electoral competition. Despite these reforms, the Constitution retained many features of the previous authoritarian framework including strong presidential powers and limited autonomy for Zanzibar.[31]

Since the 1992 reforms Tanzania has undertaken further amendments to enhance democratic governance though key structural issues remain unresolved. The Constitution has been amended multiple times to address electoral processes, human rights and governance structures; however, concerns over the concentration of power in the presidency, the lack of judicial independence and the status of Zanzibar within the Union have persisted.[32]

One of the most significant constitutional debates in recent years centered around the proposed new constitution initiated by President Jakaya Kikwete in 2011. The

[28] ibid.
[29] ibid.
[30] ibid.
[31] ibid.
[32] ibid.

Constitutional Review Commission, chaired by Judge Joseph Warioba, conducted nationwide consultations and produced a draft constitution in 2013 that recommended greater checks on presidential powers, improved devolution and more rights for citizens. The draft also sought to redefine the Union structure to give Zanzibar more autonomy.[33]

Tanzania's 1977 Constitution has struggled to adapt to contemporary western democratic expectations with calls for a new constitution intensifying especially after a prolonged standoff between government reforms and popular demand for greater checks and balances on executive authority.[34] The absence of term limits coupled with restrictive media and assembly laws has fostered a governance climate that stifles dissent and undermines constitutional freedoms. While recent political shifts offer a glimmer of reform Tanzania's constitutional framework still awaits the overhaul necessary to bring it in line with modern democratic ideals to ensure genuine accountability.[35]

4) Rwanda

Rwanda's history before colonialism was characterised by a relatively unified society under a monarchy that integrated various clans; however, German and later Belgian colonial rule fundamentally altered Rwanda's social structure, exacerbating ethnic divisions between the Hutu, Tutsi and Twa communities. The Belgian administration, particularly, reinforced ethnic identities through policies of division and favouritism which laid the foundation for future conflicts.[36]

The ethnic classification system implemented by the Belgians categorised Rwandans into Hutu and Tutsi, based on physical traits and socio-economic status further institutionalising

[33] ibid.
[34] Julius Nyerere, the first President of Tanzania, emphasised that democracy should be tailored to a nation's unique context rather than imported wholesale. He stated: "Democracy is not a bottle of Coca-Cola which you can import. Democracy should develop according to that particular country."
[35] Nicodemus Minge, 'Tanzania's Pathway to a New Constitution <https://constitutionnet.org/news/tanzanias-pathway-new-constitution-genuine-progress-or-political-rhetoric> accessed 26th October 2024.
[36] International IDEA Democracy-building & Conflict Management (DCM), 'The Role of Constitution Building Processes in Democratisation' <https://constitutionnet.org/sites/default/files/Rwanda_IDEA.pdf> accessed 26th October 2024.

inequality and tension. When Rwanda transitioned toward independence in the late 1950s, these divisions deepened leading to violence and the eventual ouster of the Tutsi monarchy by Hutu nationalists.[37]

Rwanda gained independence from Belgium on July 1, 1962 under a republican constitution that cemented Hutu dominance. The first President, Grégoire Kayibanda, led a government that institutionalised discrimination against Tutsis leading to waves of violence and mass exile. The 1962 Constitution emphasised a centralised government structure and gave the presidency considerable authority. However, it failed to address ethnic grievances and contributed to persistent instability.[38]

In 1973, a military coup led by Major General Juvénal Habyarimana overthrew Kayibanda's government and established the Second Republic. Habyarimana introduced a new constitution in 1978 that retained the centralised governance model and further entrenched single-party rule under the Mouvement Révolutionnaire National pour le Développement (MRND). Ethnic quotas were implemented in education and employment, deepening social and economic disparities.[39]

By the early 1990s, Rwanda was experiencing significant economic difficulties and growing political unrest. The Rwandan Patriotic Front (RPF), a rebel group formed by Tutsi exiles, launched an armed struggle in 1990 to demand the right of return and an end to ethnic discrimination. In response to internal and external pressure Habyarimana's government initiated limited political reforms including the adoption of a multi-party system through constitutional amendments in 1991; however, these reforms failed to address underlying tensions and the political environment remained volatile. The Arusha Accords, signed in 1993 between the RPF and the government sought to establish power-sharing arrangements and lay the groundwork for peace but these efforts collapsed following

[37] ibid.
[38] ibid.
[39] ibid.

Habyarimana's assassination on April 6, 1994 - an event that triggered the genocide against the Tutsi.[40]

From April to July 1994, an estimated 800,000 Tutsi and moderate Hutus were brutally murdered in one of the most horrific genocides in modern history. The RPF, led by Paul Kagame, ultimately overthrew the genocidal regime and ended the mass killings, taking control of the country in July 1994.[41]

Rwanda's Constitution of 2003 which provides for social cohesion, economic empowerment and security has contributed to the country's rapid growth and stability; however, the state prioritises security and order above political pluralism raising critical questions about the balance between stability and freedom within the framework of constitutional governance.[42]

5) Burundi

Burundi, like neighboring Rwanda, was a part of the Kingdom of Burundi before European colonisation. The German colonial administration, which began in the late 19th century, ruled indirectly through the existing monarchy but after Germany's defeat in World War I, Burundi, along with Rwanda, became a League of Nations mandate under Belgian administration, known as Ruanda-Urundi. Belgium's policies, similar to those in Rwanda, exacerbated ethnic divisions between the Hutu and Tutsi fostering resentment that would shape Burundi's future.[43]

Upon gaining independence on July 1, 1962 Burundi adopted a monarchical constitution. The newly independent country was a constitutional monarchy with King Mwambutsa IV as the head of state and a parliamentary democracy; however, this early constitutional

[40] ibid.
[41] ibid.
[42] UNHCR, 'Rwanda: Constitution of the Republic of Rwanda and its Amendments of 2nd December 2003 and of 8th December 2005 < https://www.refworld.org/legal/legislation/natlegbod/2003/en/46963> accessed 26th October 2024.
[43] Constitution.net, 'Constitutional history of Burundi' < https://constitutionnet.org/country/156> accessed 26th October 2024,

arrangement was fragile and failed to address ethnic tensions or establish stable governance structures. In 1966, a series of political crises led to the abolition of the monarchy and the establishment of a Republic under the leadership of Captain Michel Micombero who seized power in a coup d'état.[44] Michel Micombero declared himself President and established a one-party state under the Union for National Progress (UPRONA).

In 1976, Jean-Baptiste Bagaza, another Tutsi military officer, overthrew Micombero and implemented a new constitution in 1981. The Bagaza regime continued the practice of suppressing political dissent and ethnic opposition although it introduced some limited reforms. In 1987, Major Pierre Buyoya staged a coup and ruled under a constitution adopted in 1992 which introduced multiparty democracy; however, the democratic experiment was short-lived as the assassination of the first democratically elected Hutu president, Melchior Ndadaye in 1993 plunged Burundi into a brutal civil war.[45]

The assassination of President Ndadaye in October 1993 led to widespread violence with Hutu and Tutsi communities committing atrocities against each other. The ensuing civil war lasted more than a decade, claiming the lives of an estimated 300,000 people and displacing many more. Efforts to resolve the conflict culminated in the Arusha Peace and Reconciliation Agreement for Burundi signed in 2000. The agreement, brokered by regional leaders and facilitated by Nelson Mandela, laid the foundation for a power-sharing arrangement and outlined the principles for a new constitution.[46]

The Arusha Agreement emphasised ethnic inclusivity, power-sharing and democratic governance. It called for a transitional government, the integration of armed groups into a unified national army and a new constitution that would reflect the country's commitment to peace and reconciliation.[47]

[44] ibid.
[45] ibid.
[46] ibid.
[47] ibid.

In 2005, Burundi adopted a new Constitution based on the principles of the Arusha Agreement. The 2005 Constitution aimed to promote peace, stability and ethnic balance by establishing a power-sharing framework between the Hutu majority and the Tutsi minority. Key features of the Constitution included:[48]

i) Power-Sharing Mechanism: The Constitution required that the government be ethnically balanced, with a 60-40 representation ratio between Hutus and Tutsis in Parliament. The same ratio applied to the composition of the cabinet and other government institutions.
ii) Decentralisation: The Constitution emphasised the decentralisation of power to promote local governance and inclusivity.
iii) Bicameral Legislature: It established a bicameral Parliament consisting of a National Assembly and a Senate with seats allocated to ensure ethnic and gender balance.
iv) Presidency: The President of Burundi was to be elected by universal suffrage but the Constitution required the President to appoint two Vice Presidents - one from each ethnic group to ensure representation.

This constitutional framework facilitated the establishment of democratic institutions and paved the way for the 2005 general elections which saw Pierre Nkurunziza, a former rebel leader of the Hutu-dominated CNDD-FDD party become President. The power-sharing arrangement was initially successful in bringing relative stability to Burundi.[49]

In 2015, Burundi faced a major political crisis when President Nkurunziza announced his intention to run for a third term - a move that violated the spirit of the Arusha Agreement and the 2005 Constitution. The announcement sparked widespread protests, a failed coup attempt and violent repression by security forces.[50]

Despite the controversy, Nkurunziza was re-elected in 2015 and the crisis had lasting implications for Burundi's governance and constitutional stability. The events of 2015

[48] ibid.
[49] ibid.
[50] ibid.

highlighted the fragility of the Arusha-based constitutional framework and raised concerns about the erosion of democratic norms.

In 2018, a controversial constitutional referendum was held resulting in significant amendments to the 2005 Constitution. The amendments included:[51]

i) Extension of Presidential Terms: The new Constitution extended the presidential term from five to seven years, allowing the President to serve for a potential total of 14 years. This amendment effectively allowed Nkurunziza and his successors to extend their rule.
ii) Changes to Power-Sharing Mechanisms: The amendments reduced some of the power-sharing provisions enshrined in the Arusha Agreement, sparking fears that ethnic tensions could resurface.
iii) Abolition of the structure of the Vice Presidency: The dual Vice President system was replaced with a single Vice President and a Prime Minister.

Today, Burundi's constitutional framework reflects a mixture of achievements and challenges. The country has made progress in maintaining a degree of political stability and ethnic balance but governance issues, human rights abuses and restrictions on political opposition and civil society continue to raise concerns.[52]

In 2020, Évariste Ndayishimiye won the presidency in an election that was held amid the COVID-19 pandemic. Ndayishimiye's administration has taken some steps to improve governance and human rights but faces ongoing pressure to uphold the principles of inclusivity and democracy.[53]

The contemporary state of Burundi's Constitution remains a reflection of the country's efforts to reconcile her ethnic divisions while addressing governance challenges. The legacy of the Arusha Agreement and the 2005 Constitution continues to shape Burundi's political landscape even as debates over constitutional amendments and democratic governance

[51] ibid.
[52] ibid.
[53] ibid.

persist. As Burundi navigates her future, the balance between stability, democratic norms and ethnic inclusivity remains a critical focus of national dialogue and international attention.[54]

6) South Sudan

The history of South Sudan's constitutional framework begins with the colonial period when the region was under Anglo-Egyptian rule (1899–1956). During this time, the northern and southern parts of Sudan were administered separately with the North being predominantly Muslim and Arab and the South consisting of diverse ethnic groups practicing Christianity and traditional religions. The colonial administration's "Southern Policy" emphasised the cultural and religious differences between the North and South creating a lasting division.[55]

Upon Sudan's independence in 1956, the southern regions were marginalised under a government dominated by the Arab North. The new Sudanese Constitution failed to recognise the distinct identity and grievances of the South, fueling dissatisfaction and eventually sparking the First Sudanese Civil War (1955–1972). This conflict ended with the 1972 Addis Ababa Agreement which granted limited autonomy to the South; unfortunately, the agreement was short-lived and tensions resurfaced when the Sudanese government imposed Sharia law nationwide in 1983 igniting the Second Sudanese Civil War.[56]

The Second Sudanese Civil War, led by the Sudan People's Liberation Movement/Army (SPLM/A) under John Garang, lasted over two decades and resulted in immense suffering and loss of life. The conflict ended with the signing of the Comprehensive Peace Agreement (CPA) in 2005 which laid the groundwork for the creation of South Sudan as a semi-autonomous region and outlined a path to self-determination.[57]

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[54] ibid.
[55] Constitutionnet, 'Constitutional History of South Sudan' <https://constitutionnet.org/country/south-sudan> accessed 26th October 2024.
[56] ibid.
[57] ibid.

Under the CPA, the Interim Constitution of Southern Sudan was adopted in 2005, granting significant autonomy to the South and establishing the Government of Southern Sudan (GoSS). The Interim Constitution included provisions for governance, human rights and the administration of justice reflecting a commitment to rebuilding the war-torn region. The CPA also stipulated that a referendum on independence would be held in 2011, allowing the people of Southern Sudan to decide their future.[58]

On January 9, 2011 the people of Southern Sudan voted overwhelmingly in favour of independence leading to the birth of the Republic of South Sudan on July 9, 2011. With independence came the need for a constitutional framework to guide the new nation. The Transitional Constitution of the Republic of South Sudan adopted on July 7, 2011 replaced the Interim Constitution and became the supreme law of the land.

The Transitional Constitution established South Sudan as a democratic and decentralised state, emphasising the protection of human rights, the rule of law and the principles of equality and justice. It outlined the structure of government, with a strong executive presidency, a bicameral legislature and an independent judiciary. The Constitution also recognised South Sudan's ethnic diversity and enshrined the right to self-governance for local communities; however, the Transitional Constitution was intended as a temporary measure with provisions for a permanent constitution to be drafted through an inclusive and participatory process. The government established a National Constitutional Review Commission (NCRC) to oversee the development of a permanent constitution but progress has been slow and the transitional framework remains in place over a decade later.[59]

Additionally, some of the revitalised South Sudanese peace process - particularly the provisions establishing five positions of vice presidents - while intended to foster inclusivity

[58] Constitutionnet, 'Constitutional History of Somalia' <https://constitutionnet.org/country/south-sudan> accessed 26th October 2024.
[59] ibid.

and appease warring factions stand in stark contrast to contemporary constitution-making norms that prioritise streamlined, efficient and accountable governance.

Moreover, while the Tumaini Initiative launched on May 9 2024 in Nairobi Kenya seeks to engage all parties in the South Sudanese conflict - particularly those opposition groups excluded from the 2018 Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) - it simultaneously raises critical questions about its impact on constitutionalism and the broader project of nation-building.

7) Somalia

The modern state of Somalia emerged from the unification of two former colonial territories: British Somaliland in the north and Italian Somaliland in the south. British and Italian colonial rule left behind divided administrative systems and significant socio-economic disparities, contributing to long-standing tensions. On July 1 1960, the two territories united to form the independent Republic of Somalia adopting a provisional constitution that emphasised unity and national identity.[60]

The 1960 Constitution established a parliamentary democracy with a President as the head of state and a Prime Minister as the head of government and enshrined fundamental rights and freedoms aiming to build a unified and democratic nation; however, the early years of independence were marked by political instability, regional disputes and clan-based divisions that hindered effective governance.

In 1969, Somalia's constitutional democracy came to an abrupt end when General Mohamed Siad Barre seized power in a military coup following the assassination of President Abdirashid Ali Shermarke. Barre suspended the constitution, dissolved the parliament and declared Somalia a socialist state governed by the Supreme Revolutionary Council (SRC). Under Barre's regime the country adopted a new constitution in 1979 that

[60] ibid.

enshrined a one-party socialist state with the Somali Revolutionary Socialist Party (SRSP) as the sole legal political party.

The 1979 Constitution centralised power in the hands of Siad Barre who ruled with an iron fist suppressing political opposition and dissent. The regime implemented socialist economic policies, nationalised key industries and promoted Somali nationalism; however, widespread human rights abuses, clan-based favouritism and an economy weakened by mismanagement and conflict eroded popular support. The 1980s saw an increase in resistance from various clan-based militias and by 1991 Barre's government collapsed plunging Somalia into civil war and lawlessness.

The fall of Siad Barre's regime in 1991 created a power vacuum leading to a prolonged and brutal civil war characterised by clan-based violence and the rise of warlords. Somalia's state institutions disintegrated and the country was left without a functioning central government. Attempts to establish a national administration repeatedly failed and Somalia became a patchwork of territories controlled by different factions.[61]

The chaos of the 1990s and early 2000s created conditions for a humanitarian crisis and the emergence of extremist groups like Al-Shabaab. The absence of a constitution and central authority led to efforts by the international community and Somali stakeholders to create a framework for peace and governance.[62]

In 2004, the establishment of the Transitional Federal Government (TFG) marked a significant step toward restoring governance in Somalia. The TFG was founded under the Transitional Federal Charter which served as an interim constitution. The Charter outlined the structure of a transitional federal government emphasising power-sharing among Somalia's various clans and laying the foundation for a federal system. It also called for the drafting of a permanent constitution to stabilise the country and guide its political future.[63]

[61] ibid.
[62] ibid.
[63] ibid.

Despite these efforts, the TFG struggled to assert control over the country and violence continued to plague many regions. The Somali civil war persisted and the government's authority remained limited to parts of the capital, Mogadishu and a few other areas; nevertheless, the Transitional Charter represented a renewed hope for constitutional order and nation-building.[64]

After years of conflict and constitutional negotiations, a new Provisional Constitution was adopted on August 1, 2012 marking the end of the transitional period and the establishment of the Federal Government of Somalia. The Provisional Constitution emphasised federalism, human rights and the rule of law, aiming to create a decentralised governance system that would accommodate Somalia's diverse clans and regions.[65]

The Constitution outlined a federal structure with semi-autonomous regional states and a central government. It established key institutions such as the bicameral Federal Parliament, the President and the Prime Minister. The Provisional Constitution also enshrined the protection of human rights, freedom of expression and the promotion of gender equality. Additionally, it called for the establishment of an independent judiciary and mechanisms to promote justice and reconciliation;[66]however, the as Provisional Constitution was adopted with the understanding that it was a temporary document requiring further review and amendment leaving several contentious issues unresolved including the delineation of regional boundaries, the distribution of resources and the status of key cities like Mogadishu. The Constitution also did not fully address the role of Islamic law, clan representation or the balance of power between the central and regional governments.

Since the adoption of the Provisional Constitution Somalia has been engaged in a constitutional review process aimed at finalising and amending the document to reflect the country's evolving governance needs. The Federal Parliament and the Ministry of Constitutional Affairs have worked alongside international partners and civil society

[64] ibid.
[65] ibid.
[66]ibid.

organisations to facilitate discussions on critical issues such as power-sharing, resource allocation and the role of Sharia law in governance.

The review process has been hampered by political infighting, insecurity and disagreements between the central government and regional states. Clashes between the Federal Government and regional authorities over issues of autonomy and governance have highlighted the difficulties of implementing federalism in a country still grappling with deep-seated clan rivalries.[67]

In recent years, efforts have been made to improve political stability and foster dialogue. The Somali government, under President Hassan Sheikh Mohamud and subsequent leaders, has prioritised constitutional reforms and the democratisation process. Despite significant challenges, there has been progress in creating a legal framework for holding elections and establishing institutions that promote accountability and transparency.

Today, Somalia's constitutional framework remains provisional but it provides a foundation for governance and state-building. The country continues to face complex challenges including ongoing conflict with Al-Shabaab, humanitarian crises and the struggle to unify various regional administrations under a cohesive federal system. The Provisional Constitution has facilitated gradual progress such as the establishment of federal states like Puntland, Jubaland and Southwest State each with varying degrees of autonomy. Additionally, Somaliland has consistently rejected this federal framework maintaining that it is an independent state with its own constitution and governance institutions.[68]

Although the ambition of Greater Somalia has largely receded from contemporary politics due to the need for internal stability and reconstruction the legacy of irredentist aspirations continues to shape Somali nationalism. As Somalia navigates constitutional reforms and works to build a stable federal system, balancing historical irredentist claims with the

[67] ibid.
[68] ibid.

practical realities of governance and regional diplomacy remains a sensitive and ongoing challenge.

While the primary political ambition that has shaped Somalia's constitutional history is the irredentist goal of uniting all ethnically Somali territories into a Greater Somalia, revanchism could be considered as a secondary influence rooted in historical grievances. These grievances stem from the colonial partitioning of Somali territories and the subsequent struggles for national unity and sovereignty. The loss of Somali-inhabited territories to Ethiopia (Ogaden region), Djibouti and Kenya (Northern Frontier District, or NFD) has fueled a sense of national frustration and wounded pride.

As Somalia works toward adopting a permanent constitution the process remains fraught with political, social and security obstacles. Key priorities include resolving disputes over resource management, establishing effective governance structures and fostering national unity while respecting regional autonomy. The role of traditional clan structures and the incorporation of Islamic law into the legal system remain sensitive issues that require careful negotiation.[69]

The contemporary state of Somalia's Constitution is thus a reflection of a nation striving to heal from decades of conflict and to build a governance framework that can ensure peace, stability and prosperity. The success of this constitutional journey will depend on the ability of Somali leaders and citizens to address the challenges of federalism, foster inclusivity and build institutions that can uphold the rule of law and protect the rights of all Somalis.[70]

[69] ibid.
[70] Constitutionnet, 'Constitutional History of Democratic Republic of Congo' <https://constitutionnet.org/country/south-sudan> accessed 26th October 2024.

8) Democratic Republic of Congo (DRC)

The roots of the DRC's constitutional history lie in its colonial period under Belgian rule. The Congo Free State, a personal possession of King Leopold II of Belgium from 1885 to 1908, was marked by brutal exploitation and human rights abuses. In 1908, the Belgian government took direct control, establishing a colonial administration that excluded Congolese people from meaningful political participation.[71]

The push for independence in the late 1950s was fueled by nationalist movements leading to the DRC's independence from Belgium on June 30, 1960. The country adopted a parliamentary constitution that established a multiparty democracy with a ceremonial president and a prime minister who served as head of government; however, the Independence Constitution was poorly suited to the DRC's complex political and ethnic landscape and it failed to prevent a crisis.

Within weeks of independence, the country descended into chaos marked by the secession of regions like Katanga and widespread ethnic violence. The government of Prime Minister Patrice Lumumba struggled to assert authority leading to his ouster and eventual assassination in early 1961. Political instability and power struggles characterised the early years of independence, setting the stage for decades of authoritarian rule.

In 1965, Joseph-Désiré Mobutu (later Mobutu Sese Seko) seized power in a military coup, establishing himself as the country's authoritarian ruler. Under Mobutu's leadership, a new constitution was adopted in 1967 which centralized power in the presidency and marked the beginning of a long era of dictatorship. Mobutu renamed the country Zaire in 1971 as part of his "authenticity" campaign aimed at promoting African identity.

The 1967 Constitution abolished multiparty democracy and established a one-party state under the Mouvement Populaire de la Révolution (MPR). Mobutu wielded immense executive power, controlling all branches of government and suppressing political

[71] ibid.

opposition and dissent. Human rights abuses, corruption and economic mismanagement became hallmarks of his rule. Although the 1974 amendment to the constitution reinforced his autocratic control, the legitimacy of Mobutu's regime gradually eroded culminating in a full-blown crisis in the 1990s.

Mobutu's rule ended in 1997, when Laurent-Désiré Kabila led a successful armed rebellion and overthrew him. Kabila declared himself president and renamed the country the Democratic Republic of the Congo but the hope for stability was short-lived. Kabila's government faced numerous challenges, including internal divisions, widespread violence, and the outbreak of the Second Congo War (1998–2003) which drew in multiple neighbouring countries and was one of the deadliest conflicts since World War II.

During Kabila's presidency, there was no formal constitution guiding governance; instead, he ruled by decree. Following his assassination in 2001, his son, Joseph Kabila, assumed the presidency and began efforts to end the war and establish a new constitutional framework. The Sun City Agreement, signed in 2002 in Sun City - South Africa, provided a political roadmap for peace, leading to the establishment of a transitional government and the drafting of a new constitution.

The transitional period culminated in the adoption of a new Constitution in 2006 which was approved by a nationwide referendum. The 2006 Constitution marked a significant departure from past authoritarian frameworks and laid the foundation for a democratic and decentralised state. It sought to address the legacies of dictatorship and civil war by emphasising checks and balances, human rights and regional autonomy.

The Constitution established a semi-presidential system with a strong president, a prime minister appointed from the parliamentary majority and a bicameral legislature comprising the National Assembly and the Senate. It also created a decentralised structure, dividing the DRC into 26 provinces with elected provincial governments to promote local governance and development. The judiciary was declared independent with the Constitutional Court serving as the highest authority on constitutional matters.

Despite these reforms, the implementation of the Constitution has faced significant obstacles. Elections have often been marred by allegations of fraud and violence and the concentration of power in the presidency has remained a contentious issue.

Since the adoption of the 2006 Constitution, there have been amendments and controversies related to governance and presidential term limits. President Joseph Kabila's tenure became a major constitutional crisis when he delayed the 2016 presidential elections, citing logistical and financial challenges. Critics accused him of attempting to extend his rule beyond the constitutionally mandated two terms leading to widespread protests and international pressure.

In 2018, after years of political tension, the DRC witnessed its first relatively peaceful transition of power when Félix Tshisekedi was declared the winner of the presidential election. This event marked a historic moment in the country's democratic journey even though the election process was marred by allegations of irregularities and backroom deals.

Constitutional amendments and ongoing debates continue to shape the DRC's political landscape. Issues such as electoral reform, judicial independence and the balance of power between the central government and provinces remain central to the national dialogue. The persistent challenges of corruption, human rights abuses and insecurity particularly in the eastern regions of the country have complicated the full realisation of the constitutional vision.

Today, the DRC's Constitution serves as a crucial framework for governance, aiming to ensure democratic accountability and promote regional autonomy but the country still has a long way to go as the effectiveness of the constitutional system is often undermined by political crises, institutional weaknesses and ongoing conflict in some parts of the country. The decentralisation framework, although promising in theory, has faced implementation challenges, with many provinces struggling to exercise autonomy due to limited resources and central government interference.

Efforts to reform the electoral process and strengthen democratic institutions are ongoing, as the country seeks to consolidate peace and stability. President Félix Tshisekedi's administration has emphasised the need for constitutional and electoral reforms to prevent future crises and enhance governance but the road ahead remains uncertain with the DRC continuing to navigate the complexities of a vast and diverse nation recovering from decades of turmoil.

The contemporary state of the DRC's Constitution is a testament to the country's resilience and the ongoing quest to establish a stable, democratic society. As the DRC continues to grapple with governance challenges and the legacy of past conflicts, the constitutional framework will remain a vital tool in shaping the nation's future and aspirations for peace, development, and justice.

C) BARRIERS TO CONSTITUTIONALISM IN EAST AFRICA

The first and most pervasive barrier to constitutionalism in East Africa is the unrestrained manipulation of constitutional frameworks by political elites. Leaders exploit constitutions as mere tools of convenience - amending them at will or disregarding their provisions to serve personal or political ends.[72]

The roots of many East African states are deeply intertwined with the struggle for independence, and the leaders of these movements often became the founding fathers of their respective nations. Yet, this legacy has a darker side: the transition from freedom fighting to governance has sometimes led to a conflation of national identity with the personalities of leaders. This conflation creates a fertile ground for the development of personality cults, where leaders are viewed not merely as political figures but as symbols of the nation itself. Their words and actions often escape scrutiny and loyalty to these personalities takes precedence over adherence to constitutional norms and principles.

[72] ibid.

The bedrock of constitutionalism is the existence of strong, independent institutions that act as checks and balances against abuse of power; however, in East Africa, the independence of institutions remains compromised as Courts which should stand as bulwarks of justice often face political interference and coercion while Legislatures, rather than representing the people's interests have been reduced to rubber-stamping entities that serve the political status quo. Without robust institutions that can resist political influence and hold leaders accountable, constitutionalism remains an unattainable ideal.

Constitutionalism thrives in a society where citizens understand their rights and responsibilities and are vigilant in holding their leaders accountable; unfortunately, in much of East Africa civic awareness remains low, compounded by high levels of poverty and limited access to quality education. The result is a disengaged populace often unaware of their rights and the limits of governmental power. This civic apathy allows leaders to govern with impunity eroding the foundational principles of accountability and transparency. Constitutionalism cannot flourish in an environment where citizens are passive spectators rather than active participants in governance.[73]

Additionally, the scourge of corruption casts a long shadow over constitutional governance as it is not merely an economic vice but a direct assault on constitutionalism, corrodes public trust, distorts justice and entrenches a culture of impunity. Political leaders and public officials who engage in corrupt practices subvert the very essence of the constitution which demands integrity, transparency and accountability. When those entrusted with public office exploit it for personal gain they make a mockery of the constitution and disillusion the citizenry further widening the gap between constitutional aspirations and reality.

Moreover, the journey towards constitutionalism in East Africa is also hindered by external influences and the lingering vestiges of neo-colonialism. Many East African constitutions were born from models imported from former colonial powers often without regard for

[73] ibid.

local governance traditions, cultural nuances or political realities. This disconnect has led to constitutions that are at odds with the socio-political fabric of East African societies. Furthermore, foreign interests often influence governance in ways that undermine constitutional integrity with international pressures, aid conditionalities and foreign investments sometimes compromising a country's sovereignty through influencing through policy decisions in ways that do not necessarily serve the people's interests or uphold constitutional principles.

East Africa's political landscape is deeply intertwined with issues of ethnicity and historical grievances which have become powerful tools of division and manipulation. Politicians exploit ethnic identities to secure support and entrench power fracturing societies along ethnic lines.[74] This ethnicisation of politics not only fuels conflict but also undermines the unifying spirit of constitutionalism. Constitutions in East Africa seek to build nations that are inclusive and just yet these documents struggle to override historical grievances and tribal loyalties that fuel division rather than national unity. Until East Africa confronts and transcends these divisions constitutionalism will remain an ideal unrealised.[75]

The ultimate test of constitutionalism lies in enforcement as a constitution no matter how well-written is powerless without mechanisms that ensure its provisions are respected and its violators held accountable. In East Africa enforcement mechanisms are often inadequate, plagued by legal loopholes and underfunded institutions.

D) CASE STUDIES OF CONSTITUTIONAL CRISIS IN EAST AFRICA

The landscape of constitutional governance in East Africa has been marked by a series of crises that expose the fragile state of constitutionalism in the region; these crises are not isolated events but manifestations of deep-seated challenges that compromise the integrity of constitutional frameworks and highlight the uneasy relationship between power and law.

[74] Koigi wa Wamwere, 'Negative Ethnicity: From Bias to Genocide' (Mvule Publishers, Nairobi).
[75] Ali Mazrui '"Katiba na Kabila": If African Politics are Ethnic-Prone, Can African Constitutions be Ethnic-Proof?' (2004) 1 University of Nairobi Law Journal 144.

1) Kenya: Short termism

Kenya's constitutional journey since the promulgation of the 2010 Constitution has been one marked by both remarkable progress and sobering setbacks. In 2018, the political "Handshake" between President Uhuru Kenyatta and opposition leader Raila Odinga was initially lauded as a gesture of national unity following the disputed 2017 elections; evolved into an ambitious proposal to amend the constitution purportedly to address issues of national cohesion, ethnicity, inclusivity and governance but whose real intention was to consolidate power within a select political elite. This underscores the tension between reform and constitutional sanctity revealing how political actors attempt to use constitutional amendments to secure political agendas under the guise of reform.[76]

Additionally, the Constitution of Kenya (Amendment) (No. 2) Bill 2024 which has since been rejected proposed to amend the Constitution of Kenya to extend the terms of elected leaders which was deeply troubling as it raised concerns about the erosion of democratic principles, accountability and the risk of stagnation in leadership.[77]

2) Tanzania: Restrictive Media Laws

Under the Constitution of the United Republic of Tanzania, Tanzanians are guaranteed the right to freedom of speech and expression; however, recent years have seen the enactment of restrictive media laws and policies that severely curtail these freedoms, undermining the constitutional promise of open discourse and accountability including The Media Services Act of 2016 along with its subsequent regulations have stifled independent journalism, penalised criticism of the government and limited the public's ability to hold leaders accountable.

[76] John Mukum Mbaku, 'Is the BBI Ruling a sign of judicial independence in Kenya' <https://www.brookings.edu/articles/is-the-bbi-ruling-a-sign-of-judicial-independence-in-kenya/> accessed 26th October 2024.
[77] Victor Raballa, 'Senate inbox fills as Kenyans react to proposal on presidential term extension' (Nation, October 25 2024) <https://ntvkenya.co.ke/news/senate-inbox-fills-as-kenyans-react-to-proposal-on-presidential-term-extension/> accessed 26th October 2024.

3) South Sudan: A Fragile Constitution in a Post-Conflict Setting

Adopted in 2011, the constitution of South Sudan was intended as a transitional framework to guide the new nation towards stability, unity and inclusive governance following decades of civil war; however, the South Sudanese constitutional journey has been marred by recurring conflicts, political instability and a weak institutional foundation.

The constitutional crises across East Africa are a call to action for leaders, citizens and institutions alike as they remind us that constitutionalism is not a destination but a continuous journey requiring vigilance, courage and a commitment to the ideals enshrined in our founding documents. Only through unwavering adherence to constitutional principles can East Africa hope to overcome these crises and establish a governance culture grounded in justice, accountability and respect for the rule of law for in the end a constitution is only as strong as the collective will to uphold it.[78]

E) EFFORTS TOWARDS REALISING CONSTITUTIONALISM IN EAST AFRICA

The task of achieving genuine constitutionalism in East Africa is nothing short of formidable. The region's recent history is replete with attempts to bridge the chasm between having a constitution and living by its principles. These efforts are manifestations of an awakening and a recognition that constitutionalism is essential not merely for governance but for sustainable development, peace and justice. If the rule of law is the pillar upon which just societies are built then constitutionalism is the mortar that holds it steady.[79]

In Kenya, Uganda and Tanzania courts have increasingly asserted their authority to interpret and enforce constitutional provisions often standing as the last bastions against executive overreach and political manipulation. In Kenya, the judiciary's decision to nullify

[78] Prof Nwabueze B., *Constitutionalism in the Emergent States* (East African Bureau, 1973) page 34.

[79] ibid.

the 2017 presidential election was an unprecedented demonstration of judicial courage, signalling that no office, however exalted is beyond the constitution's reach.[80]
In Uganda judicial independence remains a work in progress and there is an ongoing need for reforms to ensure that the judiciary remains an unyielding guardian of constitutionalism. By upholding the constitution in the face of political interests the judiciary has shown that constitutionalism requires institutional fortitude, vigilance and an unrelenting commitment to the rule of law.[81]

Civil Society Organisations (CSOs) and the media have played indispensable roles in fostering constitutionalism by advocating for accountability, educating the public on their rights and challenging abuses of power. In Kenya, Tanzania and Uganda Civil Society Organisations have mounted legal challenges, organised civic education initiatives and mobilised citizens to participate actively in governance. Organizations like Kituo cha Sheria in Kenya and the Legal and Human Rights Centre in Tanzania have worked tirelessly to hold governments accountable, promote access to justice and foster a culture of rights awareness.

The media to be a critical voice for transparency and oversight; despite facing restrictive laws and, at times, intimidation journalists and media outlets across East Africa have continued to bring issues of corruption and human rights abuses to light. This exposure is vital for constitutionalism as it ensures that citizens remain informed and that those in power are constantly reminded that they are servants of the people and not their masters. Indeed, a vibrant civil society and a free fearless media are essential pillars of constitutionalism for they provide the scrutiny and accountability upon which the integrity of governance depends.

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[80] Kimiko de Freytas Tamura, 'Kenya Supreme Court Nullifies Presidential Election' <https://www.nytimes.com/2017/09/01/world/africa/kenya-election-kenyatta-odinga.html> accessed 26th October 2024.
[81] John Bolster, 'The Rule of Law: A Necessary of Free and Democratic Societies for Protecting Human Rights' <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2125&context=all_fac> accessed 26th October 2024.

Regional bodies such as the African Union (AU) and the East African Community (EAC) have begun to play more active roles in promoting constitutional adherence and democratic governance across member states. Through frameworks like the African Charter on Democracy, Elections and Governance the African Union encourages states to respect the integrity of elections, uphold human rights and promote transparency.

One of the most promising developments in East Africa's journey toward constitutionalism is the increasing role of public participation in constitutional matters. Kenya's 2010 Constitution stands as an exemplar of a people-centred constitutional process one in which citizens were given a voice in shaping the document that governs them. This participation imbued the constitution with a sense of ownership and legitimacy that has been instrumental in holding the government accountable to its principles.

In Tanzania ongoing calls for a new constitution reflect a burgeoning demand for governance that resonates with the people's aspirations. While progress has been slow the push for constitutional reform is driven by a public that is increasingly aware of its role in governance and is no longer willing to be a passive spectator. This movement toward inclusive constitution-making is a cornerstone of constitutionalism as for a constitution that emerges from the people is more likely to serve the people and be defended by the people.

For constitutionalism to take root institutions must be empowered and equipped to uphold the constitution independently and effectively. Efforts to strengthen the judiciary, electoral bodies, anti-corruption agencies and other oversight institutions have been ongoing across East Africa; for example, in Uganda, the Inspectorate of Government continues to work though with challenges, to combat corruption and enforce compliance with constitutional mandates.

Capacity-building initiatives targeting judicial officers, law enforcement agencies and public administrators have also been instrumental. By providing training, resources and support these programs aim to create a culture within government institutions that respects

constitutional boundaries and prioritises service to the public. Institutional strength is vital, for without independent, capable institutions, constitutionalism remains a theoretical aspiration rather than a practiced reality.

While these efforts represent significant progress, the journey toward constitutionalism in East Africa is far from complete; the forces that oppose constitutional governance are deeply entrenched and will not be easily dislodged. Political will, public vigilance and institutional resilience are all essential if constitutionalism is to become an enduring feature of East African governance.

The path to constitutionalism demands unwavering commitment not just from political leaders but from every East African citizen. It requires an embrace of the principles of justice, equity and transparency and a recognition that the constitution is not merely a document to be celebrated on public holidays but a living covenant that binds us all. To realise constitutionalism East Africa must cultivate a culture where the rule of law is sacrosanct, where leaders are servants of the people and where citizens are vigilant custodians of their governance.[82]

The vision of constitutionalism is as much a promise as it is a call to action. If East Africa can rise to this challenge it will not only secure the foundations of governance and justice for itself but will stand as an example to the rest of the continent. In the words of Mwalimu Julius Nyerere, "*We must run while others walk*". East Africa must run toward constitutionalism for it is only by realising the ideals of our constitutions that we can secure the future for generations yet unborn.

F) CONSTITUTIONALISM AND THE STATE OF GOOD GOVERNANCE IN EAST AFRICA

At the heart of the quest for constitutionalism in East Africa lies the pursuit of good governance - a concept that transcends mere administration and touches the very soul of ethical, equitable and effective governance.

[82] ibid, page 35.

Constitutionalism is the bedrock of good governance. It provides a framework in which power is not only structured but also restrained and where leaders are not merely authorities but accountable stewards of public trust. A government that operates within the confines of the constitution, respecting both the limits of power and the rights of citizens sets the stage for transparency, accountability and justice - the pillars upon which good governance rests. In the absence of constitutionalism governance becomes a precarious endeavour, vulnerable to the corrosive influences of corruption, favouritism and unchecked authority.

At its core, constitutionalism establishes mechanisms through which those in power are answerable to the people they serve. The constitution is not simply a document of rights but a binding contract that mandates accountability requiring leaders to act in the public interest. In East Africa, however, the promise of accountability remains tenuous. Leaders who manipulate constitutional provisions, extend terms and centralise power betray the essence of constitutionalism and erode the foundations of good governance.

Good governance requires transparency and constitutionalism provides the mechanisms to ensure that government actions are conducted in the open and subject to scrutiny. Constitutions across East Africa enshrine the right to information; however, the reality is far from the promise as corruption, remains one of the most insidious barriers to good governance in the region.

The battle against corruption is a battle for constitutionalism. When public officials divert resources for personal gain they violate not only the law but the social contract. In Uganda, Tanzania and Kenya anti-corruption commissions have struggled to fulfil their mandates amidst political interference and limited resources. The persistence of corruption, despite constitutional commitments to eradicate it highlights the gap between the aspirations of good governance and the reality of its practice.[83]

[83] Yusuf Daud, 'A Review of the Effectiveness of Anti-Corruption Strategies and Institutions in Kenya' <https://ijcsacademia.com/index.php/journal/article/view/80> accessed 26th October 2024.

Constitutionalism establishes a system of checks and balances that prevents the concentration of power in a single branch of government. In East Africa, however, this principle often meets resistance from political actors who seek to weaken institutional autonomy to consolidate their influence. The independence of the judiciary, legislature and other oversight institutions is essential to preventing authoritarianism and safeguarding good governance.

To realise good governance East Africa must strengthen her institutions ensuring that they can operate independently and resist political interference. Each branch of government must exercise its authority within constitutional bounds providing a counterbalance to potential abuses by other branches. This principle is vital not only to constitutionalism but to the stability and predictability that good governance requires. Without a robust system of checks and balances governance becomes capricious and the rule of law is undermined.

Good governance is inseparable from respect for human rights for a government that ignores its citizens' rights cannot claim legitimacy. East African constitutions enshrine a wide array of rights intended to safeguard human dignity and ensure justice; however, human rights violations persist, often justified under the guise of national security, public order or political expediency.[84]

Constitutionalism demands that the state uphold these rights and protect citizens against abuses. Good governance, therefore, is not only about effective administration but about moral leadership - ensuring that every citizen enjoys their constitutional rights without fear or favour. The pursuit of justice is central to this vision for when people see that their rights are upheld and that there are remedies for wrongs they develop trust in the governance framework. Human rights and justice are thus not just features of constitutionalism but its moral heart without which good governance cannot flourish.

[84] OHRC, 'About Good Governance' <https://www.ohchr.org/en/good-governance/about-good-governance> accessed 26th October 2024.

G) THE WAY FORWARD: REIMAGINING CONSTITUTIONALISM IN EAST AFRICA

The path to true constitutionalism demands more than a commitment to rules and institutions; it requires a cultural transformation, a collective resolve to embed integrity, accountability and justice into the very fabric of our societies. This reimagining of constitutionalism calls upon leaders, citizens and institutions alike to become guardians of the constitution dedicated to the ideals of good governance and the rule of law.

For constitutionalism to thrive East African countries must fortify their institutions, ensuring they are capable, independent and resilient in the face of political pressure: the judiciary as the custodian of the constitution must be empowered to act without fear or favour and free from political interference and resource constraints; parliament must be assertive in its oversight role, resist the lure of executive patronage and stand as a true representative of the people's will; furthermore, anti-corruption bodies, electoral commissions and other oversight institutions must be granted the autonomy and resources needed to execute their mandates effectively.

Strengthened institutions are the very lifeblood of constitutionalism as they provide the checks and balances necessary to prevent the concentration of power. East African countries must invest in building the technical capacity, financial independence and ethical fortitude of these institutions, transforming them from political appendages into robust defenders of the constitution. This institutional independence is not a luxury; it is a prerequisite for a governance framework that respects the rule of law and protects citizens' rights.

To cultivate ethical leadership East African countries should adopt rigorous codes of conduct, strengthen conflict-of-interest laws and enforce stringent accountability measures for public officials. Leadership training programs that emphasise the values of constitutionalism and ethical governance should be integrated into political and public service curricula to preparing future leaders to serve with integrity. By embedding ethical

values in leadership East Africa can create a political culture where the constitutions are honoured not only in words but in deeds.

The foundation of constitutionalism is the people's will and this will must be expressed through meaningful public participation. East African countries must institutionalise mechanisms that allow citizens to contribute to decision-making processes, hold public forums on constitutional amendments and engage in constructive dialogue on governance issues. Public participation should not be a tokenistic gesture; it must be a genuine effort to incorporate the views of citizens in the policymaking process.

Constitutional reform processes should be inclusive and participatory to ensure that all voices including marginalised groups are heard. Governments should invest in platforms for online engagement, community meetings and feedback mechanisms that empower citizens to shape the governance process. When citizens feel ownership of their governance framework they are more likely to defend it ensuring that constitutionalism becomes a collective endeavour.

East Africa's constitutional struggles are not isolated; they are part of a broader regional challenge that requires a unified response. The East African Community (EAC) and the African Union (AU) must take active roles in promoting constitutional adherence and preventing constitutional abuses and implement the African Charter on Democracy, Elections and Governance which entered into force on the 15th day of February 2012. Through peer review mechanisms, monitoring frameworks and mutual support programs regional bodies can encourage member states to uphold democratic principles, observe term limits and respect the rule of law.

Regional cooperation can provide East African states with the support needed to navigate constitutional challenges and prevent authoritarian drift. Regional bodies should establish clear protocols for intervention in cases where constitutional violations threaten peace and stability and act as watchdogs and advocates for democratic governance. This shared

commitment to constitutionalism will not only strengthen individual countries but foster regional stability and prosperity.

In the face of both internal and external threats to constitutionalism East Africa must build resilience by fostering an unwavering respect for the rule of law. Political actors must resist the temptation to exploit national security as a justification for curtailing rights or concentrating power. Similarly, external influences - whether from foreign governments or multinational corporations - must be carefully managed to ensure that they do not undermine constitutional integrity.

East Africa must adopt policies that prioritise national sovereignty while engaging constructively with the international community. Legislative frameworks should be strengthened to protect public resources, regulate foreign investments and shield democratic processes from undue influence; in so doing, East African states can uphold constitutionalism in a manner that is both nationally accountable and globally responsible.

The road to constitutionalism is a journey that requires continuous effort, unyielding vigilance and a profound commitment to the ideals of justice, equality and accountability. East Africa stands at a crossroads with a choice between the fleeting convenience of power without restraint and the enduring strength of constitutionalism. To reimagine constitutionalism in East Africa is to envision a region where the constitution is not merely a document but a dynamic force that animates every aspect of governance.

In this reimagined East Africa leaders would embrace their roles as custodians of the public trust, citizens would stand as vigilant defenders of their rights and institutions would operate as independent guardians of justice. This vision requires a renaissance of values, a revival of civic engagement and a renewed dedication to building societies governed by the rule of law.[85]

[85] Prof Nwabueze B., *Constitutionalism in the Emergent States* (East African Bureau, 1973) page 36.

H) CONCLUSION

Despite notable progress, the East African Community has struggled to fully implement some of its most critical integration goals: The Customs Union and Common Market protocols have not been comprehensively operationalised and the Monetary Union remains elusive. Furthermore, the plan to create a Political Federation, once envisioned as the ultimate achievement of the Community, has faced considerable delays primarily due to national interests, political mistrust and varying degrees of commitment among member states.

These unmet milestones hinder the development of a coherent regional constitutional framework to guide governance across member states. This inconsistency affects the predictability and effectiveness of laws governing trade, investment and the free movement of people and capital creating a legal landscape marked by uncertainty.

Additionally, as we reflect on the contemporary state of constitutions in East African countries it becomes abundantly clear that the journey toward true constitutionalism remains fraught with challenges yet it is a journey that must not be abandoned.

We have constitutions in abundance, but we lack respect for the rule of law a genuine adherence to democratic principles and an unwavering commitment to the values enshrined in these founding texts. As long as constitutions are viewed as tools for power rather than instruments of justice, the promise of constitutionalism will remain elusive. On the bright side there is reason for hope across East Africa we witness the rise of a more vigilant judiciary, the resilience of civil society, the awakening of an informed citizenry and the ongoing struggle for institutional independence.

The way forward requires courage, wisdom and an unrelenting commitment to transform constitutions from symbols into living realities. East Africa must nurture a political culture where constitutional fidelity is not just an expectation but an unwavering norm, where leaders understand that their power is derived from the people and must serve the people.

This transformation will not come overnight but will require the dedication of generations and the commitment of institutions that are built to endure.

Let us remember that the true measure of constitutionalism is not found in the words of a document but in the lives of the people it is meant to serve and the ultimate test of governance is whether it secures justice, promotes peace and advances the dignity of all. East Africa's constitutions are far more than legal artefacts; they are the covenant that binds leaders and citizens alike in the pursuit of a just and prosperous society.

Therefore, let this be a call to action - a call to reimagine, renew and uphold the principles of constitutionalism across East Africa. May the nations of this region rise to the occasion, forging a future where constitutions are not merely written but lived, not merely proclaimed but practiced.

Let East Africa be a beacon of constitutional governance an exemplar for the continent and a testament to the enduring power of law and justice in the hearts of a people committed to their destiny. Let us now strive to make the impossible possible and realise the promise of constitutionalism in East Africa.

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