I. Introduction

This article focuses on four West African countries, (Nigeria, Benin, Ghana, and Senegal) that offer different insights into the interrelationship between constitutional democracy and political parties, particularly, in the wake of democracy’s third wave that swept through Africa after 1989, that triggered the reintroduction of competitive elections accompanied by the resurgence of political parties in most African countries. A democracy needs strong and sustainable political parties with the capacity to represent citizens and provide policy choices that demonstrate their ability to govern for the public good. Political parties have been argued to be indispensable fixtures in modern democracies, although their formation and development are anything but inevitable or uniform, hence the constitutions of democratizing African countries

1 Professor Oyelowo Oyewo, Department of Public Law, Faculty of Law, University of Lagos, Lagos, Nigeria.
2 The choice of two seemingly similar (due to common colonial heritage and constitutional developments) but dissimilar Anglophone countries and two Francophone countries with varied levels of development in their democratization processes is to deepen the comparative analysis and appreciation of the dynamics of political parties within the sub-Saharan democratization milieu.
3 Huntington, Samuel P. The Third Wave: Democratization in the Late Twentieth Century, 1991, Norman OH, University of Oklahoma Press. Nigeria, Ghana, and Benin fit this categorization because they involved a “top-down” transition in which a well-established military regime ceded power to a civilian led-government; while Senegal, which had always had a civilian led-government, transformed from a dictatorial dominant de-facto one-party state into a multi-party democracy. See also, Giovanni M. Carbone, “Political Parties and Party Systems in Africa: Themes and Research Perspectives, World Political Science Review, (2007) Vol. 3 Issue 3 Article 1, 1-10; Christof Hartman, “Senegal: The Rise and Fall of a One-Party Dominant System”, in One-Party Dominance in African Democracies, Renske Doorenspeelt and Linda Lia Hijzink (Eds.), 2013, Boulder, USA, 169 -194
4 Caryn Peiffer & Pierre Englebert, Extraversion, Vulnerability to Donors, and Political Liberalization in Africa, African Affairs 111/444 (2012) 355-378, 357-358: ‘On average, African regimes displayed rapid improvements in democracy from 1989 to 1995, followed by overall stagnation thereafter. While this overall ‘end of transition’ pattern is well known, a more detailed look reveals that the initial transition itself differed broadly across countries, from radical democratization to increased authoritarianism, and that the subsequent ‘consolidation’ has largely taken place at all levels of democracy. In other words, the 2011 regime distribution across the continent – with nine ‘free’, 23 ‘partly free’, and 16 ‘not free’ countries – has been steady for almost two decades. About 90 percent of the countries that were democratic in 1995 were still democratic in 2011, and about 75 percent of the partly free ones were still partly free. Altogether, some 68 percent of democratic change across the continent between 1989 and 2011 can be imputed to changes between 1989 and 1995.’ More importantly, the democratization in most of these countries by the end of 2013 had also experienced alternation from the ruling party to the opposition party. See also, Thomas Carothers, ‘The end of the transition paradigm’, Journal of Democracy 13, 1 (2002), pp. 5–21; Sebastian Elischer, Political Parties in Africa: Ethnicity and Party Formation, (2013), Cambridge, Cambridge University Press, 22- 27.
perfunctorily contain provisions for their existence and legitimacy. However, the experience and practice of constitutional democracy in most sub-Saharan African countries, as exemplified by Nigeria, Benin, Ghana, and Senegal, have witnessed varied outcomes, particularly, the impact of the political parties in the democratization process, democratic practices, and national development.

This Paper adopts a two pronged approach in delving into the issues raised by the topic. The first approach is to deal with the constitutional and legal framework of the four countries in the light of the role and functions of political parties. The comparative analysis of the constitutional and legal framework of these countries will be examined in order to help articulate conceptual and substantive ideas for the fostering of effective political party operation in democratizing countries.

The second approach is an in-depth analysis of the political party, structures of the parties, internal democracies of the political parties, interactions between political party officials and elected government officials on political party platform, and the factors militating against the fostering of dynamic and effective political parties in these countries will be examined.

There are certain conclusions that will be drawn from the analysis, and this will include, inter alia:

(i). the idea that political party and constitutionalism in democratizing states are not mutually exclusive, even as constitutionalism has a broader meaning than constitutions;

(ii). constitutional and legal framework must be reform responsive in order to engender conducive and effective framework for the evolution of strong and dynamic political parties; and

(iii). strong and sustainable democracy is dependent on the existence of well-functioning political parties, as political parties are crucial actors in bringing together diverse interests, recruiting and presenting candidates, and developing competing policy proposals that provide people with a choice, irrespective of experiences in the democratizing countries in West Africa’

The research methodology employed is to look at, the constitutions, statutory enactments, case law, primary and secondary sources material and existing

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literature on the topic, and such other products of intellectual research and writings generated on and relevant to the topic, comparatively.

II. Constitutional Democracy, Constitutionalism and Political Parties

A. Constitutional Democracy and Constitutionalism

A constitution is usually the basic norm that establishes the organs and institutions of government, and thereby confers legitimacy on the exercise of governmental powers, sets the scope and limits of governmental powers, guarantees the basic fundamental rights of the citizens, and regulates the relationships between the organs and institutions of government among themselves, and with the citizens. The constitution is therefore not only the fons et origo for all other norms, but the “basic manual” for governmental exercise of powers in juxtaposition to the rights of the citizens, in a constitutional democracy. It is no longer just a “power map” of the society but also an instrument for addressing pressing social and economic questions as well as an “embodiment of consensus and constitutionalism”.

The constitution should realistically give birth to democracy, democratic institutions, the political process, political parties and party systems, elections and electoral system, the empowerment and legitimization of elected officials in government, set the ground rules for representative governance, and guarantee the free exercise of the choice of the people in electing their representatives. Indeed, one of its primary purposes is to foster constitutional and representative democracy, and for Larry Diamond, referring to Daniel Kaufman and his colleagues’ at the World Bank, six measures to assess a country’s quality of governance, one of which is identified as, voice and accountability (including freedom of expression and citizen participation in selecting the government), which to Diamond is a rough (if partial) surrogate for democracy.

Hence, a new constitution usually heralds the transition from the old authoritarian or dominant regime to the new or return to constitutional multi-party democracy, to set the tone for democratic governance or set down the rules of engagement for all constitutional and political actors. What therefore appears to be a common constitutional law theory of democratizing countries of sub-Saharan Africa is that, reforming the constitution or making a new constitution to establish the

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8 Larry Diamond, The State of Democracy in Africa, in Democratization in Africa: What Progress towards Institutionalization?, National Intelligence Council, Conference Report, February 2008, noted that until recently, Africa has been a desert in terms of democracy and rule of law, and it remains one of the most corrupt and badly governed regions of the world. Russell Hardin, Liberalism, Constitutionalism and Democracy, Chinese Public Affairs Quarterly, Vol. 1. No. 4, [2005], pp.255, 258-262
framework for regular conduct of elections through multi-party political system, will engender constitutional democracy and, eventually constitutionalism.\textsuperscript{10}

However, there is a divergence in the adaptation of this theory in practice, arising from the differences in the politico-socio-cultural background, the constitution-making procedures, and the constitutional and institutional structures, in the various countries.\textsuperscript{11} Going by the recent constitutional developments in Senegal,\textsuperscript{12} Benin,\textsuperscript{13} Ghana,\textsuperscript{14} and Nigeria,\textsuperscript{15} the constitution aids in the establishment of

\textsuperscript{10}Charles Manga Fombad, \textit{Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects}, Buffalo Law Review, Vol. 59, 1007 at 1009-1010. The Constitution-making processes in three of the countries under study, Benin, Ghana, and Senegal involved the referendum procedure, while the fourth country, Nigeria’s 1999 Constitution than came into force without going through a referendum procedure and has been plagued by the question of its legitimacy that has affected its effectiveness to the extent of being subjected to two constitutional conferences, the first, under former President Olusegun Obasanjo, and the second (still on-going), under the current President, Goodluck Jonathan.


\textsuperscript{12}Senegal had enjoyed a seemingly uninterrupted period of civilian-led government, without military interregnum, constitutional reforms in 1976 and 1978 incontestably democratized the Senegalese political system by allowing the emergence and expression of multiple political views and the organization of competitive elections in which opposition candidates could take part, followed by the 1991 amendments to the constitution and electoral codes, followed by the political and constitutional development of 2000 when the presidential elections brought an unexpected end to the political hegemony of the (Socialist Party (PS)), of President Diouf, for the Senegalese Democratic Party(PDS), led by Abdoulaye Wade, and it was the President Wade-led PDS government that initiated the drafting of a new Constitution that was adopted through a referendum in on January 7, 2001, although the 2001 Constitution has since been subjected to several amendment since its adoption. In the 2012 presidential elections President Wade-led PDS, was defeated by the Alliance for the Republic – Yaakar, led by Macky Sall, together with a broad opposition. See Michael Washman, \textit{Democratization through Alternation?—Comparing the cases of Ghana, Kenya, and Senegal}, being a Paper prepared for delivery at the Annual Meeting of the Swedish Political Science Association, Gothenburg, September 30\textsuperscript{th} – October 2\textsuperscript{nd} 2011, pp 7-10 @www.1315855_washman_swepsa.pdf visited on March 18 2014; Ismail Madior Fall, Matthias Homkpe, Adele Jinadu, and Psacal Kambale, Senegal: Election Management Bodies in West Africa, OSWA, 2011, pp 168-170 @www.AfrMap_EMB_Ch6_Senegal.ER.pdf visited on 3/4/14; BTI 2014: Senegal Country Report.

\textsuperscript{13}The “National Conference of Active Forces of the Nation”, which took place in February 1990, was the watershed of democratization, as a new Constitution adopted by referendum in the same year, was ratified by the first free and fair elections in 1991, and the Prime Minister of the transition government, Nicephore Soglo, won the presidency in a run-off against the former dictator, Mathieu Kerekou, who had ruled the country for 17 years, though he returned to power in the presidential elections of 1996, but he was defeated by Boni Yayi in the 2006 presidential elections. See BTI 2014: Benin; Kathryn Nwajiku, \textit{The National Conference in Benin and Togo Revisited}, The Journal of Modern African Studies, Vol. 32. No.3, Sep., 1994, pp. 429; John R. Heilburn, \textit{Social Origins of National Conferences in Benin and Togo}, Journal of Modern African Studies, Vol. 31, No.2, June 1993, pp 277-299
constitutional democracy, political parties, the organization of regular election and alternation of political parties in government, as has been the case in Ghana, Benin and Senegal, and in some federating unit states in Western and North-Western Nigeria, although a dominant party, the Peoples’ Democratic Party (PDP), has been entrenched at the central/federal government, since 1999 till date.

The constitutions of Benin, Ghana, Senegal and Nigeria, like most sub-Saharan democratizing states contain provisions on political parties and elections, however, the multi party democratization through elections on the platform of political parties pose several challenges to constitutionalism in these countries, thereby raising the question about the practice of constitutionalism in these new constitutional democracies. There is no generally acceptable definition of constitutionalism, as differences exist in its conceptualization and definition between constitutional law writers and political scientist, while the formers’ analysis of the concept focuses on how the constitution and its core values serve as a check and limitation on the exercise of governmental powers in its interaction with the people, the latter’s conceptualization and definition of constitutionalism focuses on ‘majority rule as the embodiment of political equality, on the one hand, and the constitutional

17 Democracy cannot be defined solely in terms of elections and the competition for votes on the platform of political parties, but these are indices of representative democracy that can have significant bearing on constitutionalism. See Peter Burnell, The Relationship of Accountable Governance and Constitutional Implementation, with Reference to Africa, Journal of Politics and Law, Vol. 1 No. 3, September, 2008, 10 at 21-22
19 For a classic definition of constitutionalism, de Smith’s western liberal democratic perspective which is given as follows, is apt: ‘The idea of constitutionalism involves the proposition that the exercise of governmental power shall be bounded by rules, rules prescribing the procedure according to which legislative and executive acts are to be performed and delimiting their permissible content- Constitutionalism becomes a living reality to the extent that these rules curb arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass there is significant room for the enjoyment of individual liberty.’ S.A. de Smith, The New Commonwealth and its Constitutions, London, Stevens, 1964, p.106. For more modern conceptualization and definition of constitutionalism see, Mark V. Tushnet, Popular Constitutionalism As Political Law, 81 Chi. Kent L. Rev. 991-1006 (2006); Richard H. Pilde, Political Parties and Constitutionalism, NYU, Public Law & Legal Theory Research Paper Series, Working Paper No. 10-13, March 2010, pp. 1-5 @ http://ssrn.com/abstract=1550905.htm. Visited on 3/3/14; Peter Burnell, The Relationship of Accountable Governance and Constitutional Implementation, with Reference to Africa, Journal of Politics and Law, Vol.1 No. 3, September 2008, 10 at 13-14.
role of the balance between competing parties, on the other hand. But generally constitutionalism refers to a system of government based on a constitution and constitutional law, a government which demonstrates adherence to the principles of the constitution, the rule of law, respect for the right of its citizens, and accountability to the electorate and the people. Fombad’s conceptualization of constitutionalism is most apt for our purpose: The concept today can be said to encompass the idea that government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate within its constitutional limitations. In other words, constitutionalism combines the idea of a government limited in its action and accountable to its citizens for its actions. The modern concept therefore rests on two main pillars. First, the existence of certain limitations imposed on the state particularly in relations with its citizens, based on certain clearly defined set of core values. Second, the existence of a clearly defined mechanism for ensuring that, the limitations on the government are legally enforceable. In this broad sense, constitutionalism has certain core irreducible and possibly a minimum content of values with a well defined process and procedural mechanisms to hold government accountable.

He then suggested core elements of constitutionalism identified from most recent literature on the topic as:

(i) the recognition and protection of fundamental rights and freedoms;
(ii) the separation of powers;
(iii) an independent judiciary;
(iv) the review of constitutionality of laws;
(v) the control of the amendment of the constitution.

The philosophy behind constitutionalism is expressed as the need to design constitutions that could not be easily manipulated by politicians and political parties and to promote respect for rule of law, democracy and the rights of the citizens. While the constitutions of Benin, Ghana and Senegal have engendered regularly conducted elections through multi-party democracy, that were considered free and fair to some extent, as witness the alternation of political parties elected into government in the three countries, and the Report of the African Union Election

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22 Ibid
Observation Mission to the 7th December, 2012 General Election in the Republic of Ghana, attest to the deepening of constitutional democracy in Ghana. While Nigeria’s whole democratization experience since 1999, can easily be summarized as the negation of constitutionalism. Claude Ake’s comments on such development paints a glumly picture: “The triumph of democracy may be more apparent than real. Democracy has had an embattled history struggling to survive in an environment in which support for it was rarely more than lukewarm, and invariably ambivalent, confused or opportunistic, and opposition to it, powerful, resourceful, and unrelenting. By all indication it will be more appropriate to be lamenting the demise of democracy than celebrating its universal triumph.”

More importantly, is the failure by and large, in the four countries to realistically ensure the observance of the political freedom of citizens to be involved in the internal democracy of the political parties, and in the choice of candidates for political offices, due mainly to the poor structure of the political parties, their weak internal democracy, and political violence. Moreover, the judiciary often performed its role of an independent watch-dog of constitutional democracy at critical constitutional and political times poorly in Nigeria and Senegal, but fairly well in Benin and Ghana. In Nigeria, however, election...

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24. African Union Elections Observation Mission Report: Ghana - 2012, p. 7 “The 2012 elections constituted an important step in democracy consolidation in Ghana. The stakes in the 2012 election were considerably high in light of growing popular demands for better living standards; the creation of national mechanisms for fair distribution of oil revenues and the stiff competition between the NDC and NPP. The elections afforded Ghanaians an opportunity to assess the strength of their democracy and to confirm that the country is gradually developing a culture of political transition”. See also, Lindsay Whitfield, ‘Change For A Better Ghana’: Party Competition, Institutionalization and Alternation in Ghana’s 2008 Elections African affairs, 108/433, 621–641 (2009).


27. See the following Nigerian decisions: Ugwu v Ararume [2007] 31 WRN 1, where the Supreme Court held that the Political Parties need to be disciplined enough to obey their own constitution so as to assure the people of their readiness to defend the Constitution of the nation. Followed by the Court of Appeal in Kolawole v Folusho [2009] 50 WRN 68. See Anyaonu v Azodo [2011] 49 WRN 148, C.A., an election petition questioning the nomination or substitution of a candidate; Enyong v. Ekpeyong [2011] 43 WRN 165, C.A., an election petition challenging the nomination or sponsorship of a candidate. See also, Political violence in West Africa: A Critical Analysis of Parliamentarians and Political Parties ( With a Focus on Guinea, Guinea-Bissau, Niger, Nigeria, and Togo), July 2010, UNDP, Research Paper, pp 2-7, where “political violence” is defined as use of force to achieve a political outcome, and this is illustrated with the political violence that accompanied the 2007 Elections in Nigeria UNDER FORMER President Olusegun Obasanjo, in contrast to the minimum or absence violence in the Ghana elections of 2000 and 2008 under former Presidents JJ Rawlings and J Kuffour

28. In Senegal, the Final results of the 2007 election released on March 11, 2007, showed Wade winning in the first round with 55.9% of the vote, far ahead of his nearest opponents, Seck with about 15% and Socialist Party leader Ousmane Tanor Dieng with about 13.6%. Dieng and another opposition candidate, Abdoulaye Bathily, filed appeals...
petitions have become the Waterloo of judicial independence from the originating court/tribunals to the appellate and apex court, even in the face of overwhelming proof of large scale electoral malpractices, and even on the occasional a spark of judicial independence and activism by the apex court, their ratio for their judgments have raised more controversy and left the general populace bewildered.

The control of the amendment of the constitution by the leadership of the ruling political party in government for political ends has always also posed a challenge to constitutionalism. In Senegal, constitutional amendments have been employed by Presidents Wade and Sall for political ends, however, the Republic of Ghana’s constitution of 1992 had only been amended once in 1996. Conclusively, the theory of constitution-making or remaking for the rebirth of democratization in sub-Saharan state, in praxis, has not begotten constitutional democracy or the development of political parties that adhere to the practice of constitutionalism. Constitutional developments in the four countries, Benin, Ghana, Senegal, and Nigeria, have unfolded differently, with Nigeria being at the lowest end of the spectrum, and hopefully, the ‘Spring of constitutional amendment and remaking’ by the National Assembly and the newly inaugurated National Conference will bring in a ‘Summer of constitutionalism’ for the most populous state of the sub-Saharan sub region.

regarding the election, but these were rejected by the Constitutional Council. The Senegalese Constitutional Council also approved President Wade’s constitutional amendment for the elongation of his tenure. Unlike the Senegalese Constitutional Council, the Benin Constitutional Court upheld the sanctity of the Constitution and acted as the ‘protector of the Constitution’. For accounts on the credible role of the Ghananian judiciary see, Kofi Quashigah, THE 1992 CONSTITUTION OF GHANA, pp. 3-7 @ www.//GHANA_FINAL(1).pdf visited on 3/5/14, discussing the development of the interpretative constitutional law of the 1992 Constitution of Ghana by the judiciary; and Seth Yeboa Bimpong-Buta, The Role of the Supreme Court in the Development of Constitutional Law in Ghana, Ph.D Thesis, 2005

CPC v INEC [2012] 29 WRN 1, 49-56, S.C, the election petition against the 2011 Presidential Elections, was on grounds of substantial non-compliance; PDP v. INEC [2012] 39 WRN 131, C.A, the petition was on grounds of allegation of malpractices in the conduct of election for senatorial seat, and disenfranchisement; Oyebode v Gabriel [2012] 48 WRN 49, C.A., the election petition was on the allegations of stuffing of ballot boxes, violence and thuggery in the conduct of election.

Amaechi v INEC [2008] 10 WRN 1, S.C., employing the rationale who was wrongly substituted by his Political Party, PDP, was “in the eyes of the law” the candidate of the Party, the apex court declared the candidate the elected winner for the gubernatorial elections in Rivers State, even though he neither campaigned for nor actually contested for the elections at the polls, as the wrongly substituted candidate, Omehia, was the one that actually campaigned and contested for the elections on at the polls. The apex courts rationale for it decision has been strongly criticized.

Melissa A. Thomas and Oumar Sissokho, Liaison Legislature: The Role of the National Assembly in Senegal, The Journal of Modern African Studies, Vol. 43, No. 1 (Mar., 2005), pp. 97-117, at 101, noting that President Wade, constitutional amendment of 2001 was an example of his willingness to “willingness to alter formal rules to suit his immediate political requirement.” This same route was followed by President Sall in altering the constitution to abolish the office of the Vice-President and the Senate.

Nigeria’s 1999 Constitution has been amended three times in 2010 and 2011.
While the new wave of constitutions may not have begotten democracy and constitutionalism, the democratizing process offers opportunities for constitutional reforms to correct observed weaknesses and improve the effectiveness of political parties in the governance of the state in the sub-Saharan countries, with lessons from Ghana, Benin, and Senegal.

B. Constitutionalism and Political Parties

Consistent with comparative politics research, democratization process is considered as a set of interactions between the new democracy leadership and the old authoritarian elite. Political parties are considered as not only the transitional vehicle and a bridge between the old elites and new democracy leadership, but also as a necessary condition of democratic politics, as a mechanism to aggregate interests and channel societal demands into electoral competition. Parties have historically had two broad functions in the political system, representative (linking and mediating social needs and demands relative to policy formation) and institutional (recruitment of political leaders and governing as organization of parliament and the executive). Almost all African political parties are in pursuit of actualizing the four major functions of political parties in the developing countries described by Randall:

First, they endow regimes with legitimacy by providing ideologies, leadership or opportunities for political participation, or a combination of all three. Second, they act as a medium for political recruitment, thus creating opportunities for upward social mobility. Third, they provide opportunities for the formation of coalitions of powerful political interests to sustain government (interest aggregation), have major influence on policies as a result of devising programmes, supervise policy implementation, and promote the political socialization or mobilization of people to undertake self-help activities. And, fourth, they maintain political stability in societies able to absorb increasing levels of political participation by the new social forces generated by modernization. Likewise, African political parties have become instruments or institutional mechanisms for transition to democracy. Despite the impressive body of scholarship on constitutional engineering that has appeared over the past decade, there has been surprisingly little attention given to the ways

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in which multi-ethnic parties can be developed and sustained.36 Political parties have typically been viewed as social phenomena beyond the scope of deliberate institutional engineering or comprehensible by constitutional law, hence their consignment to the domain of political science, as such most of the literature on political parties are by political scientist.37

However, in order to better understand the interconnection between constitutional democracy and constitutionalism, the interconnection with political parties must be comprehended from the constitutional law perspective, albeit, from lenses with the coloration of political science discipline. In competitive political systems, political parties have been able to provide, although often muted, the connection between the party system and government, and between government and society. They have become part of the electoral process, a rallying point for elite competition. Eventually, however, political parties became vehicles for the elite’s ambition to capture power, influence the legislative and executive branches, and control the administrative functions of the state bureaucracy through the political executive. Indeed, in all the four countries, Benin, Ghana, Senegal, and Nigeria, the executive, particularly the Presidency, and the legislature, are constitutionally required to belong to a political party. Thus, the operation of the constitution by these two arms of government, are interconnected to the ideology (or none of it) of the political parties, and the enjoyment of fundamental freedoms by the citizens.

Unfortunately, as earlier noted most of the literature and study on political parties has been in relation to elections, especially, for determining their typology and the absence of an appropriate assessment of which type of political party is conducive for constitutional democracy in Africa.38 Albeit, the constitution lays the foundation for the formation and operation of political parties, the party system, elections and electioneering, and implementation of political party ideology/policy/vision through the exercise of governmental powers. Multi-party constitutional democracy has therefore become the theoretical and operational constitutional fundamental for governance in sub-Saharan Africa, however, with variants of political systems. Ghana has been a de jure multi-party state, but a de facto two-party state, NDC and NPP, since 1992. While Benin and Senegal are constitutionally multi-party, it has always been necessary for coalition of parties in opposition to combine together to defeat the ruling political party, since the ‘third


37 Such constitutional law doctrine as ‘Political Question’, Political thicket’ reinforce this approach.

wave of democratization’ of the 1990s. Nigeria presents a constitutionally multi-party state with a dominant ruling party, PDP, at the federal level and majority of the federating states, with opposition parties being unable to work together to defeat the dominant ruling party, PDP, since 1999.

The activities of the political parties being geared towards achieving success at election times has meant that a lot of research in assessing their role in the practice of constitutionalism, have been focused on the conduct of elections, the electoral system, and the party system.

1. Electoral system

The Electoral system of government is the process which causes political growth and democratic stability of any society or country. It is also a process by which the citizens of a democratic country select through either direct voting indirectly, those who will represent them in the parliament and other three arms or organs of government, so as to protect the interest of the general public or country. It has been generally observed that there are three means to structure political parties within an electoral system, i.e., the constitution, statutory regime, and the constitution of the political parties. These rules and regulations may be reinforced by a code of conduct for political parties and other key actors during the elections, as is the case in Senegal and Ghana. The main players that are supposed to ensure constitutionalism in the electoral process are the Electoral Management Bodies (EMBs), the government, political parties, civil society organizations in, and the electorates.

However, there exist no generally acceptable, theory on the right balance of electoral system for the viability of political parties, and typically this has varied


40 Towards the 2015 elections two major opposition parties, Congress for Progressive Change (CPC) a predominantly northern political party), has merged officially with the Action Congress of Nigeria (CAN a predominantly south-west political party) together with some fragments of other political parties and decampees from the ruling party, PDP, form the All Progressives Congress (APC), for a fighting chance of defeating the ruling/dominant party at the polls.

41 P. Kumado, “Concepts and possibilities of regulating political party by legal means” in Report on the Conference: Survival and Growth of Political Parties in Africa - Challenges and Solutions Towards the Consolidation of African Political Parties in Power and Opposition February 27 – March 1, 2005, Organised by the Friedrich-Ebert-Stiftung (FES) and the Institute of African Affairs (Institut für Afrika-Kunde, IAK), Hamburg, Germany, Prepared by Matthias Basedau: “Three means to “structure” political parties: the Constitution should address only the broad tapestry, such as the recognition of a political party as a governance organ, the need for internal democracy, their non-sectarian and secular character as well as their operational freedom which includes access to the (state-owned) media. The statutory laws (party laws, electoral laws) should include the exact definition of political parties and finances, including state funding, disclosure rules and mechanisms as well as the role of the electoral commission. Also, statutory laws should provide for the nomination of candidates, measures to ensure the national character of political parties, the control of external influence, gender equality within parties and especially election-related offences such as intimidation, vote buying etc. Moreover, as a third source of structuring, political parties should be governed by their own constitutions which should mirror the spirit of the National constitution and respective statutory laws.”
from country to country in the sub-Saharan African region. The electoral system in Ghana is a plurality majority system (first past the post) characterized by a two round system for the election of the President. A winning presidential candidate must secure 50% + 1 vote, failing which a presidential runoff is held within 21 days after the first round.\textsuperscript{42} Ghana has a history of runoff elections since 2000. The election of members of Parliament is conducted simultaneously with the election of the President. The body charged with the responsibility of managing and supervising elections in Ghana is the Electoral Commission of Ghana (EC) established under Article 43 of the Constitution. The EC is widely seen as an impartial institution in dealing with electoral matters especially in the handling of complaints and propaganda emanating from political oppositions.\textsuperscript{43}

In Senegal “through a series of political negotiations, the model of elections exclusively managed by the administration was progressively challenged, first of all by the establishment in 1997 of the Observatoire National des Elections\textsuperscript{306} and then by the creation in 1998 of the High Council for Broadcast Media (Haut Conseil de l’Audiovisuel – HCA). These institutions were respectively replaced by the Autonomous National Electoral Commission (Commission Nationale Electorale Autonome – CENA) and the National Council for the Regulation of Broadcasting (Conseil National de Régulation de l’Audiovisuel – CNRA), which, for the most part, copied and reinforced their mandates. Since that time, the chosen format has been collaboration in the organisation of elections between the administration and an independent body, first ONEL and later the CENA. This system has, however, caused some political turbulence. The administration remains responsible for the material organisation of elections, while ONEL (1997–2004) and subsequently the CENA (since 2005) monitor and supervise the actions of the administration in electoral matters.”\textsuperscript{44} Clearly, there is the need for a constitutionally established independent election management body without the burden of material organization of elections by the Administration (usually under of

\textsuperscript{43} African Union Elections Observation Mission Report: Ghana - 2012, p. 10 “The EC has been in existence since 1992. Most of the political parties and stakeholders pointed out that the credibility enjoyed by the EC, is in part due to its long existence and experience acquired over time. The reputation of the Chairman of the Commission and the courage demonstrated in applying the law impartially has also contributed to the confidence the Ghanaians have in the ability of the EC to discharge its function.”
\textsuperscript{44} Ismaila Madior Fall, Mathias Hounkpe, Adele L. Jinadu, Pascal Kambale, SENEGAL - Election Management Bodies in West Africa A comparative study of the contribution of electoral commissions to the strengthening of democracy: A review by AfriMAP and the Open Society Initiative for West Africa, pp.168- 174. In addition to the Ministry of the Interior, which is in charge of the organization of elections, and the CENA, which is the elections supervisory and monitoring body, other institutions also play a role in the electoral process. These are the CNRA, the commission in charge of ballot counting (Commission de recensement des votes), local authorities and the Ministry of Foreign Affairs. Senegal experienced uncontested election results for the first time, following the second set of all-party discussions on the electoral code and the creation of the ONEL, with the legislative elections of 1998 and the presidential elections of 2000.
the control of the ruling party in government) so as to guarantee free and fair elections, and deepen the practice of multi-party democracy in Senegal.45

By virtue of Art 45 of the Constitution of Benin, the President of the Republic shall be elected by an absolute majority of votes cast. If that shall not be obtained in the first round of voting, it shall be followed, after a delay of fifteen days, by a second round. The only ones who may be presented in the second round of balloting shall be the two candidates who shall have received the greatest number of votes in the first round. In case of the withdrawal of one or both of the two candidates, the next ones shall be presented in the order of their filing after the first balloting. The candidate having received the relative majority of votes cast in the second round shall be declared elected. In the absence of an independent election management body, the Constitutional Court is vested with the duty and responsibility of watching over the regularity of the balloting and to verify its results.

The 1999 Constitution of Nigeria (as amended) has elaborate provisions on the elections46 of the President/Vice President at the federal/national level, and the Governor/Deputy Governor at the state level.47 The candidate that secures the majority of votes and not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal. In default of which a second election between the highest and second highest candidates will take place. The requirement of geographical spread is to deal with the phenomenon of ethnic/regional parties and candidates. The Independent National Electoral Commission (INEC, election management body, is constitutionally charged with the responsibility of conducting elections, registering and supervising the activities of the political parties, generate voters’ register, prosecute electoral offenders, and educate the electorates and the political parties on the free and fair conduct of elections. In the performance of its duties, INEC faces a severe crisis of credibility, due to the presidency’s overbearing influence on its top leadership and finances, and also due to its questionable management of voter registration and candidate nominations, which frequently lead to court challenges of the polls’ validity.48

46 Legal/constitutional framework for the conduct of elections in Nigeria consist of the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act and other laws regulating the conduct of institutions and agencies involved in elections.
47 Sections 132-14 deal with Presidential elections, while section 179 deals with Governorship elections. Elections into the National Assembly (the Federal Parliament) is regulated by sections 71-77 and that of the State Houses of Assembly are regulated by sections 116-117.
48 See Report of the Electoral Reform Committee, Vol. 1, 2008, p.5 @ http://www.ERC_MAIN_REPORT.2009.01.pdf. “The independence and impartiality of the country’s election management bodies, that is, the Independent National Electoral Commission (INEC), State Independent Electoral Commissions (SIECs) and other institutions involved in election matters, have been questioned by the generality of Nigerians who submitted memoranda and made presentations during the public hearings of the Committee. INEC and SIECs have generally been adjudged as operating as appendages of the ruling party and the Executive arms of
The electoral system and the elections have direct bearing on the practice of constitutionalism and democracy, as can be seen from the constitutional/legal framework for the conduct of elections. While Ghana’s electoral system and elections have helped in deepening constitutional democracy, the francophone approach in Senegal and Benin, call for constitutional/legal reforms to establish and entrench really independent EMB. Nigeria’s electoral system and elections clearly constitute a sore point on constitutionalism and constitutional democracy, as noted by the Electoral Reform Committee, needing urgent and extensive reforms to improve the system and enhance the independence and efficiency of INEC and SIEC, the EMBs.

2. Party System

Despite the seeming common factors that originated democratic transitions to multiparty constitutional democracy across the African continent, national party systems exhibit different characteristics, as the political party systems that have emerged in this democratization era vary a lot. It has been observed that the variation in African party systems can be characterized along a continuum, where at one end are well institutionalized party system characterized by few national parties that compete for power at all levels, such as that of Ghana, Senegal, and South Africa. At the other end are highly volatile systems with a proliferation of personalized, particularistic, and geographically limited parties, in such countries as, Benin, Nigeria and Zambia, with highly fragmented political system and parties that generally represent only a particular region or ethnic interests. According to political party theory, this has major implications for citizen participation, representation, mobilization, and government accountability and policy making. The factors accountable for the variants in political party system in sub-Saharan West Africa are critical for understanding the major differences in the democratization government. This perception stems mainly from the mode of appointment of key officials of the EMBs and their funding which rest exclusively with the Executive branch of government.” The EMBs have been overburdened with too many responsibilities which has affected their performance. However, the large number of ethnic and regional political parties (approximately 150), the unreliability of electoral lists and the Independent National Electoral Commission (CENA), among other problems, are in danger of weakening Benin’s democracy.

The 1999 Constitution should be amended to ensure that INEC becomes truly independent, non-partisan, impartial, professional, transparent, and reliable as an institution and in the performance of its constitutional functions.”

Parties in Africa have generally been characterized in undifferentiated terms, as extremely weak, non-ideological, or reflective of ethnic cleavages (Mozaffar, Scarritt and Galaich 2003). Other works on African political parties accurately note the prevalence of dominant parties (Manning 2005; van de Walle 2003, Kuenzi and Lambrigh 2005). Furthermore, many African countries share structural conditions of low economic development, high ethnic heterogeneity, weak state capacity and highly centralized political systems (Wunsch and Olowu 1990, Callaghy 1984) that contribute to the contemporary understanding of homogeneity in political parties in new democracies across the continent.

Ibid
processes in each country. For example, what factors can be accountable for the differences in the political party system between Ghana and Nigeria, even with the seeming similarities of common British Colonial history, several military coups/regimes, ethnic pluralism and economic underdevelopment? Ghana’s *de facto* two-party system with the two major parties, NDC and NPP, is sustained by patterns of electoral cleavage and regional party organization, the dynamics of which have changed from election to election since 1992,\(^{53}\) produced party alternations, and seems to be undergirded by an independent EMB and judiciary, and vibrant and alert civil society.

In Nigeria one of the most crucial and yet least developed democratic institutions is the political party system, as there are currently more than 50 registered political parties in the country, most of which are either personalistic, ethnic/regional, or an assemblage of people who share the same level of determination to use the party platform to get to power. This has produced a dominant party, the PDP, since 1999, and the absence of effective opposition parties, due to the fragmentation of opposition parties along ethno-regional faults. The AD, Alliance for Democracy, later transformed into ACN, Action Congress of Nigeria, and yet again merged with other opposition parties to form the APC, All Progressives Congress, predominates among the Yorubas of the South West Nigeria. The ANPP, All Nigerian Peoples Party, CPC, Congress for Progressive Change, predominates amongst the Hausa/Fulani, and control the government in some Northern States. While APGA, All Progressives Gran Alliance, predominates amongst the Ibos, and controls some states in the South West of Nigeria. Indeed, the opposition parties have been unable to present a common front to challenge, the dominant party, due to the regulatory and financial control of the dominant party in government, PDP, over the EMB, INEC, corruption of the judiciary and the security forces, the high level of electoral illiteracy amongst the general populace, and the high incidence of electoral violence during each election in the country.\(^{54}\)

In an empirical analysis of two contrasting party systems in Benin and Senegal, revealed that the authoritarian incumbent’s dominance or weakness to control the transition dynamics continues to play out over time through the influence of formal rules, collective identities and norms of organization, which reproduce and maintain the initial party system that developed during the democratic transition even after

\(^{53}\) Minion K. C. Morrison and Jae Woo Hong, Ghana’s Political Parties: How Ethno/Regional Variations Sustain the National Two-Party System, *J. of Modern African Studies*, 44, 4 (2006), pp. 623–647. Due to its single-member-district-plurality electoral system, the country has functioned virtually as a two-party system, privileging its two major parties

shifts in the external environment, and the coalition of opposition parties, in securing victory at the polls over the ruling parties to bring about party alternation.

Political Parties and Democratization

i. Political Parties and democracy

Writing on the feature of post-1990 political parties in Africa Pierre Englebert and Kevin Dunn identified six features which contrast with the usual characteristics of parties in Europe or North America: (1) Many registered parties in most countries, and a large number of them “do not possess even the minimum amount of electoral support required to win a seat” (Mozaffar and Scarritt 2005: 413); (2) Many parties are based on ethnic or regional loyalties or ethnic “congress”; (3) The relative lack of political programs, that is being “issueless”; (4) Very limited institutionalization, as their bureaucratic organization is feeble and often temporary; (5) Consequently, many parties are based on informal relations between their members and their leaders that revolve around personal rule and clientelism; and (6) The severe imbalance between the party or parties in power and those in opposition, as the ruling party tends to dominate, as democratic consolidation in Africa “tends to produce dominant parties that are able to win elections with overwhelming majorities” (Mozaffar and Scarritt 2005: 403, and Nicholas van de Walle 2003).

Ghana’s NDC and NPP present interesting contrast from the features of African political parties identified above, while Nigeria’s political parties fit squarely into the varies identified features, which may easily be the reasons for the resultant deepening of democratic governance in Ghana and the pseudo-democratization of Nigeria.

Sebastian Elischer analysis of party typologies in Africa exhaustively considers the literature and research on the subject, challenges some un-operationalized typology of clientelistic and ethnic party types, as typologically driven works in areas outside Europe either applied ill-suited Western concepts or used area specific framework. He further observed that the literature on African parties reveals particularly bleak pictures, as no systematic research on parties has taken place since the return of multiparty democracy in the early 1990, and his operationalization of his amended Diamond and Gunther typology as applied to three African countries, Kenya, Namibia, and Ghana, reveal political dynamics in the three different countries that can be instructive for the analysis of political parties and democracy in sub-Saharan African in general. Elischer’s typology presents five party types – the mono-ethnic

57 Political Parties in Africa: Ethnicity and Party Formation, 2013, Cambridge, pp. 22-41
58 Ibid.
party, the multiethnic alliance, the multi-ethnic catch-all party, the programmatic party, and the personalistic party.\textsuperscript{59}

In Nigeria like Kenya ethnic parties dominate the political scene,; in Senegal ethnic and non-ethnic parties shape the political arena; in Ghana the political landscape is dominated by various non-ethnic party types including the "catch-all" party, the programmatic party, and the personalistic party; and in Benin the political scene is also dominated by large number of political parties that are ethnic and non-ethnic parties, although not necessarily programmatic but rather personalized. Obviously, there is the need for more empirical research on the typology of African political parties, along the lines of the works of Diamond and Gunther, and Elischer to better understand the political diversity of the African continent.

\textbf{ii. Challenges and Prospects}

\textbf{Challenges}

There are several challenges posed by the democratization for political parties in sub-Saharan Africa, starting from the constitutional/legal framework within which they operate. For a country like Nigeria this has become so glaring that there have been several attempts at constitutional and political reforms to address this challenge.\textsuperscript{60} Attempts at constitutional amendments have also been prone to the challenge of abuse by the President and the ruling party to achieve tenure elongation as was done by Former President Olusegun Obasanjo of Nigeria before the 2007 elections, and Former President Wade of Senegal before the 2011 elections. Currently President Yayi’s attempt at constitutional amendment for tenure elongation in Benin has placed the countries democratization achievements under severe threat of derailment.

The electoral systems of the four countries under review are all in need of reforms as earlier observed. At the lowest rung of functional, free, and fair electoral and elections system is Nigeria, whose elections since 1999 till date has been plagued with—electoral malpractices, partisan and non-independent EMB, INEC, corruption of election relevant institutions such the judiciary, security agencies, and

\textsuperscript{59} Ibid at p.42

\textsuperscript{60} The National Political Reforms Conference was convened by former President Obasanjo in 2006, however, his attempt to use this as a vehicle for tenure elongation, resulted in the National Assembly rejecting the whole outcome of the Conference. Late President Yar’Adua constituted the Electoral Reform Committee, chaired by the former Chief Justice of Nigeria, Mohammed Uwais, and the recommendation of the Committee and Government White Paper in the Recommendation were forwarded to the National Assembly, and gave rise to the 1\textsuperscript{st} and 2\textsuperscript{nd} Alterations of the 1999 Constitution in 2010 and 2011. President Goodluck Jonathan inaugurated the current National Conference for constitutional and political reforms in March, 2014, and it is hoped that this will result in genuine reforms of the 1999 Constitution that will address the national questions agitating the nation and deepen the practice of constitutional democracy in Nigeria.
even the electorates, and violence without effective sanctions against perpetrators of electoral violence. At the highest rung of functional, free, and fair electoral and elections system is Ghana, which the African Union Election Observation Mission Report on the 2012 elections in Ghana, noted as follows:

While on the whole the legal framework for elections in Ghana is generally regarded as credible both nationally and internationally, voter registration, delimitation of constituencies, and nomination of candidates were all subjected to the litigation process that ended up in The Supreme Court. The supremacy of the Judiciary and its independence and confidence by the Ghanaian people prevailed in all cases.  

The lack of independence of the EMBs in Senegal and Benin obviously calls for constitutional/legal reforms to secure their independence and the regular conduct of free and fair elections in the two countries.

The political parties and the party system present totally different challenge to constitutionalism and constitutional democracy in sub-Saharan African as discussed by Pierre Englebert and Kevin Dunn, focusing on the features of the political parties. Hence, in Nigeria and Benin we have large number of political parties, posing the challenge of fragmentation in the absence of other dynamic factors to unify the parties, particularly, the opposition. While Benin’s seemingly fragmented political parties, there are other associational and informal ties to form coalitions that have worked to bring about alternation from the ruling party to the opposition party into government. On the other hand, Nigeria’s large number of parties, over 50 registered, has tendered to result into having ethnic or multi-ethnic parties that tends to weaken the opposition parties in offering viable alternative to the dominant ruling party, the PDP. The attempt at legislating into existence a two-party state under the draft 1989 Constitution, National Republican Congress, NRC, and Social Democratic Party, SDP under former Military Head of State, General Ibrahim Babaginda (retd.), did not see the light of day as the 1989 Constitution and the elections and the transition to democracy were all annulled and aborted. Although the potential for the emergence of a strong opposition party exist in Nigeria, however, due to the party types of the opposition parties as mono-or-multi-ethnic or regional parties, and personalistic parties, it has been near impossible for the opposition to form a coalition to defeat the dominant, multiethnic catch-them-all party, PDP. The new alliance under the umbrella of APC that is made up of the CAN, CPC, ANPP, a faction of APGA, will be making an attempt for alternation at the 2015 and 2016 elections.

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62 For an analysis of the reform of the electoral system, see Diop, A.-B., Le Sénégal, une démocratie du phénix, Paris, Karthala, 2009, p.191
The are other challenges posed by the political parties and the party system that are common to some degree with all the sub-Saharan political parties, such as the patrimonial and clientelistic governance, leadership centered as opposed to programmatic parties, and poor or weak party structure, near absence of institutionalization and party democracy, and corruption. These are features of the political parties in Senegal, Benin, and Nigeria. All these features are anathema to constitutionalism and constitutional democracy on the African continent.

Prospects
The third wave of democratization that is awash on the African continent, can only offer opportunity for the fostering of constitutionalism and constitutional democracy that will bear, what we Africans call, ‘the dividends of democracy’. Of course the variation in the democratization process in each country demands for understanding of the dynamics at play in assessing the progress and trajectory of the phenomenon on the continent. As pointed out by Sebastian Elischer, comparing the democratization and development of political parties on the African continent with that of the developed Western countries, is to paint the wrong picture, as the African experience must be appreciated within the context of political diversity of the continent.

A comparative study of the sub-Saharan West African countries of Ghana, Senegal, Benin, and Nigeria, reveals clear changes from authoritarian military regimes and dominant one party states to multiparty and democratizing constitutional democracies, with prospects for the practice of constitutionalism, albeit, in varying stages of development towards that goal. While Ghana’s experience offers exemplary case study for the other countries, especially, Nigeria, to learn from, irrespective of the difference in the dynamics at play in each of these countries. For example, the effective and independent role of the Ghana Electoral Commission, the Inter Party Advisory Committee (IPAC), and the development of Code of Conduct for the political parties through the IPAC, can serve as valuable experiments that can be adapted by the other countries, Senegal, Benin, and Nigeria in fostering constitutional democracy in sub-Saharan Africa.

Moreover, understanding the typology of the political parties, will aid in constitutional/legal and electoral reforms to foster the evolution of non-ethnic programmatic non personalized parties. The institutionalization of political parties, development of internal democracy, control and supervision of party funding and financing of campaigns are just some of the issues to be addressed in bringing about the evolution of the presently weak and unstable African political parties into enduring institutions for constitutional democracy and constitutionalism.
Conclusion
Rome, they say, was not built in a day, the third wave of democratization in sub-Saharan Africa in the last 24 year can be said to be in its infancy when compared with developed democracies of the Western world that have been in existence for centuries. The return to constitutional democracy has so far offered hopes of constitutionalism and development in Africa. Our comparative study of Ghana, Senegal, Benin, and Nigeria, reveals the diversity and variance in the dynamics of the political parties in the democratization processes of each country, but at the same time certain common thread of reasoning can be deduced from the varied experiences in the sub-Saharan countries.
Constitutions do not beget democracy or constitutionalism for that matter, as both concepts have deeper meanings that go beyond the adoption of a supreme constitution, as we have seen in experience of Nigeria, especially. Thus constitutional/legal and electoral reforms must be responsive to the challenges revealed in each countries democratization processes, particularly, the role of EMB in the electoral system, as seen from the experiences of Senegal, Benin and Nigeria. A political party is by nature much more than a constitutional/legal institution that responds to the political, economic and social factors and dynamics at play in each country, thus the development of the typology of political parties in each of these countries should aid in identifying such factors that can be inimical to the practice of constitutionalism and democracy by the political parties in each political system. Clearly, it may not be possible to formulate the model attributes of the political parties system most suitable for the sub-Saharan West Africa, however, there are such features of nonethnic and programmatic parties in Ghana’s democratization evolution which not only demonstrate the viability of political parties and constitutionalism, and lessens the skepticism about the feasibility of peaceful multiparty competition in Africa.63

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