



# **Democratisation in Africa: The Role of Self-Enforcing Constitutional Rules**

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# Democratisation in Africa: The Role of Self-Enforcing Constitutional Rules

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## Abstract

Following several decades during which violent civil conflict was common in African countries, the period from 1990 onwards was notably marked by a spreading and deepening of adherence to democratic principles. However, it is true to say that many African countries are still experiencing political instability and civil unrest. This raises the question of why these countries cannot attain sustainable conflict resolution. Drawing on economic ideas about contracts and institutions, this paper outlines a conceptual framework for thinking about the role of constitutional rules in achieving political stability, and we elucidate the main requirement for sustainable democratic systems. The gist of the argument is that constitutional rules must become self-enforcing in order to safeguard democratic systems and to avoid relapses into violent civil conflict. We discuss selective examples where constitutions do not adhere to the framework of self-enforcement, making them unable to prevent the recurrence of civil war in these countries.

Key Words: Constitutional rules, self-enforcing constitutions, informal institutions, democracy, civil war, Africa.

## 1 Introduction

VIOLENT CONFLICT HAS HARROWING SOCIETAL EFFECTS. Wars result in a loss of lives and leave a legacy of disability due to injuries and disease; they create economic deprivation and traumatise people, and have regional effects in terms of disease and displacement (Hoeffler 2008).

Violent civil conflict has been common on the African continent for several decades. Nearly 20 African countries have experienced at least one period of civil war between 1960 and 2000, and the proportion of country years since 1950 that have been marked by civil war are one in twelve in Africa compared with

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one in 20 in the rest of the world (Elbadawi and Sambanis 2000: 244; Besley and Reynal-Querol 2012: 2). As has been pointed out by Straus (2012), among others, the prevalence of civil war has tapered off in Africa since the turn of the century. In part, this trend has reflected a discernible shift from large-scale conflicts between well-structured armies aimed at securing control of states, to smaller-scale ones involving factionalised insurgents that lack the capacity to capture capital cities or to hold large swathes of territory.

Attempts to identify the causes of civil war in Africa by means of statistical techniques have linked the probability of experiencing civil conflict to factors such as greed (e.g. the availability of state resources and lucrative natural-resource rents), grievances (e.g. suppression of the political rights of a population or parts thereof and high levels of poverty), and the financial and military feasibility of rebellion (Collier, Hoeffler and Rohner 2009). Other significant factors include a history of violent conflict even before the colonial era, low levels of trust among the population, a weak sense of national identity and a strong sense of ethnic identity, as well as the absence of strong democratic institutions (Besley and Reynal-Querol 2012: 20; Collier and Hoeffler 2002: 25; Elbadawi and Sambanis 2000: 244).

The statistical link between the likelihood of civil war and the absence of strong democratic institutions suggests that the establishment of such institutions could reduce the incidence of violent civil conflict in Africa.<sup>1</sup> In fact, growing adherence to democratic principles has been a salient feature of African politics since 1990: elections have become increasingly regular, frequent and contested, and the number of African countries classified as democracies by Freedom House jumped from 3 in 1990 to 24 in 2008 (see Diamond 2008: 139-141; Radelet 2010). Figure 1 depicts this increase in the degree of adherence to democratic principles; it shows the Polity IV democracy scores of African countries in 1990 and 2010 (positive values indicate democratic systems, whereas negative values indicate autocracies).<sup>2</sup> In addition to this observation, the number of ‘untamed presidents’ of nominally democratic African states has also been falling; several powerful leaders have had to step down after unsuccessful efforts to change or ignore constitutional term-limit provisions (Posner and Young 2007: 131-135).

Clearly, the political scene has changed markedly from that of an earlier era in which one-party states were the norm. Lynch and Crawford (2011), for example, concur that African countries are relatively more democratic compared with the 1980s. Yet the process remains incomplete. Some countries allude to setbacks that require attention, such as recurring military interventions, ethnic voting and an increase in the exclusionary politics of belonging, corruption and insufficient civil society organisation to support democratisation.

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<sup>1</sup>The rarity of wars between semocracies suggests that the notion that democracy promotes peace also holds for wars between states. See, for example, Jide Nzelibe and John Yoo 2006: 2528-2530.

<sup>2</sup>The Polity IV Project [Marshall and Jaggers 2002], which is undertaken under the auspices of the Center for Systemic Peace, provides annual scores for the structural characteristics of political regimes, insitutional changes, and the direction of changes in the underlying dimensions of democracy, autocracy, and degrees of concentration of power. For more information and access to data, consult <http://www.systemicpeace.org/polity/polity4.htm>

This paper analyses the long-run implications for civil conflict in Africa of this widening and deepening of democracy. Drawing on economic ideas about contracts and institutions, it outlines a conceptual framework for thinking about the role of constitutional rules, and discusses the main requirement for sustainable democratic systems. The essence of the argument is that constitutional rules must become self-enforcing in order to safeguard democratic systems and to avoid violent civil conflict. In particular, we emphasise that certain conditions must be complied with to achieve self-enforcing democratic constitutional rules, and highlight specific African country cases where the absence of these conditions has led to recurring civil war.

## 2 An economic perspective on the role of constitutional rules

Constitutions have been perceived as contracts that regulate the relationship between governments and their constituents.<sup>3</sup> Similar to a contract that stipulates the rights and responsibilities of the parties involved in a transaction, so the constitution indicates the extent of governing power.

Hart and Moore (2008) enhanced these ideas with their proposition that contracts are reference points that determine parties' entitlement. Contract compliance actions by parties post-contracting will be influenced by their gains relative to their feeling of entitlement. In the event that a party is dissatisfied with an outcome, it results in shading (causing a loss in welfare), which results in dead-weight losses). In principle, such losses can be avoided by writing very detailed contracts that specify outcomes very precisely and, hence, leave little room for subsequent disagreements about distributions of costs and benefits. This should prevent shading, by ensuring that contracting parties receive their entitlements. In practice, though, the reality that transacting parties cannot anticipate all future contingencies makes it impossible to write such complete contracts. Furthermore, detailed contracts tend to be more rigid and complex to amend when circumstances change. Accordingly, parties tend to write incomplete contracts, and they rely on subsequent renegotiation as a mechanism for handling shocks. Yet such incompleteness means that the dangers of dissatisfaction with outcomes and consequent shading on performance are ever-present (Hart and Moore 2008; Fehr, Hart and Zehnder 2011).

Explaining the outbreak of civil war within the realm of constitutions as contracts relies on enveloping features of Hart and Moore's theory: constitutions act as reference points and provide a sense of entitlement to societal groups. 'Contracts' will only be adhered to if contracting societal groups feel that they have received what they are entitled to. If they feel deprived of these entitlements, groups will apply 'de facto political power' to amend outcomes or constitutional rules. De facto political power is held by those with sufficient economic resources to organise peaceful or violent action against the de jure political leaders and

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<sup>3</sup>For an early endorsement of this view by economists, see Buchanan and Tullock 1962.

who have overcome the problem of obtaining active participation by groups of people who as individuals would be tempted to ‘free ride’ on the efforts of others (Acemoglu, Johnson Robinson 2005: 391). Various mechanisms can be applied, ranging from elections or referendums to violent skirmishes and other extra-constitutional ones. Generally, one would expect groups to dispel incongruities in a peaceful manner. However, a war would receive consideration in particular scenarios, such as enjoying significant benefits if the opposition is permanently removed (Skaperdas 2008:33).

Polities face many possible challenges, some of which may be linked to the factors regarded as the causes of civil wars in Africa (for example, high levels of poverty and inequality, rich deposits of natural resources, and ethno-linguistic fragmentation). Hence, constitutions are the political equivalents of very incomplete contracts. At the same time, constitutions are inflexible by design; the scope for renegotiation of constitutional rules is truncated deliberately because of the difficulty of choosing new rules and the importance of stable political institutions. This combination of incompleteness and inflexibility means that the likelihood of dissatisfaction with outcomes and consequent shading on performance is non-trivial.

Business contracts include rights to third-party enforcement by the state in the event of non-performance. In the domains governed by constitutional rules, the state is a major player as well as the holder of a legal monopoly on the use of violence. This makes credible commitments to the enforcement of constitutional rights difficult, if not impossible. Such enforcement difficulties have moved some writers to reject in toto the notion of constitutions as contracts (See, for example, Hardin 1989). A discussion of this stance falls outside the scope of this paper, suffice it to say that the gravity of enforcement problems compounds the incompleteness of constitutions as devices for structuring political activity. The key implication of this incompleteness is that constitutional rules are essentially ‘parchment barriers’ that cannot protect democratic systems from violent assaults. In Africa (and elsewhere) democratic constitutional rules can survive and flourish only by becoming self-enforcing.

### **3 Self-enforcing constitutional rules**

The notion of self-enforcing constitutions has been discussed by Hardin (1989) and Weingast (2005), among others, but remains less well explored than the normative aspects of constitutional design and the political and economic effects of constitutional provisions. Hardin (1989: 119) emphasises the importance of this notion in forceful terms:

‘... a constitution does not depend for its enforcement on external sanctions or bootstrapping commitments founded in nothing but supposed or hypothetical agreement. Establishing a constitution is a massive act of coordination that creates a convention that depends for its maintenance on its self-generating incentives and expectations.’

Hardin refutes the claim that a constitution is like a contract. To him con-

stitutions govern coordination interactions and do not resolve prisoner dilemma games, as contracts do. There is also less agreement behind a constitution than a contract, as members of society are not required to sign the constitution. A constitution can legitimately be derived from the agreement among individual members of the state. Hardin also indicates that contracts are backed by external sanctions, whereas constitutions are self-enforcing (by default). This point is also made by Ginsburg, who argues that constitutions become self-enforcing when it is in the interest of all powerful factions to abide by the provisions (Ginsburg 2012).

Members of society abide by a constitution as it is in their interest to live with the arrangement. Changes to such an arrangement can be costly and not worthwhile to pursue, since they have to convince a sufficient number of society's members to follow the alternative.

To Hardin (1989: 118) a constitution provides centralised signalling to solve coordination problems: 'By adopting a constitution, we can agree to coordinate one way rather than another. But we may still not have full control over what happens, because we may steadily fall into doing what works instead of what we agreed to do.' Ginsburg (2012) shows through examples from Latin America the importance of flexibility for the endurance of constitutions. Another example is Sweden, where a stable regime changes the constitution occasionally. This is in contrast with the United States, where the constitution has become the embodiment of the regime.

A constitution needs to accommodate the needs of a wide variety of citizens. Hence, it cannot accommodate every one of the possible options; instead, it should leave room for inputs emanating from a wider pool of insights and experience than would be available to a particular group of constitution drafters. Furthermore, the sovereign cannot make the same type of commitment as would apply in a contract, because enforcement is imperfect. Constitutions should therefore be self-enforcing; Hardin (2006: 298) argues that the establishment of a constitution is an '... act of coordination that depends for its maintenance on its self-generating incentives and expectations'.

Weingast (2005: 89) states that constitutions are self-enforcing when '... political officials have incentives to honor constitutional provisions'. The key requirement for self-enforcing constitutions is that citizens should be able to act in unison when governments threaten fundamental constitutional rules. Weingast (2005: 91-99) uses a coordination game involving a sovereign (who determines the decisions of the government) and citizens to illustrate the difficulty of attaining this requirement. In a repeated game scenario, he highlights a self-enforcing liberty equilibrium, whereby citizens agree to act jointly to depose the sovereign in the event of a transgression against them, which forces the sovereign to honour their rights. Importantly, such action does not have to be rooted in altruism; it could also be based on the recognition by citizens that cooperation would enable them to maximise their individual utilities in the long run. This benign equilibrium requires that the citizens agree about the definition of rights and types of government structures that they establish to enact those rights.

Weingast (2005: 95, 98) emphasises that the self-enforcing liberty equilib-

rium is not a natural outcome in the illustrative game or in the real world. In practice, its attainment requires the deliberate creation of pacts among major groups in societies. He also identifies four conditions for successful pacts of this nature. First, such pacts should establish sets of citizen rights and governing rules for public decision-making that would also constrain the powers of states. Second, all parties should believe that they are made better off by signing such pacts. Third, all parties should be willing to change their behaviour if the other parties do so as well. Fourth, all parties should be willing to defend such pacts against transgressions by political leaders.

Periods of crises – such as wars – sometimes provide the impetus for moving societies from asymmetric equilibria to self-enforcing liberty equilibria (Weingast 2005: 96-98). Hence, African countries that have recently emerged from civil wars may have windows of opportunity for designing self-enforcing constitutional rules. Walter (1999), however, points to a number of factors that could hamper the creation of new political institutions in such environments. Former militants often require credible guarantees regarding their future security as preconditions for accepting negotiated settlements, and resume hostilities when such guarantees are not forthcoming. In such cases, other states and international organisations can help to cement peace settlements by providing the required guarantees. In addition, it is often the case in the immediate aftermaths of civil wars that government institutions are too weak to prevent grabs for power and that civil cultures lack the strength to serve as secondary barriers to misconduct. In fact, war-weary populations sometimes prefer peace, order and economic advancement to vibrant democratic institutions.

The earlier data analysis has shown that Africa has experienced an increase in the number of countries adhering to democratic principles. However, the ensuing discussion highlights how vulnerable democracy becomes if Weingast's conditions for self-enforcing constitutions are not complied with. Examples of African countries (in particular the Ivory Coast and the Central African Republic) illustrate how the absence of self-enforcing constitutions leads to recurring conflict. We highlight in these examples the factors that hindered the countries from forming self-enforcing constitutions.

## 4 African case studies

After gaining independence in 1960, the Ivory Coast was ruled by Félix Houphouët-Boigny, who stayed in power for more than three decades. The constitution at independence established an imperial presidency that did not limit the power of the executive. Even though a Supreme Court was created, it lacked any executive power. Houphouët-Boigny was of the opinion that only the elite of the country were skilled enough to take the country forward, and he limited participation in government to those who served him unequivocally (Kimenyi and Mbaku 2011). Despite the lack of multi-party elections, the country did experience economic growth during this time and was regarded as a post-independence African success story (Corey-Boulet 2012). However, a democratic government

was not established, and after the death of Houphouët-Boigny, the power struggle perpetuated this failure (Bah 2010).

A key underlying issue was citizenship: in an attempt to retain political power, the leader of the Front Populaire Ivoirien (FPI), Bédié, instituted the doctrine of Ivoirité, which perpetuated ethnicity by distinguishing between indigenous Ivoirians and those of immigrant descent. It fuelled ethnic and nationalist sentiments and infiltrated other societal spheres such as land tenure and employment policies (Bah 2010). By highlighting ethnic differences, society was unable to form any coalitions that could serve as an opposition to government transgressions of the constitution. Society remained divided. Violations of Weingast's conditions for a self-enforcing equilibrium are evident – the transgression of citizen rights by the ruling party and the divisions it created within society clearly violates the first two conditions. Furthermore, the first constitution after independence did not provide citizens with appropriate institutions (such as a judicial system independent from the state), which would have provided citizens with the opportunity to challenge any transgressions against them.

Before the 2000 elections, Bédié implemented further suppressive measures, such as removing civil service members from the northern origin, and disallowing Burkinabé to vote by forcing them to return home (Toungara 2001). His plans were thwarted by the military coup carried out under the leadership of General Robert Gueï, who assumed leadership of the junta that was put in place to rule the country. He promised a constitutional referendum and fair elections, but eventually barred certain candidates (such as Alasanne Quattara, a descendant of Muslim rulers in Burkina Faso) from participating in the elections (Toungara 2001: 68). Laurent Gbagbo assumed the presidency in 2000. Tension eased in preparation for the municipal elections, when Quattara's party gained considerable control of all northern towns and some large southern municipalities (Toungara 2001: 71).

According to Corey-Boulet (2012), the underlying ethnic divide fuelled by Ivoirité was again evident in the recent conflict in 2010/11, with attacks on immigrants and northerners (Muslim-dominated). Violence erupted when Gbagbo did not accept defeat in the 2010 elections, a clear sign that all parties did not abide by the constitutional agreement to honour the pact. Instead, Gbagbo (with the assistance of the Constitutional Council) retained power, even though he had lost the elections, which exacerbated tensions and conflict (Cederman, Gleditsch, and Hug 2013). He was eventually arrested by the International Criminal Court, and is awaiting trial in The Hague. It is therefore evident that these ethnic grievances fuelled political protests and civil war, which in Weingast's exposition prevented the participation of all parties in order to attain a self-enforcing equilibrium.

A recurring pattern of conflict in the case of the Central African Republic is another example of a self-enforcing equilibrium not having been established. It provides an example of a country that had its constitution changed as a result of a crisis (a possibility Weingast predicted), but because there was a total lack of adherence to the constitution by the government, it failed to secure peace.



The CAR gained its independence in 1960 amidst a power struggle, and still, it witnesses a constant recurrence of violence and a reluctance to uphold the constitution. It is an example of the infringement of Weingast's condition of constraining the powers of the ruling party.

When a pro-democracy movement became active in 1990, society was not unified enough to support the movement. President Kolingba denied a request from a group of citizens in 1990 for the convocation of a National Conference, and a number of opponents were imprisoned. Outside forces tried to support the movement, a prospect Walter (1999) would support. The United States and to a lesser extent France, as well as a group who represented neighbouring countries pressurised Kolingba; in 1992 he agreed to hold free elections. Claiming election irregularities allowed him to extend his reign, but Kolingba eventually acceded to external pressure and instituted a Mixed Electoral Commission, comprising representatives from all political parties.

In 1993 elections took place, and in 1994 a new constitution was approved. As with previous constitutions, it unfortunately had no influence on the practice of politics, as change was driven by pressure from outsiders and not a unified society, which detracts from Weingast's condition of ensuring that all parties participate in signing pacts. Towards the end of the 1990s, the government faced three mutinies, the destruction of property was rife, and the country experienced heightened ethnic tension. During 2001 rebels launched a failed coup attempt by scaling attacks against strategic buildings in Bangui. Subsequently, militias loyal to Kolingba launched revenge attacks against residents in the suburbs of Bangui, which caused severe destruction of property and loss of life. Hence, parties were unable to formulate and uphold or defend successful pacts aimed at attaining a self-enforcing equilibrium (Royal African Society).

Following the overthrow of President Patassé in 2003, the 1995 constitution was suspended. The new constitution, which was approved by 87.2% of the electorate, became active in 2004. This provided for a presidential term of five years, renewable only once (Bradshaw and Fandos-Rius 2013: 271). In 2011 General Yangouvonda won the presidential election by a vast majority (64.37 % of the votes, relative to 21.4 % for Patassé).

Unfortunately for CAR, the new president did not adhere to the principles of the constitution. He did not uphold the 2008 peace agreement with rebels, which would have had them demobilised and integrated into a unity government. This led to heightened tension in the country, and in December 2012 rebel movements took control of the north and central parts of the country. In January 2013 peace talks were held, and agreement was reached about a coalition government that would include the rebel leader. However, in March the coalition collapsed, and Yangouvonda fled the country ahead of the advancing rebels. Rebel leader Michel Djotodia assumed the presidency in March 2013. The AU, EU and the International Organisation of Francophonie treated the situation as an unconstitutional regime change, despite the fact that the autocratic practices of the Yangouvonda regime were well known.

Thus far 2014 has witnessed an increase in violence in CAR between Muslim rebels and Christians. With the government contributing to the violence, it is

difficult to foresee an end to the conflict. A preliminary report by a commission of inquiry of the UN – submitted to the Security Council in the second week of June – found "that ample evidence exists to prove that individuals from both sides of the conflict have perpetuated serious breaches of international humanitarian law and crimes against humanity, as well as war crimes" (Guterres 2014). A constitution that was supposed to protect the citizens has failed CAR. With citizens and government not adhering to the principles stipulated in the constitution, it is worthless.

Mozambique and Kenya provide two examples of countries that show signs of progress towards societies with self-enforcing constitutions. Mozambique gained independence from Portuguese colonialism in 1975, but FRELIMO (Frente de Libertação de Moçambique, the main liberation movement) quickly established a one-party state, which ruled until 1990. Apart from dealing with internal divisions and region-related tensions within FRELIMO, it also faced the emergence of RENAMO (Mozambican National Resistance), a liberation movement stemming from political instability in neighbouring countries (particularly the then Rhodesia). RENAMO was made up of disgruntled Mozambicans (including ex-FRELIMO fighters), who received external support to challenge the existing government (Weinstein 2001). Towards the end of this period, political and economic reforms were introduced, which resulted in movement toward democratic rule. External assistance (particularly from the United Nations) played a prominent role in the transformation process (Weinstein 2001:148).

At independence there was a single-party authoritarian regime that made little distinction between party structures and the functioning of the state; the 1975 Constitution that was developed carried the approval of FRELIMO's Central Committee (Luiz, Pereira and Oliveira 2013). In the late eighties Joaquim Chissano became the new leader of FRELIMO, and adopted more democratic principles. He suggested several constitutional revisions, which among others, made the state more independent from the party (Luiz, et.al. 2013: 684). The 1990 Constitution allowed all citizens to participate in political processes (Pereira 2009), adhering to Weingast's first principle. Supporting this principle, steps were taken in 1991 to enhance the functioning of political parties. Concerns, however, have been raised about the stability of Mozambique's democracy. According to Manning (2010), the 2009 general elections were the least democratic yet. The adoption of new regulations violated principle one by inhibiting small opposition parties from contesting elections. In addition, Manning (2010) refers to FRELIMO's use of state sources, the lack of appropriate checks on its power, and its ability to manipulate rules to its benefit, representing some of the dangers the fragile democracy faces. It seems as though not enough pacts were formed to act against transgressions by the ruling government, i.e. a violation of condition four. Manning (2010: 160) indicates that "The ruling party faces few internal or external checks on its power". FRELIMO now controls 75 percent of the legislature, 99 percent of municipal assemblies and mayoral positions, and all provincial assemblies." Recent instability suggests that the next few years will show whether citizens have formed strong enough pacts to constrain the powers of the state.

Compared with other African states, Kenya has managed a certain degree of stability since independence. This occurred regardless of the country experiencing political system changes and its neighbours experiencing crises. An accompanying benefit to Kenyans has been increased freedom, especially after multiparty democracy re-emerged.

In 1997 the country revised certain oppressive laws (which limited free speech and assembly) dating from the colonial period, as part of a cross-party parliamentary reform initiative. This is an example of better citizen rights, as stipulated by condition 1. Compliance with conditions 1 and 2 can be observed by the democratic and open elections that took place in Kenya in 2002, when Mwai Kibaki was elected as its new president.

Kenya provides an example of how society can act as a countervailing force to government. The 2007 presidential elections were largely criticised by international observers, who suggested that they did not meet regional or international standards and were beneficial to the incumbent president Mwai Kibaki. This resulted in significant unrest in the country, leading to the death of almost 1000 people and the displacement of almost 600,000. Yet the country was able to reach a diplomatic resolution that united the two rivals in a coalition government. This power-sharing arrangement was entrenched in the constitution. This is an example of parties that were willing to change their behaviour when others did likewise, i.e. accepting condition 3. According to the agreement, Kibaki and Odinga agreed to share power. Eventually a new constitution was adopted in 2010.

Kenya is unfortunately also an example of a country with a strong interconnection between ethnicity and party allegiance (Broadberry and Gardner 2013). The result is that inter-party competition in elections is characterised as a competition between ethnic groups. The link in Kenya between ethnic violence and elections highlights the dangers of a divided society.

In 2010 Kenyans voted for a new constitution in a national referendum. The referendum saw a 72 percent turnout, and 67 to 31 percent voted for a new constitution. The new constitution marked the end of the struggle for a new constitution. This had lasted since 1982, when a constitutional change transformed Kenya from a multi-party political system at independence into a de jure one-party state. Under the 1982 constitution most powers were controlled by the presidency; however according to the new constitution politicians were more accountable to the electorate. Mwangi wa Githinji Frank Holmquist (2011: 2), however, refutes the claim that the Kenyan government is now more accountable. 'For us accountability means the end of political class impunity for corruption and encouragement of political violence, as well as a concerted effort by the political class to respond to popular demands for a better material life by dampening inequality and poverty. Accountability has made little progress under the multi-party electoral frame of rule'. Time will tell whether the constitution will hold government accountable for its decisions.

The African country examples discussed above indicate that the constitutional arrangements adopted in these countries were incomplete: they did not comply with the self-enforcing equilibrium conditions specified earlier. The fact

that political stability is still elusive is an indication that a self-enforcing equilibrium has not yet been achieved. As specified earlier, repeated rounds of the game (in this case recurrence of conflict) will necessitate constitutional adjustments.

One African country that has managed to sustain a stable democracy is Botswana. It differs from the previous examples in that it showcases a history in which (male) citizens participated in political decision-making even before Botswana became a protectorate of Britain. Political decisions were made in an open environment where there was opportunity to express one's view, creating a textbook example of adherence to Weingast's first condition. This perceived openness aided Botswana in a smooth transition to a democratic government after independence. Post-independence Botswana still used discussions in local communities to provide them with feedback before new policies were implemented. Openness and consultation were, therefore, always part of the political structure in Botswana (Mgadla 1989; Scapera 1940).

The transition to a democratic system in Botswana was not altogether without problems. For example, at independence the pre-colonial chiefs lost most of their powers. To counter discontent with such a move, a House of Chiefs, similar to the House of Lords in Britain, was created to provide them with a safe environment to discuss their ideas and give feedback on possible policy changes. The chiefs no longer had executive powers, but made good use of their power to express concerns or support for policy changes. This shows a willingness to change behaviour successfully to accommodate different parties in the political process, complying with Weingast's condition 3.

Not all the chiefs were happy with this new arrangement and were active in voicing their discontent with the government. Their first loyalty was toward their village communities and not to the central government. If they were under the impression that a new policy would divide their community or be to their detriment, they did everything in their power to prevent it from being implemented (Holm 1988). These acts of resistance were not suppressed, and this shows how society can form a pact against government (Colclough and McCarthy 1980). Chiefs were allowed to enter the democratic process in a more formal manner, by being eligible for a seat in Parliament. Due to the strict rules on this, including having to give up their statutory income, only one chief (Chief Bathoen) risked standing for Parliament. He succeeded, and even ousted the then vice-president, Masire. Due to the high cost of entry (giving up their income as chiefs), only the best-educated and most capable chiefs, who knew they had a good chance of success in the elections, participated in the election process.

In summary, while some African countries have experienced recurrent bouts of civil war, their citizens have been unable to coordinate their behaviour in ways that would have incentivised rulers to honour the agreements embodied in constitutional rules. In a number of cases, political instability arose because the democratic constitutions inherited from the colonial powers were abandoned, or were simply not enforced (Prempeh (2002), for example, points out that the new leaders of African countries rejected several constitutions soon after

independence). Two other factors may also have retarded the emergence of self-enforcing constitutional rules in the African context. First, African societies typically have had very little say in the writing of the constitutions they have had to live with, with participation largely restricted to colonial officials and small domestic elites. Wing (2008) maintains that effective participation in an on-going process of constitution-writing and policy-making helps nations avoid violent conflict and build democracies by encouraging the expression of diverse concerns. Similarly, Weingast holds that effective policing of the behaviour of states requires consensus among citizens on the roles and limits of states. Participation is a prerequisite for the attainment of such consensus and, more generally, for the emergence of an 'ethic of constitutionalism' that reinforces the effectiveness of written constitutions (Bratton 2007). Second, some of the constitutional rules transplanted to African countries by their former colonial authorities may have clashed with indigenous political values and practices. As an example, Prempeh (2002: 475-476) mentions the rejection by some post-colonial African elites of multipartyism as an alien notion (though it should be added that the motives behind at least some rejections of this nature were rather more dubious).

## 5 Concluding comments

Following several decades during which violent civil conflict was common in African countries, the period from 1990 onwards has been marked by a notable spreading and deepening of adherence to democratic principles on the continent. This paper uses aspects of a theory of contracts proposed by Hart and Moore, and Weingast's ideas about self-enforcing constitutions to comment on the likely long-run implications of this development for the incidence of civil conflict. It argues that democratisation should contribute to a reduction in the incidence of civil war in Africa, provided that the constitutional rules underpinning the new democratic systems become self-enforcing so that governments have incentives to adhere to these rules. The key requirement for self-enforcing constitutions is that citizens should solve their coordination problems in order to be able to act in unison whenever governments threaten fundamental constitutional rules.

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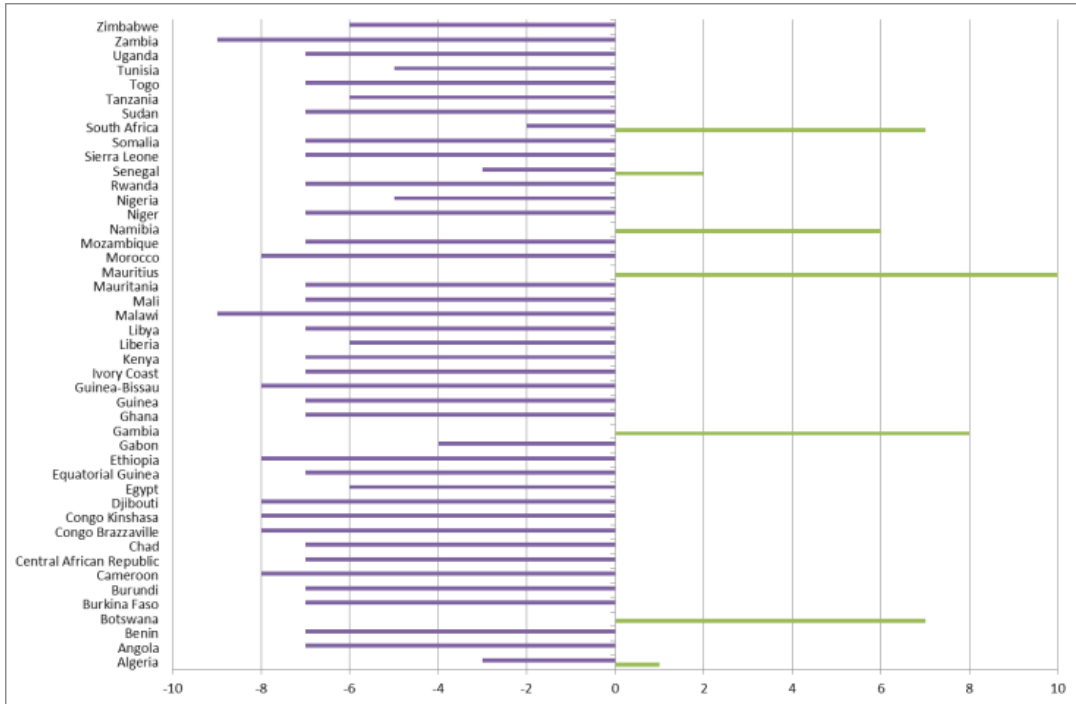
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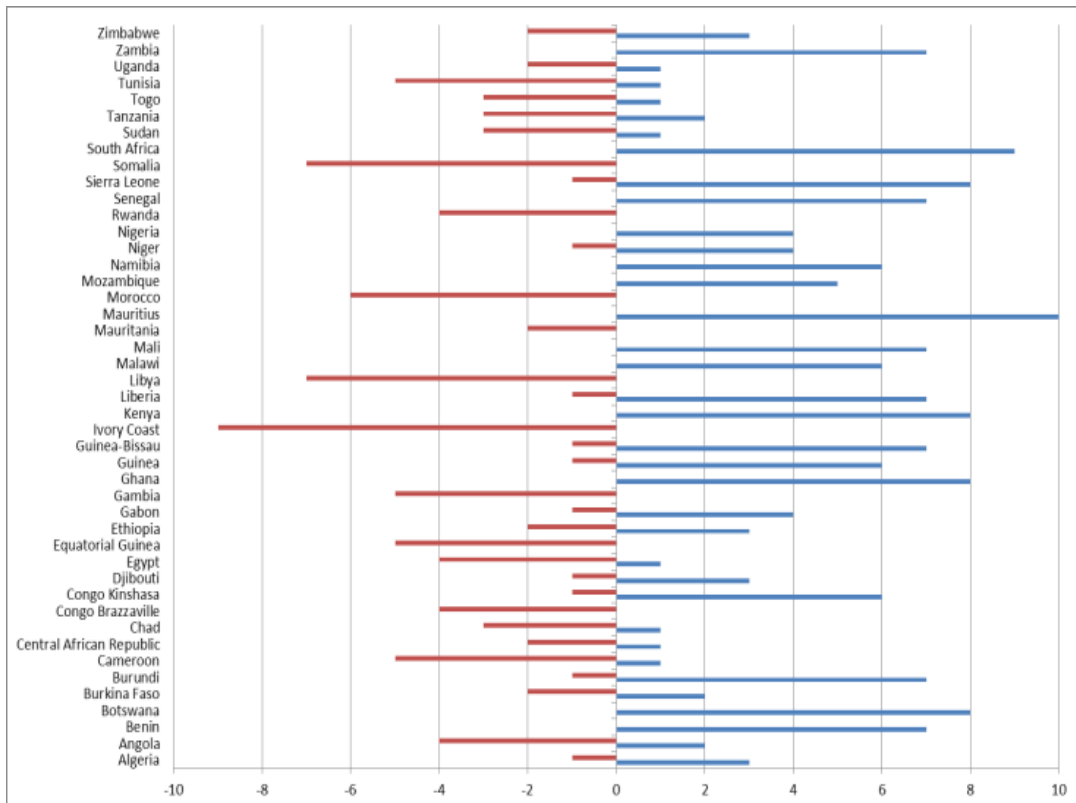
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**Figure 1: Polity IV democracy scores of African countries, 1990 and 2010.**



1990



2010

Source: Marshall and Jagger 2002