

# PRESIDENTIALISM IN THE SOUTHERN AFRICAN STATES AND CONSTITUTIONAL RESTRAINT ON PRESIDENTIAL POWER

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## INTRODUCTION

Toward the end of the last century, the world witnessed democracy triumph across the globe. Unprecedented in any epoch, democracy—with all its shortcomings (as government of, by, and for the people)—has finally been recognized as the one system of government that stands the best chance to ensure the greatest good for the majority of a country's inhabitants.<sup>1</sup> The future of democracy in Africa is predicated on the development of constitutional arrangements that guarantee viable institutions in which to conduct the business of governance. The South African Constitution serves as one of the best models for a constitutional arrangement that provides important safeguards to ensure public accountability, responsiveness to the electorate, and participation of the people in governance. The process followed in the elaboration of the South African Constitution also teaches us that in order for a people to feel a sense of ownership, the constitution-making process must ensure extensive consultations with the people and all the principal stakeholders in the country before any constitution is drawn up and adopted. The process must be inclusive, transparent, accessible, accountable, and empowering to civil society.

Rather than focus on the process of adopting a constitution, this Article examines the lessons to be learnt from the South African constitutional approach with respect to ensuring sufficient checks and balances on the executive. Presidential power is inadequately checked in many parts of Africa. As a result, presidents treat other organs of government, such as parliament and the judiciary, as subordinates instead of equals. The actions of Zimbabwe's President Mugabe in 2001, dismissing judges and forcing parliament to pass legislation in violation of fundamental rights such as the right to free speech and assembly protected in the Zimbabwe Constitution, provide a recent example of this problem.<sup>2</sup> As the African scholar B.O. Nwabueze has observed: "Presidentialism in Commonwealth Africa has tended towards

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1. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 48 (1992).

2. Africa Faith & Justice Network, *Around Africa*, at <http://afjn.cua.edu/AA%20October01.cfm> (Oct. 2001).

dictatorship and tyranny not so much because of its great power as because of insufficient constitutional, political and social restraint upon that power.<sup>3</sup>

Constitutions all over the world typically provide for an executive arm of government with specific powers and responsibilities. Yet the necessity for government creates its own problems—in particular, the problem of limiting the arbitrariness inherent in government, and ensuring that its powers are used for the good of society. In any political system, whilst the executive is often the major initiator and executor of public policies, it also has the potential for operating as a superordinate branch of the political system with tentacles that stultify the other branches.<sup>4</sup> The executive branch of government in most African states is headed by a president. The most striking feature of the presidency in African states is its tremendous power and consequent dominance of the political system. The presidency tends to expand and intensify personal rule, adopt authoritarian measures to repress systems of competitive politics and effective opposition, and restrict free political activity at all levels of society.<sup>5</sup> The president is largely free from limiting constitutional devices, particularly those of a rigid separation of powers. The separation or division of governmental authority is honored more in its breach than in its observance.

On paper, the distribution of political power follows the general principle of making parliament the sole repository of the legislative power, and the courts the repository of judicial power. The executive typically has no independent legislative power under the constitution.<sup>6</sup> There is only one legis-

3. B.O. NWABUEZE, *PRESIDENTIALISM IN COMMONWEALTH AFRICA* 435 (1974).

4. *Id.* at 2, 4.

5. Nwabueze has observed that “[i]n Commonwealth Africa . . . all the presidential constitutions establish the paramountcy of the President in the executive field. Where a prime minister exists . . . he is completely under the President, with no independent executive power of his own.” *Id.* at 21. With respect to Kenya, Mugambi Kiai observes that

[a] striking historical feature that has emerged from post-colonial Kenya is the perpetuation of the presidency as an immensely powerful institution. Indeed, this office has been so powerful that the two successive Presidents in Kenya's post-independence era have been the alpha and omega of the social, political, economic and cultural life of the nation. Except in very few instances, it is impossible for any undertaking to take root in Kenya without the President's good will.

Mugambi Kiai, *Presidential Directives vis-a-vis Democracy. Human Rights and the Rule of Law: A Paradox*, in *IN SEARCH OF FREEDOM AND PROSPERITY: CONSTITUTIONAL REFORM IN EAST AFRICA* 267 (Kivutha Kibwana et. al. eds., 1996).

6. *See, e.g.*, UGANDA CONST. art. 79, (1) (2) (1995):

Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda. Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

*Id.* For judicial power, see *id.* at art. 126 (vesting all judicial power in the courts).

lative authority—parliament; thus, whatever legislative power the executive possesses is a derivative or delegated one, and, therefore, subordinate to parliament's supreme authority. The reality in many African countries is different: the other branches of government, the legislature and the judiciary, end up subordinate to the executive.<sup>7</sup> This occurs because the executive is involved in the operations and appointment of members of the legislature and judiciary. Without adequate safeguards, the executive's involvement in these areas can lead to control of the subject institutions and the perception that the other organs of government are subordinate to the executive.<sup>8</sup> It follows that the composition, powers of the various organs of government, and their relationship to each other are critical to the operation of a democratic state.<sup>9</sup> In a constitutional democracy, arrangements should be geared toward maximizing checks and balances among the governmental organs, and securing the independence of the institutions from each other so that they can act as effective checks on each other. This objective implies the need to relate the powers and functions of the executive branch to the other organs of the state.

The need to limit and control the powers of the executive has philosophical roots in the notions of democracy which emphasize that a government has no right to govern, save with the consent of the governed.<sup>10</sup> Thus, as a neces-

7. The South African approach strikes a good balance.

(3) The president as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court and, after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice.

(4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the President of the Constitutional Court and the leaders of parties represented in the National Assembly, in accordance with the following procedure: (a) the Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President; (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made; (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.

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(6) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission.

S. AFR. CONST. art. 174, (3) (4) (6) (1996).

8. "The Chief Justice, the Deputy Chief Justice, the Principal Judge, a Justice of the Supreme Court, a Justice of Appeal, and a Judge of the High Court shall be appointed by the President acting on the advice of the Judicial Service Commission and with the approval of Parliament." UGANDA CONST. art. 142, (1) (1995).

9. See NWABUEZE, *supra* note 3, at 12 (discussing the limited powers of the executive).

10. *Id.* at 30 (discussing the checks and balances system in the United States).

sary tenet of democratic governance, a government must be responsible to the people it governs. In turn, the governed people at all times retain the right and power to exercise control over their government. The executive must not be permitted too much power; otherwise, the executive is likely to either abuse its powers or misuse them based on a misunderstanding or inadequate comprehension of the executive role in the political system.

This Article examines the nature of the presidential power in African states and the critical question of whether there are sufficient checks and balances on presidential power in the current constitutional arrangements of the African states. The mere legislative vesting of executive power and its division in the constitution affords no conclusive indication of either its actual extent or the reality of its exercise. The extent of presidential power must be judged in relation to the entire constitutional system in which the executive operates; that is, in the context of the restraints which the constitution imposes upon presidential power.

### I. TENURE OF THE PRESIDENT

In most African states the basic structure of the political system is neither parliamentary nor presidential; it is a hybrid system which provides for a directly elected president and an elected parliament.<sup>11</sup> Typically, the qualifications for election to the office of president relate to age and nationality.<sup>12</sup> In Zimbabwe, the constitutional age requirement for the president is forty.<sup>13</sup> In some cases, a maximum age is also set for candidates seeking the office of president.<sup>14</sup> In addition, the tenure of the presidency typically corresponds to that of parliament, i.e., five years unless the president sooner dissolves parliament. The exception is Zimbabwe where the two terms do not coincide and the presidential term is a year longer than that of parliament.<sup>15</sup>

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11. ZAMBIA CONST. art. 62, (1996). The President is not a member of Parliament but he or she may, at any time, attend and address the National Assembly. *Id.* at art. 82, (1) (2).

12. *Id.* at art. 34 (3). In recent times, some jurisdictions have added controversial requirements for eligibility. The Zambia Constitution, as amended in 1996, added a requirement that for one to stand as President, both his or her parents must be Zambians by birth or descent. *Id.* The amendment was aimed at Dr. Kenneth Kaunda and was opposed by the general population. See STEERING COMMITTEE ON THE MODE OF ADOPTION OF THE CONSTITUTION, CITIZENS "GREEN PAPER:" SUMMARY OF RESOLUTIONS BY THE CITIZENS' CONVENTION ON THE DRAFT CONSTITUTION 5 (1996).

13. ZIMB. CONST. art. 28, (1),(b) (1996).

14. See, e.g., UGANDA CONST. art. 102, (b) (1995). ("A person is not qualified for election as President unless that person is . . . not less than thirty-five years and not more than seventy-five years of age.")

15. The Constitution of Zimbabwe provides for a six-year term for president. ZIMB. CONST. art. 29, (1) (1996). The life of parliament, on the other hand, is five years. *Id.* at art. 63, (4).

In any political system, after the choice of the electoral system, the second fundamental choice is whether to have a presidential or a parliamentary system. In a majority of African states, such as Zambia, Zimbabwe, Tanzania, and Kenya, the choice has been a presidential system. While actual arrangements for voting procedure may vary,<sup>16</sup> the president is directly elected in a national election.<sup>17</sup> The real significance of the direct election of a president by the people rather than by the legislature lies in the fact that it gives the president an independent right to govern. The right flows directly from the people who elect him or her, and, arguably, is greater than that of the legislators because it is more nationally based.

A president drawn *from* the legislature owes his or her right to govern *to* the legislature. Because government by the entire membership of the legislature is neither practicable nor desirable under modern conditions, the legislature inevitably delegates its authority to one or more of its members, with one of their number elected as president. This is the central feature of the parliamentary system. In such a system, the only popular election is for members of the legislature; no separate election is held for the president. Thus, the only popular mandate for the government is that conferred by the votes of the elected members. Since that mandate is the only authority for government, it belongs to the legislature. A president elected by the legislature therefore owes his or her right to govern and tenure in office to the legislature.

Good constitutional design for multiethnic divided societies would seem to dictate against directly elected presidents. Shugart and Carey have identified three key traits of presidentialism that often have negative consequences—temporal rigidity, majoritarian tendencies, and dual democratic legitimacy.<sup>18</sup> Temporal rigidity refers to the length of presidential terms as determinate and difficult to change. As Shugart and Carey point out,

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16. For example, in Zambia, under the 1964 Constitution, every parliamentary candidate was required to declare which of the presidential candidates he or she supported. Every vote cast in favor of a parliamentary candidate was considered a vote for the presidential candidate which that parliamentary candidate had chosen.

17. Some, like Kenya, moved away from the parliamentary system. At Kenya's independence, the President was an elected member of parliament and his term of office was tied to that of the parliament. Constitution of Kenya, 1963; ASIAN-AFRICAN LEGAL CONSULTATIVE COMM., 1 CONSTITUTIONS OF AFRICAN STATES 606-610 (1972); Pheroze Nowrojee, *Why the Constitution Needs to be Changed*, in IN SEARCH OF FREEDOM AND PROSPERITY: CONSTITUTIONAL REFORM IN EAST AFRICA 386, 388 (Kivutha Kibwana, et al. eds. 1996). The Zambian Constitution provides for direct elections for the president. ZAMBIA CONST. art. 34. (1996); UGANDA CONST. art. 103, (1) (1995).

18. MATTHEW SHUGART & JOHN CAREY, *PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* 28-36 (1999).

[a]lthough most presidential constitutions make provisions for impeachment, they are invariably unwieldy procedures, requiring extraordinary majorities, which formally can be used only when there is evidence of malfeasance or disregard for constitutional procedures on the part of the chief executive. . . . The principal dilemma presented by the set presidential term is what to do with a highly unpopular chief executive . . . .<sup>19</sup>

Or, perhaps even more importantly, one who has become arbitrary and undemocratic.

The second negative trait of presidentialism, majoritarian tendencies, refers to the likelihood that a president may in fact represent the *minority* vote of the voters in an election, yet still win the election to office, thereby distorting representation. This distortion can be mitigated by insisting that election to the office of president require an absolute majority of votes. For example, the 1991 Zambian Constitution had a provision that required a president-elect to obtain more than fifty percent of the valid votes cast.<sup>20</sup> The third trait, dual democratic legitimacy, refers to the fact that because both parliament and the president are popularly elected, both can claim a unique popular mandate that might lead to conflict and a struggle for dominance.<sup>21</sup>

A further concern regarding directly-elected presidents is that in a multiethnic society without a history of stable democracy, there is no assurance that the losers of a presidential race will accept defeat in what amounts to a zero-sum game.<sup>22</sup> The conflicts in Angola in 1994 and the Congo in 1992 highlight the potential consequences of such a zero-sum structure. In the case of Angola, Ann Reid blames the 1994 collapse of peace plans and the bloody conflict that ensued largely on the country's presidential system. She observes that because Jose Eduardo Dos Santos and Jonas Savimbi were vying for the presidency, which was "the only prize worth having," it was inevitable that Savimbi would resume his violent struggle after losing the election.<sup>23</sup> Similarly, in Congo in 1992,

19. *Id.* at 28-29.

20. ZAMBIA CONST. art. 34, (7)-(10) (1991). If no candidate receives more than fifty percent, a second poll is held. If there is still no candidate that has received more than fifty percent or there are two candidates who have received an equal number of votes, the president shall summon parliament to elect a new president. *Id.* at art. 34, (8)-(10).

21. SHUGART & CAREY, *supra* note 18, at 32.

22. A zero-sum game is a game in which the cumulative winnings equal the cumulative losses. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2658 (3d ed. 1986).

23. INR Foreign Affairs Brief, Ann Reid, Conflict Resolution in Africa: Lessons from Angola, (Bureau of Intelligence and Research, U.S. Dep't of State, 1993). Ian Campbell notes that in Nigeria, the all-or-nothing structure of the 1993 presidential election made it easy for the military to succeed in

Sassou Nguesso succumbed to popular pressure and permitted multi-party elections in which he stood as a candidate for president. After losing the election, he became obsessed with ousting his successor, Pascal Lissouba, and mounted a military campaign against Lissouba until he succeeded in regaining power in June 1998.<sup>24</sup> Such situations are unlikely to happen, however, when a president is elected by parliament. Directly elected presidents often interpret a “popular” mandate as distinct from that of a parliamentary mandate, with the former entitling them to supervise parliament in its work or at least prevail in the event of conflict between the two institutions. Another danger of a presidential system is that a directly elected president is more susceptible to be pressured into ethnic or regional exclusivity. Such presidents have a great incentive to offer special privileges to their own ethnic or regional groups as a means of ensuring re-election through a simple majority or plurality of votes.<sup>25</sup>

In contrast, an arrangement in which the president is elected by parliament is more conducive to formal and informal power-sharing arrangements. In such an arrangement, even without grand coalition requirements, minority parties can influence the choice of president and the composition of the cabinet, particularly where no one party has a clear parliamentary majority.<sup>26</sup> Furthermore, given the factors discussed above, it would seem that a president elected by members of parliament would foster the feeling of greater participation in the election by all stakeholders in the country as represented in parliament. South Africa follows this arrangement.<sup>27</sup> “At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or man from among its members to be the President.”<sup>28</sup> When elected president, a person ceases to be a member of the National Assembly.<sup>29</sup> For countries that practice proportional representation as their electoral system, the adoption of the parliamentary system, for the election of a president, would be an extension of the proportional representation system to the presidential election.

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annulling the election before the final results had been officially announced. Unsuccessful candidates had no immediate stake in the political outcome, and many readily acquiesced in the annulment of the election in the hope of being able to run again. See Ian Campbell, *Nigeria's Failed Transition: 1993 Presidential Elections*, 12 J. CONTEMP. AFR. STUD. 182 (1994).

24. Douglas G. Anglin, *Conflict in Sub-Saharan Africa, 1997-1998*, available at Carleton University, Canada, <http://www.ulaval.ca/iqhei/circa/cm96-97> (last visited Mar. 23, 2002).

25. NWABUEZE, *supra* note 3, at 17.

26. SIRI GLOPPEN, SOUTH AFRICA: THE BATTLE OVER THE CONSTITUTION 217-18 (1997).

27. S. AFR. CONST. art. 86, (1996).

28. *Id.* at art. 86, (1).

29. *Id.* at art. 87.

## II. EXERCISE OF PRESIDENTIAL POWER

Most African constitutions vest broad executive power in the president.<sup>30</sup> This is a phenomenon that has been termed "presidentialism." It involves the centralization of state power in the hands of a president or his or her office.<sup>31</sup> When most African states gained independence, attempts were made to blend Westminster-style cabinet government with an American version of presidential power. In some cases the functions of head of state and chief executive were immediately fused in the office of president, while others soon thereafter adopted this approach.<sup>32</sup> In most states, soon after independence the constitutional president became uneasy with the demands and challenges of the position. The president began groping for absolute power and for a constitutional order that would increasingly allow him or her to operate outside the strictures of the constitution.<sup>33</sup> This was achieved by the constant amendment of the constitution to remove any restraints on presidential power and give excessive power to the president. The result is that most African states' constitutions provided and continue to provide for a very strong executive president. The president typically has power over all the other branches of government.<sup>34</sup>

Some of this power concentration could be controlled by providing—in the constitution—the manner in which presidential power may be exercised. For instance, the South African Constitution attempts to circumscribe the power of the president by providing the manner in which executive authority is to be exercised as a way of providing meaningful checks and balances in the exercise of that authority.<sup>35</sup> It provides:

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30. Filip Reyntjens, *Authoritarianism in Francophone Africa from the Colonial to the Postcolonial State*, in *THIRD WORLD LEGAL STUDIES* 60 (1988). A typical constitutional provision is like that found in the Constitution of Zambia. "The executive power of the Republic of Zambia shall vest in the President and, subject to the other provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him." ZAMBIA CONST. art. 33, (2) (1996).

31. NWABUEZE, *supra* note 3, at 17. The Zambia Constitution also provides broad powers to its president. ZAMBIA CONST. art. 33, (1) (1996); *see also*, UGANDA CONST., art. 99, (1995).

32. This is especially true with respect to countries such as Zambia that went straight into Republican status. ZAMBIA CONST. art. 33, (1996).

33. *See* Smokin Wanjala, *Presidentialism, Ethnicity, Militarism and Democracy in Africa: The Kenyan Example*, in *LAW AND THE STRUGGLE FOR DEMOCRACY IN EAST AFRICA* 86, 90–92 (Joseph Oloka-Onyango et al. eds, 1996).

34. The Uganda Constitution provides that "[t]here shall be a President of Uganda who shall be the Head of State, Head of Government and Commander in Chief of the Uganda Peoples' Defence Forces and the Fountain of Honour." The constitution also vests the executive power in the president. UGANDA CONST. art. 99, (1) (1995).

35. S. AFR. CONST. art. 84, (1996).

The President exercises the executive authority, together with the other members of the Cabinet, by (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise; (b) developing and implementing national policy; (c) co-ordinating the functions of state departments and administrations; (d) preparing and initiating legislation; and (e) performing any other executive function provided for in the Constitution or in national legislation.<sup>36</sup>

In a further attempt to provide more checks and balances on the executive, the manner in which executive decisions are taken is regulated by law. Article 101 of the South African Constitution provides that “[a] decision by the President must be in writing if it (a) is taken in terms of legislation; or (b) has legal consequences.”<sup>37</sup> In addition, “[a] written decision by the President must be countersigned by another cabinet member if that decision concerns a function assigned to that other Cabinet member.”<sup>38</sup>

### III. THE CABINET

In most African states, the president is assisted by a cabinet. Although the office of cabinet minister is usually formally established by the constitution, the appointment of ministers from among members of the national assembly is actually vested in the president, and ministers serve at the president's pleasure.<sup>39</sup> The ministers together with the president constitute the cabinet. The role of the cabinet minister and the cabinet is to advise the president on government policy and such matters as are referred to individual ministers or the cabinet by the president. In most African countries, the presidency has with time grown in stature at the expense of the other state branches. The cabinet appears particularly unable to influence the decisions of the president. In Zambia, for example, President Kaunda developed a practice of appointing special assistants on various subjects of governance, even labeling some “ministers.” “These individuals appeared more important and closer to the President than the Cabinet members.”<sup>40</sup>

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36. *Id.* at art. 85, (2)(a)–(e).

37. *Id.* at art. 101, (1).

38. *Id.* at art. 101, (2).

39. “There shall be a Cabinet which shall consist of the President, the Vice-President and such number of Ministers as may appear to the President to be reasonably necessary for the efficient running of the State.” UGANDA CONST. art. 111, (1) (1995). “Cabinet ministers shall be appointed by the President Cabinet with the approval of Parliament from among members of Parliament or persons qualified to be elected members of Parliament.” *Id.* at art. 113, (1).

40. Muna Ndulo & Robert Kent, *The Constitutions of Zambia*, 30 ZAMBIA L. J. 7 (1998).

Moreover, the situation of ministers in Zambia was much worse under the one-party systems of government. Under one-party rule, one party was supreme over all other branches of the state, thereby stripping the cabinet of its policymaking powers. The highest forum for policy formulation became the party congress. Later, the central committee of the party would appropriate for itself the powers and prerogatives once traditionally enjoyed by the cabinet. Thus re-arranged, power meant that elected officials, especially ministers, were now divorced from the direct formulation of policy. From a democratic perspective, this attribute essentially deprived the citizens of the right to influence the course of policy by way of lobbying elected officials. The role of the cabinet was now merely to advise the president on the implementation of policies made by the party.<sup>41</sup>

In addition, the government was no longer responsible to parliament, but to the party. The role of parliament was severely restricted, and its members were subject to political party disciplinary procedures. It was seen as a sub-committee of the Central Committee of the party.<sup>42</sup> Parliament became less crucial in debating national issues. It could only question government ministers on the implementation of policy; the policies once decided by the party were not subject to debate in parliament.<sup>43</sup> The concept of accountability, critical to democratic rule, was eclipsed as authoritarianism took center stage. It is unfortunate that in most African jurisdictions the cabinet is not an effective check on the president. The formal establishment of the cabinet in the constitution is clearly intended to minimize, as much as practicable, the possibility of personal government and to operate as a check on the president.

#### IV. VICE PRESIDENT

The constitutions of most African states empower the president to appoint a vice president from among the national assembly members.<sup>44</sup> The role of the vice president is often left quite vague, with the principal func-

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41. JOHN MWANAKATWE, *THE END OF THE KAUNDA ERA* 103 (1994).

42. The *Zambian Constitutional Review Commission of 1995* observed: "The supremacy of the party was a veiled cover for a powerful and autonomous president who merged the mobilisational power of the party together with the instruments and material resources of government to near totalitarian proportions." *REPORT OF THE CONSTITUTIONAL REVIEW COMMISSION* 7 (1995).

43. *Id.* at 5.

44. The 1996 Zambia Constitution, for instance, provides that "[t]he vice president shall be appointed by the President from among the members of the National Assembly." ZAMBIA CONST. art. 45, (2) (1996). In Uganda, the appointment of a vice president requires ratification by Parliament. See UGANDA CONST. art. 108, (2) (1995).

tion of the officeholder to assist the president<sup>45</sup> and/or to exercise such functions as may be conferred upon him or her by the president, the constitution, or by an act of parliament.<sup>46</sup> Typically, the only express constitutional function conferred on the vice president is the right to preside over cabinet meetings in the temporary absence of the president. Sometimes the vice president is assigned ministerial responsibility and is thereby able to participate in the management of government in the same manner as cabinet ministers. Being a presidential appointee and holding office at the pleasure of the president, the vice president is constitutionally weak, thereby making it impossible for him or her to challenge the power of the president. Through this power to appoint the vice president, the president controls succession to the presidency in the event of death, disability, or removal. The perception in most African states is that often many of the vice presidents are appointed to their positions more for loyalty than for competence.

## V. THE LEGISLATURE

Although most African constitutions vest all legislative powers in parliament, which consists of the president and the national assembly, the president has considerable power over what happens in parliament.<sup>47</sup> The extent of this subordination may perhaps be best perceived by considering how the legislature and executive share powers and functions involved with the legislative process. The legislative process comprises three main powers and functions, namely the formal legislative power, the legislative initiative, and the actual enactment of legislative proposals into law. The legislative power of parliament is exercised through bills passed by the national assembly and assented to by the president. In most circumstances the president has the power to withhold assent to a bill, in effect vetoing it.<sup>48</sup>

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45. The Zambia Constitution states, "[i]n addition to the powers and functions of the Vice-President specified in this Constitution or under any other law, the Vice-President shall perform such functions as shall be assigned to him by the President." ZAMBIA CONST. art. 45, (4) (1996); see also *id.* at art. 38-39, (providing that the vice president will perform the duties of the president when the president is absent, ill, or the office of president is vacant); UGANDA CONST. art. 108, (1)-(3) (1995) (providing that the vice president performs functions assigned to him or her by the president).

46. The Constitution of Uganda, for instance, provides that "[t]he Vice President shall (a) deputize for the President as and when the need arises, and (b) perform such other functions as may be assigned to him or her by the President, or as may be, conferred on him or her by this Constitution." UGANDA CONST. art. 108. (3) (1995).

47. As Nwabueze observes, the right of government to determine the business of the assembly has translated into a government monopoly of the legislative process. NWABUEZE, *supra* note 3, at 268.

48. ZAMBIA CONST. art. 78, (4) (1996).

Presidential veto power over legislation is considerable.<sup>49</sup> Through the veto power, the president has the final say as to which legislation becomes law. Typically when the president withholds assent to a bill, the bill can be returned to the national assembly and re-enacted, provided that it has the support of two-thirds of parliament.<sup>50</sup> If such bill is again presented to the president, the constitution requires the president to sign it or dissolve parliament. The situation is somewhat mitigated in Uganda, where upon second passage through parliament, the bill automatically becomes law.<sup>51</sup>

The South African Constitution appears to provide meaningful checks on this presidential power. Under the South African Constitution, when the national assembly passes a bill, the president must assent to the bill.<sup>52</sup> A presidential refusal to assent to a bill can only be on the grounds that it might be unconstitutional.<sup>53</sup> If the president has reservations about the constitutionality of the bill, he or she must refer it back to the national assembly for reconsideration.<sup>54</sup> If, after reconsideration, a bill fully accommodates the presidential concerns, the president must either assent to and sign the bill or refer it to the Constitutional Court for a decision on its constitutionality.<sup>55</sup> If the Constitutional Court decides that the bill is constitutional, the president must assent to and sign the bill.<sup>56</sup> The president does not have the alternative of dissolving parliament as is the case in most African jurisdictions. As such, the South African Constitution tries to provide a check on the presidential power to block the passage of legislation. It ensures that the president does not unnecessarily block legislation passed by parliament, and thereby emphasizes the independence of parliament from the executive.

The timing and duration of parliamentary sittings is often determined by the president. Without safeguards, this can be used to manipulate parliament. For example, the Zambian president facing impeachment in May 2001 simply did not call Parliament into session, and thereby prevented the tabling of an impeachment bill.<sup>57</sup> Under the South African Constitution, after an election, the first sitting of the National Assembly must take place at the time and on a date determined by the President of the Constitutional Court, but no more than fourteen days after declaration of the

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49. *Id.* at art. 78, (4) (5).

50. *Id.* at art. 78, (1) (4).

51. UGANDA CONST. art. 91, (1)-(5) (1995).

52. S. AFR. CONST. art. 79, (1) (1996).

53. *Id.*

54. *Id.*

55. *Id.* at art. 79, (4).

56. *Id.* at art. 79, (5).

57. *MP's Petition Impeachment of Chiluba*, POST OF ZAMBIA, May 4, 2001, at 1.

election result.<sup>58</sup> Once the first sitting has taken place, the National Assembly determines the time and duration of its other sittings and its recess periods.<sup>59</sup>

## VI. THE JUDICIARY

In most African constitutions, the president has significant involvement in the appointment of the judiciary. In most states, the president appoints the chief justice,<sup>60</sup> who then provides leadership to one of the three branches of government. Inasmuch as the role of the executive ought to be minimized, the doctrine of checks and balances requires the intervention of other branches of government in the appointment of the Chief Justice. In Zambia, for example, the president appoints all other judges on the recommendation of the Judicial Service Commission.<sup>61</sup> Generally, the Judicial Service Commission is chaired by the Chief Justice, who is thereby accorded a key role in the appointment process. The weakness of the system is that the president makes the appointments to the Judicial Service Commission, which creates an opportunity for the president to appoint only compliant members.<sup>62</sup>

Furthermore, in most African states the president plays a role with respect to the removal of judges. The president, in consultation with the judicial service commission, may remove a judge from office for misbehavior or incompetence, but only after a majority of the members of the national assembly have voted for such removal.<sup>63</sup> The South African approach to judicial appointments ensures consultation with all stake-

58. S. AFR. CONST. art. 51, (1) (1996).

59. *Id.* at art. 51, (2).

60. "The Chief Justice, the Deputy Chief Justice, the Principal Judge, a Justice of the Supreme Court, a Justice of Appeal and a Judge of the High Court shall be appointed by the President acting on the advice of the Judicial Service Commission and with the approval of Parliament." UGANDA CONST. art. 142, (1) (1995). Without putting in place procedures of nomination and selection of would-be candidates, this kind of provision has proved inadequate to ensure that courts are not packed with judges of the government's political persuasion.

61. ZAMBIA CONST. art. 95, (1) (2) (1996).

62. *Id.* at art. 93, (1) (2).

63. The Zambia Constitution provides:

If the President considers that the question of removing a judge of the Supreme Court or of the High Court under this Article ought to be investigated, then (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office; (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the judge ought to be removed from office under this Article for inability as aforesaid or for misbehaviour.

*Id.* at art. 98, (3).

holders. The president appoints the President and the Deputy President of the Constitutional Court after consultation with the Judicial Service Commission and the leaders of parties represented in the National Assembly.<sup>64</sup> The president appoints the Chief Justice and Deputy Chief Justice after consulting the Judicial Service Commission.<sup>65</sup> The other judges of the Constitutional Court are appointed by the president, after consultation with the President of the Constitutional Court and the leaders of parties represented in the National Assembly, in accordance with the following procedure:

- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President; (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made; (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.<sup>66</sup>

All other judges are appointed in consultation with the Judicial Service Commission.<sup>67</sup>

## VII. OTHER APPOINTMENTS

Other areas in which the powers of the executive and the legislature intersect include the making of appointments to constitutional offices, such as Director of Public Prosecutions, and the Auditor General. In some African jurisdictions, in order to lessen the influence of the executive over such offices, a system of requiring parliamentary approval for appointments to such offices has been instituted.<sup>68</sup> The effectiveness of this attempt to make the national assembly the principal branch for checking and supervising the executive branch largely depends on the existence of an effective committee system in the national assembly.<sup>69</sup> In the African states

64. S. AFR. CONST. art. 174. (3) (1996).

65. *Id.*

66. *Id.* at art. 174, (4).

67. *Id.* at art. 174, (6).

68. *See, e.g.*, ZAMBIA CONST. art. 93, (1) (2) (1996) (national assembly ratifies appointments of the chief justice, the deputy chief justice, and judges of the supreme court); UGANDA CONST. art. 142, (1) (1995) (parliament approves appointments for judicial positions).

69. The existence of the requirement for parliamentary approval in Zambia has not translated into a real check. This is largely because the committees established have not reflected the expertise

where these procedures exist, they have been poorly structured. As a result, the process has not focused on the competence of the candidates for judicial appointments; it has instead focused on security clearance of candidates and is often taken as a formality.

Another crucial aspect of the presidential power relates to the control of the appointment, promotion, dismissal, and discipline of public servants.<sup>70</sup> The president typically appoints and dismisses most key public servants, such as, *inter alia*, the police commissioner, and the army commander. This is a very important power because power over peoples' means of livelihood operates to render them amenable to the will of the person wielding power. The British policy at independence of transferring power to nationalist governments was to remove the public service from political control and vest it in an independent public service commission established directly by the constitution. The object was to ensure that merit rather than political considerations would serve as the criterion for appointment and promotion, that dismissals and disciplinary control were not used as an instrument of political victimization, and that political neutrality of the public service would not be jeopardized.<sup>71</sup> The device was also part of the general scheme of institutional safeguard of political and tribal minorities. This system has largely failed, with the public service almost universally politicized and turned into what might be termed the "presidential" service. However, public service is the bedrock of the government, providing not only expert advice on the basis of which policy is determined but also the machinery for the execution of such policy. It is important, therefore, that it is representative of the various population groups in the country and that it functions efficiently and free from any political interference.

#### VIII. RELATIONSHIP BETWEEN THE PRESIDENT AND THE LEGISLATURE

The presidential system, as adopted in most African states, is endowed with enormous powers, and is therefore often equated with authoritarianism.<sup>72</sup> Thus armed with limitless powers, African presidents went on

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required to discharge the functions of vetting. In the end, the committees have regarded their job as one of checking security credentials.

70. In Zambia, the president has power to appoint individuals to offices for the Republic and the power to abolish any such office. ZAMBIA CONST. art. 60, (1)-(3) (1996).

71. This led to the creation of public commissions with powers to appoint, promote and exercise disciplinary control over persons holding office in the public service. See, e.g., UGANDA CONST. art. 165, (1) (1995).

72. Upon gaining independence on October 24, 1964, Zambia became a republic. See ZAMBIA CONST. schedule 2 to the Zambia Independence Order, 1964, promulgated by Her Majesty in Council under the provisions of the Foreign Jurisdiction Act 1890.

to act without any restraint whatsoever. Parliaments, initially intended to provide a check over executive powers, were made tools for serving presidents' whimsical interests by deliberately legislating—sometimes *ex post facto*—for the purpose of giving formal legitimacy to even the most despicable actions and inclinations of presidents. For example, following Kenya's independence, the executive did not even attempt to implement the devolution provisions of the constitution, which was, in fact, subsequently amended to make Kenya a republic with a powerful executive president.<sup>73</sup> Justifications for the change argued that the demands of a developing nation are best served by the strong and effective leadership that an executive president seems to provide. It was further argued that the fusion of the role of chief executive and head of state into one person facilitated rapid response to any emergency. In many countries, soon after independence, a series of constitutional amendments were made which all went to strengthening the central executive at the expense of other branches of government, especially parliament. Many African parliaments were practically converted into tools for legislating at the respective executives' pleasure and convenience. In such cases, the presidency consequently exercised a dominant influence on the legislature; there were no sufficient countervailing safeguards to check the executive branch and thus balance the powers.

The distribution of political powers in the constitution in commonwealth Africa follows the general principle of making parliament the sole repository of the legislative power.<sup>74</sup> The executive has no independent legislative power. There is only one legislative authority under the constitution, namely parliament. It follows, then, that whatever power the executive possesses to make law is a derivative or delegated one. Therefore, pursuant to the constitution, any executive legislative power is subordinate to parliament's supreme legislative authority. However, the reality in most African states is that parliaments have always dutifully legislated in accordance with the wishes of the president. As Catholic bishops in Zimbabwe observed:

[W]ar veterans . . . are being used to take away the farms where cash crops and food is being grown . . . . All this is done to keep the powers that be in political power . . . . The whole exercise of invading farms and factories and the ignoring of the court orders

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73. Kivutha Kibwana, *The People and the Constitution: Kenya's Experience*, in *IN SEARCH OF FREEDOM AND PROSPERITY: CONSTITUTIONAL REFORM IN EAST AFRICA* 345 (Kivutha Kibwana et al. eds., 1996).

74. UGANDA CONST. art. 79, (2) (1995) (providing that "[e]xcept as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under the authority conferred by an Act of Parliament").

and the fighting against the judges has increased lawlessness in Zimbabwe. The government breaks their own laws which they passed in Parliament and they disregard the Constitution which they themselves made, respecting it only when it suits them . . . .<sup>75</sup>

Most African parliaments do not exhibit much freedom to discuss, criticize, and reject government legislation. As a result, the president is no longer accountable to parliament, or to any other body or institution. The South African Constitution is unique in Africa in that it requires the national assembly to provide for mechanisms “to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of (i) the exercise of national executive authority, including the implementation of legislation; and (ii) any organ of state.”<sup>76</sup> These measures are designed to further strengthen the role of parliament and to give an added assurance to the people that ultimately all important matters will be subject to public scrutiny through their representatives. The legal sovereignty of the national assembly, as well as the political sovereignty of the people, are thereby underpinned and given concrete institutional mechanisms through which they are expressed.

The importance of a legislature that can act independently of the president, to ensure accountability of the president, needs no special emphasis. Unless parliament is in fact independent of the president, parliament’s sovereignty simply means the sovereignty of the executive. The final process by which policy is legislated into law binding on the community must not only be separated from, but needs to be independent of, the executive. To secure liberties in an open, plural, and democratic society there ought to be an effective parliament which would not only be a focal point of policy, but one that is expected to play a crucial role in the checking and balancing of other powers. It is in this arrangement that the real essence of liberty lies and can be assured. Liberty is not secured by a constitutional guarantee of a rights regime alone. No constitution, however strongly entrenched, can be guaranteed against the temptations of power on the part of the executive—unless there is an independent legislature to act as a counterpoise against such temptations, and unless there is a strong national ethic against executive pretensions.

Legislation in the governing process is important because it is the means by which the life of the nation is regulated, and from which the

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75. WASHINGTON OFFICE ON AFRICA, WASHINGTON NOTES ON AFRICA VOL. 27, ISSUE 3, at 2 (2001) (quoting Archbishop Pius Ncube).

76. S. AFR. CONST. art. 55, (2) (1996).

authority of the government to govern derives. In this light, the danger to liberty of a president that controls the legislature becomes apparent. It is not just that the executive can pass tyrannical laws and then execute them; it can also act arbitrarily in flagrant disregard of the limits of its powers and then proceed to legalize its action by retrospective legislation. Opposition under such circumstances becomes both futile and dangerous. The individual has virtually no rights against the government because governmental powers are, for all practical purposes, unlimited. The African scholar Nwabueze has observed: "Doubtless, an executive president who holds and exercises executive power in his discretion and who also controls the process of legislation arouses fear of dictatorship."<sup>77</sup>

### A. Executive Controls Over Legislative Process

In most African countries, the executive controls the entire legislative process through several procedures. A member's right to initiate legislative measures is limited by the opportunities available for its exercise, and is severely constrained by a number of additional factors. For example, the executive determines how frequently parliament should meet, a matter that determines the time available for legislation.<sup>78</sup> Although the president is constitutionally bound to call a session once every year at intervals of less than twelve months,<sup>79</sup> it is the president who summons a session of parliament and brings it to an end by prorogue.<sup>80</sup> In practice, meetings of the assembly are often too few to provide the members ample opportunity to discharge their functions adequately and effectively. In any case, it is not only that government business takes precedence; this monopoly has become so complete in practice that, in many African countries, most parliament members are unaware that they have a right to initiate legislation.

A second manner in which the executive controls parliament is through patronage. In most African states the proportion of parliament members enjoying government patronage of some kind, through appointment to ministerial positions, maybe as high as half or more of the total membership of parliament.<sup>81</sup> In Zambia, for instance, under the Chiluba regime, members of parliament holding ministerial positions numbered as high as

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77. NWABUEZE, *supra* note 3, at 255.

78. In Zambia's Constitution, for example, article 88, (1) provides, "[s]ubject to the provisions of clause (4) each session of Parliament shall be held at such place within Zambia and shall commence at such time as the President may appoint." ZAMBIA CONST. art. 88, (1) (1996).

79. *Id.* at art. 88, (2).

80. Zambia's Constitution provides that the President may summon a meeting of the National Assembly at any time and may prorogue Parliament at any time. *Id.* at art. 88, (1), (3), (5).

81. NWABUEZE, *supra* note 3, at 276.

forty percent of the members of parliament. Needless to say, a minister is bound by the obligations of collective responsibility not to oppose or criticize a government measure in the house. An assembly with a significant proportion of members serving as ministers or other government functionaries is a negation of the doctrine of separation of personnel of the two primary political branches. One way of checking this conflict might be to establish a constitutional limit on the number of cabinet ministers a president could appoint.<sup>82</sup>

Another area in which a president in African states holds considerable power concerns the declaration of a state of emergency and the use of emergency powers. In practically all of the African states, the authority to declare an emergency belongs in the first instance to the president alone. Parliamentary approval comes only after the initial declaration by the president, and, in practice, is given as a matter of course. A useful safeguard might be a declaration remaining in force only for a specified period of six months, unless extended by parliament.<sup>83</sup> The only different approach is that provided for in the South African Constitution, where deliberately-placed checks minimize the chances of abuse. Under the South African Constitution, "[a] state of emergency may be declared only in terms of an Act of Parliament, and only when (a) the life of the nation is threatened by war . . . national disaster or other public emergency; and (b) the declaration is necessary to restore peace and order."<sup>84</sup> South Africa's Constitution also provides that:

A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only prospectively; and for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 percent of the members of the Assembly.<sup>85</sup>

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82. The Zambian Constitution of 1964 had a limit of nineteen presidentially-appointed cabinet members. See ZAMBIA CONST. art. 44, (1) (1964). Most African constitutions are silent on this issue. For example, the Ugandan Constitution articulates only a "number of ministers as may appear to the President to be reasonably necessary for the efficient running of the State." UGANDA CONST. art. 111, (1) (1995).

83. See, e.g., ZAMBIA CONST. art. 31, (2) (1991).

84. S. AFR. CONST. art. 37, (1) (1996).

85. *Id.* at art. 37, (2).

The South African Constitution further provides for judicial oversight. It empowers any competent court to rule on the validity of "a declaration of a state of emergency; any extension of a declaration of a state of emergency; or any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency."<sup>86</sup>

Importantly, in a democracy, courts play a key role as independent and impartial arbiters in promoting the rule of law. Constitutional democracy implies that all those who are entrusted with the exercise of public power should do so in a manner consistent with the principles of legality. It is the duty of the courts to ensure compliance with rules and procedures. In an emergency, a president is typically empowered to detain citizens without trial and to suspend the operation of certain aspects of the bill of rights. The president's powers during an emergency have great impact on the individual rights of citizens. While it is acceptable that a president should have power to declare an emergency, the exercise of that power should be counter-balanced by the legislature. The president is better placed to assess the objective and subjective circumstances that might invite the invocation of emergency powers. The president offers a much more identifiable center for responding to a crisis as opposed to the national assembly. As the chief executive and commander-in-chief of the armed forces, the president enjoys advantages of information, authority and influence. Without effective checks and balances and without judicial supervision of emergency powers, however, gross abuses of executive power are possible.

*B. Measures to Ensure Accountability of the President and Weaknesses of These Measures*

The colonial legacy was not a good foundation for democracy in African states. The authoritarian president accords with the colonial experience in which the governor was the dominant political figure, epitomizing the sort of strong, authoritarian, and irresponsible executive incarnated by the medieval European monarch. As commander in chief, sole executive and legislator, he was empowered to "exercise . . . all such power and jurisdiction as Her Majesty . . . had or may have within the territory, and to that end to take or cause to be taken all such measures and

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86. *Id.* at art. 37, (3). In Article 34, (4), the South African Constitution specifies that "any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that (a) the derogation is strictly required by the emergency; and (b) the legislation (i) is consistent with the Republic's obligations under international law applicable to states of emergency." *Id.* at art. 37, (4).

to do or cause to be done all such matters and things therein as are lawful and as in the interests of H.M.'s service he may think expedient."<sup>87</sup>

Filip Reyntjens has observed that the attitude of most leaders after independence was not so much a departure from the constitutional past they rejected, but rather its continuation under another label.<sup>88</sup> D.J. Lavroff has also stressed that "one of the reasons for the emergence of authoritarian regimes after independence was the fact that the colonial powers not only developed an administrative system which required a strong central executive branch, but also exercised power in a manner that could bear only very few institutional checks."<sup>89</sup> Indeed, under no colonial system throughout Africa was the political organization based on such principles of constitutionalism as the separation of the branches of government or checks and balances. More specifically, three attributes of legislatures in liberal-democratic constitutional theory were absent in colonial legislative councils. First, the executive was in no way responsible to the legislature. Second, the legislature was not even formally representative of the people for whom it was making laws. Third, the legislative council was neither a supreme nor a sovereign body.<sup>90</sup> Further, the social and legal relations of a president in a typical African country with his or her fellow citizens are not characterized by anything like the same degree of equality. In particular, entirely absent is any concept of the incumbent being the elected servant of the people in whom they have resided responsibility for managing their affairs for a specific period of time. To begin with, there is no question of his or her being personally amenable to the judicial process while in office;<sup>91</sup> that question is settled by the Constitution itself. Under the Constitution, an incumbent president typically enjoys immunity from both

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87. NWABUEZE, *supra* note 3, at 68 (quoting Art. 4, Nigeria Protectorate Order-in-Council, 1899); see also Royal Charter of Incorporation of the British South Africa Company, Oct. 28, 1889.

88. Reyntjens, *supra* note 30, at 60.

89. D.G. LAVROFF, *LES PARTIS POLITIQUES EN AFRIQUE NOIRE* 55 (1970).

90. Reyntjens, *supra* note 30, at 74.

91. Article 43 of the Constitution of Zambia provides that

(1) No civil proceedings shall be instituted or continued against the person holding the office of President or performing the functions of that office in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

(2) A person holding the office of President or performing the functions of that office shall not be charged with any criminal offence or be amenable to the criminal jurisdiction of any court in respect of any act done or omitted to be done during his tenure of that office or, as the case may be, during his performance of the functions of that office.

ZAMBIA CONST. art. 43, (1996). The immunity may extend to a retired president unless the National Assembly determines "that such proceedings would not be contrary to the interests of the State." *Id.* at art. 43, (3).

criminal and civil suit or other process. However, the immunity prevails only during his or her incumbency. It is thus a procedural immunity only, and in no way removes his or her liability, which becomes enforceable again in the ordinary mode of proceedings at the end of the term of office, without any limitation as to the time for the period covered by his or her incumbency.<sup>92</sup> Although necessary to enable the president to fulfill his or her constitutional obligations, this protection makes it more difficult to hold the president accountable for his or her actions. Furthermore, presidential immunity from suit or legal process is different from being protected by law from insult or abuse beyond the protection offered by the ordinary law of libel and sedition. In some African states it is a criminal offence to publish by writing, word of mouth or in any other manner any defamatory or insulting matter concerning the president with intent to bring him or her into hatred, ridicule or contempt.<sup>93</sup> The justification for this is questionable. Verbal attacks, sometimes of a very derogatory kind, are inseparable from political competition. Often this law is used to harass members of the opposition and stifle dissent. In Zambia, for instance, during the run up to the 2001 elections several leading politicians were charged for insulting the president by allegedly calling him a thief.<sup>94</sup>

Hence, a major constitutional challenge is how to ensure presidential accountability. Nwabueze has observed that when the executive presidency is blended with features of the parliamentary system without adequate constitutional and other safeguards on the resultant power structure, the result might be dictatorship.<sup>95</sup> Under the Westminster model, where the party with a majority in parliament forms a government headed by a prime minister, the government and the cabinet ministers, in their separate portfolios and collectively, are accountable to parliament for their conduct in office.<sup>96</sup> Where the government fails to secure a parliamentary majority in support of a major policy initiative, it can be forced to resign. Individual ministers can be censured for unwarranted conduct. In addition, the presence of effective minority parties in parliament, the vigilance of a free press, and the fear of electoral defeat all help ensure that the government

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92. See, e.g., *id.* at art. 43(4).

93. The *Zambian Penal Code* includes a typical provision: "Any person who, with intent to bring the President into hatred, ridicule or contempt publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years." PENAL CODE, ch. 87, § 69, available at <http://www.parliament.gov.zm/constitution.htm>.

94. *There is no Evidence of Theft Against Chiluba Says Sata*, POST OF ZAMBIA, Aug. 14, 2001 (Zambia).

95. B.O. NWABUEZE, CONSTITUTIONALISM IN THE EMERGENT STATES 55-6 (1973).

96. *Id.*

will act reasonably and for the good of the nation. In an undemocratic state, these elements are lacking. The media is either owned and controlled by the state or is closely circumscribed. The government is not accountable to parliament—it is accountable to itself. This development is particularly worrisome when, with the demands of rapid economic development, most African states have witnessed a rapid concentration of state power in the president and the granting of wide discretionary powers to government ministers.<sup>97</sup> The constitution and other laws make the president an all-powerful institution with power to appoint personnel to virtually all important government and public institutions. He or she has power to appoint and dismiss the cabinet and all senior public servants. He or she appoints heads of government institutions and public corporations.<sup>98</sup>

In most African constitutions, the president is subject to any one or a combination of two, three, or four constitutional constraints: (a) presidential power and the cabinet;<sup>99</sup> (b) parliamentary vote of no confidence; (c) removal of the president through the impeachment process;<sup>100</sup> and (d) codes of conduct.<sup>101</sup> Under the first constraint, the constitution typically provides that the president must act on the advice of the cabinet. In theory the president is bound to follow the advice of the cabinet. The Zimbabwe Constitution, for instance, provides “[i]n the exercise of his functions the President shall act on the advice of the Cabinet, except in cases where he is required by this Constitution or any other law to act on the advice of any other person or authority.”<sup>102</sup> The Zambian Constitution provides that the cabinet “shall formulate the policy of the Government and shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President.”<sup>103</sup> This is the least effective measure in practice. Typically, the president determines the scope of the cabinet’s advice. Since ministers serve at the president’s discretion, ministers are unable to assert themselves in matters in which they hold different views from those of the president.

97. See, e.g., REPORT OF THE CONSTITUTIONAL REVIEW COMMISSION, *supra* note 42, at 6.

98. See MWANAKATWE, *supra* note 41, at 84 (discussing the operations of one party rule and its pervasive nature); Cherry Gertzel, *Dissent and Authority in the Zambian One-Party State 1973–80*, in THE DYNAMICS OF THE ONE-PARTY STATE IN ZAMBIA 102 (Cherry Gertzel ed., 1984).

99. See, e.g., ZAMBIA CONST. art 50, (1996).

100. S. AFR. CONST. art. 89, (1996); ZAMBIA CONST. art. 37, (1996).

101. S. AFR. CONST. art. 96, (1) (1996); ZAMBIA CONST. art. 52, (1996).

102. ZIMB. CONST. art. 31, (H)(5) (1996).

103. ZAMBIA CONST. art. 50, (1996). In article 51, the constitution makes all ministers and Deputy Ministers accountable collectively to the National Assembly. *Id.* at art. 51.

The second constitutional constraint on presidential power relates to a parliamentary vote of "no confidence." This is the power of parliament to pass a vote of no confidence on a government that, due to its performance, no longer has the support of parliament. A vote of no confidence should lead to the resignation of the government, although this would not be applicable where the president is elected through direct elections. In a direct election system, the legislature has no power to pass a vote of no confidence on the president because the latter derives his or her mandate directly from the people, and thus only the people can remove him or her from office.<sup>104</sup> A vote of no confidence in this case would, however, make it difficult for a president to run a country as he or she would not be able to enact the government's legislative agenda. Even if the no confidence vote were available against a directly-elected president, its effectiveness would be doubtful since, in most African states, the president has power to dissolve parliament at any time and thereby avoid a vote of no confidence.<sup>105</sup> This situation is made more difficult by the fact that it is quite common to find anti-floor-crossing provisions.<sup>106</sup> This means that members of parliament face the dilemma that should they vote against the president of the party, they are likely to be expelled from the party and lose their parliamentary seat.

In contrast, the South African Constitution provides that Cabinet members are collectively and individually accountable to Parliament for the exercise of their powers and the performance of their functions.<sup>107</sup> "If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet."<sup>108</sup> However, "[i]f the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign."<sup>109</sup>

The third constitutional constraint is impeachment proceedings against an erring president. Most African constitutions provide that a president can be impeached on the grounds of misconduct, abuse of office, violation of

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104. See, e.g., *id.* at art. 34, (1).

105. See, e.g., *id.* at art. 88, (6)(c).

106. A typical provision found in most African constitutions reads: "A member of the National Assembly shall vacate his seat in the Assembly . . . in the case of an elected member, if he becomes a member of a political party other than the party, of which he was an authorised candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party . . ." *Id.* at art. 71, (2)(c).

107. S. AFR. CONST. art. 92, (2) (1996).

108. *Id.* at art. 102, (1).

109. *Id.* at art. 102, (2).

the constitution and other laws of the country, and willful violation of the oath of office.<sup>110</sup> In the abstract, one might question whether an impeachment process is required at all. There is some merit in the argument—at least in the case of a directly-elected president—that such a process unnecessarily inhibits presidential freedom of action. Thus, because it is the electorate to whom the incumbent is answerable, it is for them to decide whether or not the incumbent retains their confidence at the next presidential election. In reality, given that there are cases where the allegations against a president are too urgent or serious to leave until the next presidential election, it seems justified to have the impeachment process as an option for dealing with such situations.

The starting point is the presidential oath of office. When assuming office, the president solemnly swears to well and truly perform the functions of the office, and to preserve, protect and defend the constitution.<sup>111</sup> A president should be impeached when he or she breaches the oath of office. Under the provisions of most African constitutions, the process of impeachment is initiated by a notice to the speaker of the national assembly signed by at least one-third of the national assembly members. The notice details the grounds of the allegation of misconduct. The motion requires the support of a minimum of two-thirds of the national assembly before it proceeds to the next stage. If this is achieved, the chief justice then empanels a tribunal to investigate the allegations. The tribunal then submits a report to the national assembly. If the tribunal is of the view that the allegations have been substantiated, the president may be removed from office if the motion is supported by the votes of at least three-quarters of the national assembly. In this scheme, the tribunal is not a court of law; it merely performs an investigative role.

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110. The English roots of impeachment have been described as follows:

Impeachment proceedings originated in 14th century England. However, they really came to prominence in the 17th century when used by Parliament to bring to heel corrupt and oppressive nobles, ministers, and crown officials who could not be dealt with by the ordinary criminal process. In doing so it emphasized the fact of parliamentary supremacy over the absolutist pretensions of the crown . . . . The impeachment proceedings were later included by the founding fathers of the United States Constitution.

John Hatchard, *Presidential Removal: Unzipping the Constitutional Provisions*, 44 J. AFR. L. 1, 1 (2000).

111. The oath of office in Uganda reads as follows:

[I] swear in the name of the Almighty God/solemnly affirm/that I shall faithfully exercise the functions of the President of Uganda and shall uphold, preserve, protect, and defend the Constitution and observe the laws of Uganda and that I shall promote the welfare of the people of Uganda. Do help me God.

See UGANDA CONST. 4th sched. (1995).

Most African states provide for a procedure to establish a special tribunal to investigate allegations against the president. Arguably, the establishment of such a tribunal is a key safeguard against the abuse of the process insofar as it provides for an independent, transparent, and non-partisan investigation into the allegations. However, referral to a tribunal unduly complicates the procedure. The decision to remove the president should lie with the people's representatives in the national assembly. Since the allegations are made in parliament, the hearing of the matter should be in parliament. Where a president is elected by parliament, it is difficult to justify an arrangement that would deny parliament the right to dismiss an erring president whom it appointed. Moreover, impeachment is both politically and legally sensible. Politicians judge other politicians and impose political punishments such as removal from office and disqualification from future office holding. The standard of conduct is not only narrowly legal, it is also political. It is not a matter of applying criminal law statutes and criminal standards. A president might be unfit to govern even if his or her misconduct was not an ordinary crime. Imagine, for example, a president who leaves the country at the height of an economic crisis to go on vacation without any arrangements to oversee the government while he or she is gone. Although such conduct may not be criminal *per se*, it may well be considered grievous misconduct providing grounds for impeachment.

The weakness of the impeachment procedures in African states lies in the requirement of majorities that are far too high. There is also the problem, as observed earlier, that members of parliament who are opposed to the president are likely to lose their party membership and effectively lose their seats in parliament because of the anti-crossing provisions that exist in most African constitutions. This is complicated by the presence of presidentially nominated members of parliament in most African jurisdictions.<sup>112</sup> These factors tend to give the executive leverage to influence voting in parliament. A recent attempt to impeach President Frederick Chiluba in Zambia illustrates the difficulties of this procedure.

President Chiluba prepared to change the Constitution to permit a third term. His efforts met great resistance from his Cabinet and members of

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112. For example, in Zambia the constitution provides that

The president may, at any time after a general election to the National Assembly and before the National Assembly is next dissolved, appoint such number of persons as he considers necessary to enhance the representation of the National Assembly as regards special interests or skills, to be nominated members of the National Assembly, so, however, that there are not more than eight such members at any one time.

ZAMBIA CONST. art. 68, (1) (1996).

Parliament. He was accused of using unconstitutional means, including corruption, to obtain a change in the Constitution. Those opposing his plans managed to secure the signatures of one-third of Parliament members on a petition for the impeachment of the president.<sup>113</sup> The ruling party, the Movement for Multiparty Democracy (MMD), used its disciplinary procedures to expel from the party twenty-two Parliament members who had signed the petition. Pursuant to the Constitution, once expelled, a member of Parliament loses his or her seat. The speaker of the National Assembly did not help matters. He declined to call Parliament into session, although it was mandatory for him to do so. When notice of impeachment is given by the requisite number of Parliament members, yet Parliament is not in session, the Zambia Constitution requires the speaker to convene Parliament within twenty-one days.<sup>114</sup> By refusing to call Parliament into session the speaker denied the members their day in Parliament and undermined the Constitution.<sup>115</sup> The South African procedure avoids the setting up of a tribunal and leaves the matter entirely to parliament. The South African Constitution provides that “[t]he National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of (a) a serious violation of the Constitution or the law; (b) serious misconduct; or (c) inability to perform the functions of office.”<sup>116</sup>

Another problem in the impeachment process is that many African constitutions do not lay down any detailed procedures for conducting the impeachment proceedings.<sup>117</sup> This omission creates a recipe for unnecessary delays and confusion. It is imperative that clear procedures relating to the manner in which the impeachment process is to be conducted are clearly laid down. Procedures could include (a) laying out in detail the allegations and serving a notice of them on the president, (b) supporting the allegations with any “necessary documentation,” (c) providing the president with an opportunity to respond orally or in writing to the national assembly on the allegations, (d) providing that the proceedings are held in public, and (e) fixing a specific time frame to allow all parties involved time to prepare their cases. The existence of procedures would help to regularize the impeachment process and over time allow the development of policies,

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113. *MPs Petition Speaker to Impeach Chiluba*, POST OF ZAMBIA, May, 4, 2001, at 1.

114. ZAMBIA CONST. art. 37, (1)(b) (1996).

115. *See Ndulo Advises Mwanamwambwa*, POST OF ZAMBIA, May 31, 2001.

116. S. AFR. CONST. art. 89, (1) (1996). “Anyone who has been removed from the office of President in terms of subsection (1) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.” *Id.* at art. 89, (2).

117. Hatchard, *supra* note 110, at 4.

procedures, proposals and precedent that can be applied consistently regardless of which party is in power.<sup>118</sup>

A related and necessary impeachment method is the procedure for removing a president who refuses to resign although, owing to illness or old age, he or she has become incapable of performing the functions of the office. The prospect of an ailing and incapacitated president hanging on to the office for a long time is not a remote one. Again, there is a conspicuous absence of procedure to deal with such a situation in many African states. The procedure in those countries where it exists (Uganda, Kenya, Zambia) is at the initiative of the cabinet who, by a majority of its members, may resolve that the mental or physical capacity of the president to discharge the functions of his or her office should be investigated.<sup>119</sup> Upon the cabinet's information or request to the president, the chief justice appoints an investigating board or tribunal of five qualified medical practitioners. This body conducts an investigation and reports whether, in its opinion, the president is, by reason of infirmity of body or mind, incapable of discharging the function of the office.<sup>120</sup> If the report confirms the president's incapacity, the chief justice certifies accordingly. The chief justice's certificate has the effect of causing the president to automatically vacate the office of president in Zambia and Gambia. In Kenya, however, the vacation takes effect at the end of three months only if, within that period, the chief justice has not again certified following another report of the medical board or tribunal, that the president has recovered his capacity.<sup>121</sup> The chief justice's certificate in Uganda is only a basis for action by the national assembly which, unless the president has resigned upon notification of the adverse medical report, might remove him by resolution. The cabinet could act in a like manner, if the president dissolves parliament. In Tanzania, incapacity to discharge the functions of the executive office on the ground of physical or mental infirmity, certified by the chief justice in his or her own discretion after request by a cabinet resolution and after consideration of medical evidence, does not vacate the presidential office, but only suspends the president until such time as he or she recovers capacity.

An increasingly common method of executive accountability is the adoption in several African jurisdictions of ministerial codes of conduct to govern the conduct of ministers and members of parliament. In Zambia, for

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118. See Akhil Reed Amar, *On Impeaching Presidents*, 28 HOFSTRA L. REV. 291, 300-11 (1999) (discussing what qualifies as impeachable offences in the American system and the procedures established for the impeachment process).

119. See, e.g., ZAMBIA CONST. art. 36, (1) (1996).

120. *Id.*

121. KENYA CONST. art. 12, (4) (1998).

instance, under the Parliamentary and Ministerial Code of Conduct, an allegation that a member of parliament or minister has breached a code of conduct may be made to the Chief Justice.<sup>122</sup> On receipt of the complaint, the Chief Justice appoints a tribunal to investigate the allegation. A tribunal consists of three persons appointed by the Chief Justice from amongst persons who hold or have held the office of judge of the Supreme Court or High Court.<sup>123</sup> The tribunal makes its findings and submits a recommendation to the president. This avenue has been used in Zambia to investigate ministers who have abused their authority or have engaged in corrupt practices. Hence, investigative organs play a useful role in democratic governance; the bodies can play the roles of early warning systems and curative institutions. Defects in governmental operations may be detected and remedial measures taken. However, these entities can only play a useful role where they are independent and impartial. They should not appear to be instruments of the president. Notably, a major shortcoming of the Zambian system is that the tribunal reports to the president and its findings are not binding on the president.<sup>124</sup> In contrast, the South African Constitution provides that members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.<sup>125</sup> A variation to the codes of conduct is Uganda's procedure which censures individual members of the executive. Article 118(1) of the Ugandan Constitution provides that:

Parliament may, by a resolution supported by more than half of all its parliament members, pass a vote of censure against a Minister on any of the following grounds: (a) abuse of office or willful violation of the oath of allegiance or oath of office; (b) misconduct or misbehavior; (c) physical or mental incapacity . . . ; (d) mismanagement; or (e) incompetence."<sup>126</sup>

Upon a vote of censure passed against a minister, the president must, unless the minister resigns from office, take appropriate action in the matter.<sup>127</sup> The censure of a minister is

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122. See Act No. 35 of 1994, Ch. 16 of the Laws of Zambia, PARLIAMENTARY AND MINISTERIAL CODE OF CONDUCT, [CODE OF CONDUCT], pt. IV (Administration and Enforcement §§ 13, 14, at <http://www.parliament.gov.zm/constitution.htm>. (describing the process for administering allegations of breach of conduct received by the Chief Justice).

123. *Id.* at § 14 (1).

124. *Id.*

125. S. AFR. CONST. art. 96, (1) (1996).

126. UGANDA CONST. art. 118, (1) (1995).

127. *Id.* at art 118, (2).

initiated by a petition to the President through the Speaker signed by not less than one-third of all members of Parliament giving notice [that] they are dissatisfied with the conduct or performance of the Minister and intend to move a motion for resolution of censure and setting out particulars of the grounds in support of the motion.<sup>128</sup>

With this procedure, individual ministers that abuse their authority can be targeted without involving the whole Cabinet.

An increasingly popular form of control over the executive is in relation to the term of office.<sup>129</sup> A number of African constitutions now contain provisions limiting the number of terms any one person may serve as president to two. This provision ensures regular change in the top leadership. It is further designed to ensure that oligarchy does not develop in a democracy. Undoubtedly, the office of president is an important position in any country and should not be monopolized by any one individual. An executive who holds power at his or her sole discretion is a dictator. There is then no meaningful restraint on the individual who occupies the office.

In addition, there is a need to develop procedures for the transition of power after elections. The transition of power is in itself a learning process—a deliberate ritual in installing democratic values and a culture of tolerance and orderliness in the conduct of public affairs. During this period, the incumbent and president-elect would learn to consult and cooperate with each other. In the final analysis this would prove a dividend to democracy as the administrative system would not suffer the cataclysm and convulsions accompanying abrupt changes of power. For example, a thirty-day transition period could help facilitate a smooth transfer of power. During this period the incumbent president would be responsible for the day-to-day administrative duties of the presidency, but would make decisions on important matters only with the consent of the president-elect. In particular, the outgoing president should neither initiate serious policy measures nor make important appointments to public offices. In addition, provisions relating to war, state of public emergency, and threatened emergency should be invoked only with the consent of the president-elect.

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128. *Id.* at art. 118, (3).

129. *See, e.g.*, S. AFR. CONST. art. 88, (2) (1996) (“[n]o person may hold office as President for more than two terms, but when a person is elected to fill a vacancy in the office of President, the period between that election and the next election of a President is not regarded as a term”); ZAMBIA CONST. art. 35, (1996) (“every President shall hold office for a period of five years . . . [n]otwithstanding anything to the contrary contained in this Constitution or any other Law no person who has twice been elected as President shall be eligible for re-election to that office”).

There is also need to provide for the retirement of heads of states. Most states now make specific provision for terminal benefits, a pension, and other benefits for former presidents. Such provisions are welcome insofar as they provide an incentive for leaders to withdraw gracefully from the political scene secure in the knowledge that they and their immediate family have life-long financial security.

Apart from the role of the legislature and the judiciary, effective control of government powers requires a number of outside institutions, some of which are often taken for granted in the well-established liberal democracies. Non-state institutions include a diversity of pressure groups and civil associations, in various kinds of organizations both formal and informal.<sup>130</sup> These institutions largely shape public opinion. An opposition party does indeed work to keep the government in check, but an opposition party could easily overlook or disregard some of the weaknesses or excesses of the government for the sake of political expediency. Thus, the duty of civil associations and interest groups is to ensure that the government properly governs. These groups make known their interests and insist that the government take them into account at all times. Indeed, serious political parties, whether or not in office, avoid antagonizing such interest groups because they know that they have the ability to vote any government in or out of office, or to keep any political party in and out of office. Such interest groups and civil associations only thrive in an atmosphere that guarantees freedom of association and information.

### CONCLUSION

The first generation of post-colonial leaders have largely vanished from the African political scene. Enjoying what Weber called "charismatic authority" by virtue of being the leader who had successfully challenged the colonial power, these leaders had created executive dictatorships through the centralization of state power in their own hands. In doing so, they strangled the development of democratic institutions. The result, as Wanjala describes, has been an "African leadership [that] has presided over the plunder and mismanagement of the continent's institutions to such an extent that despair and apathy have replaced hope in the future."<sup>131</sup>

The constitution is only one source of presidential power, albeit a supremely important one. The reality of power depends on other factors besides its formal structures as defined in the constitution. Two such

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130. See PHIROSHAW CAMAY & ANNE J. GORDON, *ADVOCACY IN SOUTHERN AFRICA: LESSONS FOR THE FUTURE I* (1998).

131. Wanjala, *supra* note 33, at 86.

factors of overwhelming importance are the character of the individual president and the circumstances of the country concerned. These include social and political forces, conditions, and events. It may even be said that the conditions in Africa encourage the development of an authoritarian presidency. To begin with, there is little importance attached to constitutional sanctions against the abuse of power, and no embedded democratic ethic. As Nwabueze has written,

The social values of the advanced democracies enshrine a national ethic which defines the limits of permissible action by the wielders of power. This national ethic is sanctified in deeply entrenched conventions operating as part of the rules of the game of politics. Thus, although an action may be well within the powers of the President under the constitution, still he cannot do it if it violates the moral sense of the nation, for he would risk calling down upon himself the wrath of public censure. The force of public opinion is sufficiently developed to act as a watchdog of the nation's ethic, and no action that seriously violates this ethic can hope to escape public condemnation. More than any constitutional restraints, perhaps, it is the ethic of the nation, its sense of right and wrong, and the capacity of the people to defend it, which provide the ultimate bulwark against tyranny.<sup>132</sup>

The traditional African attitude towards power is not much assistance in this regard. Nwabueze argues that authority in African traditional society is conceived as being personal, permanent, mystical, and pervasive. The chief is a personal ruler whose office is held for life. Serving as a legislator, executive, judge, priest, medium, father, and more, the chief's role pervades all relations in the community.<sup>133</sup> Nwabueze further argues that the modern African presidency reflects these characteristics.<sup>134</sup> Tradition has inculcated in the people a certain amount of deference towards authority.<sup>135</sup> The chief's authority is sanctioned in religion, and it is a sacrilege to flout it except in cases of blatant and systematic oppression, when the whole community might rise in revolt to de-throne, banish, or even kill a tyrannical chief. Thus, while customary sanctions against extreme cases of abuse of power exist, there is also considerable toleration of arbitrariness by the chief. This attitude towards authority tends to be transferred to the modern political leader. The vast majority of the population, which is still

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132. NWABUEZE, *supra* note 3. at 106.

133. *Id.* at 107.

134. *Id.*

135. *Id.* at 65.

illiterate, is not disposed to question the leader's authority and indeed disapproves of those who are inclined to do so.

There is yet another respect in which the conditions in African societies militate against effective restraint on presidential power. In a developing country where there is grinding poverty and mass unemployment, where the state is the principal employer of labor and almost the sole provider of social amenities, and where personal ambition for power, wealth, and influence—rather than principle—determines political affiliations and alliances, power to dispense jobs and patronage are very potent weapons in the hands of the president.<sup>136</sup> These weapons enable him or her to gain political advantage. Moreover, loyalty of the type secured by patronage can often border on subservience. It produces an attitude of dependence, a willingness to accept without question the wishes and dictates of the person dispensing the patronage. Therefore, patronage has been one of the crucial means by which African leaders have secured the subordination of the legislature, the bureaucracy, the police, and the army. This means that if presidential power in the African states is to be held accountable, special attention should be paid to the development of electoral processes that are able to ensure that qualified candidates are elected to the office of president. It also means that civil education must be intensified so that the values that underpin democracy take root in those states. In addition, it means that poverty—a major factor undermining democracy—must be addressed.

There is room for optimism over the viability of democracy in Africa. Popular opposition to undemocratic practices has become more persistent. The voice of dissent has found an unlikely ally in the form of economic recession. The deepening economic crisis in Africa has forced African governments to become more dependent on Western aid and to accept the role of good governance in the development process. As a result, the democratic practices of various regimes and their human rights records have become key factors in the extension of aid.<sup>137</sup> With this trend, African regimes are beginning to respond more positively to criticism of the constitutional and legal arrangements which constrain democratic participation of the people in the governing of their country and jeopardize effective government accountability. An important development in the emergence of good governance in Africa remains the need to develop

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136. For a discussion of Africa's economic situation, see generally Adebayo Adedeji, *The African Economy: Overview and Prospects for Recovery and Sustained Development*, in AFRICA LEADERSHIP FORUM. THE LEADERSHIP CHALLENGE FOR IMPROVING THE ECONOMIC AND SOCIAL SITUATION OF AFRICA I (Adebayo Adedeji & Tariq Husain eds., 1998).

137. Patricia Armstrong, *Human Rights and Multilateral Development Banks: Governance Concerns in Decision Making*, 88 AM. SOC'Y INT'L L. PROC. 271 (1994).

effective constitutional arrangements that ensure that the executive abides by constitutional government. Mechanisms should be strengthened to ensure that an over-zealous and interventionist president should have no capacity to interfere with the legislative and judicial branches of government.