

**“Constitutionalism In Africa: Creating Opportunities, Facing Challenges” (2001),
Oloka-Onyango, J., ed., Notes, refs, index, xi, 345pp, UGANDA. FOUNTAIN
PUBLISHERS**

This extraordinary edited book of words, style, illustrations and arguments provides a relevant insight into African constitutionalism from the past until the present, with projections into the future. The success of this book is, in fact, in the scholarly and editorial ingenuity of both the contributors and the editor. Oloka-Onyango combines creative authors who use law, gender, literature, pan-Africanism, language, politics, religion and ethnicity as disciplinary arenas of examination. The book is about re-writing African constitutions and constitutionalism in ways that reflect African people power. Whether by reverting to oral constitutionalism of African traditional societies as Antonia Kalu suggests, or introducing positive discrimination quota systems for affirmative action as Sylvia Tamale suggests, all the authors seem to agree that the phenomenon of executive prerogatives and excess cannot continue unchecked by law and principle.

Constitutionalism defined. Kalu sees constitutionalism as the carefully crafted relationship between recognizable national ideas and the day-to-day practice of citizenship. She cautions against neo-colonial constitutionalism in Africa by continual use of “Western classrooms” models introduced in the colonial era. Likewise, several chapters acknowledge that many African governments and the drafters of various constitutions have manipulated the instruments in order to deny people their rights and freedoms. Analyses in all the chapters of the book reveal beyond doubt that the human rights schemes in various constitutions examined discriminate against both men and women and put undesirable restrictions on rights granted to people in international human rights documents. Particularly beyond that, there is a fair agreement that in the formulation of African constitutions, women face the plight of the larger half; they face limitations on their sexual orientation (Mazrui, Chapter 1), ethnicity (Gahamanyi-Mbaye, Chapter 5), indigenous citizenship (Tajudeen, Chapter 4), religious freedoms (Ola Aboa Zeid, Chapter 10), and they are socially and economically under-privileged (Tamale, Chapter 12).

Another observation is that neutrality in human rights is not guaranteed in African constitution formulation. In some cases, reservations have been made to various articles and principles of international law and human rights principles in the belief that the articles violate *inter alia*, traditional cultural rights, the teachings of Shari’a, human dignity, and established supposedly “moral,” sexual behavior and African custom. For example, Article 1(a) of the Cairo Declaration recognizes that all human beings are equal, albeit in human dignity not ‘rights’ (Zeid). The question, which then arises, is what is African and what is Western, and how can we be “African” without appearing to deny rights that are inherent? Is it possible to develop an African constitutionalism when Africa, especially sub-Saharan Africa, is interpretively working with ‘Westernized’ law models that conflict with the Arab and African interpretation and practice of Shari’a law? Is it fair to argue that international law is indeed originally European law and to a large extent continues to be since no Islamic, African states were involved in its formulation? For example the introduction of ‘Temporary Protection’ in International Refugee Law is a justification of Western international law, not applicable to existing

refugee situations on the African continent. If African feminists argue that international law was not originally neutral to women's concern, do they recognize this also in other parts of international law?

Most of the contributors to the anthology acknowledge that in the advancements of the women's movement, constitutional provisions in many parts of Africa are still essentially *masculinist*. Tamale (Chapter 12) expounds on the affirmative action strategy introduced in Uganda to boost women's political, social and educational achievements. Due to masculinist meritocracy, social privilege, and notions of African communitarianism, affirmative action has not translated well into women empowerment. She argues for positive discrimination such as affording education for all girls at primary and secondary education as a model affirmative action. Additionally, many women run the high risk of losing citizenship in Africa, since most marriages are patriarchal (Tajudeen, Chapter 4), patrilocal (Pereira, Chapter 9), or patrilineal (Zeid, Chapter 10). Pereira recounts a situation where in Nigeria married women who move to their marital states lose indigenous citizenship in both their father's indigenous states and their marital states.

In Chapter 1, Mazrui tables the issue of sexual orientation, which is indeed controversial to Muslim Africa and parts of Sub-Saharan Africa. He argues that African constitutions have not been well formulated to serve the interests of the people instead; political leaders and cultural institutions have engineered notions of "acceptable sexual behavior". Ali Mazrui points out that in many African states, such as President Moi's Kenya, President Museveni's Uganda and President Mugabe's Zimbabwe, individual offences against economic and political order are more tolerated than individual sexual offences. Homosexuals for example, are denied a place in some African constitutions. Conclusively, people-centered constitutions should limit state power in the African individual private life.

Another issue explored is the negotiation of religious differences in constitutional making tomorrow to guarantee protection of African people and their religious preferences. In Chapter 10, Oba Zeid challenges the state-inspired interpretation of human rights principles using grassroots public opinion and action. Using the example of Muslim Africa, activities of liberal Muslims and public opinion should be encouraged to negotiate existing schemes to protect people of other religious beliefs and women from state inspired interpretations of international law.

A couple of arguments made by the contributors are discomfiting. For example, Kalu in Chapter 3 makes the argument that ancestral constitutionalism is only unique to Africa and not in the United States and Eastern Europe. In contrast, Native Americans had ancestral constitutions before colonialism that the tribes have maintained through meticulous oral history guaranteeing them rights of self-government, freedom of choice and expression within their own territories. Peter Mukidi Walubiri's argument that constitutionalism is a process of state empowering the people, contradicts the reality that people empower the state and this should be the precedent. Ola Zeid, (Chapter 10) seems to infer that restrictions in Shari'a laws are unique in comparison to other laws in Africa. Yet, in "Christian Africa", such restrictions occur in laws *inter alia*, relating to terrorism, the media, political association, gender and asylum. Zeid also dwells on

married Muslim women but fails to demonstrate what Shari'a law provides for single Muslim women and female youths.

This book is written entirely by Africans working on the continent and Africa Diaspora. Though the authors are primarily scholars, this is not your typical scholarly piece. It is therefore good forage for activists, researchers, civil society, judiciary, legislators and all pan-africanists. Unlike other scholarly writings on Africa published and accessible only in "Western" libraries, this book is published and available in Kampala, Uganda. It captures so eloquently the ongoing constitutional debate in Africa. If you know the authors, this book makes you feel like you are in fact having a one-to-one conversation and if you do not, you will be glad you found them.

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