

Why Benin and Kenya need the space to own their Constitutional Development

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A number of African states are currently involved in the process of reworking the systems that govern them as part of a deliberate and careful move to make them more reflective of their particular contexts and core national interests.

This process follows multiple attempts to emulate foreign systems, first in the image of the coloniser and then of the geo-political heavyweights that dominated the latter half of the twentieth century. These attempts, often with foreign interests as their core logic, alienated populations from the state and did not allow for the kind of truly representative governance that would be the motor for independent progress in economic and political spheres.

Benin and Kenya are two examples of countries who are carefully adapting their constitutional dispensations in order to take back their ability to govern properly and legislate in the interests of their people. This is what one could term the development of solutions to issues of governance in specifically Afro-Kenyan and Afro-Beninese contexts.

Benin amended its Constitution in 2019 to fix governance issues and systemic dysfunctions that were unanticipated in the heady days of the 1990 National Conference. This amended system is currently undergoing its first stress-test with the upcoming presidential elections in April. On the other side of the Anglophone-Francophone divide, Kenya is currently undergoing a similar process as it attempts to bridge deep political divisions within its society that have been exacerbated by a non-reflective system of governance.

The Third phase of African Constitutional Development

Colonialism established systems of governance and party representation in Africa that were tailored around the political and economic interests that prevailed at the time. It is commonly understood that, as structured political entities, the prevailing interests of the state simply did not revolve around the local population.

The era of independence gave newly-free nations on the continent an first opportunity to build new political structures that reflected their contexts. However, local innovation was quickly replaced by concepts such as guided democracy and the single party state. For the Cold War hegemony of the time, it was an acceptable state of affairs as long as it was confined to the continent and their interests were served.

The fall of the Berlin Wall brought on the second phase of constitutional development on the continent. This wave of democratisation was the result of the fall of America's Cold War antagonist and a prevailing assumption that the Western liberal democratic model was the best solution for the continent.

History has not stood still since then, however, and we are currently in what can be seen as the third and latest phase of constitutional development in Africa.

The Magnitude of the Task at Hand

Of key concern in both the Beninese and Kenyan contexts is how to address the governance challenges that emerged from the wave of political liberalisation following the end of the Cold War. The adoption of a purely Western liberal approach to political parties, in particular, posed a problem that both countries are moving to solve by applying context-specific solutions.

Benin's adoption of the 'système de parrainage', or endorsement system, is an example of a measure designed to foster the emergence of national and ideological parties. The outcome of this laissez-faire approach was the emergence of a highly fractured party landscape that was dominated by localised and individual interests, sometimes only encompassing neighbourhoods and the newly-rich.

The cost of poor consensus building at the national level in this context was the country's ability to govern itself in a coherent manner. The economic costs of the problem held Benin back significantly and it was stranded amongst the lower-income economies up until 2020.

A similar scenario is playing out in the East. Kenya has been grappling with the issue of how best to integrate its strong ethnic constituencies into a system that allows for national interests to be the deciding factor in policy decisions.

The magnitude of this task is therefore immense and requires that the solutions reflect the particular Afro-Beninese and Afro-Kenyan contexts.

Western models of governance and political party regulation are the result of their particular historical experience and struggles. Where political parties in these countries may have begun as highly partisan and divided entities, evolution over centuries has allowed for the development of constitutional and informal norms needed to foster the emergence of national and ideological movements. Not all parties make it to the national stage if they are unable to meet certain criteria.

Benin and Kenya are in the process of developing their own parameters to temper the broadly defined political and party systems that were established during the previous phase of constitutional development. Given the levels of fragmentation of their party systems, it is highly unlikely that this important evolutionary step can be developed in an unregulated environment.

The Need for Nuance and the Problem of Serious Jokers

The real significance of this current phase of constitutional and electoral reform on the continent remains somewhat underappreciated by influential actors in local and international spheres. This results in knee-jerk reactions to ideas of political innovation and a highly conservative view of the kinds of change that African countries should undertake. This conservatism is not without impact.

Part of the problem is what one could call the emergence of 'Serious Jokers' who exploit the international community's conservatism in order to gain political capital.

A prime example is the recent lobbying on the part of the Beninese opposition at the African Court of Human and Peoples' Rights and the United Nations in order to call into question the legitimacy of the 2019 amendments. A similar situation is taking place amongst the emerging

de facto opposition in Kenya as they use similar narratives to question the legitimacy of the Building Bridges Initiative (BBI) that seeks to find a workable solution to Kenya's ethnically fragmented political and governance structures.

Their ability to call into question the legitimacy of the initiatives that exist within the constitutional rules of the game and the parameters of international human rights exacerbates an already sensitive situation. The fact that the international community gives such actors as much recognition as established political leaders is not a simple matter of fair or equal representation in practice. Their ability to de-legitimise these initiatives, despite their particular track records, raises the risk of constitutional, political and electoral crises within the countries concerned.

More nuance is required from observers of the African continent in order to allow states to determine their national identity, to decide on the systems that will make them benefit from their immense human and economic capital and, ultimately, to flourish.

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The published version of Prof Ben Sihanya (2021) "Why Benin and Kenya Need the Space to own their Constitutional Development," March 2, 2021, *Ventures Africa*, is available at <https://venturesafrica.com/why-benin-and-kenya-need-the-space-to-own-their-constitutional-development/> (accessed March 3, 2021).