Leaders Behaving Badly: The Perils of Bad Governance by Africa's Tyrants Masquerading As Democrats

Okechukwu Oko, Southern University Law Center
LEADERS BEHAVING BADLY: THE PERILS OF BAD GOVERNANCE BY AFRICA’S TYRANTS MASQUERADING AS DEMOCRATS

By

Okechukwu Oko*

Introduction 2

1. Features of Governance in Africa 8
   A. Ineffective Leadership 8
   B. A Dictatorship in Disguise 13
   C. A Dangerous Absence of Checks and Balances 28
   D. A Hierarchy of Cronyism 32
   E. Intimidating the Opposition 36

II. The Way Forward 46
   A. Effective Leadership 48
   B. Establishing Accountability 54
   C. Allowing Transparency 58
   D. Treating Opposition and Critics with Respect 60
   E. Revamping Public Institutions 66

Conclusion

* Dodson-Hooks Professor of Law, Southern University Law Center. LL.B. (Honors), University of Nigeria Law School; LL.M., University of Nigeria; LL.M., J.S.D., Yale Law School. I gratefully acknowledge the superb assistance rendered by Walter Gabriel Jr., JD ‘09.
Introduction

Africa’s woes — social disequilibrium, civil wars, ethnic unrest, social disequilibrium, poverty, corruption, decrepit institutions, deteriorating and deteriorated institutions are all public knowledge and have been the subject of several studies and analysis by scholars, politicians and policy makers. Kofi Annan, former United Nations Secretary General, stated that “for many people in other parts of the world, the mention of Africa evokes images of civil unrest, war, poverty, disease and mounting social problems.”

Recently, Dambisa Moyo, a Zambian Scholar, in her insightful book on the adverse effects of foreign aid in Africa, posed the following questions:

Why is it that Africa alone among the continents of the world seems to be locked into a cycle of dysfunction? Why is it that out of all the continents in the world Africa seems unable to convincingly get its foot on the economic ladder? Why in a recent survey did seven out of the top ten “failed states” hail from that continent? Are Africa’s people universally more incapable? Are its leaders genetically more venal, more ruthless, more corrupt? Its policy makers more innately feckless? What is it about Africa that holds it back, that seems to render it incapable of joining the rest of the globe in the twenty-first century?

Unlike Dr. Moyo who traces the roots of Africa’s problems to foreign aid, I argue that bad governance accounts for Africa’s current predicaments. Bad governance provides the necessary

---


3 Dambisa Moyo, supra note 1 at 6-7.

4 Id.
antecedents to the social ruins that have disfigured Africa.\textsuperscript{5} Wangari Maathai, winner of the Nobel Peace Prize from Kenya, expressed the views widely shared by most Africans: “One of the major tragedies of post colonial Africa is that the African people have trusted their leaders, but only a few of those leaders have honored that trust. What has held Africa back and continues to do so has its origins in lack of principled, ethical leadership.”\textsuperscript{6} Chinua Achebe, a Nigerian scholar and novelist, was even more emphatic in his excoriation of African leaders for the social problems in Africa. The trouble with Nigeria according to him “is simply and squarely a failure of leadership.”\textsuperscript{7}

This paper examines the condition of governments in Africa and provides a critical analysis of the problems that deform governance and prevent leaders from delivering the promises of democracy to their citizens. The promises of, and commitment to, good governance made by African leaders often turn out to be vacuous soothing words, feckless rhetoric, and hollow gestures frequently and fatuously repeated as part of their farcical attempts to poultice international concerns about the quality of governance in Africa. Despite the establishment of constitutional democracy, African leaders continue to exercise power in unprincipled and pernicious ways, using the machinery

\textsuperscript{5} CRS REPORT FOR CONGRESS, NIGERIA CURRENT ISSUES 1 (2008) (“poor governance has severely limited infrastructure development and the provision of social services, hindering economic development and leaving much of the country mirred in poverty.”); Derin K. Ologbenla, Leadership, Governance and Corruption in Nigeria, 9 Journal of Sustainable Development in Africa, 97 (2007) (“Independent Nigeria has been grappling with the three monsters of corruption, bad leadership and bad governance.”).

\textsuperscript{6} Maathai, supra note 1 at 25.
of government to harass opponents while enriching themselves and their cronies. This paper is divided into two broad parts. Part I examines the condition of governments in Africa.

---

7 CHINUA ACHEBE THE TROUBLE WITH NIGERIA, 1 (1983).
The troubles with governance in Africa result chiefly from the attitudes, character deficits, and tyrannical tendencies of ravenously corrupt leaders masquerading as democrats. African leaders obsessed with cultivating and acquiring power care less about the needs and welfare of their citizens and are even more disturbingly unconcerned about the rule of law. A cursory survey of governance in Africa reveals that African leaders, despite their democratic pretensions are nothing but pale simulacra of their counterparts in established democracies. Most African leaders are yet to acquire the mien or even the gravitas to govern as democrats while others are indifferent to the norms and restraints that sustain democratic governments. They are not only tyrants but also are generally ineffective, even incompetent leaders clearly lacking the vision and moxie to lead their countries. Some of Africa’s leaders are too blinkered to understand and appreciate constraints on their powers and the central values of the rule of law, transparency and accountability. Some others are too arrogant or intellectually ill-equipped, sometimes both, to govern effectively. The scale and magnitude of leadership failures in Nigeria caused Professor Karen Drew, in a 2006 report prepared for the Freedom House publishers, to note that:

As Nigeria enters the seventh year of its latest effort of build democratic rule, the country remains trapped at the political crossroads, vacillating between democratic consolidation and the slow road to decay and dissolution. With an estimated population of 130 million growing at nearly 3 percent annually, and an oil output of 2.5 million barrels per day increasing to 4 million by the end of the decade, Nigeria should be taking its rightful place as the giant of Africa. Instead, the giant has been brought to its knees by 20 years of brutal and corrupt military rule, which left a legacy of executive dominance and political corruption in the hands of Nigeria’s so-called...

---

8 Kenneth Roth, executive Director of Human Rights Watch in his interesting article appropriately titled despots masquerading ad democrats, uncovered the democratic pretensions of leaders around the world who profess commitment to constitutional democracy but continue to act in ways antipodal to democracy. Kenneth Roth, Despots Masquerading as Democrats, 1 Journal of Human Rights Practice, 140 (2009).
godfathers — powerful political bosses sitting atop vast patronage networks who view the government primarily through the lens of their own personal enrichment.9

African leaders imbued by power and sated with arrogance and narcissism not only engage in epochal human rights violations, but have also undermined and crippled institutions and processes that serve as anchors for good governance. The dominant impulse of African leaders is to attain power, and they are untroubled by the method used to achieve their objective, no matter how destructive. Once they attain power, they distort, disfigure, and manipulate legal rules, institutions, and democratic processes to ensure hegemony over the nation.10 African leaders typically subvert accountability mechanisms, blunt the system of checks and balances, personalize government, and force their citizens to live under the will of the leader, not under the rule of law as mandated by constitutional democracy. What started as a democratic process has nearly calcified into full-blown dictatorship in most parts of Africa.11 This part of the paper identifies and examines five


10 Describing the tactics used by Nigerian politicians to retain power, Professor Omololu Fagbadebo stated that: various tactics were employed for regime survival. This was worsened by a prolonged experience with dictatorial military rule. The common political intrigue associated with the civilian era was the propensity of the political elites to hang on to power through electoral malpractices, and lately, orchestrated manipulation of the constitutional rules. . . Thus, meaningful developmental programs were neglected, as efforts were concentrated on how to curtail the rising opposition for offices.


11 Daniel Chirot, Post Colonial Africa and Middle Eastern Tyrannies: Combining the Worst of the Classical and Modern Traditions in CONFRONTING TYRANNY: ANCIENT LESSONS FOR GLOBAL POLITICS 85 (Toivo Koivukoski & David Edward Tabachnick eds. 2005) describing the nature and quality of rulers in Africa, the author stated that:

Even in the classical sense of the word, “tyranny” as the rule by an individual or small clique that has low legitimacy with the population, that is abusive and corrupt, and that has damaged the well-being of most of those it rules, the average post colonial African regime has been tyrannical.

The excesses of African leaders have spurned a litany of articles. See e.g. Robert I. Rotberg, Africa’s Mess, Magabe’s Mayhem, Foreign Affairs July-August 2000, 47-61 (discussing Mugabe’s excesses); Aili Mari Tripp...
characteristics that define and deform governance in Africa, namely ineffective leadership, a dictatorship in disguise, a dangerous absence of checks and balances, a hierarchy of cronyism, and intimidation of the opposition. These problems affect and distort governance in most African countries with varying degrees of intensity and generally prevent leaders from providing good governance.

Part II offers suggestions that will address the problems discussed in part I. Most of the problems of bad governance in Africa are self inflicted, caused by leaders who engender and sustain a culture that is inimical, even hostile to the imperatives of good governance. Somewhere in the struggle for power, and amid the din of electoral politics, the nation’s interest and welfare of the citizens have lost value and currency in the eyes of leaders. All the elements of good governance – accountability, transparency, restraints – have been sacrificed to the imperatives of greed and hubris.

As Africa seeks to move away from a past characterized and deformed by dictatorship and failed attempts to deepen democracy, leaders need Copernican attitudinal shifts and mental adjustments. Much of African leaders’ tropism toward bad governance and undemocratic practices are inspired by history and experience. Because of years of dictatorship, most leaders acquired dictatorial values that

---

Changing Face of Authoritarianism in Africa: The Case of Uganda, Africa Today, No. 3, p. 3, 6 (2004) (examining dictatorial attitude of Uganda’s President); Robert Rotberg, Strengthening African Leadership: There is Another Way, in BEYOND HUMANITARIANISM: WHAT YOU NEED TO KNOW ABOUT AFRICA AND WHY IT MATTERS 165 (Princeton Lyman & Patricia Dorff eds. 2007) (“Africa has long been saddled with poor, even malevolent leadership; predatory kleptocrats, military-installed autocrats, economic illiterates, and puffed-up posturers.”); Nicholas van de Walle, Africa’s Range of Regimes, 13 J. DEM. 66, 69 (2002) (“in most African countries, power lies with a president and a small ruling class who use the state’s resources to keep the support of a large network of political clients.”)
continue to shape and influence their actions. It may be too much to expect citizens steeped in authoritarian values to automatically alchemize into democrats simply because of a transition to democracy.

Only good governance can counteract the prevailing image of African governments as paradigms of sloth and corruption. To provide good governance, leaders must modify their behavior and recalibrate their moral compasses to observe more consistently the rule of law and constraints on their powers. They must use their powers wisely and responsibly and should at all times be motivated not by conceit, self interest or hubris, but only by the desire for public good and national interest. They must also rescind efforts at personalizing government and give primacy to the needs and welfare of citizens by whose authority and on whose behalf they hold and exercise their powers and authority. They need to provide effective leadership, the kind so very well articulated by Sir David Owen, former British Foreign Minister:

> The virtues of a representative democracy lie in the scope it gives elected leaders to exercise real leadership and to show the decisiveness most voters prefer to hesitation, doubt and vacillation. But the exercise of leadership needs to carry the trust of the electorate which is usually lost when the leader crosses the borderline between competent decision making and hubristic incompetence.\(^\text{12}\)

Citizens in a constitutional democracy elect leaders with the justifiable understanding that they will provide good governance. Good governance demands an open, transparent and accountable government that is respectful of the rule of law, that gives primacy to interests and welfare of the citizens, and that will generally create a conducive environment for citizens to pursue and advance

---

\(^{12}\text{David Owen, In Sickness and in Power: Illness in Heads of Government During the Last 100 Years, 363-4 (2008).}\)
their legitimate interests.\textsuperscript{13} African leaders know what citizens expect from them but are often disinclined from pursuing the central tenets of good governance for purely selfish reasons. Institutionalizing good governance will choke off their means of maintaining power and enriching themselves. Africa will truly be a remarkable place if leaders can subordinate their selfish interests to the overriding national interests in good governance and democratic consolidation. Governance in Africa will be significantly reformed and improved if leaders can pursue the following objectives: providing effective leadership, promoting accountability and transparency, treating opposition with respect, and revamping public institutions that anneal both good governance and the democratic process. These objectives, if seriously and vigorously pursued, will reinvigorate and entrench the essential tenets of good governance obliterated by appallingly hubristic and provocatively corrupt African leaders.

**Part I: Features of Governance in Africa**

Ineffective Leadership

The *raison d’être* of government is to provide good governance described by Professor Robert Rotberg as “the delivery of high quality political goods to citizens.”\textsuperscript{14} Political goods, he argued, include “security and safety, rule of law, participation and human rights, sustainable economic opportunity and human development.”\textsuperscript{15} Most African leaders have failed to meet the

\textsuperscript{13} \text{Maathai, supra note 1 at 113 (noting that “good leadership would provide the milieu in which citizens can be creative, productive, and build wealth and opportunity.”).}

\textsuperscript{14} \text{Robert Rotberg, Governance and Leadership in Africa: Measures, Methods and Results, 62 Journal of International Affairs, 113 (2009).}

\textsuperscript{15} \text{Id.}
The ineffectiveness of leaders is traceable to the nature of Nigerian politics. Nigerian politicians aim solely to win elections and to enjoy the swag of victory. Policies, programs or even ideas for governing the country rarely form part of their scheme for attaining power. There are no debates among the candidates, no meaningful manifestos, and candidates for elective offices neither have nor are they expected to provide their ideological perspectives on how to govern. The few who assume leadership positions are often ominously ill prepared to effectively discharge the duties of their respective offices. Some of them assume office as relative *tabula rasa* and have never thought through how they will tackle the nation’s problems. For example, President Obasanjo, according to Professor Abubakar Siddique Mohammed, “did not have any articulate program on assumption of office. The program drawn for him by some eminent technocrats, academics and elder statesmen was ignored. He followed his moods, prayers and idiosyncrasies.” More troubling is the fact that some of them are completely unaware of their countries’ major problems and even after attaining power spend little or no time trying to develop agendas or plans for the country. Not only do they fail to improve the lot of their citizens, but they also seem unconcerned and uninterested in trying to do better. Rather than confront the issues facing the nation, the government engages in sinuously orchestrated demarches both to circumvent the will of the people

---

16 George Klay Kieh Jr. Introduction: Africa and the old Millennia, in *AFRICA AND THE THIRD MILLENNIUM*, 1 (George Klay Kieh Jr. 2008) (“the continent’s local ruling classes have failed to provide the critical leadership that is exigent and imperative for exiting the neo-colonial state and ushering in a new pro-people, pro-democracy and pro-development construct.”).

17 Nicholas Van de Walle, Meet the New Boss, Same as the Old Boss? The Evolution of Political Clientelesim in Africa in *PATRONS CLIENTS AND POLICIES*, 50, 62 (Herbert Kitschelf & Steven I. Wilkinson eds., 2007) (“a third salient feature of the emerging electoral politics in contemporary Africa has been the absence of programmatic debates . . . ideological differences have been minor across parties and debates about specific policy have been virtually non existent.”).

18 Abubakar Siddique Mohammed, Self Succession in Nigeria: A Comparison of IBB and OBJ, in *GOVERNANCE AND POLITICS IN NIGERIA* 74, 89 (Sam Oyovbaire ed. 2008).
and to blunt populist demands for accountability.°

The powers and majesty of high office incline most leaders to adopt a “know-it-all” attitude toward governance that prevents them from listening to their advisers and citizens whose ideas run contrary to their own. Most leaders are afflicted by the debilitating political vice of arrogance that prevents them from educating and informing themselves about the demands and challenges of high political office. They prefer, and indeed substitute, monologues and dictation for reasoned debates and meaningful discussions about important national issues. They often surround themselves with incompetent and unskilled tyros who owe their appointments to their loyalty or closeness to the office holder. The few competent aides are often insufficiently disenthralled from the leader or too scarred to present them with an honest, unvarnished, and objective assessment of government policies and programs. It is therefore not surprising that African governments are ineffective, unfocused, inefficient, and for the most part, incapable of meaningfully and creatively dealing with their countries’ problems.®

Aided by obliging legislators, these monofocal dictators, whose minds are warped and distorted by the desire for self advantage, typically pursue their policies, programs, and even their excesses and preferences with little to no concern for the interest or welfare of the citizens. Ignoring the feelings of citizens is traceable to executive hubris that has long been the defining trait of post independent governments in Nigeria.® Rather than serve the people, governments in Africa are

---

19 Meredith, supra, note 1 at 218-248 (discussing efforts by Africa’s tyrants to muzzle dissent and retain power).

20 Lauren Pioch, NIGERIA: CURRENT ISSUES, CRS REPORT FOR CONGRESS, supra note 5 at 1 (“Despite its oil wealth, Nigeria remains highly underdeveloped. Poor governance has severely limited infrastructure development and the provision of social services, hindering economic development and leaving much of the country mired in poverty.”).

21 HUMAN RIGHTS WATCH CRIMINAL POLITICS, VIOLENCE “GODFATHERS AND CORRUPTION IN NIGERIA, 41 (2007) (“throughout Nigeria there exists a deeply entrenched culture of impunity that developed at all levels of Nigeria’s
driven by two dominant concerns: tightening their grip on power and amassing resources both to sustain their ostentatious life styles and to reward their supporters.\textsuperscript{22} They proceed on the arrogant and gravely flawed assumption that citizens will bovinely accept their policies and programs and therefore cavalierly pay little or no attention to the social maladies that scourge the nation and its citizens.\textsuperscript{23} Unable to inspire and motivate citizens by their records and conduct, they resort to intimidation and brutal displays of force.\textsuperscript{24}

Professor Diamond’s vignette of the problems of democracy poignantly locates bad governance as the chief problem that continues to frustrate efforts to deepen democracy in fragile democracies. He stated that:

\begin{quote}
There is a specter haunting democracy in the world today. It is bad governance – the governance that serves only the interests of a narrow ruling elite. Governance that is drenched in corruption, patronage, favoritism, and abuse of power. Governance that is not responding to government under military rule and remains as a source of the country’s worst human rights abuses.”\end{quote}

\textsuperscript{22} Professor George B.N. Ayittey, a distinguished Ghanian scholar and the President of Free Africa foundation stated that:

The African state has evolved into a predatory monster or a gangster state that uses a convoluted system of regulations and controls to pillage and rob the productive class — the peasantry. It is common knowledge that heads of state, ministers and highly placed African government officials raid the African treasury, misuse their positions in government to extort commissions on foreign loan contracts, skim foreign aid, inflate contracts to cronies for kickbacks and deposit the loot in overseas banks. The very people who are supposed to defend and protect the peasants’ interest are themselves engaged in institutionalized looting.


\textsuperscript{23} Id. at 12. noting that “the Obasanjo regime, though far better than the string of military gangster regimes it succeeded, has been scandalously incompetent and hopelessly ineffective in tackling the myriad of social ills confronting Nigerians. Provision of basic social services –clean water, reliable electricity, etc – remains sporadic and anemic.”

\textsuperscript{24} See pages 12–24 of text infra.
the massive and long-deferred social agenda of reducing inequality and unemployment and fighting against dehumanizing poverty. Governance that is not delivering broad improvement in people’s lives because it is stealing, squandering or skewing available resources. The Philippines, Bangladesh, and Nigeria lie at different points along the path of democratic decay, but they reflect a common problem. Where power confers virtually unchecked opportunities for personal, factional, and party enrichment, it is difficult if not impossible to sustain democratic rules of the game. The democratic spirit of elections drowns in vote-buying, rigging, violence, or all three.\textsuperscript{25}

Compromised by corruption and hobbled by cronyism, civilian governments in Africa have become theaters of sloth and mediocrity instead of symbols of change and development.\textsuperscript{26} Unable to meaningfully address the nation’s pressing problems, leaders resort to, and glorify \textit{ad hocism} as the style of government. Most African leaders have lost the political \textit{savoir faire} to meaningfully serve the society and are concerned only with consolidating their power.\textsuperscript{27} Unable or unwilling to meaningfully tackle the nation’s pressing problems, they pedantically recycle promises and ineffective nostrums they neither hope to keep nor intend to implement. On virtually all social and economic issues, the government’s ideas are often shaggy, its policies short sighted and self indulgent, its efforts anemic, its execution slapdash, and record of achievements are unflattering and even pitiful.\textsuperscript{28} Failed government policies, corruption, and incompetence have set in motion a series


\textsuperscript{26} Fagbadebo, \textit{supra} note 10 at 35 (noting that “a failed, corrupt and inept leadership coupled with inclement domestic socio-political environment have plunged development performance in Nigeria into the abyss.”).

\textsuperscript{27} Chris Alin Lackey & Ben Rawlence, in a devastatingly accurate assessment of President Obasanjo’s rule and the 2007 elections, stated “Nigeria’s elections — rife with vote rigging, violence and intimidation --- are only the latest of the corruption and decay that have characterized Obasanjo’s rule.” \textsc{Human Rights Watch}, \textit{Nigerian Nightmare: Elections Manifest Entrapped Patterns of Corruption, Human Rights Abuse in Government}, available at \url{www.hrw.org/english/docs/04/25/Nigeri5770.htm}.

of problems that further weaken the economy, enfeeble democracy, and expose citizens to economic hardships and poverty.  

A Dictatorship in Disguise

Even after democratic transitions, most African nations remain ruled by civilian leaders insufficiently committed to the ideals and dictates of constitutional democracy.  

Democratic leaders, like their military predecessors, have minimal respect for democracy and are impatient with rules and processes that, in their view, constrain their powers. They have repeatedly shown themselves to be indifferent, if not actively hostile to democratic values. Armed with omnipotent powers and unsupervised control of the machineries of government, African political leaders are growing more autocratic and unaccountable. They feel barely limited by the constitution and even far

Blaming Africa’s economic and social problems on poor planning and bad policies introduced and implemented by the leaders, Professor Wayne Nafziger noted that:

African leaders’ economic policies during the 1970s and early 1980’s emphasized detailed state planning, expansion of government-owned enterprises, heavy-industry development and government intervention in exchange rates and agricultural pricing. These policies contributed to economic decline and growing poverty (especially in rural areas) and inequality. The political elites used the state to pursue economic policies that supported their interests at the expense of Africa’s poor and working classes.


Michelle Faul, West Condemns Mugabe, Ignores Other Africa’s Despots, SOUTH TOWN STAR, July 6, 2008, at A20. (“Today only 21 states including Botswana and South Africa, hold relatively free elections. Many of the remaining 31 are ruled by despots, including many offering the illusion of democracy with elections like those Mugabe held.”).

Adigun Agbaje, Nigeria: Prospects for the Fourth Republic, in DEMOCRATIC REFORM IN AFRICA: THE QUALITY OF PROGRESS 201, 216 (Gyimah-Boadi ed. 2004) (the president and many of the governors heading the executive branch appear to have thoroughly imbibed a militaristic culture intolerant of institutions and procedures of restraint. This intolerance manifests itself in their dealings with the legislature, occasionally in the manner in which they or their agents respond or fail to respond to judicial pronouncements, and also in the peremptory manner in which they deal with lower tiers of government).
less by public opinion. They engage in grotesque displays of power and exercise their authority in contemptuous disregard for the rights, liberties, and welfare of the citizens.\textsuperscript{32} Though the government speaks wistfully about democracy, probity, and respect for the rule of law, it is by all accounts corrupt, ineffective, and too often unaccountable.\textsuperscript{33} Political leaders offer a homily of democratic values and respect for rights while they trivialize and denigrate civil rights and liberties, muzzle dissent, and expect, or rather demand, robotic obedience from the citizens.\textsuperscript{34} Robert Rotberg, one of the world’s leading experts on governance, provides a depressing but accurate description of leaders in Africa:

Leadership in Africa is typified more by disfiguring examples — Idi Amins and Robert Mugabes – than by positive role models such as Nelson Mandela and Seretse Khama. Other clusters of developing nations, such as Southeast Asia or Latin America, exhibit wide variations in leadership quality, but none is so extreme in its range. During the past three decades, roughly 90 percent of Sub-Saharan Africa’s leaders have behaved despotically, governed poorly, eliminated their people’s human and civil rights, initiated or exacerbated existing civil conflicts, decelerated per capita economic growth and proved corrupt.\textsuperscript{35}

\textsuperscript{32} See note 11 \textit{supra}.

\textsuperscript{33} Profesor Van de Walle aptly describes the typical powers and disposition of African presidents:

Throughout the region, power is highly centralized around the president. He is literally above the law, controls in many cases a large portion of state financing with little accountability, and delegates remarkably little of his authority on important matters. In most countries, the presidency emerges as the dominant arena for decision making, to the point that regular ministerial structures are relegated to an executant role. Nicholas Van de Walle, \textit{Presidentialism and Clientelism in Africa’s Emerging Party Systems}, Journal of Modern African Studies Vol. 41, 310 (2003).

\textsuperscript{34} The anti democratic practices of African rulers continue despite of their commitments to promote good governance by ensuring transparency and good governance, and to strengthen political institutions to entrench a culture of democracy and peace. \textit{See AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE}, Article 12(1) & (2) adopted by the eighth ordinary session of the assembly, held in Addis Ababa, Ethiopia, 30 Jan. 2007.

\textsuperscript{35} Robert Rotberg, The Roots of Africa’s leadership Deficit, 1 (2003) available at \url{www.worldpeacefoundation.org}. 
Rulers who finagle their way to power by rigging elections often overwhelm accountability mechanisms designed to constrain and check excesses of leaders. In such a context, rulers operate with neither consent of the governed nor respect for constitutionalism, and are untroubled by public opinion. Everything, including the citizens’ rights and liberties, depend on the forever changing mood and whims of the leaders, especially the president. The dictatorial tendencies of elected officials led one journalist to note that civilian presidents still “wear a dictatorial toga.” Similarly, late Professor Claude Ake’s observation in 1996 has more resonance today than when it was made. He observed that “self appointed military or civilian dictators are being replaced by elected dictators.” The troubling level of authoritarianism displayed by most African leaders caused Noble Laureate, Wole Soyinka, to declare, albeit in a different context, that they “fail to understand that a people must be led in dignity, not dragged on their knees and bellies on the pathway to social transformation.”

Nigeria operates a federal system of government akin to the United States system. The constitution, however, vests the President with enormous powers and significant control over the nation’s resources and revenue. The powers of the president are so enormous and overwhelming

---


37 CLAUDE AKE IS AFRICA DEMOCRATIZING, 6 (1996).


39 There exists a central government, thirty-six state governments, a Federal Capital Territory Authority and several Local Government Authorities.

40 CONSTITUTION, art. 5 (1999) (Nigeria) (vesting executive powers of the federation in the President)
that professor Kwasi Prempeh declared that

Nothing good that needs done and nothing bad that needs undone in the African state seems unlikely to proceed without the personal initiative or intervention of the president. The pace and direction of progress or reform on nearly every important issue, appears to depend on the level of a president’s personal interests and commitment.”

The constitution also places significant constraints on the powers of the presidency, designed to ensure that presidents do not become tyrants. Despite these limitations, African presidents often think and behave like despots or even conquistadors presiding over vanquished citizens with little or no rights. Most African presidents use their enormous powers and resources to overwhelm and neutralize accountability mechanisms, notably the legislature and the courts. Professor Richard Joseph paints an accurate but disturbing portrait of African leaders:

Few African leaders, even in electoral democracies, govern today as committed democrats. Some, such as Abdoulaye Wade of Senegal, spent many years in opposition sharply criticizing incumbents as undemocratic, only to behave nepotistically and autocratically once they themselves gained power. Contemporary African leaders may govern as autocrats (Meles Zenawi of Ethiopia, Hassan Al-Bashir of Sudan, Isaac Afwerki of Eritrea) or as Democrats (John Kufor of Ghana, Amadou Toumani Toure of Mali, Jakaya Kikwete of Tanzania) or else may oscillate between the two models. Nigeria’s Obasanjo is a prime example of the last category. During his 1979-1999 stint in the political wilderness, including four years as a prisoner of brutal dictator Sani Abacha, Obasanjo built an international reputation as a strong promoter of democracy. After he returned to power in the 1999 Presidential election, however, whether he governed as an autocrat or democrat depended on his own, often opaque political calculation.


42 George Klay Kieh Jr., The Travails of Democratization in Africa, in AFRICA AND THE THIRD MILLENNIUM 151 (George Kaly Kieh jr. ed. 2008) (“the immense and unchecked powers of the presidency enable the institution to subordinate the legislature and the judiciary to its dictates.”)

Executive powers present opportunities for abuses in a democratic system of government, even in established democracies. Power induces what David Owen, a medical doctor and former British Foreign minister, called the “hubris syndrome.” Dr. Owen advances the thesis that power leads to changes in the mental makeup of its holders, which results in hubristic behavior. The significant and most dominant concern for citizens in a democracy is how to constrain the hubristic behavior of leaders whose minds are warped and perverted by power to ensure that they observe the constitutional restraints on their powers. Every democracy faces such challenges, but it seems that the problems are more pronounced, pervasive and persistent in fragile democracies because of the near absence of, or weakness of, mechanisms designed to check and curtail the excesses of the executive, and also because of the palpable lack of democratic culture. Substantial powers without democratic temper and restraints catalyze contempt for laws and constitutional restraints and unleash entropic forces that drain democracy of meaning and relevance, thus leaving citizens at the mercy and good faith of their rulers. Ineffective and in some cases completely overwhelmed accountability mechanisms create powerful and ever growing incentives for leaders to act like tyrants and dictators. Explaining the persistence of leadership excesses in Africa despite constitutional democracy, Professor Rotberg observed that:

Whereas American and European politicians might want to behave as autocrats, they are restrained by the norms of their dominant political cultures and the likelihood of being found out. In Africa, shame is less apparent than a kind of entitlement. Once elected or chosen by a military junta to rule, the president confuses himself with the state – in some way thinking of himself as embodying and being the state.”

44 OWEN, supra note 12 at xxii.

45 Id.

46 Rotberg, Roots of Leadership Deficits in Africa, supra, note 35 at 32.
A similar explanation was offered by Richard Dowden, an international journalist who spent significant research time in Africa. Explaining what makes African leaders different, Richard Dowden argued that:

Elsewhere rulers are constrained by constitutions, institutions and pressure groups that prevent them becoming megalomaniac, kleptocratic dictators. African politics are all local and personal. They have had little to do with how Africa is to be ruled and everything to do with who is to rule. Ideology, principle, political parties and policy have been merely disposable weapons in a battle for power between individuals and power blocs. And having obtained the political kingdom, the winners hold on to it at any price — sometimes even at the cost of destroying the country itself.47

The impetus for abuses is further heightened once leaders realize that they can overwhelm accountability mechanisms. African leaders typically abominate limitations on their powers and devise schemes to overwhelm or circumvent accountability mechanisms, especially judicial review and legislative oversight. Presidents want neither to be constrained by law nor held to standards they demand from others. Institutions that serve as counterweights to dictatorship, especially the courts and the legislature, have been systematically neutered by overbearing presidents.48 As a report from the Electoral Reform Committee found, “the principles of checks and balances which is central to the Presidential system has been difficult to practice largely because the executive overshadows the legislature and the judiciary.”49

---

47 Dowden, supra note 1 at 70.


legislature and the courts — have been overwhelmed and corrupted by the executive, the vectors of power inevitably point to the direction of dictatorship.\textsuperscript{50} Leaders swooning with desire to entrench themselves in office and secure hegemony over the nation have the opportunity and a conducive environment to sate their imperial appetites and sooth their tyrannical instincts. In a searing denunciation of President Obasanjo’s dictatorial tendencies, two Nigerian scholars stated that:

\begin{quote}
Evidently, Obasanjo who was ushered onto the seat of power based on constitutional democracy amidst great expectations, instead sought from initial time to implement a bizarre imperial presidency. In his autocratic mode, regardless of the constitution, he was the law, lawgiver, custodian of knowledge, integrity, due process, morality and rectitude. He even conceived of himself as the sovereign authority in the land. He hectored and bullied public officials. Moreover, he presumed to have the powers to sack his Vice President. He embraced and extolled failures, fakes, and “garrison commanders” and installed political gangsterism, terror and blackmail into the center stage of national politics. He stoked flames of discord in the land almost everywhere. When he was not razing down communities, he was perverting the police to abduct a state governor or teleguiding thugs to burn and rampage through a state, or else perverting the EFCC to illegally imprison the legislators of renitent states and destabilize their governance machineries.\textsuperscript{51}
\end{quote}

In Africa, the pomp and powers of the presidency in the hands of leaders unschooled in democratic values and with messianic attitudes have turned into nightmares for the citizens. Leaders who win elections are transformed by power and turned into tyrants who disdain limitations on their powers. The statement that power tends to corrupt and absolute power corrupts absolutely is so true

\textsuperscript{50} Temi Harriman, Is There a Future for Democracy in Nigeria? lecture delivered at the department of International Development, Oxford University, June 5, 2006 at p.2 (arguing that “the major cause of political instability in Nigeria is the failure of politicians to sufficiently adhere to the basic tenets of democracy and constitutionalism. It is this that has given rise to abuse of power, brazen corruption, disregard for due process and the rule of law, intolerance of political opposition, abuse of the electoral process and the weakening of institutions.”)

\textsuperscript{51} Ahmadu Abubakar & Chu S.P. Okongwu, Resources, Resource Use and Reforms, in GOVERNANCE AND POLITICS IN NIGERIA, supra note 18 at 265-266.
in Africa, a continent where institutions and processes that check executive excesses are either non-existent or moribund. For African leaders engaged in monumental imposture, executive powers have turned out to be “a standing temptation to monarchical abuses.” Their pervasive and persistent disdain for constitutional restraints lead them to undermine accountability mechanisms typically used to check leadership excesses in a democracy. Undermining or circumventing accountability mechanisms serves as a surefire recipe for dictatorship. Disabling accountability mechanisms has disturbing implications for both the nation and the citizens. It turns governance into a specter of hauteur and hubris as leaders with unbridled powers turn the nation into a private empire and govern as they please. It subverts the foundations of democracy and leaves the citizens vastly more vulnerable to human rights abuses and predation of the leaders. The absence or near total domination of accountability mechanisms enables the government to turn the machinery of government into instruments of terror and self-aggrandizement.

The government’s trend toward despotism is more accurately revealed in how it treats the citizens. Public opinion that typically serves to check executive excesses has no chastening effect

52 George Will, Summoning the United States Up from Childishness, available at www.realclearpolitics.com

53 For an excellent discussion of the strategies used by African rulers to blunt demands for reform and accountability, see Bates, supra note 1 at 117-27.

54 Joseph, supra, note 43 at 102. (“with a few exceptions such as Mugabe, African rulers today avoid denying democracy outright, and instead seek to outflank it by expanding their personal powers at the expense of institutions that may constrain them.”).

55 Bates, supra note 1 at 115. (noting that not being accountable, governments in Africa could adopt policies that conferred concentrated benefits on the elites while imposing widely distributed costs on others).

56 Richard Joseph, Africa: States in Crisis. 14 J. DEMOCRACY, 159, 163 (2003) (“whatever the rhetoric, the reality is that those who win governmental office concentrate on serving themselves and their narrow circles of supporters.”).

57 INTERNATIONAL IDEA DEMOCRACY IN NIGERIA, 60 (2000) (noting that public opinion is a counterweight to power as it keeps public and elected officials on their toes.).
on Africa’s tyrants because of their ability to manipulate the electoral process to secure favorable outcomes. They know that citizens neither like nor support them but remain untroubled by public opinion. Burdened by that knowledge, and facing an avalanche of complaints and criticism from restless citizens, they become more aggressive and demand allegiance by force. Criticisms and challenges gnaw at their self esteem and often move them to respond with a mix of anger and condescension. They resent debates and discussions, which they avoid by tarring their opponents and trying to intimidate the balky public and the persistent press by force. They gaudily chafe at legal rules designed to promote accountability, and deride as detractors those who demand accountability and transparency. They are afflicted by political sclerosis that dangerously undermines their capacity to engage in good faith dialogue, consensus building or accommodation necessary to make government work for the citizens. Unable to gain public support by their records, African rulers display and espouse the same predilections of the military: ruling by brute force and intimidation.

Unlike governments in established democracies that worry interminably about how the electorate will perceive and judge them, these arrogant, blatantly and disdainfully proud governments in Africa remain blissfully impervious to public opinion and are untroubled by the prospects of losing elections. Once they win elections (or finagle their way to electoral victory), they lose their bearing and sense of accountability to both the nation and the citizens. They feel no loyalty

---

58 **HUMAN RIGHTS WATCH, CRIMINAL POLITICS, supra** note 21 at 2. (“Many of Nigeria’s ostensibly elected leaders obtained their position by demonstrating an ability to use corruption and political violence to prevail in sham elections. In violent and brazenly rigged polls, government officials have denied millions of Nigerians any real voice in selecting their leaders. In place of democratic competitions, struggles for political office have often been waged violently in the streets by gangs of thugs recruited by politicians to help them seize control of power. In recent years, hundreds of Nigerians have lost their lives in the cross fire or as paid proxy fighters for the country’s political leaders.”)

59 For a discussion of the attitude of the military towards governance, see OKECHUKWU OKO PROBLEMS AND CHALLENGES FOR LAWYERS IN AFRICA 271-82 (2007).
to either the nation or the citizens and often view themselves as potentates unconcerned and untroubled by the prospect of losing elections. They operate with a galactic sense of invincibility, secure in the knowledge that they can always count on the election commission and security operatives to deliver favorable electoral outcomes. They focus almost exclusively on wealth acquisition and pay dangerously scant attention to the welfare of the citizens. They treat citizens not like free people in a democracy, but like subjects with neither rights nor powers. They act with ostentatious self-righteousness and are often blind to contrary arguments or different points of view on how to improve the country. Even when they are not corrupt, they display an unacceptable level of insouciance that leaves their unsupervised underlings to loot the treasury. The lack of a template for probity in government creates a milieu in which desire for self-advantage and corruption reign supreme. The government’s attitude regarding power led Human Rights Watch to conclude that:

Unfortunately, the transition to civilian rule has not delivered democratically accountable government for Nigerians. Nigeria has not held a free and fair general election since the end of military rule; polls in 1999 and 2003 were characterized by widespread violence, intimidation, bribery, vote rigging and corruption. The officials who came to office through that process have generally not realized the hopes of Nigerians for socio-economic advancement and better governance. Instead, Nigeria’s population remains mired in poverty and despite limited advances governments at all levels is riddled with corruption and abuse of human rights.

---

60 Peter Kakirambudde, African Director at Human Rights Watch observed that “once in office, these politicians use their power to undermine basic human rights and enrich themselves at the expense of Nigeria’s impoverished Populace.”). Quoted by HUMAN RIGHTS WATCH CRIMINAL POLITICS, supra note 21.

61 GEORGE B.N. AYITTEY, AFRICA UNCHAINED: THE BLUE PRINT FOR AFRICA’S FUTURE, 50 (2005) (“in many African countries, the institution of government has been corrupted and transformed into a criminal enterprise. The ruling elites do not enter government to serve but to fleece the people.”). [hereinafter AFRICA UNCHAINED].

62 HUMAN RIGHTS WATCH, ELECTION OR SELECTION? HUMAN RIGHTS ABUSES AND THREATS TO FREE AND FAIR ELECTIONS IN NIGERIA, 1, April, 2007.
Another fallout from the dictatorial tendencies of Africa’s rulers is their efforts to insulate government decisions and activities from public scrutiny and review. African governments pretend to cherish the ideals of transparency but in reality dread public review or examination of the workings of government. Most governments in Africa are instinctively uncomfortable with opening the conduct and condition of government to review as expected in a constitutional democracy. They value secrecy and blind loyalty and resent efforts by the public, including the media and the opposition to gain access to the workings of government. They increasingly seek to justify their lack of transparency as somehow necessary to maintain security and preserve social equilibrium. Some of them paranoically accuse the opposition of working to undermine democracy and importunately devise schemes to limit public access to the workings of government. Claims of national security often serve as a smokescreen for the government to pursue their private vendetta against perceived enemies and political opponents.

Cheered on by a coterie of sycophants and compliant aides, rulers often proceed on the complacent assumption that the public will bovinely accept their programs and policies without questions. They do not like and are unaccustomed to having their decisions or authority challenged or questioned. Those who criticize or raise questions about government policies or programs are derided and called disloyal if they are party members or detractors if they belong to the opposition. A sense of invulnerability pervades the government’s every action. They avoid and dislike public debates and discussions on issues of governance and react to different views impulsively and often

with the usual mix of anger and condescension. In their nearly unopposed quest to bend the country to their vision and wishes, they typically ignore public sentiments and impose their agenda and views on a balky public and a disconsolate nation by intimidation, force, and hectoring. Their cavalier attitude regarding power leads them to govern as they please to the point of subordinating the rule of law to their preferences. Ultimately, governments in Africa are often operated and dominated by arrogant, unaccountable and generally unsavory elements masquerading as democrats. The scale and magnitude of the government’s contempt for laws and norms of constitutional democracy caused Human Rights Watch to scathingly observe that:

Nigeria is mired in a crisis of governance. Eight years since the end of military rule, the country’s longest-ever stretch of uninterrupted civilian government, the conduct of many public officials and government institutions is so pervasively marked by violence and corruption as to more resemble criminal activity than democratic governance.\(^{64}\)

Nigerians and the world community had hoped that President Obasanjo, one of the first military rulers to voluntarily hand over to a civilian regime, would live and act true to the dictates of democracy. The excitement and optimism that heralded President Obasanjo’s assumption of office in 1999 were admirably captured by Reuben Abati, one of the leading journalists in Nigeria:

Obasanjo’s emergence brought much hope and confidence about the future. . . . Everywhere he went: Europe, the United States etc. he was warmly received by foreign leaders who wanted to know his plans for the Nigerian nation. . . Obasanjo had both charisma and history on his side. The majority believed that if anyone could save Nigeria, it would be Obasanjo at that point in time. He was experienced and he had spoken for so many years like a man of knowledge. A former head of state, he was the first Nigerian military leader to hand over power willingly to civilians.\(^ {65}\)

\(^{64}\) _Human Rights Watch_, Criminal Politics, _supra_ note 21 at 1.

\(^{65}\) Reuben Abati Obasanjo’s Legacy, West Africa Review, Vol. 11 (2007); similar observations were made by
The expectation that Obasanjo, a retired army general raised in a profession that preached and emphasized unquestioning acceptance of superior orders, would morph seamlessly from the army’s autocratic disposition to a true democrat proved gravely misplaced. Rarely has the gap between expectation and performance been so great as in Obasanjo’s presidency. A leader who upon assuming office in 1999 was compared to South Africa’s Nelson Mandela and held up as a model of restraint within eight years degenerated into a paradigm of hubris and arrogance. Domestic support and international sympathy for President Obasanjo were quickly frittered away by his narcissism. He acted with callousness, insensitivity to citizens’ rights, contempt for legal restraints, and impunity associated with despots. His ultimately doomed efforts to extend his tenure beyond the constitutionally permitted limit served to confirm both his contempt for legal restraints on power and his messianic impulse that too often led him down the path of highhandedness and dictatorship.

Lamenting President Obasanjo’s failure to live up to expectations, Richard Dowden, an international

Professor Jibrin Ibrahim who observed that:

General Obasanjo came to power in 1999 in a groundswell of optimism that Nigerian leaders had learnt their lessons and would henceforth respect the desire of the Nigerian people for the respect of the rule of law, democracy and federalism. Obasanjo had three important strengths in his curriculum vitae. His war record had demonstrated his nationalist credentials. Secondly, his handover to the elected Shehu Shagari regime in 1979 portrayed his capacity to bow to democratic demands for a second republic. Finally, his engagement in civil society with the Africa Leadership Forum and Transparency International had shown a track record of democratic struggle and commitment to combat corruption that led Nigerians to believe that this President would not be like the military leaders who tried to manipulate the country to perpetuate their self rule and loot the treasury.


66 For interesting parallels between President Obasanjo and Nigeria’s most brutal dictator, late General Sani Abacha, see, Abubakar Siddique Mohammed, *Obasanjo: The Lust for Power and Its Tragic Implications for Nigeria*, occasional paper by Center for Democratic Development Research and Training, Zaria Nigeria, available at www.ceddert.com/publications/cedderto1.pdf

journalist with significant experience and interest in Africa noted that:

With the legacy of sixteen years of bad military rule, strong international support and a six-fold increase in Nigeria’s oil revenues during Obasanjo’s eight years as President, it is hard to find exactly how he managed to end his reign as just about the most unpopular man in Nigeria. When he came to power he had all the cards. He could have bought off or charmed opponents, taken easy steps such as providing electricity and clean water. He could have left a legacy of real change, a transformed Nigeria, but Obasanjo left office discredited and disgraced.\(^68\)

President Obasanjo’s administration was essentially personality driven. Every official, both elected and appointed, had to cater to his ego or face his wrath. During his tenure, he undermined all institutions that failed to protect his arrogance. He used the twin ploys of inducement and intimidation to turn public servants who were expected to be independent and apolitical into pliable instruments of state power. He had problems with every Senate President since the inception of democracy in 1999, appointed and replaced ministers at will without public explanations, engaged in a well-publicized war with his Vice President and orchestrated a failed attempt to force him out of government.\(^69\) He treated opposing views and the legislature with levity and contempt.\(^70\) Anyone who disagreed with or contradicted him was derisively dismissed as either unpatriotic or unintelligent.\(^71\) President Obasanjo’s dictatorial tendencies led one scholar to label his style of

\(^{68}\) Dowden, \textit{supra} note 1 at 475.

\(^{69}\) Mohammed, \textit{supra} note 18 at 26-27. (“it is no secret that virtually all the presidents of the senate, who were removed, suffered their fate at the behest of President Obasanjo.”)

\(^{70}\) \textsc{International IDEA Democracy in Nigeria}, 32 (2000) (“the relationship between the presidency and the legislature is particularly worrying. In particular, relations are so poor that the president’s party in the assembly has become the de facto opposition. The president appears to have a barely disguised contempt for the national assembly and appears impatient with perceived constraints by the assembly on the spirit and intent of the democratic constitution.”).

\(^{71}\) Abati, \textit{supra} note 65. (“the general ran a government in which he was the wisest man in the entire country. Nobody was expected to contradict him and those who did were punished for their insubordination.”)
governance as “Obasanjoism,” which he defined as “autocratic governance architecture decorated with trappings of political democratization.”

More disquieting are the recent revelations of troubling levels of corruption and abuse of public resources. Tony Iyare stated that “inspite of its anti graft stance ... the Obasanjo administration may go down as one of the most corrupt in the history of Nigeria. Its creation of a due process unit to vet and scrutinize the cost of projects notwithstanding, the government may emerge as the crudest in its subversion of the governance institutions and processes.” These allegations of corruption are all the more distressing given that President Obasanjo spent a better part of his tenure basking in moral superiority for combating corruption in Nigeria. These allegations of corruption against the Obasanjo administration raise two important scenarios, neither of which is flattering to the image of the president as an anti-corruption crusader. The allegations show that President Obasanjo at worst was guilty or complicit in the graft. And at best, they show that he was indecisive, tentative and perhaps displayed a level of insouciance that made it possible for his aides to engage in atrocious levels of corruption.

---


73 See e.g. Sufuyan Ojeifo, Finance Minister Slams Obasanjo Over Award of Contracts, THIS DAY June 24, 2008. available at http://allafrica.com.stories/200806240625.htm (Reporting that the finance minister Dr. Usman in his testimony before the Senate Committee, stated that “they [Obasanjo administration] awarded a lot of contracts without design, sometimes without due process; there were extra budgetary spending and there was a lack of proper planning); Emmanuel Aziken et. al. Senate Probes Obasanjo on Bad Roads, Rail, Aviation, VANGUARD, Apr. 30, 2008, available at http://allafrica.com/stories/200804300170.html (Reporting that the Senate ordered a probe of President Obasanjo’s activities in the transportation sector. The probe followed disclosure that trillions of naira invested in the transportation sector could not be accounted for.).

74 Tony Iyare, Corruption and the Crisis of National Values in GOVERNANCE AND POLITICS IN NIGERIA, supra note 18 at 37 (Sam Oyovbaire ed. 2008).

75 Okey Ndibe, Obasanjo’s Assets and Liabilities, THE SUN, Tuesday, July 10, 2007 at 48 (“for eight years, the man [Obasanjo] treated the rest of us to hypocritical treatises on subjects as varied as probity, transparency, good
The current Nigerian President, Yar Adua, a man of equable temperament and a scion of privilege from the state of Katsina, has behaved much like his predecessor. He is perhaps more restrained and honest than Obasanjo, but in substance he is the same. He lacks the gumption to reverse the errors of the past administration and introduce innovative and transformative changes that will move Nigeria further along the democratic path. He is yet to meaningfully and energetically attack corruption and has been unable to address the most intractable social ills that scourge the citizens ---- poverty, unemployment, and inflation.

A Dangerous Absence of Checks and Balances

Despite the bromides and lofty statements by African leaders promising to govern as democrats, many African leaders have shown little enthusiasm for constitutional checks and balances of their powers. They chaff at rules that constrain their powers and device schemes to blunt or neutralize accountability mechanisms. One of the initial acts of African leaders upon assuming office is to systematically blunt and scuttle the principles of checks and balances contained in the constitution and mandated by constitutional democracy. They exhibit a visceral and instinctive dislike for public demands for accountability, are intensely sensitive to criticisms and deal with the surge of public disenchantment and fissures in the society by intimidation and cooption.\textsuperscript{76} Their disdain for rules often tempts them into viewing the law as a tool of self aggrandizement to be

deployed to punish political opponents and government critics while turning a blind eye on the malodorous and often illegal practices of their associates. Bruce Fein, former Associate Deputy Attorney General of the United States under President Regan, accurately described the prevailing attitude of African leaders toward the rule of law when he stated that “from 1999 – 2007, Nigeria’s President Obasanjo conceived of law as a jumble of political calculations to punish enemies and to reward friends.”

The personalization of government opens up avenues for the government to reward loyalists and move against opponents and perceived enemies. More disturbingly, it leads to corruption on a massive scale– the kinds that have disfigured Nigeria. Rulers personalize government and use unconstrained state powers and their unchecked access to the state treasury to consolidate their power base. They deliver favors to their friends and cronies, coopt and intimidate opposition, cover up their excesses, and set up snares and traps to punish their political opponents and critics. The use of the legal process to punish political opponents manifested itself predominantly in the anti corruption initiatives introduced by the Obasanjo administration. Agents of the Economic and Financial Crimes Commission, (EFCC), one of the two anti corruption agencies, failed to act as impartial detectives. Instead of carrying out the task of sleuthing out evidence of corruption, they often acted as emissaries of the government, intent on harassing and embarrassing opponents and critics of the government.

A vastly diminished and immobilized legislature and an inefficient and corrupt judiciary

77 Bruce Fein, Nigeria’s Rule of Law Challenges, WASH TIMES, July 15, 2008 at A22.
78 See Ayittey, supra note 22.
79 Iyare, supra note 74at 46. (noting that “at some point it [EFCC] derailed completely as it became the tool of the
enabled dictatorial and bludgeoning executives, most of whom assumed office through questionable and dubious elections, to exercise unbridled powers over hapless citizens, leading ineluctably to the personalization of the office of the president. Having subverted and disabled accountability mechanisms, a government uncontrolled by either law or public opinion anthropomorphizes governance, and obtrusively demands and indeed tries to institutionalize loyalty to the person of the officeholder. The government seeks and demands blind loyalty and reverence and is irritated, even resentful, of criticism and opposition. The anthropomorphic imperatives of leaders leave government in a gnarled and tangled state where massaging the fragile egos of snooty leaders in constant need of adulation becomes more important than rules and laws, even the constitution. Citizens do not know exactly what to expect from their leaders and must constantly seek to please them to avoid incurring their wrath. Any assertion of independence gnaws at their self esteem and attracts adverse and often career ending consequences. Moreover, expecting technocrats to assert their independence in the face of unimaginable pressures mounted by virulently aggressive presidential hacks is both unrealistic and naive. As government degenerates into a personality cult, citizens live not under the rule of law as envisaged and dictated by constitutional democracy, but under the whims and caprices of rulers drowning in solipsism. The weakening of democratic institutions in Africa – the courts, the legislature and public institutions – result from African leaders’ proclivity for personalizing governance and elevating themselves over laws and the country’s system of accountability. Professor Kwasi Prempeh poignantly describes this phenomenon as “personalistic presidential

Obasanjo government to silence and witch hunt Obasanjo’s political opponents.”

32. Andrew M. Mwenda, Personalizing Power in Uganda, 18 J. Of Dem. 23, 28 (2007) (the worst obstacle to democratic development in Uganda has been the personalization of the state).
rule,” and concludes that:

Institutions outside the presidency – the legislature, the courts, the civil service, local government - withered as just about every decision of import found its way to the presidents “in box.” Africa found itself beset by the strange paradox of strong presidents sitting atop weak states - states that routinely lacked the requisite institutional capacity to fulfill even their most basic function.

African leaders who crave public adulation often end up enslaved by it. Cringing sycophantic aides and cronies do not disappoint their leaders, most of whom are abloom with an inexhaustible supply of sycophancy. This claque of opportunists cower, praise, flatter, and cheer their actions to such levels bordering on the worshipful. Complaisant government officials constantly struggling to please the president lose their sense of responsibility to the nation. Such despicable fawning over the president reached an apogee when some public servants, legislators and businessmen, acting either at the behest of, or with the consent of the president, orchestrated a scheme to extend President Obasanjo’s tenure beyond the constitutionally mandated two term limit. The failed third term bid clearly showed the length to which cronies are prepared to go to please African presidents. The excessive public adulation of leaders raises the disturbing prospect of producing leaders who are

---

82 Id.
83 Discussing the effect of sycophancy on the leaders, Professor Siddique Mohammed stated that:
   The praise singing infused some messianic illusions in those leaders. They began to interpret their dreams to mean revelations. They became isolated from reality and ended up believing their own lies. They became papa or baba or nana such as our president [obasanjo] has become. The danger is that baba is never wrong. In such circumstances, expert advise is dispensed with and the dreams of the dictator became the policy.
Mohammed, supra note 18 at 25.
84 President Obasanjo’s effort to secure a third term elicited national outrage and was ultimately defeated by the National Assembly. See Daniel N. Posner & Daniel J. Young, The Institutionalization of Political Power in Africa, 18 J. DEM. 126 (2007) (discussing the intrigues and politics of Obasanjo’s efforts to secure a third term).
disconnected from reality and increasingly hostile to criticisms and opposition.

A Hierarchy of Cronyism

In a presidential system of government, the president occupies a key position on which so many citizens depend upon for a broad variety of privileges and perks. The president has an arsenal of perks, inducements, privileges and concessions to extend to his allies and supporters. He also has the capacity to make life unbearable for opponents and critics by denying them the opportunity to improve their lives and businesses. The combination of incentives and sanctions provides a powerful impetus for citizens to seek the president’s approval and friendship. The president, and indeed all office holders, recognize that their ability to retain office depends on the extent to which they are able to satisfy their cronies, friends and supporters. As Professor Collier aptly observed “patronage financed by embezzlement has been the standard means of retaining power.” The mutually beneficial relationship between office holders who dole out benefits and favor-seeking parasitic cronies has led to the characterization of African politics as clientelistic, neo patrimonial or prebendalistic. Professor Van de Walle aptly stated that “political authority in Africa is based on the giving and granting of favors, in an endless series of dyadic exchanges that go from the village

---

85 See pages 15-17 of text supra.

86 HUMAN RIGHTS WATCH NIGERIA: RENEWED CRACKDOWN ON FREEDOM OF EXPRESSION (2003) (documenting harassment, including the arrest of opposition party supporters and government critics); HUMAN RIGHTS WATCH: COUNTRY SUMMARY NIGERIA, 4 (2005) (noting that “there were numerous cases of arrests, detention, ill-treatment, intimidation and harassment of critics and opponents of government.”).

87 COLLIER, supra note 1 at 213.

level to the highest reaches of the central state.\textsuperscript{89}

Virtually all governments in Africa are characterized by one key attribute ----- the elevation of selfish interests over public good and the interests of the nation.\textsuperscript{90} Rather than using the instrument of power to improve the welfare and quality of life of the citizens, leaders engage in cartelization of the nation’s resources, granting concessions and privileges to their cronies and supporters, often in ways inimical to the nation’s interest.\textsuperscript{91} The leaders’ eagerness to shore up their support bases incline them to atomize the nation, doling out favors and benefits to supporters and moving against perceived enemies. A major consequence of cronyism is that government jobs and major appointments are based not on merit or competence but on the basis of favoritism and patronage.\textsuperscript{92} Personal connections cloud the judgment of leaders and lead them to accommodate and even accept failure and mediocrity.\textsuperscript{93} Because loyalty trumps competence, African leaders tend to recruit generally underachieving, sometimes incompetent underlings who can be trusted to advance and protect the leaders’ selfish interests and agenda. Underlings, on their part, rather than focusing on the tasks for which they were hired, spend time oleaginously propitiating the executive and cultivating


\textsuperscript{90} See e.g. Penda Mbow, \textit{Senegal: The Return of Personalism}, 19 J. Dem. 156 (2008) (describing Senegal’s President Wade’s autocratic tendencies and efforts to personalize power).

\textsuperscript{91} Sklar et. al, supra note 67 at 107 (“Neopatrimonialism is bad for Nigeria, as for other countries, because power is excessively personalized.while national policy is driven by elite relationships rather than by public needs. Neopatrimonialism may randomly allow more enlightened rulers to govern and even to install some reforms for a tie, but these inevitably come second to the unending need to service the expensive elite relationships that keep one in power.”)

\textsuperscript{92} Ayittey supra note 22 at 7. (“State institutions decay and breakdown. Nobody cares because tenure of office and promotions are based not on competence and merit but on personal loyalty to the president, ethnicity and sycophancy.”).

\textsuperscript{93} Claderisi, supra note 1 at 84. (“loyalty operates in both directions and to this day, exacts a high price. Subordinates overlook the wilfulness and pettiness of their superiors, in exchange for having their own limitations
relationships and friendships with the ruling party hierarchy, often at the expense of competence and productivity. Citizens know that fawning on the president carries many benefits. They also know that failing to declare one’s support for the president with fervor and public enthusiasm attracts severe and sometimes career-ending consequences. In Nigeria for example, President Obasanjo, or Baba, as his cronies obsequiously addressed him, saturated the public sector with genuflecting cronies and allies who had no qualms about going to any length to demonstrate their fealty to him. These political hacks neither had, nor were they ever expected to possess, the requisite skills and competence for their positions. Far too often, these obsequious party loyalists and brassy cronies lack the capacity to tackle the pressing needs and challenges of governance. More injuriously, they lack the courage to present the President with objective assessments of policies and programs, especially if they are negative or unpalatable to the President. Public servants who gave their best and unvarnished advice and opinion often had their careers blighted and possibly destroyed by votaries of the presidency.  

The flotsam of personalization of governance has become painfully obvious. The effectiveness of government is considerably diminished, perhaps crippled, as presidents operate without the creativity and ingenuity of the all-too-eager to please technocrats who sacrifice competence to the imperative of securing the president’s approval. Public servants operating in environments where contacts with the ruling party hierarchy and the presidency matter more than competence, often approach their assignments with little creativity and far less ingenuity.

94 COLLIER, supra note 1 at 16 (“those advisers who told the President the truth tended not to last long as advisors.”).
Technocrats who provide the competence and skills that drive the engine of government often succumb to the belief that all that matters is the President’s approval and not competence. They therefore fail to give their best efforts, preferring instead to focus on currying favors from the party hierarchy. Frank Sutton’s assessment of African governments more than thirty years ago remains true in contemporary Africa. He stated that “African governments are indeed weak and afflicted with influences that make them too often governments not of laws but of personal authority and preference.”

Vast deficiencies in the government and ineffectiveness that scar the country and frustrate government policies are traceable to the quality of personnel recruited to execute government projects. Government programs are generally effete, as worthy ones are languidly and ineffectively pursued, and some ultimately bollixed up. In Nigeria for example, on virtually all issues that citizens yearn for --- health care, housing, power supply, education, poverty alleviation and security---the government continues to show signs of incompetence, ineptitude, irresolution and even total indifference. Instead of addressing pressing social and economic issues, the government initiates

---


96 Meredith, supra note 1 at 580-1. Describing the poor execution of projects in Nigeria, an author who spent research time in Nigeria stated that:

The record of successive governments had been abysmal. Leading institutions such as the civil service swallowed sums of money but delivered few services. . . . Vast sums had been spent on prestige projects but to no advantage. A total of $8 billion had gone on constructing a steel complex based at Ajaokuta that had yet to produce a single bar of steel. Billions more had been sunk into an ultra-modern capital at Abuja complete with glittering hotels and office towers that the ruling elites enjoyed using but that brought little benefit to ordinary citizens.

97 ECONOMIST, Nigeria, Mission Impossible Aug. 4, 2007 (noting that most Nigerians continue to live in squalor and poverty. The country ranks 159th out of 177 on the UN’s human development index); Sola Ogundipe & Chioma Obinna, Erratic Fortunes for Health, Vanguard May 27, 2008 available at http://allafrica.com/stories/200805270115.html. (Reporting that despite President Yar Adua’s promise to address Nigeria’s energy problems, electricity supply remains epileptic as ever); Bukola Olatunji, Declare Education
programs designed to mulct the nation while reassuring the restive citizens that they have found the nostrum for all of the nation’s problems, ranging from corruption to erratic power supply and notoriously ineffective public services.\footnote{Richard Joseph, \textit{Challenges of a “Frontier” Region}, 19 J. DEM. 94, 103 (2008) (“Africans are still overwhelmingly denied basic goods of health care, education, clean water, electrical power, physical security, a salutary environment and decent transport infrastructure because the institutions required to provide them are . . . constantly being eroded from within.”).}

Intimidating the Opposition

Another disturbing trend in Africa is the dreadful, licentious clamp down of the opposition.\footnote{Ayittey, \textit{AFRICA UNCHAINED}, supra note 61 at 50 (noting that the primary instinct of African leaders “is to loot the national treasury, perpetuate themselves in power and brutally suppress all dissent and opposition.”); For problems and public perceptions of opposition in Africa, see Carolyn Logan, Rejecting The Disloyal Opposition? The Trust Gap in Mass Attitudes Toward Ruling and Opposition Parties in Africa, Afro Barometer Working Paper No. 98 (2008) \footnote{See CONSTITUTION art. 39(1) (1999) (Nigeria) ( guaranteeing freedom of expression and the press.)}}

Citizens in a democratic society must have the freedom to react as they please to government’s policies and programs, provided they confine their activities within the ambit of the law. This freedom is often enshrined in the constitution and typically includes demonstrations, expression of opinions and criticisms.\footnote{Jorge I. Dominguez & Anthony Jones, Building and Sustaining a Contemporary Democratic State, in \textit{THE CONSTRUCTION OF DEMOCRACY}, 3 (Jorge Dominguez & Anthony Jones eds. 2007) (noting that constitutional democracy . . . . celebrates and facilitates partisan contestation and guarantees the rights of those who disagree to do so publicly and vigorously.).} Dissent and opposition are necessary, indeed invaluable and perhaps indispensable in a constitutional democracy.\footnote{Disaster Area — Jamb Registrar. THIS DAY Jan. 28 2004 at \url{http://allafrica.com/stories/20041280287.html} (Reporting that the registrar of the Joint Admission and Matriculation Board stated that education should be declared a disaster area in need of attention and that it is time to go beyond mere lip service to rescue a system that is producing illiterates. He further stated that although today’s graduate can read and write, most do not understand what they are reading or writing).} Constitutional democracy and the nation benefit

\begin{flushright}
\textit{Disaster Area — Jamb Registrar. THIS DAY Jan. 28 2004 at \url{http://allafrica.com/stories/20041280287.html}}
\end{flushright}
immensely from a robust and free exchange of ideas, discussions and criticisms of government. A healthy opposition is encouraged and celebrated because it helps to keep the government in check and makes leaders more sensitive and responsive to the needs and views of the public. Democratic societies accept and view opposition as an integral, perhaps inevitable part of the process. Societies suffer and are often weakened whenever opposition is stifled and dissent punished. Whenever citizens lose the freedom to express their views and to speak openly and freely to their leaders and the government, the nation loses an essential component of constitutional democracy and begins its descent toward dictatorship.

In Africa, hubris and contempt for rules trigger a mindset that leads government to view criticisms and competition as affronts to the government. They tend to view opposing or contrary views as personal slights and animadversion against their government. They respond to criticisms with the usual mix of anger and frustration that often lead them to extreme and crude retaliatory measures against those who oppose or criticize the government. Moved more by pique than concerns for the nation’s security interests, these egotistic leaders condemn, muzzle, and sometimes

102 Logan, supra note 99 at 3 (“the failure to establish a credible opposition continues to limit the public’s real choices and provides few incentives for the emergence of a truly responsive and representative political system. Under such circumstances, political elites remain largely disconnected from their constituencies).

103 Freedom of speech is generally regarded as one of the essential elements of constitutional democracy. The freedom to speak freely without restraints or fear of reprisal enables citizens to raise questions about their government and to invite both domestic and international attention to the government’s excesses.

104 Nicholas Van de Walle, Presidentialism and Clientelism in Africa’s Emerging Party System, 41 J. MOD. AFR. STUD. 297, 308 (2003) (“observers have long noted that African political systems have not handled political competition well.”).

105 Tony Iyare, Corruption and the Crisis of National Values, in GOVERNANCE AND POLITICS IN NIGERIA, supra note.. at 38 (“like the Gestapo raid of media houses that were rife under IBB and Sani Abacha regimes . . . . officials of the State Security Service laid seige to the offices of many media houses under Obasanjo including the Insider magazine, pulling down doors and shattering the walls of office complexes after the magazine published a story considered offensive to the Obasanjo government.”)
punish critics and the opposition. Rather than deal or grapple with the issues and concerns raised by critics and opponents, the government frequently embarks on a campaign of calumny to damage the reputation and credibility of those who voice opposition to its policies. Leaders who are unaccustomed to having their opinions and views challenged typically avoid debates and serious public examination of government policies by tarring their opponents, calumniating and subjecting them to brutal *ad hominem* attacks. The groping by the government to justify its crude and brutal treatment of critics and opposition frequently leads the government to evoke the nation’s security interest as the main reasons for its attack. The reality, however, is that a major source of disdain for the opposition is that the ruling government is often unsure of its core ideas and the efficacy of its policies and programs. Leaders therefore resort to the strategy adopted by most African leaders, civilian and military, to gain the upper hand on discussions and examination of issues: squelching and silencing the opposition.

Despite constitutional democracy, “political leadership has continued to exhibit a disturbing inclination to cling to state power and deploy devious tactics, often bordering on the unlawful to stifle political opposition.”106 Most African leaders have fragile egos and often display chronic discontent with opposing views and criticisms. They seem temperamentally incapable of accommodating opposing views and ideas and are increasingly disdainful of criticisms. Leaders loathe criticisms and challenges and any attempt to question or contradict the government’s stand on any issue is deemed unpatriotic and punished, sometimes violently.107 In Nigeria, the government

---


107 See Ayittey, supra note 22 for a compendium of attacks and detention of journalists for publishing materials considered unpalatable by the government.
often adopts an “all or nothing” and “take it or leave it” attitude to governance, thus making it impossible to reach or build consensus on important issues of national concern. The government typically treats opposition and critics with disdain and feels no need to pay attention to their views and suggestions. Disdain for the opposition is driven in part by the failure of political elites to appreciate the role and place of the opposition in a constitutional democracy. A study by Professor Larry Diamond crystallized this point:

Nigeria thus began its experiment in independent democratic government with little understanding of the institutional role of political opposition in a large-scale competitive democracy. To the extent that the top political elites had such an appreciation, it tended to be overwhelmed by the anti democratic culture of the emirate, the insecurity and distrust fostered by the federal system, the competition between the ethnic groups, and not least, the huge electoral stakes generated by a swelling state, to which everyone was looking to for a better life.\(^\text{108}\)

The fact that the ruling party controls both houses of the National Assembly by significant and comfortable margins makes it easy for the government to govern as it pleases with little or no concern for the opposition, or even public opinion.\(^\text{109}\) As government grows more emboldened by its super majority in the legislature, the prospects of accommodating the opposition fades, perhaps irretrievably.

Because of the government's attitude, opposition, which is very healthy and desirable in a

\(^{108}\) Larry Diamond, Class, Ethnicity and Democracy in Nigeria, 71 (1988).

\(^{109}\) 76 of the 109 senators are members of the ruling Peoples Democratic Party, (PDP) while 223 of the 360 seats in the House of Representatives are occupied by PDP. available at www.nassnig.org
democracy, is in disarray, decimated by the twin ploys of intimidation and cooption.\textsuperscript{110} African governments neutralize opposition by force and intimidation or buy their silence and/or support with offers of lucrative government contracts and plum jobs. These strategies have been employed by leaders in developing societies with increasing effectiveness to neutralize the opposition.\textsuperscript{111} Opposition parties and ordinary citizens who chuck and criticize the government become objects of threat and intimidation.\textsuperscript{112} Governments typically attempt to wean away members of the opposition and critics by offering them plum jobs or lucrative contracts to induce their silence or cooperation.\textsuperscript{113} The strategy of co-opting the opposition, derisively referred to as “settling,” was perfected and institutionalized by the military. It has since been used by successive governments, civilian and military, to buy support, silence critics, and destabilize the opposition. The government uses largesse --- appointments, lucrative contracts, oil licenses, business concessions --- to turn virulently antagonistic opponents into allies. For example, presidents of the Nigerian Bar Association who mounted sustained and vociferous attacks on the excesses of the military rulers were co-opted by appointing them to serve as attorney generals of the federation. This strategy was introduced by

\textsuperscript{110} This strategy was used with significant success by the military dictatorship during the military interregnum. Those who could be bought were offered plum jobs and government concessions. Others who stuck to principle and refused to be bought were harassed, bullied and ultimately silenced.


\textsuperscript{113} Carolyn Logan, supra note 90 at 6. ("since the president so completely dominates decision making and access to resources, winning his favor frequently becomes the main ambition of so called opposition politicians who may even seek to join the ruling party once their own value as social mobilizers has been demonstrated").
General Babangida in 1985 and used again in 1992. And it was embraced by President Obasanjo in 2003. Other vocal critics of government have been rewarded with cabinet positions, ambassadorial posts and lucrative government contracts. The enormous powers of the president and control over vast resources make it easy for the president to entice and reward opposition members, some of whom seem to have no qualms about joining the administration. Gerald Alexander accurately portrays the powers of the president to turn erstwhile opponents and critics into fans of the administration:

In all democracies, incumbents have advantages like patronage and publicity. But this advantage widens dangerously for any prospective democracy when incumbents control the central or even the sole source of wealth in a society that is otherwise poor. . . . Many (in some cases, most) citizens receive some benefit at the partial discretion of the rulers — public or private employment, income support and social services, diverse consumer subsidies, licences of all kinds — that they might find reduced or withdrawn if they supported a true opposition movement. These governments may not be strong internationally, but they tower imperiously over all other organizations in their societies.

114 Describing efforts by the government to coopt the legal profession, a publication by the Open Society Initiative, one of the non governmental organizations in Nigeria stated that: whether military or civilian, federal or state, the government at all levels has always indicated more than a passing interest in the activities of the Nigerian Bar Association and who runs it . . . In Nigeria particularly, the center has always sought to hijack the bar. In doing this, the government seeks to muzzle the Nigerian Bar Association and make it lose coherence and bite. One major strategy the government has often used is the “Carrot and Stick” approach. . . . The presidency of the Nigerian Bar Association was a sine qua non for becoming the Attorney General and minister for justice. Every Nigerian Bar Association president at that time eventually became the federal attorney general. And the military took the fullest advantage of this.

115 For a discussion of other efforts by the government to coopt the bar, see Okechukwu Oko Lawyers in Chains: Restrictions on Human Rights Advocacy Under Nigeria’s Military Regimes, 10 HARV. HUM. RTS. J. 257 (1997).

116 Open Society Initiative, supra note 114 (discussing President Obasanjo’s nomination of the then President of the Nigerian Bar Association, Bayo Ojo as the Attorney General of the Federation)

The few citizens who refuse to be bought are anathemized, contumeliously attacked, and retaliated against.\textsuperscript{118} Even the strongest and most adamant critics of government often quail before the ponderous powers of government. Government easily deploys its powers and a posse of government agents – the police, state security services and lately, anti corruption agency officials— to harry, intimidate, and punish critics and paralyze their abilities to pursue their normal and legitimate business interests.\textsuperscript{119} Professor Suberu, an eminent Nigerian scholar, offers a detailed account of efforts by Nigeria’s President Obasanjo to neutralize the opposition. He perceptively stated that:

The police would brazenly intimidate or detain opposition supporters and candidates, ransack the offices and campaign headquarters of opposition parties and deny permits for major opposition rallies and meetings. Even independent organizations, including private media houses and civil organizations suspected of opposition sympathies would become targets of police and security service harassment and intimidation. Nor would police misconduct be the end of it. The EFCC, INEC, and Ad hoc panel of presidential appointees - sometimes acting in defiance of court rulings - began issuing politically motivated corruption indictments in order to disqualify targeted candidates.\textsuperscript{120}

\textsuperscript{118} International Crisis Group Nigeria’s Elections: Avoiding A Political Crisis 4 (2007) (”while it was keeping the PDP nominations under control, the Obasanjo camp also was actively using the anti corruption campaign and other means of intimidation to undermine opposition to the ruling party. . . . simultaneously, many illegal acts have been committed by the federal and state governments to disempower and disorganize the opposition parties.”).

\textsuperscript{119} Discussing the use of security operatives to harrass and intimidate the opposition, Professor Siddique Mohammed stated that:

In many African countries, political, economic and ethnic tensions which despotic misrule had generated did not spare the security agencies even though they were the last to be affected by the inevitable decay or disintegration of the state. The constant use of the personnel of the armed forces or other security agencies in illegal and quite often terrible operations of detention without trial, torture and the physical elimination of opponents, transformed them into private instruments of coercion of the despot. Mohammed supra note 18 at 25-6.

\textsuperscript{120} Suberu, supra note 112 at 98.
The attacks on the opposition have had powerful and chilling effects on members of the opposition. Opposition leaders and even ordinary citizens with different views cower in their shells, gravelly frightened that opposing government policies will signal death and destruction for their businesses and sometimes their lives. Their fears prove well-founded, given that some government critics pay for their principled criticisms with ruined businesses, revoked licenses, and harassment by government on trumped up, and ultimately unprovable, charges of corruption. Critics of government have been subjected to well-publicized investigations by anti corruption agents whose sole aim was to uncover dirt and publicly embarrass and humiliate the targets of investigation. The allegations of corruption against opponents often turn out to be all suspicion and no proof, inventions crocheted by brassy and compromised anti corruption agents to demonstrate their loyalty to the

---

121 AIT, a privately owned television station was demolished by the Federal Capital Authority on the flimsy reason that the building was not approved. The true reason bruited in various segments of the society is that the action was taken to retaliate against the television station that was airing news materials unpalatable to the federal government. See Okok Aihe & Umoru Henry, *Nigeria: FCT Moves Against AIT, Threatens More Actions*, Vanguard June 20, 2007, available at [http://allafrica.com/stories/200706200153.html](http://allafrica.com/stories/200706200153.html).


123 *Human Rights Watch Criminal Politics, supra* note 21 at 48-52 (discussing the selective use of anti-corruption institutions); *International Crisis Group Nigeria’s Elections: Avoiding A Political Crisis* 3 (2007) (“the EFCC became selective in its targets, increasingly going after known Obasanjo opponents and declared candidates for his succession within the PDP.”)

124 *International Crisis Group Nigeria’s Elections: Avoiding A Political Crisis*, 2 (2007) describing the Nigerian government efforts to harass and intimidate the opposition, the report noted that the Economic and Financial Crimes Commission (one of the two government anti corruption agencies) became selective in its targets, increasingly going after known Obasanjo opponents and declared candidates for his succession within the PDP. Throughout 2006, the country witnessed the impeachments for corruption of five state governors, all of which were carried out with the active collaboration of the Presidency and the EFCC in controversial circumstances (footnotes omitted).
The use of anti-corruption agencies to harass and intimidate opponents advertise the government’s disdain for opposition and its grotesque view of the machinery of government as an instrument for personal vendetta and self gratification. Near total domination of the economy gives the ruling party enormous power to grant largesse to its supporters and to move against opponents.

The relentless assault mounted by notoriously vindictive and brutal government operatives against critics and opposition sends tremors through all opposition parties and critics of government, most of whom feel weakened and demoralized. Members of the opposition have responded to the insidious and arbitrary pressures and attacks on government critics in different ways. Some citizens lose the will, and perhaps the energy to oppose the government, cave into threats, retreat into their shells, and maintain studied silence in the face of government excesses. Other citizens have figured out that there is far more personal gain in aligning with government than opposing it. Those who support the government benefit from the largesse doled out by the corrupt government to silence critics. Nigeria is a major player in the oil industry and with such massive revenues from oil, a

---

125 Toyin Falola & Mathew M. Heaton, A History of Nigeria 272 (2008) (“The allegations of corruption leveled at many politicians were selective: they were used by Obasanjo and several state legislatures primarily to discredit opponents and try to prevent them from contesting the elections at all.”).

126 Logan, supra note 90 at 6 (“since the president so completely dominates decision [making] and access to resources, winning his favor frequently becomes the main ambition of so called “opposition” politicians, who may even seek to join the ruling party once their own value as social mobilizers has been demonstrated.”)

127 See note 121-123 and accompanying text, supra.

128 Bratton Michael, Robert Mattes & Emmanuel Gyimah-Boadi Public Opinion, Democracy and Market Reform in Africa, 39 (2005) (“especially in systems based on patronage and in countries where political office is one of the only reliable routes to personal wealth, partisan identification with a governing party is critical to ones life chances.”).

government so inclined, can bribe or coopt opposition members.\textsuperscript{130} Compromised citizens play the role of quislings and defend government’s actions and decisions, however outrageous, misguided, or even manifestly illegal. In the welter of polemical explanations, government propaganda, claims, and counter claims by pawns of government, there are often no thoughtful, deliberative and good faith discussions of policies and programs.

The net result of the two strategies of intimidation and cooption is that citizens, either out of fear or loyalty, are less inclined to oppose or criticize the government. Also, the activities of compromised citizens who act as shills for the government are distinctly unhelpful to the democratic process. Citizens coopted by government or crippled by fear offer little or no meaningful or constructive ideas to governance and the democratic process. Citizens often fail to obtain truthful information to enable an objective assessment of government policies and programs. Whenever criticisms and open examinations of government are squelched, two things more sinister take their places: propaganda and disinformation. Warped, distorted and often garbled assessments of government programs and policies by sycophants and sophistic rhetoric by government propagandists often elide vital information. Such faulty communications ultimately leave inquiring citizens with incorrect or insufficient information to ventilate government policies with sufficient thoroughness.\textsuperscript{131}


\textsuperscript{131} UNDP Human Development Report 2002: Deepening Democracy in a Fragmented World 75 (2002) (“informed debate is the lifeblood of democracies. Without it, citizens and decision makers are disempowered, lacking the basic tools for informed participation and representation.”).
Part II: Good Governance: The Ultimate Answer

Good governance has been described as “a euphemism for strong and credible institutions, transparent rule of law and economies free of rampant corruption.”132 Good governance is the sumnum bonum of constitutional democracy and must be institutionalized if Africa is to achieve its eminently desirable goal of deepening democracy.133 Good government according to Professor Julius Ihonvbere, “is the ultimate answer to insecurity, human rights abuses, the suffocation of civil society, social injustice, unemployment and the marginalization of non-bourgeois communities and states.”134 The United States President Barak Obama echoed similar sentiments about the importance of good governance, perhaps with greater clarity and eloquence in his address to the Ghanaian parliament. He stated that “development depends upon good governance. That is the ingredient which has been missing for too many places for too long. That is the challenge that can unlock Africa’s potential.”135

Laurie Nathan’s description of the impact of bad governance on Africa bears repeating:

Good governance is not limited to the cardinal features of democracy: free and fair elections, accountability, transparency, and respect for

---

132 Moyo, supra, note 1 at 22.

133 Stressing the nexus between democracy and good governance, a USAID Report stated that: democracy and good governance are mutually reinforcing: when they develop together, resources are used to advance the public good. Public institutions perform their designated roles. Social consensus supports and stabilizes the system of government. Disputes are settled peacefully. And investments flows in, attracted by the low transaction costs associated with government transparency and legitimacy and the rule of law.


pluralism and human rights. It also entails efficiency and effectiveness in fulfilling the functions of the state. These qualities are missing in most African countries, which lack the skills, expertise, infrastructure, and resources to meet the welfare and other security needs of their citizens. In the absence of the requisite institutional capacity, the values and principles of democracy cannot be “operationalized,” the security vacuum will not be filled, and resort to force by the state and sectors of civil society may consequently be commonplace.\footnote{Laurie Nathan, “The Four Horsemen of the Apocalypse”: The Structural Causes of Crisis and Violence in Africa in \textit{SEEDS OF NEW HOPE: PAN-AFRICAN PEACE STUDIES FOR THE TWENTY-FIRST CENTURY} 219 (Matt Meyer & Elavie Ndura-Ouedraogo eds., 2009).}

A velleity to institute good governance is not enough for Africans who have reached a slough of despondency following the predation of their country by an endless parade of hubristic and corrupt leaders. Citizens need leaders who publicly condemn and abjure leadership excesses to display commitment to good governance through concrete actions, not talk or slogans. Ultimately, governance will be evaluated not by public statements and pious declarations from African leaders but by the actions and activities of leaders. Africa is beyond the era where good governance is just an aspirational ideal: it must be displayed and reflected in the policies, programs, and activities of leaders. Thomas Jefferson, in his 1801 inaugural address, provided a definition of good governance that remains accurate and valid today: A wise and frugal government, which shall restrain men from injuring another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and not take from the mouth of labor the bread it has earned. This is the sum of good government.\footnote{Thomas Jefferson, Inaugural Address, March 4, 1801.}

Africans can relate to a Chinese proverb which states that “the wind of words alone cannot
turn the mill of history.” Government’s public statements professing commitment to good governance carry little weight in an environment sated with distrust, and even disdain for leaders. Citizens who demand and deserve good governance want their leaders to move beyond the flowery rhetoric of good governance and institutionalize the practices and dictates of good governance so eloquently summarized by Jefferson. They need reassurances demonstrated by concrete actions they can see and appreciate; slogans or orotund speeches will no longer suffice. Good governance must be reflected in the attitude of leaders and reflected in their policies, programs and in the methods and strategies they employ to govern the country.

The African experience has shown that it is difficult to build and consolidate democracy when leaders continue to despoil and misrule their countries. So much of the public discontent with democracy in Africa is inspired by bad governance, especially the excesses of the leadership. Good governance requires a new attitude to governance, more and better focus on the nation’s problems, humility and restraint by the leaders, and greater sensitivity to citizens’ rights, needs and welfare to offset the resentment, anger, and apathy percolating in the society. The sense of frustration and apathy that ensnare most African citizens can be dissipated and counteracted by focusing on five main issues: effective leadership, accountability, transparency, treating the opposition and critics with respect, and revamping public institutions.

1. Effective Leadership

Effective leadership requires leaders to steer away from the self-indulgent policies and attitudes of the past and focus on creative ways to provide solutions to the nation’s myriad of problems. Embracing the new norms of good governance requires leaders to overhaul ingrained
practices and attitudes that lead them to ignore the virtues of good governance. Without attitudinal adjustments, the prospects of institutionalizing good governance will remain nothing but sheer fantasy. A good and effective government is a government where leaders accept and internalize the norms and values of democracy, appreciate and understand the scope and limitations on their powers, and always act in full awareness and sensitivity to the democratic norms of accountability, transparency, and respect for the rule of law.

Effective leadership is the greatest and most credible way for the government to demonstrate its commitment to good governance. An effective leadership is the anvil on which good governance may be forged. The well springs of good governance are fed by examples and the provision of the right environment. To institutionalize good governance, changes will have to come from leaders who must strive to extricate themselves from the monster they created and develop the sinews of good governance. Leadership, now unfocused, inefficient, and insensitive to public needs and welfare, must respond effectively and efficiently to the challenges of governance. Leaders must strive valiantly to clear the dross of bad governance and reestablish the standards of good governance currently eclipsed by hubris and greed. The biggest obstacle facing most African governments is regaining public trust squandered by bad governance. Currently, most citizens are switched off from the government and pay little attention to whatever it says or does. It took citizens a long time to get to this point and will surely require concerted efforts by the leaders to reverse the situation and establish their bona fides. The most effective way for the government to regain public trust is to exhibit fidelity to the triple imperatives of restraint, accountability, and transparency. Adhering to these three virtues will provide both symbol and substance to the ideals of good governance and more importantly act as effective counterweight to arrogance and hubris that far too often deform
governments in Africa. Public trust can be regained, but it requires more commitment to democratic values, and greater attention and sensitivity to public needs and welfare than leaders have so far displayed. Regaining public trust also requires new attitudes and an improved focus on the nation’s pressing problems by the president and other administration officials to offset the anger and resentment percolating in the society against the leaders.

Democracy demands a better approach to governance than what currently exists in Africa. Leaders must use power and authority not for personal gain, but for the good of the country and its citizens. The imperatives of good governance and democracy oblige leaders to show greater concern and sensitivity to the needs and welfare of their citizens. Leaders must show and be seen by the public to feel concern for public good. Leaders must use power wisely and responsibly and should be motivated, not by self interest or arrogance, but only by the desire for public good and national interest. Citizens need clear, unambiguous and unequivocal commitment from their leaders that they will respond to their problems, needs, and interests. The simplest and most fundamental expectation of citizens is for their government to subordinate their selfish interests to the pursuit of and advancement of public good. Indifference or insufficient attention to public needs engenders apathy and even hostilities that ultimately sour the relationship between citizens and their leaders. Leaders must be seen by the public as prioritizing public good over selfish, partisan, or sectional interests. The elevation of public good over self interest of the leaders will dramatically reassure citizens of their government’s seriousness in institutionalizing good governance.

The current culture of governance that leads leaders to intimidate, harass, and bludgeon citizens into accepting government policies and programs is antipodal to democracy and definitely antithetical to good governance. Leadership excesses, especially corruption and insensitivity to
public needs and welfare, besmirch democracy and the concept of good governance in the eyes of the citizens. Such haughty and intimidating attitude and conduct block the necessary and thoughtful public discussion and examination of government policies, thus depriving both the government and the citizens of well-reasoned measures. Perhaps even more destructive is that the government often acts in blind and total indifference to the needs and views of the citizens and tends to waste resources on boondoggles that add little or no value to the society. The dangers of glib solutions to society’s problems will be significantly reduced if the government displays more attention and sensitivity to the needs and feelings of citizens.

Government cannot continue to uppishly dole out instructions and directives to citizens without paying attention to their needs, welfare, and opinion, especially on issues of national concern. Democratic governments do not deride, intimidate or hector their citizens; they motivate, persuade and inspire them toward building consensus and supporting the government. No effort to inspire or motivate the citizens will be effective if citizens distrust the government. To provide effective leadership, the government must recapture public trust by changing its mode of operation and attitude toward the citizens. Citizens’ trust is any government’s most vital asset and it should not be lightly dissipated. Democracy will not deliver its promises without effective leadership that builds and sustains the trust and confidence of the citizens. Distrustful citizens will remain uninterested, uninvolved and in most cases indifferent to government programs and initiatives. Effective leadership is therefore a sine qua non to building public trust.

138 Mariane Camerer, Measuring Public Integrity, 17 J. DEM. 152 (2006) (“if democratic states are to endure, reliably uphold law-based rule, safeguard human rights, and offer their citizens reasonable opportunities for
betterment, such states must govern not only democratically, but effectively as well.”).
Effective leadership requires two essential, perhaps indispensable traits of good governance—humbility and restraint. Leaders must have the humility to act as servants of the people, tending to their concerns, needs, and welfare. They should also exercise some restraint, to know and respect the limits of their authority and to always act in full awareness of the extent of their powers and authority. Leaders must eschew arrogance and conduct themselves as servants of the people. Government must be honest and straightforward with the citizens, explaining policies, projects and ideas it wishes to pursue, admitting errors and mistakes when they occur, and making changes and refining its policies to accommodate useful suggestions, public input, and acquired knowledge. African leaders will neither restore their badly tarnished credentials nor burnish their stained images by pious declarations or flowery rhetoric. Citizens need and want them to reject the hypocrisy that has dogged efforts to promote good governance and make persistent and transparent efforts to implement the tenets of good governance contained in the NEPAD document. To regain public confidence in government, leaders must govern in a manner that reflects the noble ideals of constitutional democracy. Leaders must govern responsibly and honestly, respect rights and liberties, allow institutions and processes that strengthen democracy to function as intended, and more importantly, provide opportunities and avenues for citizens to improve their lives.  

The antidote to most of Africa’s problems is good leadership that will meaningfully address the three major issues that grate citizens and dampen their zeal toward democracy, namely corruption, human rights abuses, and government’s lack of sensitivity to the needs and welfare of citizens.

139 Richard Sandbrook, Democracy in Africa Can Succeed, in AFRICA OPPOSING VIEW POINTS, 37 (Laura Egendorf ed. 2005) (“democracy will have little meaning if, between periodic electoral contests, rulers govern autocratically. The consolidation of democracy therefore involves the internalization of rules of democracy governing the exercise of power on a day-to-day basis as well as rules underpinning free and fair electoral contests.”).
Distrust for government engendered by leadership excesses can be restored by effective leadership. Africans need good leadership, the kind described by Professor Rotberg, who observed that:

Good leaders globally, not only in sub-Saharan Africa guide governments of nations to perform effectively for their citizens. They deliver high security for the state and the person; a functioning rule of law; education; health; and a framework conducive to economic growth. They ensure effective arteries of commerce and enshrine personal and human freedoms. They empower civil society and protect the environmental commons. Crucially, good leaders also provide their citizens with a sense of belonging to a national enterprise of which everyone can be proud. They knit rather than unravel their nations and seek to be remembered for how they have bettered the real lives of the ruled rather than the fortunes of the few.

More importantly, Africans expect their leaders to confront, unequivocally and tenaciously, the evils of dictatorship, human rights abuses, and corruption disinterred by civilian administrations. Citizens navigating their way amid the debris of chaos and ruin created by bad governance will always approach their government with torpor, disinterest and sometimes with downright contempt. Public trust and confidence in government will be recaptured if the government provides effective leadership that will transform the lives of citizens enervated by the consequences of bad governance.

---

140 USAID provides an accurate description of the relationship between good governance and democratic consolidation. It stated that:

Democracy and good governance provide the foundation for sustainable development in Africa. Effective government which represents the interests of the people and is accountable and transparent, is the best insurance that the needs and desires of citizens will be met. Long term improvements in health, education, economic growth or the environment in African countries ultimately require responsive and representative government that can implement the changes necessary to promote and consolidate such gains.


Citizens want their government to confront strategically and adroitly the social ruins – poverty, unemployment, rising crime rates, creaky infrastructure, decrepit institutions, corruption, outmoded transportation system, falling educational standards, and festering ethic tensions – all of which diminish the quality of life in the country. Leaders must pursue, consistently and with brio, policies and programs that will elevate the moral and material well being of citizens who count on them for good governance.

Establishing Accountability

Citizens embrace democracy because of its core attributes of transparency, accountability, and restraints on exercise of power. The democratic norms of the rule of law, accountability, and respect for citizens’ rights are the central and defining characteristics of constitutional democracy. They cannot be traduced and their enjoyment does not depend upon the whims or preferences of the leaders. Accountability, according to a United Nations Development Program, UNDP, study is “about power — about people having not just a say in official decisions but also the right to hold their rulers to account. They can demand answers to questions about decisions and actions. And they can sanction public officials or bodies that do not live up to their responsibilities.” These attributes reflect the firm renunciation of despotism that thrives on personalization of power and the exercise of unconstrained powers by the government. The much touted and frequently repeated commitment to good governance means nothing if African leaders continue to act like despots with no sense of accountability. The incongruity between their promises to respect democracy and their actions is clear and obvious and continues to drive a wedge between the government and citizens. The main anxiety in Africa is that governments are regressing back to the old way of treating citizens like

robots who must accept whatever the government does without question.

The failure to observe constitutional limitations on power has been a recurring challenge and criticism of democratic governments in Africa. African countries suffer from bad governance chiefly because of presidents who feel unaccountable and imperialistic. These powerful presidents erode the system of checks and balances and by doing so, prevent review of their actions. The erosion of accountability mechanisms rides roughshod over democratic imperatives and traduces the dictates of good governance, both of which demand that governments be accountable to the citizens. The lack of accountability has led to severe consequences for both the democratic process and the nation. Absent accountability mechanisms, elected officials rule like monarchs, deciding for themselves what should be done, how it should be done, and which laws should be observed with scant or no regard for both the law and public opinion. It tempts presidents into reckless choices and excesses that often lead to the squandering of the nation’s resources by corrupt leaders who operate with impunity. It has also led to brazen violations and acts of lawlessness by leaders unafraid of sanctions or recrimination. More importantly, it has disaffected the citizens who, unable to hold their leaders accountable, lose faith in the democratic process.

Lack of accountability is a common and accelerating trend in Africa that must be addressed if the government is sincere about institutionalizing good governance. Democracy without accountability is nothing but totalitarianism in a borrowed halo. The most important step toward promoting good governance is for political elites to liberate themselves from the thralldom of hubris

143 See Kwasi Prempeh, supra note 41 (describing efforts by African presidents to personalize government).

144 Peter Burnell, The Relationship of Accountable Governance and Constitutional Implementation with Reference to Africa, I Journal of Politics & Law 10 (2008) (“accountability makes the abuse of political power less likely, while at the same time helping to empower governments to serve the ends that democratically elected governments are
and provide a more honest, transparent, and accountable leadership.\textsuperscript{145} Leaders must develop the habits of respecting the rule of law and constitutional limitations on their powers and authority. Respecting the constitution will provide the moral ballast for leaders to demand similar respect from their subordinates. Leaders must, by the power of examples, set the template for probity in government.\textsuperscript{146} It is only then that leaders can, with moral confidence and justification, demand similar conduct from public servants. If leaders espouse and demonstrate the virtues of honesty, integrity and probity, they will not only enhance the quality of government, but they will also make it easier to persuade the masses to emulate their examples. It will be easier for a government that serves as an exemplar of the democratic spirit to change the attitude of citizens who are dismayed, demoralized, and ultimately cynical toward constitutional democracy.

African leaders must squelch their well-known antipathy to constitutional restraints and offer a clear and coherent vision of governance that uplifts the citizens, respects rights and liberties, and generally provides a better enabling environment for citizens to pursue their legitimate goals. Citizens must be allowed to enjoy their fundamental rights, liberties and freedoms without unnecessary restraints or interference by the government. They must enjoy the right to vote, 

\footnotesize{\textsuperscript{145} I adopt the definition of good governance stated by Daniel Kaufmann et al in their study for the World Bank. They defined governance broadly as ”the traditions and institutions by which authority in a country is exercised for the common good.” This includes (1) the process by which those in authority are selected, monitored, and replaced; (2) the capacity of the government to manage its resources effectively and implement sound policies; and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them. \textsc{Daniel Kaufmann et al, Governance Matters VII: Aggregate and Individual Governance Indicators 1996-2007} (World Bank Policy Research Working Paper 4654, June 2008).}

\footnotesize{\textsuperscript{146} Edward Kannyo, Liberization, Democratization and Political Leadership in Africa, in \textit{Towards Africa’s Renewal} 80 (Jeggan C. Senghor & Nana K. Poku, eds. 2007) (“the role of political leadership is as crucial now as it was at the time of dictatorship because the leaders are placed in the role of founders of new polities. How they manage power, their vision, strength and weaknesses will have a long term impact.”).}
participate and compete for elective offices, exercise their right of free speech and dissent, and be able to criticize or question their government’s policies without harassment. Respect for rights and liberties should be the first and most urgent priority. It is this more than anything else that starkly dramatizes the transition from dictatorship to democracy.

The imperatives of good governance demand that leaders release their grip on institutional accountability mechanisms such as courts, legislatures, and electoral commissions and allow them to function as expected, i.e., independently, fairly, objectively, and predictably. At present, the safeguards for promoting accountability are frail, incessantly assaulted by executives with the power, resources, and more importantly, the inclination to undermine them. If these institutions lack the resources to perform their oversight functions, constitutional restraints and limitations will be ignored as they have been in the past by the government. These institutions, especially the judiciary, freed from the shackles of the executive, will provide effective counterweight to executive excesses and abuse. They would also promote accountability and ensure that the government respects both the rule of law and rights of the citizens. Also, public servants will be able to perform their duties and discharge their responsibilities unpressured by government or ruling party stalwarts.

147 Kaufman et al. supra note 145 at 169.

148 See pages 15-18 of text, supra.


150 AFRICAN GOVERNANCE REPORT 2005, supra note 53 at 171 (“respect for human rights and rule of law is among the most important indicators of good governance.”).
Allowing Transparency

Constitutional democracy and the imperatives of good governance both forbid leaders from running a closed system of government. A democratic government exists to conduct the peoples’ business and it should never act with secrecy or prevent citizens from gaining access to their government. As stewards of the people, leaders should not be afraid to open up their stewardship to public scrutiny. Good governance requires a fundamental rethinking of the way African governments operate, especially their inclination not to open up government to review and scrutiny. The dominant impulse of African leaders has been to run a closed government. They often resort to devious schemes to shield their activities from review by restless citizens, tenacious journalists, and international organizations. This mindset infects both their attitude and disposition and leads them to resist attempts and efforts by the public to review their activities. African governments’ profound aversion to transparency is a travesty of the ideals of transparency and accountability that inspire and undergird both the democratic process and good governance.\(^{151}\) As servants of the public, the government has an obligation to explain its policies and activities to the citizens. To further the ends of good governance, leaders must dismantle the obstacles and barriers, which prevent citizens from gaining access to their government.

Good governance demands that leaders open government to review and scrutiny by citizens, opposition parties, and international organizations. The ultimate goal is to provide the public with access to data and information that will help citizens objectively evaluate their government, raise

\(^{151}\) Anderson JJ & Y V Tverdova, Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies, Journal of Political Science, Vol. 47(1) 91 (2003) (“the principles underlying democratic political systems presume that governments are accountable to their citizens, that they administer laws equitably and fairly, that their actions are transparent, and that all citizens have access to the political process.”).
questions and concerns, and to demand answers without artificial obstacles, or fear of intimidation. Such a move will blunt widespread and growing public concern that government programs and activities are shrouded in secrecy. There will always be dissent, complaints and protests against the government, as all are inevitable aspects of constitutional democracy. Political elites must learn to allow people with different points of view to express them, even vociferously if they so choose. As Professor Hazard stated, albeit in a different context, “in a free country, the voices of protest will continue. Those who cannot stand the complaints should get out of the kitchen.”152

The nation’s security interests frequently evoked by leaders as the reason for shielding their activities from public scrutiny is, in most cases, baseless and perhaps even self-indulgent. Granting the public access to the rudimentary workings of government will in no way jeopardize or compromise national security. Government must give citizens the opportunity and perhaps even the encouragement to review government activities and to offer criticisms and suggestions without fear of reprisal. An open government is not only essential; it is and should be required of all democratic governments.153 Opening government to review will not only allay public fears and suspicions that


153 Maria Dakolias, Are We There Yet?: Measuring Success of Constitutional Reform, 39 Vand. J. Transnat’l L. 1117, 1150 (2006) (noting that the success of democracy and engagement by the public depends on the availability
the government is hiding something, but also compel corrupt governments with a skewed sense of priorities to chart a new course and exercise their powers for the greater good of citizens. 154

Most governments in Africa are currently undergoing a transition – moving away from the past characterized by arrogance, high handedness and insensitivity toward public opinion and to a yet to be reached destination where openness, transparency and accountability shall be the government’s defining characteristics. Government can transform this period of uncertainty, doubt, and distrust into a vision of hope by modifying its arcane ways of governance and opening up government to public review and scrutiny. The government must preserve and respect, more diligently and consistently, the right of the public to know about their government. A commitment to transparency obliges the government to respect the freedom of the press enshrined in the constitution, to grant the public unfettered access to the workings of government, its policies and programs, and the conduct of government functionaries. Government can expunge the suspicion that it has something to hide by opening up government to public review. The government can also play a more proactive role by providing access to information on its own, without prompting by the public or the press.

of information. The degree of openness and transparency of government is central to good governance and has positive effects on economic growth, government performance, quality of policy and integrity).

154 KEMPE RONALD HOPE, POVERTY, LIVELIHOODS, AND GOVERNANCE IN AFRICA: FULFILLING THE DEVELOPMENT PROMISE 133 (2008) (“transparency in government is a good thing, for governments in Africa have the most potential for going awry given their monopoly on force and power and the ease with which some use and abuse that force and power. Where there is transparency, government officials will be prevented from exercising discretionary powers. Transparency therefore complements and reinforces predictability, reduces uncertainty, and inhibits and reduces the scope of corruption among public officials.”).
Government policies and programs stand better chances of receiving public support if citizens have unrestricted access to information and data. Granting the public access to information and opening up the government to public scrutiny will expunge the suspicion that the government has something to hide and will also help restore faith and confidence in the government. Public apprehension about the government may subside once citizens are granted access and opportunity to review and obtain vital information about the condition of their government.

Treating Opposition and Critics with Respect

Another core imperative of good governance is how the government treats the opposition. The democratic process is built for disagreements and opposing views. Commitments to democratic values and good governance demand respect for and accommodation of the opposition. The opposition should be allowed to freely ventilate their views and to canvas their position without hindrance by the government. The current scenario where African governments engage in devious schemes to obliterate the opposition does not augur well for either constitutional democracy or the quest for good governance. Such treatment is not only unnecessary but also counterproductive. The government’s contempt for citizens with different and opposing views generates frustration and disgust that often elide easily and smoothly into violence and civil disorder. Some opposition members, bewailing their inability to participate in the democratic process, resort to extra legal measures to vent their frustration. The government must show respect for the opposition by allowing them to freely express their views, opinions, and even criticisms without harassment. Treating the opposition with respect may salve the pain of losing elections and make the opposition more understanding and even supportive of government programs. The opposition may downplay its
differences with the government if it senses that the government is making transparent and good faith efforts to respect its views and seek its input on important matters affecting the country. Treating the opposition with respect will reassure citizens powerfully and concretely that the government is committed to democratic ideals, especially respect for citizens’ rights and liberties.

Opposition parties exist to offer different and competing ideas or differences with the government. Opposition parties scarcely disguise their desire to replace the ruling party and they often spend time and resources exposing and excoriating the excesses and missteps of the government in the hopes of swaying public opinion in its favor.\footnote{Wondwosen Teshome, \textit{Opposition Parties and the Politics of Opposition in Africa: A Critical Analysis}, International Journal of Humanities and Social Sciences 3:1, p.2 (2009) (noting that the role of an opposition party in a democracy is to check and poke, and to replace the incumbent party.).} The rights and powers of the opposition to criticize the government and to present different visions and ideas on how to solve the nation’s problems are vital components of constitutional democracy. The opposition cannot be squelched by the government, and its ability to perform vital functions should not depend upon the whims or preferences of the government. Governments in established democracies often display some discomfort, even disdain, for the opposition but they rarely seek to decimate or obliterate them. They learn to respect the opposition and typically refrain from interfering with the legitimate and lawful activities of the opposition. They instead find ways to out maneuver them and gain greater support from the public to win future elections. The problem in Africa is that governments neither care to respect nor accommodate the opposition. Governments in Africa do not view the opposition as fellow compatriots interested in advancing the nation’s interest but as detractors, saboteurs, and enemies that must be destroyed. Lacking patience and understanding for people with different views and motivated by a crass desire to display their authority and hegemony over the nation, they deal
with the caterwauling from critics and opponents in an impulsive and often tyrannical way. This attitude was captured and advocated by President Obasanjo long before he became Nigeria’s civilian President in 1999. He stated that:

In most African languages, the word opposition has the same meaning and connotation as the word enemy. Can we possibly conceive of a loyal enemy? Yet, the institutionalization of opposition was one of the pillars upon which the structures and processes that were bequeathed to us were supposed to rest.  

President Obasanjo, having professed disdain for the opposition, engaged in various schemes to decimate it, some illegal, most of them despicable. Regarding the opposition as enemies inspired the disdain and contempt that drove the government’s crude, abrasive, and intimidating treatment of the opposition.

Government must be careful not to squander the benefits of democracy by maltreating and suppressing the opposition. Rather than treating the opposition party with reflexive disdain and tarnishing their reputation by scurrilous and baseless allegations of illegal activities, the ruling government must treat the opposition with respect and accord them all the rights, privileges and liberties extended to citizens in a democracy. Vice President Abubakar Atiku made a compelling case for respecting opposition. He stated that:

One of the real tests of democracy is the acceptance by those in power that others who criticize them and are indeed trying to democratically

---


157 See pages 36-45 of text, supra.
take over their exalted positions are legitimate players in the system. This has been a major challenge in most African countries which we must face.\footnote{Vice President Atiku, Keynote Address to the National Conference on Elections 2007: Protecting the Peoples Mandate, Abuja Aug. 25, 2005.}

Tolerance for opposition should not be limited to when it is convenient or causes no distress to the government. A government cannot preach and espouse democratic freedoms and liberties and incongruously expect citizens to be docile and passive and to accept government policies and decisions without expressing their views. A government must respect the rights of its citizens, especially the right of the opposition to freely express themselves and offer alternatives to the governance. The public needs a candid and open assessment of government and would scarcely get them without a vibrant opposition ready to discuss and subject government actions to public scrutiny. Citizens with different views, agendas, and visions should be free to air and voice them so that the public can evaluate them against those offered and pursued by the government. Instead of reacting negatively to criticisms and opposition, the government needs well considered and constructive responses to opposing ideas and criticisms raised by the opposition.
Bad governance thrives in Africa because of the absence of a healthy and vibrant opposition that has both the capacity and the willingness to call the government on its excesses. Professor Adrienne LeBas was correct in her observation that “a strong opposition may be the most effective means of creating checks and accountability in hybrid regimes and therefore the most important prerequisite for democratic deepening.”

African governments charged with protecting public good and governing responsibly undermine both virtues, due to a lack of sustained effort and challenges by the opposition. Some of the flawed government policies result from the stubborn and arrogant implementation of policies without any effort to seriously review different and contrary options presented by ordinary citizens and the opposition. A government must cultivate the spirit of dialogue and encourage the free flow and exchange of ideas and information on important national issues. Government policies and programs benefit immensely and are often significantly enriched when policies or ideas are discussed openly, freely, and as vigorously as possible. Such public debates and discussions enable the government to decide which options are better for the country. It is futile and meaningless to talk about good governance without viable opposition with the requisite resources and means to demand changes from the government. A healthy and vibrant opposition will serve as an effective counterweight to the government’s impulse to ignore the democratic imperatives of restraint and accountability. Good governance thrives when opposition members with the independence to question the government stand up to the government and demand accountability.

---

159 Adrienne LeBas, The Contributions of Contention: Political Change in the Hybrid Regimes of Southern Africa, quoted by Teshone, supra note 155 at 2.

160 Adam Habib & Sanusha Naidu, Race, Class and Voting Patterns in South Africa’s Electoral System: Ten Years of Democracy, AFRICA DEVELOPMENT, vol xxxi, no 3, 81, 91 (2006). (“A weak opposition is bound to have negative consequences for the consolidation of democracy in the country. For as long as there is no viable opposition party to keep the government party on its toes, so long will the lines of accountability between state elites and the citizenry remain, at best tenuous.”).
Professor Carolyn Logan accurately described the effect of a lack of credible opposition on the democratic process:

The failure to establish a credible opposition continues to limit the public’s real choices, and provides few incentives for the emergence of a truly responsive and representative political system. Under such circumstances, political elites remain largely disconnected from their constituents.  

161

The democratic system of government is structured to thrive on the free flow of competing ideas and visions, disagreements, and even opposition. Good policies and programs often emerge or are made even better by a process of vigorous debate and exchange of ideas, public scrutiny, and even criticisms by all concerned — the opposition, private citizens, the government, and its supporters. Such unhindered expressions of opinions represent the capstone of the freedom enshrined in the constitution. Suppression of the opposition deprives citizens of their most treasured right to elect candidates of their choice.  

162 It also weakens government and deprives the society of the benefits of sound policies formulated after the accumulation of nuances, different ideas and competing visions. Sometimes, it takes a vibrant opposition plumbing government policies and programs to compel the government to govern more responsibly and pay greater attention to the needs and welfare of the citizens.

Efforts to promote good governance must therefore incorporate a commitment by the government to respect the opposition. A healthy opposition is beneficial to both the democratic process and good governance. It provides a chastening effect on government by providing incentives

161 Carolyn Logan, supra note 99 at 3.

162 Staffan I. Lindberg, Opposition Parties and Democratization in Sub Saharan Africa, Journal of Contemporary African Studies, 123, 124 (2006) (“without political opposition, there is no choice and when there is no choice the people cannot exercise their right to rule.”).
for leaders to govern more responsibly. Governance is often significantly enriched by increased and free flow of ideas, suggestions and criticisms and input from the opposition. An effective leadership requires the government to listen and to evaluate the arguments and competing ideas presented by opposition parties and then initiate policies and programs informed and influenced by the knowledge accumulated from discussions. Another major advantage of the opposition is that they illuminate the democratic process by turning the searchlight on governance, exposing errors and weaknesses, and necessitating the government to explain and justify its actions and conduct, thus providing citizens with vital pieces of information upon which to judge the performance of their government. A constant evaluation of government by the opposition and the presentation of counter ideas and vision for the country will make the government more alert to its obligations to the citizens, thus making the government more sensitive to the needs and demands of the public.

5. Revamping Public Institutions

Public institutions are central to good governance because they are the vehicles through which government provides services to the citizens. Democratic reform and efforts to institutionalize good governance will achieve little to nothing unless the bureaucratic infrastructure and public institutions that anneal constitutional democracy are revamped.163 Constitutional democracy continues to falter not only because of the conduct of leaders but also because of inefficient,

---

163 A similar challenge was framed by Professor Udombana, who stated that “the first major challenge to democratic governance in Africa is to develop and strengthen competent institutions of democracy such as the media, civil service, electoral systems, independent commissions and educational institutions. These and similar institutions implement policies that are necessary to democracy and development. They also provide alternative voices, guaranteeing alternative mechanisms to various groups to get a response from the government.” Nsonguru J. Udombana, Articulating the Right to Democratic Governance in Africa, 24 Mich. J. Int’l L. 1209, 1271-2 (2003).
ineffective and deteriorating public institutions.\textsuperscript{164} At present, public institutions are ineffective, inefficient, crippled by corruption, and mismanagement and the legacy of military rule.\textsuperscript{165} Public institutions are poorly funded, inadequately equipped and function in circumstances that make efficiency difficult if not impossible. No one familiar with Nigeria will question Professor Ayittey description of the infrastructural decay in Nigeria:

Infrastructure has crumbled in Nigeria because contractors failed to perform. The educational system has sharply deteriorated. Roads are pot-holed. Hospitals lack basic supplies because they have been stolen or diverted, and patients are often asked to bring their own bandages and blankets. State institutions decay and breakdown. Nobody cares because tenure of office and promotions are based not on competence and merit but on personal loyalty to the president, ethnicity, and sycophancy. Institutions such as the civil service, the judiciary, parliament, and the police disintegrate and fail to function since they have all been perverted.\textsuperscript{166}

Corruption and desire for self-advantage have overwhelmed the ideal of public service and have turned public institutions into crucibles of sloth, avarice and mediocrity.\textsuperscript{167} Poor leadership, shaggy government policies and poverty continue to expose public servants to manipulation and corrupt practices.\textsuperscript{168} Politicians view public institutions as appanages of their office and often treat

\begin{footnotesize}
\textsuperscript{164} Joseph, Frontier State, \textit{supra} note 12 at 103 (noting that democracy will not flourish in Africa until public institutions perform their most fundamental duties in a reasonably efficient and predictable manner).

\textsuperscript{165} \textsc{Deepening Democracy in a Fragmented World}, \textit{supra} note 32 at 65 ("...democratic institutions in many countries – especially newer democracies – are overburdened and lack the means to do their jobs. ... oversight and regulatory agencies lack well trained staff. And bureaucrats are underpaid, overworked or both.").

\textsuperscript{166} Ayittey, \textit{ supra} note 22 at 7.


\textsuperscript{168} Kwesi Kwaa Prah, African Wars and Ethnic Conflicts – Rebuilding Failed States, African Regional Background Paper: Human Development Reprt 2004 at p.3 ("inept and corrupted bureaucracies have spawned in societies in which graft and pilferage have become common place. People in bureaucratic organizations treat their office as
them in ways that are inimical to the objectives and integrity of the institutions. They seek to influence, control, and retaliate against public officers who refuse to hew to their every demand.\textsuperscript{169} Citizens with money or influence — politicians from the ruling party, senior government officials, and wealthy private citizens can manipulate and control public institutions to achieve their selfish desires. Public servants who live in a culture dominated by greed succumb to the prevailing orthodoxy and use their public offices to make money.\textsuperscript{170} Without a strong and upright leadership to set the right examples and demand accountability from public institutions, civil servants engage in an arbitrary, unprincipled and ultimately corrupt and improper exercise of power to advantage themselves.\textsuperscript{171} They orchestrate inexplicably circuitous and long drawn out schemes to frustrate their patrons with the ultimate aim of extorting money from them. Justice Emmanuel Ayoola, the current Chairman of the Independent Corrupt Practices Commission, one of the anti-corruption agencies in Nigeria, stated recently that:

\begin{quote}
Corruption in civil service is so widespread and involves common occurrences of delayed files, making wrong claims, favoritism, truancy, outright demand for bribes and abuse of office. Vouchers of contractors and pensioners are delayed by officers who claim to be very busy, but in actual fact, they are mere well rehearsed and orchestrated ploys to collect bribes or make contractors or pensioners agencies through which they make money, largely because their salaries can hardly meet their needs in an ever-inflationary economy.”).
\end{quote}


\textsuperscript{170} Oko, \textit{supra} note 167.

\textsuperscript{171} As I stated elsewhere:

Fueled by greed and the absence of meaningful supervision, government officials use their powers to enrich themselves. They often engage in various forms of illegal activities, including demanding bribes, extortion, embezzlement, fraud, and even outright expropriation of the state’s resources. \textit{Id.} at 415.
play ball before processing their documents.\textsuperscript{172}

Public institutions are central to good governance because they are the vehicles through which the government provides and delivers services to the citizens. Another subtle, but ultimately more dangerous, component of corruption in public institutions is that it puts undue and unnecessary pressures on honest public servants who want to diligently discharge their duties. Public servants often operate in environments and circumstances where they cannot easily assert their independence or resist the demands of overbearing and all too powerful politicians, especially members of the ruling party. They are also exposed to pressures that can overpower even the strongest human beings and disable their moral compasses. As they watch their bosses and colleagues luxuriate in ill-gotten wealth while facing straitened and harsh economic circumstances themselves, some public servants succumb to the morals of the marketplace and become participants in schemes to enrich themselves.\textsuperscript{173}

When public institutions malfunction, as they often do in Africa, their inadequacies color and define the tenor and assumptions that undergird the relationship between the rulers and the citizens. The failures of public institutions habituate citizens to not expect much from the government and rob them of the trust and confidence so vital to the legitimacy and effectiveness of


\textsuperscript{173} This phenomenon was explained by Robert Calderisi who stated that:

\begin{quote}
Imagine being a minister of finance trying to raise a family of five or six on a salary of $500 a month . . . . and surrounded by less competent colleagues who have already sent their children to American or French universities and have handsome apartments in London or Nice. Only the rarest of human beings could resist such temptations very long. Remarkably, many still do. One way of honoring that resistance is to close the yawning gaps in government rules -- foreign and domestic-- that allow officials to rob public money with impunity.
\end{quote}

Calderisi, \textit{supra} note 1 at 90.
democratic governments. Public institutions in Nigeria continue to show signs of decay and inadequacy in coping with the dynamics and demands of a rapidly developing society in the process of democratization. Bedraggled by corruption and enervated by ineptitude, mismanagement and years of neglect, most public institutions have lost the capacity to respond effectively and efficiently to the demands of the public. They exhibit the weaknesses of the human infrastructure that operates them; they are afflicted with corruption, nepotism, inefficiency and lack commitment to public good. There exists a widespread dissatisfaction with public institutions— the courts, the police, and public service institutions. Problems with public institutions are often systemic, deep rooted and pervasive. They cannot be addressed by cosmetic or superficial changes.

As an informed scholar of Africa presciently stated more than four decades ago, “it is difficult to see how Africa’s crisis can be surmounted without . . . national institutions that function efficiently and predictably.” Professor Richard Joseph poignantly and perceptively observed that “the most daunting frontier still to be crossed in much of post colonial Africa is the creation and

174 UNDP HUMAN DEVELOPMENT REPORT 2002: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD, 65 (2002) (“ . . . .democratic institutions in many countries – especially newer democracies – are overburdened and lack the means to do their jobs. . . . oversight and regulatory agencies lack well trained staff. And bureaucrats are underpaid, overworked or both.”).

175 Jeffrey Herbst, The Incomplete Triumph of Democracy in Africa, lecture delivered at the American Enterprise Institute, Nov. 1, 2004, available at www.aei.org The author stated that:

Beyond elections themselves, many of the democratic institutions in most African countries are far from the democratic ideal. Parliaments are just trying to organize themselves and often cannot provide effective counterweight to the executive. The courts are extraordinarily weak; judges are sometimes corrupt, seldom well-paid, and often unable to access the simplest resources. The police and military are often badly resourced, corrupt and distracted from their primary missions of providing internal and external security by the political ambitions of their leaders and rivalries within their ranks.

maintenance of institutions that will uphold transparency and the rule of law.”177 Public institutions that function neither effectively nor efficiently continue to feed populist cynicism and frustration with government. Professor Kempe Ronald Hope provided an accurate depiction of the state of public institution in Africa when he stated that:

Institutions and public institutions in particular, have been a failure in Africa. Many of these institutions have been captured by the elites to serve narrow personal interests. The resultant effect has been the lack of ability of the state to provide the requisite institutional framework to support good governance.178

Governments cannot conform to the imperatives of good governance or deepen democracy unless institutions through which they serve the citizens function effectively and efficiently.179 Government must revamp dysfunctional, fraying and creepy public institutions that prevent citizens from deriving optimal benefits from constitutional democracy. Professor Charles Soludo, the then Governor of the Central Bank of Nigeria, stressing the need to revamp public institutions in Nigeria stated that:

“[t]o make rapid progress, the institutions of the state need restructuring and strengthening. The focus is to eliminate perverse institutions, rebuild or create institutions that are developmental in orientation, tie the hands of government from arbitrary behavior and circumscribe it to behave in a manner that is socially optimal.”180 Public institutions serve as the pillars of democracy and anchors


178 Kempe Ronald Hope, supra note 154 at 122.

179 Kwame A. Ninsin, Introduction: The Contradictions and Ironies of Elections in Africa, Africa Development, vol. xxxi, no 3, 1, 4 (2006) (“where democratic institutions fail to meet the material expectations of the people, instilling the norms and procedures that govern democratic actions becomes problematic and a convenient justification for some leaders to exploit popular disenchantment to corrupt democratic institutions or subvert them.”).

180 Charles Soludo, Law Institutions and Nigeria’s Quest to Join the first World Economy, lecture delivered in honor of retired Justice of the Supreme Court, Justice Kayode Eso at the Obafemi Awolowo University, Ile-Ife July 25, 2006
of good governance and they must be revamped and transformed to meet the needs and challenges of constitutional democracy. As Professor Makinda rightly observed, “democracy is only possible if the structures, processes and institutions through which the people’s will is expected to be addressed accommodate their interests, values and aspirations.”

Public institutions require vast structural and attitudinal readjustments that will curtail corruption and inefficiency, and expand the frontiers of accountability and transparency. Public institutions should no longer be allowed to function in an atmosphere of corruption, executive interference and indifference to public good. Competence, efficiency, autonomy and transparency should be the defining characteristics of public institutions. For public institutions to function optimally, there should be no alternatives to recruiting competent and honest employees who have the autonomy and independence to act in the best interest of the public. Public servants facing the pull and tug by politicians and lacking the means to resist their overtures succumb to their illegal requests for favors. The biggest challenge, however, is to unhook public institutions from the grip of inept and dictatorial leaders so that they can better serve the public without pandering to the wishes of the government. Efforts must be made to encourage and help citizens and government officials to approach and treat public institutions with a different mindset, one that emphasizes honesty, transparency and accountability over the pursuit of selfish interests. A government must prioritize

---


182 Mohammed *supra* note 18 at 26 (“good governance is achieved by improving the quality of government organization and service delivery.”).

the interests and welfare of public service patrons and, revamp public institutions by promoting employee competence, training, and efficiency. Efforts by politicians to control or manipulate public institutions should be discouraged and prohibited. Public servants should have the independence and autonomy to neutrally, fairly and objectively apply the institutions’ rules and regulations to all patrons regardless of social status or political affiliations.

Conclusion

Ultimately, Africa will be a much better continent if leaders practice self-restraint and subordinate their selfish interests to the overriding interests of the nation. Leaders must use their powers responsibly, and consistently and diligently strive to preserve and promote the central ideals of constitutional democracy — the rule of law, respect for the rights and liberties of citizens, preserving the independence and integrity of public institutions, including the legislature and, the courts and generally providing an enabling environment for them to function effectively, efficiently, without efforts by government functionaries or ruling party stalwarts to influence or control them. A government and its leaders “must support and strengthen, not stymie the institutions of state – the institutions that must endure long after leaders have left.”\textsuperscript{184}

Good governance may not necessarily address all of Africa’s problems, but most of the problems may prove amenable to resolution once the leadership provides good governance. Moreover, good governance will help Africans attain what they have longed and hoped for: an open, effective and accountable government that is sensitive to their needs and welfare and respectful of

---

\textsuperscript{184} Prempeh, \textit{supra} note 41 at 833.
their rights, liberties and freedoms and willing and capable of providing an enabling environment for
them to live in peace and security, uplift their lives and pursue their legitimate aspirations without
unnecessary restraints.