There have been many books in the recent past that have attempted to unravel the crisis of state in Africa. They have interrogated this fragility from many different stand points in an effort to understand and propose possible solutions. The book under review is one such effort to do so from institutional/constitutional reform angle. The premise being the democracy is founded on the institutional arrangement that has been expounded in the constitution and in order to safeguard democratic order, the constitution must incorporate appropriate checks and balances. This makes the constitution one of the sites of struggle to secure democracy.

The struggle around democracy and the Kenyan state has been carried out by looking at the points of departures. The making and implementation of any constitution is primarily related to the issue of how a people or a society is organized and the way in which power is exercised and negotiated between different actors. The starting point of change is the promulgation of the new constitution but this does not imply that change will necessarily follow. Rather various outcomes are possible based on different permutations and combinations of factors.

Kenyan context brings the spotlight on similar changes that took place in other parts of Africa around the 1980s but many of them relapsed into military dictatorships, one-party or authoritarian rule. These failures imply prevalence of a much more deeply rooted nature of political authoritarianism along with its structure. The concomitant characteristics like political inequity, fragile and incapacitated state institutions controlled by elite coalitions, fractured political parties with cohesive social bases, weak civil society fragmented along ethnic and regional lines. There is a vast variation across the continent in the capacity of citizen’s to effectively use democratically institutions. Theorists have tried to conceptualize this phenomenon as a problem of competitive elections but are not free and fair or these are held under authoritarian leadership.

Kenya during the 1990s was in a similar condition. The 1992 and 1998 elections were severely flawed as a result of manipulation by an authoritarian leadership. The demand for constitutional reforms stemmed from this need to provide safeguards and ensure free and fair competitive democracy and elections. The 2002 victory by the opposition gave faith to the people of the possibility of change through formal political process. This confidence in the system was again tested during the 2007 elections and violent aftermath. However the negotiated settlement of the violence helped in promoting constitutional change. Constitutional change was an important bridge over the gap that had arisen between the constitutional provisions and its actual practice.

African experience of diluted constitutionalism was anchored in statism which was rooted with the notion of colonial developmentalism. This idea was used by post colonial governments to water down democracy in the name of development. Many regimes suspended the constitution while others manipulated its provisions, all this resulted in the culture of constitutionalism being eroded and undermined. Unfortunately three decades later there was silence but no development in Africa. Authoritarian rule flourished while development floundered. As Zeleza argues in the book, neither statist nor neo liberal authoritarianism has succeeded in creating transparent development in Africa.
In the Kenyan case, initial support was for multiparty democracy, however it was later felt that this is not enough and reforms of the constitution was demanded. The old constitution provided opportunity for manipulation. It had become an instrument of highly concentrated and authoritarian executive power. The power of the president was kept above the ambit of the constitution and could over ride it whenever he wanted.

Many held the constitution and state power for sustaining and perpetuating of the problems that have plagued the Kenya like poverty, inequality and exclusion along regional, ethnic, class and gender lines. There was a need to change impunity and exclusion with accountability and inclusion. For this the exercise of power had to be transformed, implying a need for reviewing of the constitution. The post colonial state deteriorated from a relatively open multiparty structure with regional devolution to a de facto single party state by the time of Kenyatta’s death in 1978. This was in consonance with other African states like Ghana, Tanzania and Uganda which followed a pattern of centralization of power along with systematically eliminating potential alternative centres of power.

These changes were initially incorporated with the constitution by enhancing the power of the presidency. It was also accompanied with the creation of institutions whose power emanated directly from the presidency. Along with this a trend of concentration of security powers or coercive powers and their repeated use to intimidate, silence or instil fear. In order to achieve loyalty of the apparatus, they were ethnicised with people from the president’s ethnic group being placed in key positions. Any opposition to this was responded with forced disbanding of opposition parties, arrests, assassinations or being forced into exile.

President Moi made further amendments to the constitution and made the political system de jure one-party state. He controlled the party and side stepped the parliament through an embedded network of provincial administrators whose unquestioned loyalty spread fear, dependency and exclusion. The security agencies used surveillance, detention and torture towards perceived enemies especially in potential sites of resistance like universities. The removal of the security of tenure of judges and establishing of opaque appointment system of judges in 1988 resulted in judicial subservience. Initially the judiciary was equal to the executive. Eventually in the government organization, it was relegated to become mere department under the office of Attorney General. By 1988 Moi regime was at its authoritarian zenith. It felt confident to rig the elections through a mlolonge (queuing) system of voting. This ensured that KANU removed unwanted party leaders with no scope of judicial remedy or appeal.

Those who wanted to resist were forced to operate outside the constitutional and civic space. Due to this, the focus of democratic struggle in the run up to 1997 elections emphasized constitutional reforms as the only way in which the political interests outside KANU could be liberated and exercised. The old constitution which was based on the colonial constitution had been amended many times to concentrate power in the presidency, which also controlled judiciary, public service, security forces, provincial administration and parliament. Thus to attain accountability in the exercise of power, respect for human rights, the distribution of resources were all related to reforming of the constitution and restricting the power of the presidency. The National Rainbow Coalition (NRAC) government came to power in 2002 after campaigning for constitutional reforms. However the popular supported draft constitution was rejected. The diluted constitution which was proposed as an alternative reform was defeated in the referendum in 2005. The popular frustration with NARC to live up to its promises increased while political privileges were being usurped and parallel exclusion of key NARC constituency led to the hardening of positions during the 2007 elections campaigning. The Orange Democratic Movement led by Raille Odinga wanted to remove the conservative wing of NARC led by Mwai Kibaki. This struggle led to the problems during the elections and resulted in post election violence. The 2010 constitution had some of progressive characteristics like the bill
of rights and checks and balances on power. It is all the more important that it was adopted despite resistance. The book under review attempts at analyzing the various actors and processes that resulted in National Accord of 2008 that was reached after 2007 violence, addressing some of the enduring and deep running problems of Kenyan state and society. The Grand Coalition government’s mandate included many accompanying reforms processes and commissions that helped shape the 2010 constitution. Even after being adopted there have been efforts to undo the popular content by the elites.

The 2013 elections tested the provisions of the constitution. These were elections conducted with the new rules of game. A new Independent Elections and Boundaries Commission along with public institutions critical for free and fair elections were created. These included a reformed judiciary and constitutional commission. The Election Commission also announced the elections one year in advance. However as elections approached it was not able to maintain a united front and procurement, configuring, counting and tallying of election voting machines became of controversial and there were allegations of scandal. Many flaws and malfunctioning took place. Similarly existence of different voter registers resulted in complications. Uhuru Kenyatta was able to avoid a runoff by less than ten thousand votes. Thus the legitimacy of the government rests on the legitimacy of the electoral process and that there is certainty of the outcome. This bringing into focus whether the glitches in election process were of a magnitude that they cross the threshold and undermine the legitimacy of the election results. The courts intervention too has not been supportive raising questions on the viability of the democratic constitutional order and there a fear of relapse into an order characterized by inequity and concentration of power.

The book provides an interesting perspective into the current political struggle taking place in Kenya. How the safeguarding the constitution become a major site of contestation for democratic order. The forthcoming elections will litmus test in this regard. This is a useful book to understand the crisis of African state and larger churning taking place across the continent.

**Disclosure statement**

No potential conflict of interest was reported by the author(s).

Bijay Ketan Pratihari

*Faculty, Academy of International Studies, Jamia Millia Islamia University, Jamia Nagar, New Delhi*

bijaypratihari@gmail.com

© 2018 Bijay Ketan Pratihari

https://doi.org/10.1080/09744053.2018.1485258