

# **Developmentalism: A Friend or a Foe to Constitutional Democracy in Africa**

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Despite the advances constitutional democracy has made in sub-Saharan Africa over the past two decades, there are still many challenges to its consolidation and entrenchment in the continent. One such challenge to constitutional democracy in sub-Saharan Africa seems to be the increasing appeal of the “Developmental State” model. The thinking behind the developmental state model, inspired by the economic success of East Asian countries like Korea, Taiwan, and Singapore, challenges the relevance and legitimacy of the liberal model of constitutional democracy in Africa. In a way, the emerging developmentalist discourse seems to be a reincarnation of similar arguments deployed to jettison democracy in the 1960s and 70s by the post-independence political elite of Africa. Nevertheless, given how this discourse resonates with the popular demand for socioeconomic progress and transformation, advocates of constitutional democracy should be careful not to fall into the trap of creating a false dichotomy between development and constitutional democracy.

The aim of this paper is to present a defense of the liberal democratic constitutional model by showing its potential contribution to socio-economic development. With this objective in view, the author will first discuss how the developmentalist discourse has been, and continues to be, deployed in various African countries, particularly in Ethiopia, Rwanda, and Ghana in debates concerning constitutional reform and implementation. This discussion will highlight both the benign and malignant strains of such developmentalist discourse. Finally, by relying upon the

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*Glenister v. President of South Africa* (2011) decision of the South African Constitutional Court and the Nkandla saga (also from South Africa), the paper will try to illustrate the significance of constitutional democracy for development. By doing so, the paper aims to show that the aspiration of most Africans for development and democracy can and should be aligned in a way that recognizes the potential for constitutional democracy and development to be mutually reinforcing processes.

## I. The Rise of the Developmental State Model in Africa

The developmental state model seems to be gaining more and more traction in the contemporary political and intellectual discourse regarding governance in sub-Saharan Africa. This fact can be observed especially when one looks at the discourse in some African countries that are in relative terms regionally influential. For instance, if we look at South Africa, which till very recently is considered to have the biggest economy and which is also a country that is supposed to be a beacon of constitutional democracy in the continent; the ruling party has officially adopted the developmental state model since 2005.<sup>2</sup> The African National Congress (“ANC”) officially endorsed the developmental state model in its National General Council in 2005.<sup>3</sup> This commitment was reaffirmed in the party’s Policy and National Conferences held in 2007.<sup>4</sup> This endorsement of the developmental state model is also explicitly indicated in the 2009 and 2014 election manifestos of the ANC.<sup>5</sup>

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<sup>2</sup> See Chance Chagunda, South Africa as a Development State, Southern African Catholic Bishops Conference Parliamentary Liaison Office, *Briefing Paper* (2007), [http://noelimits.co.za/staging/CPLO2/pdfs/Briefing\\_Papers/2007/BP%20178%20South%20Africa%20as%20a%20Developmental%20State%20Aug%2007.pdf](http://noelimits.co.za/staging/CPLO2/pdfs/Briefing_Papers/2007/BP%20178%20South%20Africa%20as%20a%20Developmental%20State%20Aug%2007.pdf) (last visited on Apr. 26, 2017).

[http://noelimits.co.za/staging/CPLO2/pdfs/Briefing\\_Papers/2007/BP%20178%20South%20Africa%20as%20a%20Developmental%20State%20Aug%2007.pdf](http://noelimits.co.za/staging/CPLO2/pdfs/Briefing_Papers/2007/BP%20178%20South%20Africa%20as%20a%20Developmental%20State%20Aug%2007.pdf) (last visited on Apr. 26, 2017).

<sup>3</sup> See Omano Edigheji, *Constructing A Democratic Developmental State In South Africa: Potentials And Challenges*, 1 (Human Sciences research Council Prwaa 1<sup>st</sup> ed. 2010).

<sup>4</sup> *Id.*

<sup>5</sup> African National Congress 2009 Manifesto Working Together We Can Do More, <http://www.anc.org.za/docs/manifesto/2009/manifesto.pdf> (last visited on Jan. 26, 2016) and See Together We Can Move South Africa Forward,, <http://www.anc.org.za/docs/manifesto/2014/anc-manifesto.pdf> (last visited on Jan. 26, 2016).

Besides South Africa, Ethiopia and Rwanda are also widely perceived as developmental states.<sup>6</sup> Rwanda, with the recognition and admiration it has received from the West for its spectacular economic turnaround after the 1994 Genocide, has become the poster child of the emerging African developmental state model.<sup>7</sup> The Rwandan government and the ruling Rwandan Patriotic Front have made state led economic development the main focus of the country.<sup>8</sup> To borrow the words of Purdekva (as quoted by Mann and Berry), "...development has become the overarching goal with everything in Rwanda subjugated to it."<sup>9</sup>

A similar situation can be seen in Ethiopia, where the late Prime Minister of Ethiopia emerged as one of the notable and vocal advocates of the "democratic developmental state" in Africa.<sup>10</sup> Prime Minister Meles Zenawi first articulated his vision of a developmental democratic state for Africa in his own academic writing.<sup>11</sup> Later on, the ruling Ethiopian People's Democratic Front also endorsed the developmental state model as a major tenant of the party's ideological orientation. Although these three countries are the countries that are most often associated with the developmental state model in Africa, there are also other African countries characterized as "developmental states" in relevant academic literature. These include countries like Mauritania, Botswana, and Tanzania.<sup>12</sup> However, South Africa, Rwanda, and Ethiopia are considered to be the most prominent examples of the emerging developmental state model in Africa. With regard to South Africa and Ethiopia, this is partly due to the expressed avowal of the dominant ruling parties in both countries to build a democratic developmental state.<sup>13</sup> Although Rwanda does not advertise

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<sup>6</sup> Hilary Matfess, *Rwanda and Ethiopia: Developmental Authoritarianism and the New Politics of African Strong Men*, 58 AFR. STUD. REV. 181, 184 (2015).

<sup>7</sup> See Laura Mann and Marie Berry, *Understanding the political motivations that shape Rwanda's emergent developmental state*, 21 NEW POL. ECON. 119, 119-120 (2016).

<sup>8</sup> *Id.* at 21.

<sup>9</sup> *Id.* at 20.

<sup>10</sup> Regional Conference on Building Democratic Developmental States for Economic Transformation in Southern Africa, Gedion G. Jalata, *An African Developmental State: Ethiopia's Emergent Experience*, 21-22 (Jul. 20, 2015).

<sup>11</sup> See Meles Zenawi, States and markets: Neoliberal limitations and the case for a developmental state, *Good growth and governance in Africa: Rethinking development strategies*, 140, 174 (2012). This paper was written and published while Meles Zenawi was the Prime Minister of Ethiopia and the Chairperson of the Ethiopian Peoples' Democratic Front which has been the ruling party in Ethiopia since 1991. The Prime Minister wrote this paper as his graduate thesis and the contents of the paper were reflected later on in the policy documents of the party and the government.

<sup>12</sup> TAMRAT DEJENE DADDI, THE EMERGENCE OF DEMOCRATIC DEVELOPMENTAL STATES IN AFRICA: THE ETHIOPIAN EXPERIENCE, 6, (Sept. 21, 2013), available at

SSRN: <https://ssrn.com/abstract=2329040> or <http://dx.doi.org/10.2139/ssrn.2329040>.

<sup>13</sup> *Id.*

itself as a developmental state, its policies, the rhetoric of its political leadership, as well as its impressive economic growth in the past decade have led many to characterize Rwanda as a developmental state.<sup>14</sup>

At this juncture, it should be asked, what is the “developmental state model?” In answering this question, it is important to understand that the notion of the “developmental state” was not an *apriori* concept that preceded the implementation of the model. In fact, the model is an abstraction of the model of governance that has been observed in East Asian countries like Japan, South Korea, Taiwan, and Singapore, which were able to dramatically transform their economy within a short span of time.<sup>15</sup> Charles Johnson, the scholar who is credited for coming up with the notion of the “developmental state” asserts that he “invoked the concept of the ‘developmental state’ to characterize the role the Japanese state played in Japan’s extraordinary and unexpected post-war enrichment.”<sup>16</sup> Johnson highlights the predominance of a “developmental orientation” in Japan after WWII and identifies four elements of the Japanese developmental state.<sup>17</sup> These are:

1. An elite and competent state bureaucracy that selects, provides guidance to, and supervises key industries considered to have a strategic importance for economic transformation and industrialization,
2. A political system that accords a degree of autonomy to such a bureaucracy to craft and implement a rational industrialization policy,
3. Strategic, robust, and selective state intervention in the market, and
4. A central agency or pilot organization that serves as the nerve center of industrial policy.<sup>18</sup>

Laura Routley, who has conducted a systematic and comprehensive review of literature on developmental states, defines the developmental state as a state that “has sufficient state capacity

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<sup>14</sup> *Id.*; David Booth and Frederick Golooba-Mutebi, *Developmental patrimonialism? The case of Rwanda*, AFR. AFF. OXFORD ACAD., Vol. 111 Issue 444 July 2012, at 379 -403.

<sup>15</sup> See Omano Edigheji, *Constructing A Democratic Developmental State In South Africa: Potentials And Challenges*, vii (1<sup>st</sup> ed. 2010).

<sup>16</sup> Chalmers Johnson, *The Developmental State: Odyssey Of A Concept* in THE DEVELOPMENTAL STATE, 32, 33-34 (Meredith Woo-Cummings, ed., Cornell University Press, 1999).

<sup>17</sup> *Id.* at 37-38.

<sup>18</sup> *Id.* at 38-39.

to be effective in its targeted area and has a developmental vision such that it chooses to use its capacity to work towards economic development.”<sup>19</sup> Routley complements this definition with a list of what she considers to be the attributes of a developmental state in a way that reflects the elements of the Japanese developmental state discussed by Johnson. The attributes that Routley has identified are:

1. A capable, autonomous but embedded bureaucracy,
2. A political leadership oriented towards development,
3. A close, often mutually beneficial symbiotic relationship between some state agencies and key industrial capitalists, and
4. A successful policy intervention which promotes growth.<sup>20</sup>

David Booth describes the developmental state as “one that is actively promoting and supporting a productivity revolution in agriculture and pursuing a deliberate ‘industrially policy with a view to building capabilities and acquiring new comparative advantages for exploitation within regional or global markets.’”<sup>21</sup> Therefore, what we can infer from the relevant literature is that the developmental state is one that considers bringing about economic development as its *raison d’être*, adopts long term plans and policies to bring about economic development, has the institutional capacity to implement these plans, and strategically intervenes in the market to kick start development. In other words, the developmental state model is a model that requires a certain ideological posture, instructional capacity, policy framework, and targeted market intervention from the state. Though the extent to which South Africa, Ethiopia, and Rwanda conform to this model is debatable, as shown above, these countries are perceived by others and consciously present themselves as developmental states. The fact that Ethiopia and Rwanda are among the fastest growing economies in Africa has made the model appealing to other African countries and

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<sup>19</sup> Laura Routley, *Developmental states: a review of the literature 4* (Effective States and Inclusive Development Working Paper No. 3, Feb. 2012),

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2141837&rec=1&srcabs=2312104&alg=7&pos=1](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2141837&rec=1&srcabs=2312104&alg=7&pos=1)

<sup>20</sup> *Id.* at 8.

<sup>21</sup> David Booth, *Towards A Developmental State Concept that is Fit For Purpose (in the 21st century, in Africa)*, OVERSEAS DEV. INST. 3 (2014), available at <http://www.institutions-africa.org/filestream/20150210-towards-a-developmental-state-concept-that-is-fit-for-purpose>.

has increased interest in the rest of the continent.<sup>22</sup> The growing conversation surrounding the developmental state model is an indication of how fashionable the model is becoming in the continent.<sup>23</sup> A striking example of the appeal of the developmental model and its significance to constitutionalism in Africa is the Ghanaian constitutional reform process.

Ghana, one of the few African democratic success stories had set in motion a constitutional review process in 2010.<sup>24</sup> The Constitutional Review Commission was an ten-member inquiry commission established by President Atta Mills.<sup>25</sup> Its members included lawyers, traditional and religious authorities, academicians, and representatives of civil society.<sup>26</sup> The Commission was instructed by the President to ascertain what the Ghanaian people thought of the 1992 Constitution of Ghana and their recommendations for constitutional reform. With this mandate, the Commission put in place an elaborate and participatory process to identify in what respects the Ghanaian people would like to see an improvement in their constitution.<sup>27</sup> The Commission held public consultation forums throughout Ghana and with the Ghanaian diaspora in various countries. The Commission also solicited and received submissions from the public. Based on the input the Commission received from the people through these consultations and submissions, the Commission prepared a report and proposed many Constitutional amendments.<sup>28</sup> A central theme

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<sup>22</sup> See, Leulseged Worku, *Ethiopia: Developmental State Governance Enables Ethiopia Register Remarkable Growth – Minister*, THE ETHIOPIAN HERALD, (July 05, 2016), <http://allafrica.com/stories/201607051163.html>.

<sup>23</sup> See, Dereje Feyissa Dori, *Ethiopia's 'African tiger' leaps towards middle income*, THE GUARDIAN (Oct. 22, 2014), <http://www.theguardian.com/global-development/poverty-matters/2014/oct/22/ethiopia-african-tiger-middle-income>; See also Isma'il Kushkush, *Ethiopia, Long Mired in Poverty, Rides an Economic Boom*, THE N. Y. TIMES (Mar. 3, 2015), [https://www.nytimes.com/2015/03/04/world/africa/ethiopia-an-african-lion-aspires-to-middle-income-by-2025.html?\\_r=0](https://www.nytimes.com/2015/03/04/world/africa/ethiopia-an-african-lion-aspires-to-middle-income-by-2025.html?_r=0); See also Paul Kagame, *Rwanda and the New Lions of Africa*, THE WALL STREET JOURNAL (May 19, 2013), at <http://www.wsj.com/articles/SB10001424127887324767004578485234078541160>.

<sup>24</sup> See Teo Kermeliotis, *Ghana: Keeping One Of Africa's Stars Of Democracy Shining*, CNN (Feb. 28, 2014), <http://www.cnn.com/2014/02/26/world/africa/ghana-history-overview-on-the-road/>; Republic Of Ghana Const. Rev. Commission, *Report Of The Constitution Review Commission: From A Political to A Developmental Constitution*, 9 (Dec. 20, 2011)[hereinafter *A Political to A Developmental*].

<sup>25</sup> Republic Of Ghana Const. Rev. Commission, *From A Political to A Developmental Constitution*, 9 (Dec. 20, 2011).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 10.

<sup>28</sup> *Id.* at 14.

of the Commission’s proposal for constitutional reform in Ghana was its proposal to “transform the Constitution from essentially a Political Constitution to a Developmental Constitution.”<sup>29</sup>

The Constitutional Review Commission (“CRC”) proposed:

“a new National Development Planning Commission (“NDPC”) be established by the Constitution as an independent constitutional body, with dedicated funding, charged with the development of a National Development Plan [(“the Plan”)].....[and] composed of technically competent representatives of major political parties, traditional authority, the private sector, civil society and all regional planning officers.”<sup>30</sup>

The Constitutional Review Commission proposed that the “national development plan should be comprehensive, long-term, strategic, multi-year, and binding in nature and enforceable at the instance of any person or institution.”<sup>31</sup> The CRC proposed that such a plan should be adopted in a process that ensures “broad consultation with a wide range of stakeholders, starting from the grassroots level.”<sup>32</sup> The CRC recommended that this plan be subject to approval by a two third majority in Parliament and that while the executive branch of government will be responsible for its implementation, the NDPC will have the power of supervising the implementation of the plan.<sup>33</sup> Furthermore, the CRC recommended that the individual citizen should be given the right to petition courts to enforce the plan making disputes regarding the national development plan a justiciable matter.<sup>34</sup> The CRC also recommended that, “any policy, legislation, administrative action, programme, project, initiative, budget and financial disbursement which is inconsistent with the Plan be considered unconstitutional.”<sup>35</sup> The CRC argued that “[t]his will improve the current practice of short-term planning and the reliance on political party manifestos that do not garner broad consensus. It will also address the spate of abandoned projects all over the country.”<sup>36</sup>

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<sup>29</sup> See Prof. (Emeritus) Albert Kodzo Fiadjoe Chair, *Constitution Review Commission On The Occasion Of The Presentation Of The Final Report Of The Constitution Review Commission To H. E. Prof. John Evans Mills, President Of The Republic Of Ghana*, at <http://www.media.myjoyonline.com/docs/201112/scan0005.pdf>.

<sup>30</sup> Republic Of Ghana Const. Rev. Commission, *supra* note 23 at 2-3.

<sup>31</sup> *Id.* at 43.

<sup>32</sup> *Id.* at 52.

<sup>33</sup> *Id.* at 55.

<sup>34</sup> *Id.* at 43.

<sup>35</sup> *Id.* at 55.

<sup>36</sup> *Id.* at 3.

It is also interesting to note that the CRC envisioned the Plan as being a binding framework for the annual government budget.<sup>37</sup> Not surprisingly, the government which set in motion the Constitutional review process did not warm up to these proposals and rejected them.<sup>38</sup> As a result, the Constitutional amendments proposed by the CRC to bring about the transformation of the Ghanaian Constitution from a political to a developmental constitution were not enacted. However, this attempt to constitutionalize the developmental state model is an important development worth reflecting upon by those interested in constitutionalism in the African continent. This proposal which reflects the sentiments and wishes of the Ghanaian people, that was distilled in a very inclusive and participator process, shows a desire to see a constitutional order that significantly contributes to national development. It shows a discontent with the status quo in Ghana, although Ghana is regarded as a relatively more successful democracy in Africa. The fascination, one might even say envy of Ghanaians with what countries like Rwanda has achieved seems to have made the developmental state model attractive to Ghanaians.<sup>39</sup> Taking into account the reputation Ghana has garnered as a “model democracy” in Africa, the call for a shift from a political to a developmental constitutionalism is one that scholars of comparative constitutionalism and democracy in Africa must reflect upon seriously.

## II. Developmentalism: A Threat to Constitutionalism?

The rise of the developmentalist state model as well as its particular incarnation in the proposals of the Ghanaian CRC could be disconcerting to advocates of constitutional democracy in sub-Saharan Africa for various reasons. The first reason is the sense of *déjà vu* the whole developmentalist discourse triggers among longtime observers of African politics. In the period immediately after colonialism, the political elites of the era have deployed similar developmentalist logic to argue for the dismantling of constitutional democracy.<sup>40</sup> Upon

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<sup>37</sup> *Id.*

<sup>38</sup> Republic of Ghana Const. Rev. Commission of Inquiry, *White Paper on the Report of the Constitution Review Commission of Inquiry*, 2-9 (June 2012), [http://ghana.gov.gh/images/documents/crc\\_report\\_white\\_paper.pdf](http://ghana.gov.gh/images/documents/crc_report_white_paper.pdf).

<sup>39</sup> *Rwanda: The Hope for Africa*, KOFI SAID IT (Nov. 21, 2013), <http://kofisaidit.com/2013/11/21/rwanda-the-hope-for-africa/>; see also Nancy Birdsall and Francis Fukuyama, *The Post-Washington Consensus: Development after the Crisis*, (Center for Global Development Working Paper 244, Mar. 3, 2011), <http://international.cgdev.org/publication/post-washington-consensus-development-after-crisis-working-paper-244>.

<sup>40</sup>H. Kwasi Prempeh, *Progress and Retreat in Africa: Presidents Untamed*, 19.2 J. of Democracy 109, 110-111 (Apr. 2008).



independence, most African states had constitutions that provided the legal framework for representative government, limitation of governmental power in the form of a bill of rights, as well as (in some instances) constitutionally entrenched decentralization.<sup>41</sup>

However, these constitutions were amended beyond recognition or outright abrogated by the post-colonial era elites who argued that the imperative of development requires doing away with constitutional democracy.<sup>42</sup> This was one of the principal justifications advanced by the political elites of that period to discredit constitutional democracy and make the case for autocratic rule by a single party or in the form of a personal or military dictatorship. The “big-men” of that period abolished political competition, the free press, opposition political parties, imprisoned critics, and cowed the judiciary and the legislature to turn themselves in to life time presidents with despotic powers.<sup>43</sup> All along they tried to legitimize their actions by claiming that development should be prioritized over democracy. The proposals of the CRC of Ghana seem to echo this kind of thinking.

Another reason why the proposal of the CRC is alarming to those committed to the consolidation of representative democracy in Africa, is the extent to which the Commission’s proposal marginalize those who hold elected public office, be it in the legislature or the executive. The parliament is denied any initiative in the process of formulating and adopting national policies. Its role is reduced to approving or rejecting the long term plans designed by a commission which is mainly composed of experts. The weight given to the technocratic expertise of the planning commission seems to outweigh the democratic mandate of the parliamentarians as representatives of the people since the plan would effectively be as entrenched as the Constitution.

Furthermore, the role of the executive branch of government, led by a President elected directly by the people, seems confined to implementing the national plan designed by a body that has no democratic credentials.<sup>44</sup> Primacy in policy making and the budgetary process which constitute the

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<sup>41</sup> See Gedion T. Hessebon, *The Fourth Constitution-Making Wave of Africa: Constitutions 4.0?* 28 TEMP. INT’L & COMP. LJ 185, 186-188 (2014).

<sup>42</sup> *Id.*; see also H. Kwasi Prempeh, *Africa’s constitutionalism revival: False start or new dawn?* 5 INT’L J. CONT. LAW 469, 473-474 (2007); see also Charles Manga Fombad, *Constitutional Reforms And Constitutionalism In Africa: Reflections On Some Current Challenges And Future Prospects* 59 BUFF. L. REV. 1007, 1012 (2011).

<sup>43</sup> See H. Kwasi Prempeh, *Marbury in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa*, 80 TUL. L. REV. 1239, 1241-1242, 1253(2006).

<sup>44</sup> *Supra* note 25 at 52.

very essence and core of political power in a modern state is given to an unelected body without a popular mandate.<sup>45</sup> This organ is also given the power to supervise the performance of elected officials and their power is reinforced by making their plan judicially enforceable.<sup>46</sup> The anti-democratic tenor of these proposals is quite evident. The fact that such a proposal came from a high profile CRC of a country that is celebrated as a rare democratic success story is very puzzling if not outright disturbing.

Another reason why Ghana's flirtation with developmentalism should give rise to concern is due to the impact developmentalist rhetoric has in both Rwanda and Ethiopia. The poster kids of developmentalism in Africa, i.e. Rwanda and Ethiopia also happen to have governments that are ranked among the most repressive governments in Sub-Saharan Africa.<sup>47</sup> The Ethiopian People's Revolutionary Democratic Front ("EPRDF") in Ethiopia and the Rwandan Patriotic Front ("RFP") in Rwanda have established a *de facto* one party state in which freedom of speech, assembly, and association are severely restricted and dissent is dealt with brutally.<sup>48</sup> Both Rwanda and Ethiopia rely upon their developmentalist credentials to deflect criticism regarding their horrible record with political rights.<sup>49</sup>

Although the ruling party in Ethiopia claims that its intention is to build a democratic developmental state, as opposed to the autocratic nature of the developmental state in eastern Asia, it's obvious for everyone that the party is only paying lip service to democracy and in reality there is hardly any semblance of democracy on the ground.<sup>50</sup> The same is true for Rwanda, where the

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<sup>45</sup> *Id.* 50-52.

<sup>46</sup> *Id.*

<sup>47</sup> Arch Puddington & Tyler Roylance, *Anxious Dictators, Wavering Democracies: Global Freedom under Pressure*, FREEDOM HOUSE: FREEDOM IN THE WORLD 2016, 21, 23 (2016). On a scale of 1-7, 7 being the worst, Ethiopia scores 6 on both civil liberties and political rights according to the Freedom House Freedom in the World 2016 Report. The report designates Ethiopia as "Not Free". Rwanda's rating and designation in the report is the same as Ethiopia. When we look at the Economist Democracy Index of 2014, both Ethiopia and Rwanda are categorized as autocratic states and are ranked 124 and 135 respectively out of 167 states included in the index.

<sup>48</sup> See Jenny Clover, *Rwanda Sending 'Chilling Message' To Dissenters: U.N. Rapporteur*, REUTERS (Jan. 27, 2014), <http://www.reuters.com/article/us-rwanda-rights-idUSBREA0Q14C20140127>. ; *Ethiopia: Crackdown on Dissent Intensifies*, HUMAN RIGHTS WATCH (Jan. 29, 2015), <https://www.hrw.org/news/2015/01/29/ethiopia-crackdown-dissent-intensifies>.

<sup>49</sup> See Hilary Matfess, *Rwanda and Ethiopia: Developmental Authoritarianism and the New Politics of African Strong Men*, 58 AFR. STUD. REV. 181, 182, 186-187 (2015).

<sup>50</sup> See Yekoye Mengesha Simegnish, *Silencing Dissent*, 27 J. OF DEMOCRACY 89, 89-94 (2016).

state has made economic growth the principal source of its claim to legitimacy at the expense of the right to political participation and democracy.<sup>51</sup>

In South Africa, the home to the prestigious constitutional court, the vibrant private media and civil society would not allow the kind of autocracy that currently exists in Ethiopia and Rwanda. Discussion of the developmental state model seems to coincide with a decline of respect for the constitution within the ANC.<sup>52</sup> Therefore, it is safe to say that in all three countries that could be considered the prominent developmental states of Africa, the developmental state model is, as a matter of fact, associated with autocratic tendencies and disdain for constitutional limits on the power of governments.

### **III. Development and Constitutionalism: Corruption as A Common Foe**

As the discussion in the previous section of this paper demonstrates, there are reasons to be alarmed about the proposal of the Ghanaian CRC, which would have undermined constitutional democracy for the sake of development. As the experience of Rwanda and Ethiopia amply demonstrate, the rationalization of autocracy by emphasizing the need for economic development is a trend that is having a devastating effect on the transition to democracy in Africa. The question that will be addressed in this section of the paper is how scholars and activists committed to promoting constitutional democracy in Africa respond to the developmental state discourse. In the face of calls to sacrifice democracy at the altar of development and governing elites who argue that democracy should take the back seat until African states pursue development, what should the proponents of constitutional democracy do? Obviously, there cannot be one single answer to this question. It is important to note that the various answers that could be given to this question are not mutually exclusive. For example, the apologists of constitutional democracy in Sub-Saharan Africa could invoke the horrors of slavery, colonialism, and postcolonial autocracy to justify the need for a political order that recognizes the inherent worth and dignity of each human being. Such arguments that invoke the past may also be supplemented by arguments that could draw on the

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<sup>51</sup> See Filip Reyntjens, *Rwanda: Progress or Powder Keg?*, 26 J. OF DEMOCRACY 19, 19 (2015).

<sup>52</sup> See Roger Southall, *Democracy at Risk? Politics and Governance under the ANC*, 652 ANNALS OF THE AM. ACAD. POL. & SOC. SCI. 48, 48-69 (2014); See also *The Hollow State*, THE ECONOMIST (Dec. 16, 2015), <http://www.economist.com/news/middle-east-and-africa/21684146-two-decades-after-south-africas-transition-non-racial-democracy-its>.

customs, religions, and world view of African societies to forward more abstract justifications for constitutional democracy.<sup>53</sup> One could also deploy arguments that rely on a broader and more comprehensive conception of development which underscore that freedom is an integral element of development.<sup>54</sup>

However, a focus on such historical, sociological, or philosophical normative arguments alone might not be sufficiently strong to meet the challenge that the developmental state discourse poses to constitutional democracy. While there is evidence in the form of public opinion surveys that show there is an intrinsic popular support for democracy in many African countries, there is no gainsaying that this support would become even more robust if it could be shown that constitutional democracy is helpful in bringing about economic development.<sup>55</sup>

Many scholars have also argued that the legitimacy of democracy in Africa is contingent on the degree to which it helps in facilitating socio-economic growth.<sup>56</sup> This insight, which sounds almost intuitive and tautological, is strengthened by the public opinion which underlies the recommendation of the Ghana Constitutional Review Commission.<sup>57</sup> The constitutional reform processes of other African countries have also reflected sentiments that show the desire of the public to see constitutions that are developmentally relevant.<sup>58</sup> The inclusion of socioeconomic rights within constitutions or a chapter on Directive Principles of State Policy could be one way of responding to such demands. However, this still leaves unaddressed the siren calls to sacrifice democracy at the altar of development. Therefore, there is still a need to demonstrate the developmental relevance and utility of constitutional democracy.

There are different arguments presented from various disciplinary perspectives that correlate freedom and democracy with development. Constitutional lawyers have not contributed much in

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<sup>53</sup> See FRANCIS MADING DENG, *IDENTITY, DIVERSITY, AND CONSTITUTIONALISM IN AFRICA*, 77 (US Inst. Peace Press, 2008); see also ABDULLAHI AHMED AN-NA'IM, *AFRICAN CONSTITUTIONALISM AND THE ROLE OF ISLAM*, 99 (U. Pa. Press, 2010).

<sup>54</sup> See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (Oxford U. Press, 1999).

<sup>55</sup> See Michael Bratton & Robert Mattes, *Support for Democracy in Africa: intrinsic or instrumental?* 31 BRIT. J. POL. SCI. 447, 447-474 (2001).; see also Lexi Shechtel, *Drivers of Satisfaction with Democracy in Africa*, 11 STAN. J. INT'L REL. 48, 48-57 (2010).

<sup>56</sup> Gedion T. Hessebon, *The Fourth Constitution-Making Wave of Africa: Constitutions 4.0?*, 28 TEMP. INT'L & COMP. LJ 185, 190(2014).

<sup>57</sup> *Supra note 25* at 40.

<sup>58</sup> *Id.*

this regard. In the remaining section of this paper, the author will demonstrate how constitutional democracy could be instrumental in fighting corruption by using two examples from South Africa as an illustration. The purpose of this paper is not to present a comprehensive defense of constitutional democracy *vis a vis* the challenges of the developmentalist state discourse. It is rather to provide a modest example of how a more concrete defense of the developmental utility of constitutionalism could be attempted.

The focus on corruption is justified because rampant corruption is one of the major obstacles for development.<sup>59</sup> Although the extent to which corruption hampers development might be debated among economists, there is a consensus that corruption must be controlled to create an environment conducive to sustainable and equitable development.<sup>60</sup> The cautionary tale of Angola and Nigeria, where excessive corruption stunts development and fuels conflict, amply demonstrates that the ability of the state to safeguard public funds from the instantiable greed of wayward public officials is crucial to create the environment necessary for development.<sup>61</sup>

- a. Regardless of the ideological perspective one might ask how development could be brought about in underdeveloped African states, almost everyone would agree that corruption needs to be tackled decisively for there to be an equitable and sustainable economic development in a country. Therefore, by showing that a functioning constitutional democracy helps corruption, I would like to demonstrate that constitutional democracy is developmentally relevant. The examples that I would use for these purpose are the *Glenister v President of*

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<sup>59</sup> *Corruptions Perceptions Index 2015*, TRANSPARENCY INTERNATIONAL, 4 (2015). According to the Transparency International Corruption Perceptions Index Of 2015, the average score of sub-Saharan African countries on corruption perceptions is 33% on a scale from 0 (highly corrupt) to 100 (very clean). See *Corruptions Perceptions Index 2015*, TRANSPARENCY INTERNATIONAL, 4 (2015), available at [http://files.transparency.org/content/download/1955/12832/file/2015\\_CorruptionPerceptionsIndex\\_Report\\_EN.pdf](http://files.transparency.org/content/download/1955/12832/file/2015_CorruptionPerceptionsIndex_Report_EN.pdf), last accessed on February 16, 2016.

<sup>60</sup> *Corruptions Perceptions Index 2015*, TRANSPARENCY INTERNATIONAL (2015), <http://www.transparency.org/cpi2015>, last accessed on February 16, 2016. It is interesting to observe that as Transparency International notes, “Five of the 10 most corrupt countries also rank among the 10 least peaceful places in the world” which is list that includes conflict ridden African countries like South Sudan. In addition to the risk of conflict that becomes higher as a result of corruption, the sheer amount of public resources that is stolen away and which could have been spent to improve the life ordinary people is astounding. Transparency international estimates that “Poor countries lose US\$1 trillion a year to corruption”.

<sup>61</sup> *Id.*; see also Daniel Agbibo, *Under-development in practice: Nigeria and the enduring problem of corruption* 24 DEV. PRAC. 390, 390-404 (2014).; see also Albert Arko-Cobbah, & Basie Olivier, *The Dynamics of State Fragility in Angola*, in STATE FRAGILITY AND STATE BUILDING IN AFRICA 163, 163-181 (Dele Olowu and Paulos Chanie eds., 2016).

*the Republic of South Africa and Others (herein after Glenister)* case and the ongoing Nkandla saga. ***Glenister v President of the Republic of South Africa***

In *Glenister*, the constitutionality of laws that disbanded the Directorate of Special Operations (popularly referred as the Scorpions) was at issue. These laws used to be under the National Prosecuting Authority and established a Directorate for Priority Crime Investigation (popularly referred to as the Hawks) under the South African Police Service.<sup>62</sup> Both the Scorpions and the Hawks are specialized, elite investigative units focusing on organized crimes and corruption. The Scorpions attained notoriety due to their investigation of allegations of corruption that implicated President Jacob Zuma, who was by then a prominent ANC politician and aspiring for the presidency.<sup>63</sup> The application challenging the constitutionality of the laws was brought by Mr. Hugh Gleniste, a fierce critic of President Jacob Zuman and the ANC.<sup>64</sup> The application was also supported with amicus curiae by the Helen Suzman Foundation, which is a foundation with a mission to promote liberal constitutional democracy.<sup>65</sup>

The applicant and amicus challenged the law on many grounds but the majority of the Constitutional Court zeroed in on a specific aspect of the challenge which concerned the independence of the newly established criminal investigation unit.<sup>66</sup> In relation to this, it is important to note that the National Prosecuting Authority is an autonomous organ of the state established by the Constitution, hence providing the Scorpions greater autonomy as compared to the Hawks, which were supposed to be under direct executive control through the normal police hierarchy and also through a cabinet committee that was supposed to provide the new investigative unit policy guidelines.<sup>67</sup> The majority of the Court held that the Constitution of South Africa gives rise to an implicit obligation to establish an independent anticorruption body and that the laws

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<sup>62</sup> *Glenister v President of the Republic of South Africa and Others* 2011 3 SA 347 (CC) at 2 (S.Afr.).

<sup>63</sup> See *Battle Over Future of The Scorpions*, MAIL & GUARDIAN ONLINE (Feb. 10, 2008), <http://mg.co.za/article/2008-02-10-battle-over-future-of-the-scorpions>.

<sup>64</sup> See *Glenister Eyes Concourt Over Hawks Bill*, NEWS24 (Aug. 15, 2012, 8:13 pm), <http://www.news24.com/SouthAfrica/News/Glenister-eyes-ConCourt-over-Hawks-bill-20120815>.

<sup>65</sup> See *What We Do*, HELEN SUZMAN FOUNDATION (last visited Feb. 16, 2016), <http://hsf.org.za/what-we-do>,

<sup>66</sup> *Glenister*, *supra* note 57 at 2.

<sup>67</sup> *Id.*

which disbanded the Scorpions and established the Hawks under the South African Police Service are in breach of this constitutional obligation.<sup>68</sup>

The Court argued that the Bill of Rights in the Constitution, read in light of South Africa's treaty obligations, gives rise to an obligation to establish an independent anticorruption unit.<sup>69</sup> In a key paragraph of the majority opinion, authored by Deputy Chief Justice Dikgang Moseneke and Justice Eriwn Cameron, the court asserted that;

“What reasonable measures does our Constitution require the state to take in order to protect and fulfil the rights in the Bill of Rights? That question must be answered in part by considering international law. And international law, through the inter-locking grid of conventions, agreements and protocols we set out earlier, unequivocally obliges South Africa to establish an anti-corruption entity with the necessary independence.”<sup>70</sup>

Justices went on to assert;

“.....that failure on the part of the state to create a sufficiently independent anti-corruption entity infringes a number of rights. These include the rights to equality, human dignity, freedom, security of the person, administrative justice and socio-economic rights, including the rights to education, housing, and health care.”<sup>71</sup>

It is also interesting to note that in reaching these conclusions, one crucial premise of the majority's reasoning was the adverse effect of corruption on development. The majority opined that, “when corruption and organi[z]ed crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk.”<sup>72</sup> The Court also cited academic research to strengthen this point and quoted the former secretary general of the UN who said;

“This evil phenomenon is found in all countries big and small, rich and poor but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a governments ability to provide basic services, feeding inequality and injustice, and

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<sup>68</sup> *Id.* at 63.

<sup>69</sup> *Id.* at 39.

<sup>70</sup> *Id.* at 102.

<sup>71</sup> *Id.* at 104.

<sup>72</sup> *Id.* at 85.

discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development.”<sup>73</sup>

So, the Court invalidated the laws that were challenged and gave Parliament 18 months to rectify the constitutional defect of the laws in question.<sup>74</sup> Subsequently, parliament enacted the SA Police Service Amendment Act to comply with the judgment of the Constitutional Court, but the amended law was also challenged before the Western Cape High Court which found it to be constitutionally defective.<sup>75</sup> This judgment of the Western Cape High Court issued in December 2013 was confirmed by the Constitutional Court in 2014.<sup>76</sup> The Helen Suzman Foundation is still fighting to ensure the government fully complies with the judgment of the High Court, which has been confirmed by the Constitutional Court.<sup>77</sup>

### ***b. The Nkandla saga***

Another instructive case that shows how a functioning constitutional democracy could help in fighting corruption is the Nkandla Saga which was resolved recently. The matter arose as a result of a story published by Mail & Guardian, leading South African daily newspapers. The newspaper reported that the private residence of the President Jacob Zuma, found in the town of Nkandla has been renovated and upgraded at the cost of millions of Rands to South African tax payers.<sup>78</sup> The renovations and upgrades were carried out by the Public Works Department of South Africa.<sup>79</sup> The President’s residence was provided with a helicopter pad, a swimming pool, an amphitheater, enclosures for cattle and chicken, a guest house, and a visitor’s center.<sup>80</sup> After denying that the renovations and upgrades were carried out, the government argued that the upgrade was necessary

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<sup>73</sup> *Id.* at 86.

<sup>74</sup> *Id.* at 84-85.

<sup>75</sup> Chris Pieters, *Institutional Independence: Why it is Important and What We Are Doing*, HELEN.SUZMAN.FOUNDATION (Feb. 9, 2016), <http://hsf.org.za/resource-centre/hsf-briefs/institutional-independence-why-it-is-important-and-what-we-are-doing>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*; see also Chantelle Benjamin, *Court Orders Hawks head Anwa Dramat be Reinstated*, MAIL & GUARDIAN (Feb. 6, 2015, 11:42), <http://mg.co.za/article/2015-02-06-court-orders-hawks-head-anwa-dramat-be-reinstated>.

<sup>78</sup> See Mandy Rossouw, *Zuma's R65m Nkandla Splurge*, MAIL & GUARDIAN (Dec. 4, 2009, 7:17), <http://mg.co.za/article/2009-12-04-zumas-r65m-nkandla-splurge>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*; see also David Smith, *Jacob Zuma Accused of Corruption 'On a Grand Scale' in South Africa*, THE GUARDIAN (Nov. 29, 2013, 12:27), <http://www.theguardian.com/world/2013/nov/29/jacob-zuma-accused-corruption-south-africa>.



for security reasons.<sup>81</sup> Not satisfied with this response, a few individual citizens and an opposition political party presented a complaint to the Public Protectors office.<sup>82</sup>

Taking up this complaint was the public protectors, which is an independent organ of state established under the constitution to serve as watchdog over the executive and investigate allegations maladministration. The Public Protector conducted an extensive investigation and came up with a scathing report that exposed the illegality and use of public money for the upgrade amounted to undue benefits for the president.<sup>83</sup> The public protector in her report said that;

“The expenditure incurred by the state in respect of the measures taken, including buildings and other items constructed or installed by the DPW at the request of the SAPS and DOD, many of which went beyond what was reasonably required for the President’s security, was unconscionable, excessive, and caused a misappropriation of public funds. The failure to spend state funds prudently is a contravention of section 195 (1)(b) of the Constitution and section of the Public Finance Management Act. The acts and omissions involved are, accordingly, unlawful and constitute improper conduct and maladministration.”<sup>84</sup>

The Public Protector also noted that the funds spent on renovating the presidents house, “transferred from other much needed Department of Public Works (“DPW”) projects.”<sup>85</sup> Based on this finding, the public protector instructed the President to pay the government a portion of the expenses incurred in the renovation of his house.<sup>86</sup> The President adamantly resisted complying with this order and insisted that he had no legal obligation to abide by the order of the Public Protector.<sup>87</sup> He also had the Minister of Police investigate the matter and naturally, the Minister came up with a report that concluded that the President did not have to pay the government.<sup>88</sup> The ANC-dominated parliament also established an ad hoc committee that conducted an investigation

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<sup>81</sup> See Rossouw, *supra* note 73; See also Phillip De Wet, *Jacob Zuma Still 'Not Safe' in Nkandla Compound*, MAIL & GUARDIAN (Sept. 19 2014), <http://mg.co.za/article/2014-09-18-jacob-zuma-still-not-safe-in-nkandla-compound>.

<sup>82</sup> See Pub. Protector, *Secure in Comfort Report on an investigation of impropriety and unethical conduct relating to the installation and implementation of security measures by the Department Of Public Works at and in the private residence of President Jacob Zuma at Nkandla in the KwaZulu-Natal province*, Report No. 25 (Mar. 19, 2014).

<sup>83</sup> *Id.* at 54.

<sup>84</sup> *Id.* at 56.

<sup>85</sup> *Id.* at 62.

<sup>86</sup> *Id.* at 63.

<sup>87</sup> See Joe Brock, *South Africa's Zuma Denies Wrongdoing over \$23 Million Home Upgrade*, REUTERS (Mar. 31, 2014, 5:16 A.M.), <http://www.reuters.com/article/us-safrica-zuma-idUSBREA2U0FI20140331>.

<sup>88</sup> See Andrew England, *Police Clear Jacob Zuma of Having to Repay Nkandla Cash*, FINANCIAL TIMES (May 28, 2015), <https://www.ft.com/content/6f2d720e-055b-11e5-bb7d-00144feabdc0>.

that came up with a report exonerating the President.<sup>89</sup> However, in addition to pressing the matter in parliament, the opposition parties took the matter to the Constitutional Court.<sup>90</sup> Pressed into a corner and fearing a full-fledged hearing at the court could worsen his increasingly political vulnerability within the ANC, the President conceded to the Constitutional Court that the remedial ruling of the Public Protector is binding and that he was wrong to ignore it.<sup>91</sup> Therefore, he reversed his position that the actions prescribed in the report of the public protector's report are merely recommendations and agreed to pay back the part of the money that was spent for the security upgrades.<sup>92</sup>

#### **IV. Lessons from Nkandla and Glenister**

So, what can we learn about development and constitutionalism from Nkandla and Glenister? The author of this paper submits that there are various lessons we can learn about the importance of constitutionalism for development from the Nkandla and Glenister. Both Nkandla and Glenister relate to the issue of corruption. One common denominator in both cases is the extent to which the Constitutional Court and the ordinary courts played an important role in the fight against corruption. In Glenister, the judiciary thwarted the attempt to bring the leading anti-corruption agency of South Africa under its own control. In the Nkandla case, the fact that the opposition political parties went to the Constitutional Court was crucial in forcing President Zuma to agree to repay the public money spent for his personal benefit. These victories for the anticorruption cause would not have been possible had there not been independent and well respected courts that strive to uphold the rule of law in South Africa.

In addition to the Constitutional Court and the ordinary judiciary, the Nkandla saga is notable for the role the office of the Public Protector played. This experience shows the potential that independent constitutional organs such as an institution of an Ombudsperson could play in holding the executive branch of government accountable for corruption, maladministration, and similar

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<sup>89</sup> See Zalene Merrington & Mercedes Besent, *Parliament's Ad Hoc Committee on Nkandla Rejects Draft Report*, SABC NEWS (Aug. 6, 2015), <http://www.sabc.co.za/news/a/43a654004961aa24bc23bffc39efa26/Parliaments-Ad-Hoc-Committee-on-Nkandla-rejects-draft-report-20150608>.

<sup>90</sup> *EFF and DA take Zuma to Constitutional Court*, THE CITIZEN (Sept. 2, 2016, 7:37 A.M.), <http://www.citizen.co.za/983229/eff-and-da-take-zuma-to-constitutional-court/>.

<sup>91</sup> *South Africa's Zuma makes U-turn over Nkandla Revamp Money*, BBC (Feb. 9, 2016), <http://www.bbc.com/news/world-africa-35529190>.

<sup>92</sup> *Id.*

unethical conduct. Both Nkandla and Glenister show how the state organs given autonomy under the south African constitution such as the Constitutional Court, the Public Protector's Office, and the National Prosecuting Authority of South Africa reinforce each other's mandate and help counter the unrestrained exercise of power by an executive and parliament which are dominated by a single party.

However, it will be a mistake to focus solely on judicial, prosecutorial, and Chapter Nine institutions provided under the South African Constitution in this analysis. As we can see in the preceding section, non-state actors including private citizens, the media, and opposition political parties have played a very important role in the fight against corruption in South Africa. Hugh Glenister, who launched a suit against the President of the Republic, is a private citizen. The Helen Suzman Foundation is also another private entity that has been at the fore front of civil society efforts to uphold the rule of law and promote government accountability. This foundation has participated in the Glenister case by submitting an amicus curiae and it has also been persistent in this and similar efforts to maintain the independence and integrity of the South African Criminal justice system.

Alongside private citizens and non-governmental organizations, one also has to take in to account the role of the media and opposition political parties. The media has played a crucial role in both Nkandla and Glenister, particularly in the Nkandla saga. It was the press that originally brought the scandal to the attention of the public. The press provided extensive coverage of the whole Nkandla saga. Had the public not been informed about the Nkandla affair, the investigation of, and report on, the matter by the office of the Public Protector, President Zuma might have easily brushed the whole issue under the carpet. The press was essential in keeping the pressure on the President and keeping the public informed about the important work of the office of the public protector.

In both cases, the role of the opposition political parties was very important. South Africa has a political system in which one political party enjoys the consistent support of the overwhelming majority of the electorate. Therefore, the ANC has a comfortable majority in the national assembly and faces no real threat of its control of both the parliament and the executive. Nevertheless, opposition political parties like the DA and the Economic Freedom Fighters ("EFF") have been

very active, especially in the Nkandla case by providing political cover for the office of the Public Protector by repeatedly raising the Nkandla issue in parliament and taking the matter to the Constitutional Court when the President refused to comply with the Public Protector's order.

This assortment of state and non-state actors in South Africa are all actors that one could expect to play the kind of roles that they had in South Africa only in a Constitutional Democracy. The actors mentioned in the preceding paragraphs were able to play the role they played because South Africa is a constitutional democracy as imperfect as its constitutional democracy might be. An individual citizen and a small private NGO was able to bring a suit against the President of the Republic as well as a host of powerful ministries. The press was able to report stories that were embarrassing to the President and his administration. The Courts repeatedly handed down decisions that were at odds with the preference and interest of the ruling party. All of these things are nearly impossible to imagine in a country like Ethiopia and Rwanda where freedom of the press and freedom of association are virtually absent and where the judiciary is made completely subservient to the government and the dominant ruling party.

The above line argument would obviously raise the question of how Ethiopia and Rwanda, within an authoritarian context, are faring in the fight against corruption. When we look at Ethiopia, the situation reinforces the argument presented above. Corruption is increasingly becoming more pervasive into the extent that even the government and the ruling party acknowledge that it is severely hampering the ability of the state to deliver on its developmental promises. In its most recent convention, the ruling party has gone to the extent of claiming that corruption has started posing an existential threat to the party and the developmental state it intends to build.

The absences of independent institutions that foster horizontal accountability like a truly independent court, ombudsperson as well as the lack of basic liberties for a free press and civil society to function have made the fight against corruption in Ethiopia very difficult. Just as mold grows and spreads in darkness, the spread of corruption seems to be facilitated by the authoritarian and repressive nature of the Ethiopian government. Corruption now pervades most aspects of public administration and government in Ethiopia because the tools that civil society and concerned citizens need to fight corruption are not available in an autocratic and repressive system.

However, if Ethiopia was a constitutional democracy like South Africa, Ethiopia would have been in a better position to tackle corruption. Tackling corruption in turn would have contributed immensely to facilitating economic growth and ensuring that the economic growth would translate into a sustainable and equitable development that benefits ordinary people.

In response to the argument that has just been presented, one might raise Rwanda as a counter example. Rwanda is every bit an authoritarian state as Ethiopia, but it has managed to fight corruption effectively.<sup>93</sup> Over the past decade or so, Rwanda's score on the Transparency International Corruption Perception Index has improved significantly. Many observers and analysts of the situation in Rwanda applaud Rwanda's success in fighting corruption. This success has come about in an environment where citizens do not possess freedom of press or association and where the state tightly controls all aspects of organized life. Critiques and dissenters are ruthlessly repressed and Rwanda scores low on most democracy of civil and political rights indexes. These are obviously facts that undermine the argument I have tried to construct so far. Therefore, there is a need to take into account the experience of Rwanda and square it with the argument that constitutional democracy helps in fighting corruption and hence contributes to bringing about equitable and sustainable development.

In this regard, it is important to understand how and why Rwanda was successful in its fight against corruption. By most accounts, Rwanda's success in its fight against corruption is attributed to the personality and character of its President Paul Kagame.<sup>94</sup> As much as the affable President Jacob Zuma of South Africa seems to embody corruption and incompetence, the stern Paul Kagame exudes an air of incorruptibility and wonkish competence. Due to his iron grip on the ruling party and by extension the Rwandan state, Kagame has managed to impose his discipline and control over the whole state apparatus. The fact that he is not perceived as being corrupt and his determination to fight corruption has made it easier for the Rwandan anticorruption agency to fight corruption more effectively. The strong backing of the president has made the job of the anticorruption watch dog in Rwanda easier. And there lies the catch of the Rwandan experience.

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<sup>93</sup> *Rwanda: A Star in Fighting Corruption*, NEW AFRICAN MAGAZINE (Mar. 19, 2013), <http://newafricanmagazine.com/rwanda-a-star-in-fighting-corruption/#sthash.v9VgZaBw.tUp9Ql7x.dpuf>.

<sup>94</sup> *Id.*; see also Andrew Friedman, *Kagame's Rwanda: Can an Authoritarian Development Model Be Squared with Democracy and Human Rights?*, 14 OR. REV. INT'L L. 253, 256 (2012).

The success of Rwanda in fighting corruption is largely contingent on the character and political will of those in power today.

This kind of approach to fighting corruption that is primarily based upon personalities as opposed to institutions is fraught with many problems. To begin, it is unlikely that this kind of approach will work in much bigger, ethnically diverse societies. The peculiarity of a country like Singapore or Rwanda, especially in terms of their geographic and population size, has to be taken into account before an attempt to replicate their success. Furthermore, as leaders come and go, one can never be sure that those who hold the most powerful seat in government would be one of integrity. Chances are, most African countries are likely to be dealt a Zuma as opposed to a Kagame. Therefore, it would be courting disaster to adopt a developmental state model and discount the importance of constitutional democracy in tackling corruption and facilitating sustainable development.

## **V. Conclusion**

Today, more and more African countries seem to be flirting with the idea of building a developmental state. This tendency poses a challenge for the consolidation of constitutional democracy because very often it is associated with undemocratic overtones. As a result, those who advocate for constitutional democracy are suspicious of the developmental state discourse; especially when it comes from political elites who are in power and who find the notion of the developmental state appealing because it has a potential to legitimize their resistance of constitutional restraints by promoting economic development as the overriding objective of the state.

However, it would be ill advised if advocates of constitutional democracy in sub-Saharan Africa were to react to the developmentalism discourse in a way that creates a false dichotomy between constitutional democracy and development. To do so would be to undermine the legitimacy of constitutional democracy among the majority of the population in African countries who are attracted by the objectives of the developmental state. Most citizens of African states are likely to support and help sustain a constitutional democracy if they could be convinced that constitutional democracy has developmental relevance. Therefore, apologists of constitutional democracy should

do much more than provide abstract, universal normative justifications for constitutional democracy. We also need to present contextualized arguments that would appeal to the broader public and would show that constitutional democracy is quite useful, perhaps even necessary to have sustainable and equitable development.

One possible way to do this is by making the case that constitutional democracy curbs corruption. As Secretary General Banki Moon has said;

“The cost of corruption is measured not just in the billions of dollars of squandered or stolen government resources, but most poignantly in the absence of the hospitals, schools, clean water, roads and bridges that could have been built with that money and would have certainly changed the fortunes of families and communities”<sup>95</sup>

Hence, it could be argued that by helping any society minimize corruption, constitutional democracy helps in ensuring better futures for families and communities. The author hopes that this paper has presented such an argument and that such contextualized defenses of democracy would become more common in the scholarship on African comparative constitutional law. Finally, it should also be pointed out that a more concrete and contextualized justification for constitutional democracy could be made highlighting its contribution for development other than tackling corruption. In addition to its utility in minimizing corruption, one could also argue that a well-designed constitutional democracy is developmentally relevant by promoting peace, inclusivity, and fairness in the polity. Obviously, these arguments are not original arguments. For instance, Daron Acemoglu in his book, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, argued that political institutions play a decisive role on the economic fate of nations.<sup>96</sup> However, it is an argument that African comparative constitutional lawyers rarely make and it is high time that this situation changes.

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<sup>95</sup> See *Corruption Destroys Opportunities and Creates Rampant Inequalities*, UNDP (Dec. 11, 2012), <http://www.bw.undp.org/content/botswana/en/home/presscenter/articles/2012/12/11/corruption-destroys-opportunities-and-creates-rampant-inequalities/>.

<sup>96</sup> DARON ACEMOGLU & JAMES ROBINSON, *WHY NATIONS FAIL THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2012).