

RESEARCH
ARTICLE**The Regulatory Role of African Constitutional Courts:
Ensuring Continuity and Stability in****Senoussi Ahmed Aimen
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Doi Serial<https://doi.org/10.56334/sci/8.9.65>**Keywords**Regulatory function ; African constitutional court; Material constitution ; Broad
constitution.**Abstract**

The african constitutional systems have utilized a variety of mechanisms to solidify liberal principles. A notable recent addition is the regulatory function of constitutional courts. Comparative judicial practice has demonstrated the efficacy of this function in sustaining open political systems that might be paralyzed by internal conflicts. By filling legislative gaps and facilitating peaceful transitions of power, constitutional courts contribute to political stability. This regulatory function relies on a final judicial authority that seeks to align the actions of political actors with both the literal and the underlying principles of the constitution, promoting rational governance and peace.

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Introduction

The constitutional court system in African countries has undergone a significant transformation as a result of these countries' adoption of the liberal model. This adoption has been translated into profound reforms affecting all aspects of this system, both structurally and functionally. These reforms reflect the societal desire for change towards modernization and social and political openness¹.

To circumscribe the transformations of constitutional justice in these states, which represent a shift from 'formality to effectiveness'² through the status accorded to this type of judiciary within the institutional framework of states, it was necessary to examine the various jurisdictions and areas of intervention entrusted to it by the African drafter.

¹ T. le Roy, « Le constitutionnalisme : quelle réalité dans les pays du Maghreb », RFDC, PARIS ,N79, 2009, p54.

² M.Nicas, « La fonction de régulation des juridictions constitutionnelles en Afrique francophone »,AIJC,PARIS, Constitution et liberté d'expression - Famille et droits fondamentaux, 2008,PP(45-66).

³ A.Bourgi, « L'évolution du constitutionnalisme en Afrique, du formalisme à l'effectivité », RFDC, PARIS ,N52,2002 ,P721.

Comparative judicial practice has transformed this from a tool of legitimation into a means of contributing to the embodiment of the liberal concept of the state through the various functions it plays in achieving social coexistence, relying on numerous constitutional techniques and principles in pursuit of the rule of law.

The modern trend in constitutional texts in this field has been to expand the functional scope of constitutional adjudication by granting it various forms of review. These range from constitutional review of legislative and regulatory functions to overseeing the validity of national elections, as well as safeguarding the existence and balance of the entire constitutional system by activating the life of public authorities and charting their course of action through framing their operations and revitalizing their functions. By adopting a similar text, the African drafter³ has given it a regulatory function towards public authorities, aiming to create regularity and integration in the sequence of the exercise of these latter's constitutional duties and to address any internal or external disturbances that may arise due to conflicts or disagreements within them, which may threaten the overall institutional movement of the state and consequently undermine the constitutional system as a whole.

It is important to emphasize that the effectiveness of adopting a regulatory function is best assessed by examining its intended objectives. This is largely due to the absence of a clear, universally accepted definition of 'regulation' within the academic sphere⁴, particularly in the social sciences⁵. The term 'regulation' originates in technical sciences, and when applied to ideological or social frameworks, it often lacks the same clarity and precision. The transition from technical to social applications inherently broadens the concept, leading to a degree of ambiguity⁶. Moreover, legal scholarship has approached regulation both as a tool for governance and as an end in itself, mirroring the evolution of the state from an interventionist to a regulatory, guardian-like function⁷.

The impossibility of defining a concept of review is due to the difference and multiplicity of the models of its embodiment, on the one hand; and the diversity of its functional means from one field to another, on the other hand, which can be generally and broadly summarized in a Regulatory function that relies on a set of "mechanisms and public authorities that seek to preserve the balance and continuity of the production of a complex system"⁸ adopted by the African drafter and sought through it to make up for its shortcomings⁹ in ensuring the provision of the forecasting function outside the short term to protect the existing political system and its movement, through a judicial practice directed in a determined manner to ensure the continuity of political authorities and public authorities and their functions and to preserve the same way of working to embody the continuity of the system itself and its adaptation to the normative needs that may arise in the material components of the state body in its dynamic form.

The regulatory function has been translated through the application of constitutional reviews over actions (1), in which the constitutional judge goes beyond basing his judgments on the texts that he derives from the constitutional mass but goes in his establishment to the underlying principles of the constitution¹⁰, as well as working to control and define the political field and its changes through the law (2).

³ The Constitutional Court regulates the functioning of institutions and the activities of public authorities. See Article 185 of the 2019 Algerian Constitution, Article 114 of the 1990 Benin Constitution, Article 83 of the 1991 Gabon Constitution, Article 75 of the 1990 Djibouti Constitution, Article 166 of the 1996 Chad Constitution, and Article 99 of the 1992 Togo Constitution.

⁴ M. Nicas, Op.cit, P46

⁵ J. Chevalier, « La régulation Juridique en question », DROIT ET SOCIÉTÉ, PARIS, N49, 2001, PP(827-846).

⁶ J. Chevalier, « L'Etat Régulateur », RFAP, PARIS, N 111, 2004, PP(473-482).

⁷ A regulatory state can be defined as another form of the "night-watchman state," representing a shift from an intrusive, controlling state, omnipresent in all aspects of social life, to a "night-watchman state" whose primary function is to preserve the broad economic, social, and political framework.

The regulatory state marks a departure from the interventionism and control characteristic of the previous interventionist state. See: J. Chevalier, Op.cit, p473.

⁸ G. Marcou, « la notion juridique de régulation », AIJA, PARIS, 2006, PP(347-362).

⁹ Boulifa, Mohammed Omar, "The Representative Dimension of the National Council and Its Role in Institutional Stability," Doctoral Dissertation in Public Law, Constitutional Law Branch, University of Mentouri Brothers, Constantine 1, 2015, p. 8.

¹⁰ M. Nicas, op, cit, P47

I. First Chapter: Constitutional review of Administrative Action :

The significance of the regulatory function can be illustrated by its scope of practice. It serves as a tool that highlights and directs public authorities towards a comprehensive understanding of their functions, given that public authorities are the cornerstone of societal organization¹¹. The state itself is merely a collection of specialized public authorities¹². This reflects a tangible image of constitutional justice, as it is a judiciary that oversees public authorities and their jurisdictions. The function of the constitutional judge is to adjudicate disputes related to their jurisdictions, as well as their operations, composition, and the broader political atmosphere within them¹³.

Moreover, the substantive concept of constitutional justice refers to the normative framework of the constitution¹⁴, as opposed to the formalistic approach, which its proponents argue that the function of the constitutional court is limited to constitutional review of the constitutionality of legal texts and the distribution of powers between the legislator and the constitutional authority through the review of the organization of legal framework¹⁵.

This development has been firmly established through the constitutional constitutional practices of African constitutional, which assess the extent to which the actions and conduct of state bodies and public authorities align with constitutional requirements, particularly in cases of institutional paralysis that demand constitutional intervention (1.1). Furthermore, this framework has been employed to hold political actors accountable when performing their official duties (1.2).

1. Part One: Resolving Institutional Paralysis :

Within this context, the regulatory function is a constitutional instrument that empowers constitutional courts to intervene and rectify institutional breakdowns or standstills stemming from political impasses or institutional vacuums arising from interrupted electoral processes, thereby safeguarding the peaceful transition of political power.

1. 1 . Section One: Resolving institutional paralysis:

This competition, in essence, reflects divergent and sometimes contradictory orientations and ideas, leading to actual or imminent disruptions in the functioning of political authorities and the balance of the constitutional system¹⁶. This is framed through a function that grants the constitutional¹⁷ the initiative to adopt an additional form of constitutional review, which, in substance, moves the judge beyond the normative dimension of traditional review, which is limited to reviewing the normative framework produced by constitutional public authorities, i.e., "review of the normative product," towards a review of the entire rule-making process, including the producing institution and all those involved in producing these rules¹⁸.

¹¹ M. Nicas, Idem.

¹² M. Duverger, « Institutions Politiques et Droit constitutionnel », PUF, PARIS, 1970, P73.

"As a collection of "legal structures and mechanisms that frame specific behavior within a defined group," institutions can be categorized into political, administrative, judicial, and social institutions.

Alternatively, they can be classified into institutions as structures, such as the parliament, and institutions as mechanisms designed to achieve a specific goal, such as democratic or social institutions." G.

Cornu, « vocabulaire juridique », PUF, PARIS ,2002, P475 ; M. Perlot et J. Boulouis, « Institution politique et droit constitutionnel », Ed 11eme, Dalloz ,PARIS ,1990, P44.

¹³ M. Fromont, « la justice constitutionnelle dans le monde », Dalloz, PARIS, 2014, P2.

¹⁴ M. Verdussen, « Introduction , La Constitution belge, Lignes et entrelignes, Bruxelles », ED LE CRI, BELGIQUE, 2004, P13.

¹⁵ C. Eisenmann, « La justice constitutionnelle et la Haute Cour constitutionnelle d'Autriche », LGDJ, PARIS , 1928, PP(1-9).

¹⁶ M. Duverger, « Janus, les deux faces de l'occident », FAYARD, PARIS 1979, P8.

¹⁷ M. Nicas, Op, cit, P51.

¹⁸ Ségnon Gilles BADET, « Contrôle intra normatif et contrôle ultra normatif de constitutionnalité », Thèse de Doctorat en Droit, Université Catholique de Louvain, BELGIQUE, 2012, P198.

Given that the regulatory function of the constitutional court is enshrined in the task of assessing political reactions and their impact on the smooth functioning of the system and the avoidance of any disruption caused by their intensity, it is as if the constitutional judge assumes the function of a regulator of the political authorities in the event of a standstill or when rational political discourse deviates from its normal framework within them, and such regulation is carried out through a special legal mechanism.

1. 2. Section Two: Legal Privacy of the Regulatory Function :

This final form of oversight employs a distinct regulatory function that assesses the conformity of conduct, practices, and interactions within political authorities on the brink of dissolution due to internal strife, with the expansive notion of the constitution and its overarching principles governing all facets of societal life, including the separation of powers, the form of government, and individual rights.

The constitutional systems of several African countries have consistently affirmed the necessity of legally categorizing political acts and implementing corresponding constitutional intervention to address the institutional paralysis that can occur when drafters refuse to carry out their legislative duties due to disagreements¹⁹ with the executive, or when advisory bodies cease to function effectively.

This type of constitutional review is generally guided by the principle that all political acts must conform to the Constitution, including its underlying principles, whether expressed or implied. A declaration that a political act has led to a institutional paralyse and is therefore unconstitutional involves the application of legal principles, which may, at times, extend beyond the Constitution's literal text. The primary aim is to reestablish the normal functioning of the constitutional system by setting deadlines to resolve the impasse and mandating the resumption of institutional operations according to judicially prescribed timelines, without substantively intervening in the process of resolving the paralysis.

This is akin to the ruling of the Constitutional Court of Benin in Decision No. 770/03, rendered on May 3, 2007²⁰. In that case, the Court declared a procedural action unconstitutional due to the political stance adopted by the President of the session convened to elect new members of the People's Assembly. The President had conditioned the composition of the Bureau on the inclusion of opposition members and repeatedly postponed the electoral session in an effort to exert pressure on the majority. The Court grounded its decision in this political dispute on a general constitutional provision, specifically Article 35 of the Constitution²¹.

Additionally, as part of its oversight function, the constitutional court may take a proactive stance by directly intervening and adopting a particular orientation²². It may favor the application of one legal rule over another, declaring the latter unconstitutional. This is aimed at compelling the contending political actors to shift their positions, even partially, to break the paralysis

2. Part Two: Compensation for Institutional Paralysis :

The African experience, in the context of strengthening liberal principles, including the periodic rotation of power through elections, has encountered frequent instances of institutional paralysis. This is primarily due to the failure to ensure a peaceful transition of power, often resulting from the suspension of the electoral process. Such disruptions are frequently caused by inadequate or absent legal mechanisms to resolve institutional paralysis, exacerbated by conflicting interests. Consequently, numerous military interventions have occurred, marked by the

¹⁹ M.Nicas, Op,cit , P52.

²⁰ Decision No. 077/03 of the Constitutional Council Interpreting Article 10 of the Constitution.

²¹ "Article 35 of the Constitution of the Republic of Benin of 1990 stipulates that 'Citizens appointed or elected in the performance of a public function are obliged to carry it out with commitment, competence, honesty, and integrity in order to respect the common good.'"

²² Sègnon Gilles BADET ,Op.Cit ,P205.

use of force to address institutional vacuums²³. In response, constitutional courts have attempted to mitigate these issues by adopting expansive interpretations of the constitution to provide legal remedies for political impasses.

2. 1. Section one : Legal Characterization of Political Disputes :

The Constitutional Court has utilized its regulatory function as a mechanism to reinforce the principle of a smooth transfer of power. This has been achieved through a series of judicial interpretations whereby the Court has granted itself the authority and function of intervening²⁴ by determining the necessary actions to compensate for a legal ruling. This is done to ensure the guarantee of a process of power transfer through the adoption of a guiding image that takes the form of a legal solution to a political process. The success of this process is contingent upon the integration of normative framework, as a prerequisite for the reproduction and continuity of the constitutional system²⁵ during the transfer of power. This is what the Algerian Constitutional Council did in its Decision No. 20 of June 1, 2019, by extending the term of the President after the expiration of the 90-day period stipulated for the organization of presidential elections until the organization of new presidential elections²⁶.

Amidst the unique historical context and ongoing socio-political transformations of African nations, constitutional justice has been directly involved in the political arena. By adopting the novel technique of judicial review, it has imposed substantive constitutional reviews on the actions of various political actors. This approach embodies the principles of stability and continuity, while simultaneously granting a legal dimension by declaring unconstitutional acts through judicial rulings. Such rulings have addressed political actions that contradict the constitution, resulting in a functional standstill. The constitutional judge has stepped in to define the necessary course of action by dictating binding legal norms for institutions and public authorities, thereby filling the Paralysis and overcoming impasses. This ensures a peaceful transfer of power and democratic succession²⁷.

2. 2. Section Two: Regulatory Function, Activities for the Broad Application of the Constitution :

The function of constitutional reviews assumes both a regulatory and a complementary guiding function over the entire political field and its interactions. In this regard, the function of constitutional review is summarized in the idea of framing politics within the law, through which the liberal system sought to adapt to the African reality, which lies outside its original framework, by adopting a transformative technique that ensures stability and balance in the system's movement. This is achieved by establishing constitutional judicial action based on a broad concept of the constitution and relying on pillars that extend beyond the written text. It affirms the supremacy of the unwritten and entrenched "the underlying principles of the constitution"²⁸ in order to address any imbalances that may affect the state. In doing so, it ensures the existential guarantee of the existing constitutional system through a legal limitation of the scope of political practice and protects it from unconstrained political deviations that could lead to the collapse of the existing constitutional system through political means²⁹.

II. Second Chapter: The Legal Framework of the Political Sphere :

The African constitutional drafter deemed it necessary to adapt liberal principles to the African context, given the distorted image³⁰ these concepts often take due to the disparity between the low technological level of African states and the public authorities imported from foreign contexts. This necessitated a qualitative approach that required a

²³ "The African continent has experienced numerous instances of political instability resulting from a stalled demographic transition that triggered military intervention. See: List of Coups and Military Interventions in Africa, with a chronology of events."

<https://fr.wikipedia.org>

²⁴ M.Nicas, Op.Cit , P47.

²⁵ Sègnon Gilles BADET, Op.cit ,P203.

²⁶ Decision No. 20, Issued by the Algerian Constitutional Council, dated 01/06/2019

²⁷ Sègnon Gilles BADET, Op.cit,P289.

²⁸ M.Nicas, Op.cit, P46.

²⁹ Sègnon Gilles BADET, Op.cit, P245.

³⁰ M.Camau , « Caractère et rôle du constitutionnalisme dans les Etats maghrébins » , A.A.N ,Paris,1977,P380.

legal and political convergence in the functioning of constitutional justice, by adopting a regulatory function to organize the political sphere and define the boundaries of political practice. This is based on the premise that "the functioning of public authorities is not entirely free and can only operate within a space defined by the constitution"³¹, through a judicial framing of the political sphere (1.2), in order to achieve political appeasement and ensure political peace (2.2).

1. Part One: constitutional Framework of the Political Sphere :

The African constitutional justice system can be categorized as one that aligns with the transitional phase towards constitutional liberalism³². Consequently, the constitutional architect has been compelled to accompany this trajectory with techniques that harmonize with this phase while simultaneously considering the political particularities of these states. This involves the gradual and continuous insertion of the constitutional judge into the political arena in order to contribute to the adaptation of legal and constitutional needs to the diverse and modern social and political realities. constitutional practice has granted the constitutional judge a significant function through the margin of appreciation (1.1.2) and the power of adjudication (2.1.2) that they possess.

1.1 Section One: Scope of Initiative :

The jurist Barbarossa argues that the 'regulatory function' consists in the judge's power to 'appreciate the choice'³³ by means of his interventional role in the functional revitalization of the system's components. This involves making binding constitutional decisions that affect the internal aspects of organizational units, extending to altering its political composition, adopting comprehensive representation of political actors, and thwarting any exclusion from political representation that could lead to functional paralysis.

In accordance with the ruling of the Constitutional Court, Ordinance No. 11-01 dated January 12, 2001, the Independent National Electoral Commission of the Republic of Benin has confirmed that two parliamentary seats have been allocated to the National Development Party in place of the National Consensus Party³⁴. This decision is pursuant to Article 26 of the Constitution, which upholds the principle of equitable representation within political authorities³⁵.

In this context, the framers of the constitution drafter intended to preserve stability by instituting a mechanism of constitutional review. This mechanism empowers political entities and constitutionally designated public authorities to bring disputes before the constitutional court. The court, in turn, issues rulings grounded in legal analysis, independent of political influence³⁶, to minimize the impact of political dynamics on public authorities. Through this judicial intervention in political sphere, the court aims to counteract the destabilizing effects of a fluid political environment.

1.2 Section Two: The Authority to Adjudicate :

The function of African constitutional courts is characterized by their comprehensive authority over the political sphere, exerting constitutional oversight across all levels of the state. This authority extends externally to public authorities and internally to the political actors operating within those public authorities. The courts' wide-ranging powers enable them to issue observations, impose sanctions³⁷, and craft legal arguments as deemed necessary, with their rulings resulting in binding constitutional decisions. Through these decisions, constitutional judges define the

³² Michel Miai, "The State of Law: Technology and/or Ideal," Journal of Studies and Social Criticism, Algeria, Issue 03, 1992, p. 03.

³³ N.Barbaroussis ,«la fonction Régulatrice du président de la république bélliniaque» , L.G.D.J , PARIS ,2000, P245.

³⁴ Ordinance No. 011/01 enacted by the Constitutional Council of the Republic of Benin on January 12, 2001.

³⁵ Article 26 of the Constitution of the Republic of Benin, 1990

³⁶ M.Nicas,Op.Cit,P51.

³⁷ M.Nicas,Op.Cit, P49.

legal contours of political activity, ensuring compliance, fostering coherence among diverse political actors, and resolving disputes arising from various societal components³⁸.

As clearly confirmed by various African constitutional experiences, the constitutional judge is granted broad authority to make all necessary decisions to prevent any paralysis affecting the functioning of public authorities³⁹. Furthermore, the decisions of the constitutional court system are binding on all public authorities as they fall outside the traditional tripartite separation of powers, positioning the constitutional judge as the ultimate overseer of all political actors.

Moreover, reaffirming this orientation, the idea emerges that behind politics lies a distinct realm, the realm of law, which exercises supremacy over politics⁴⁰. This is evidenced by the binding and final nature of a constitutional judge's decision in resolving a political impasse, which is obligatory upon all public authorities⁴¹.

Accordingly, it concludes that the functional diversity of the constitutional judge in exercising oversight, through legal characterization and accompaniment of discord and conflicts within the political sphere, which take on an infinite number of forms, along with the binding authority of their rulings over all public authorities, has led to the emergence of a new value for constitutional justice. This value derives from the judge's evolving function, now possessing a declaratory judicial philosophy, whereas previously it was limited to a mediating function due to the political nature it had been characterized by in the past.

2. Part tow : Ensuring Political Stability :

The African drafter sought to effect a break from previous practices by working to reduce instances of political crises within his systems, which primarily arise from the autocratic mindset associated with acquiring and exercising political power through violent, hereditary, and appointive means. These methods are characterized as parallel democracies that, while not entirely devoid of democratic principles, do not, in practice, produce the same effects⁴².

If such a measure is adopted, it is entrusted to the constitutional court to regulate political life by ensuring political stability, maintaining peace and coexistence among various political actors and trends within the constitutional system, and preventing any deviation from it. The regulatory function is considered an alternative means of resolving political crises (1.2.2) and a mechanism for establishing a guideline for political practice within the framework of rationalizing a newly opened political system (2.2.2).

2.1 Section One: Alternative Means for Resolving Political Crises :

The significance of the African constitutional court system's regulatory function is manifest in its function of accompanying political dynamics and mitigating the resulting disturbances. It offers an alternative means of overcoming political crises stemming from institutional paralysis or dysfunction⁴³. Prior to the emergence of this judicial function, the task of resolving such impasses was entrusted to constitutional contracting or what is known as

³⁸ M.Duverger, Op.cit, P98.

³⁹ The Constitutional Court of Benin affirmed that it is responsible for ensuring the proper functioning of public authorities and the activities of public authorities, in accordance with Article 114 of the Constitution. Based on this function, it is empowered to take any measures it deems necessary to resolve any paralysis that may affect the public authorities of the Republic. See: Decision No. 078/03 of the Constitutional Council of Benin, issued on May 12, 2003.

Furthermore, the scope of the powers of the Algerian Constitutional Judge has also expanded in the legal field through the adoption of the constitutional technique of "regulatory function" even before it was stipulated by the Constitution. Nevertheless, the judiciary established and applied it, which was later incorporated by the constitutional legislator in Article 185/2 of the 2019 Constitution. See: Decision No. 20 of the Algerian Constitutional Council, issued on June 1, 2019.

⁴⁰ Michelle Miyae, ibid, p. 7

⁴¹ Article 198, Paragraph 5 of the 2019 Algerian Constitution states: '... The decisions of the Constitutional Court are final and binding on all authorities ...'

⁴² M. Duverger, Op.cit, P111.

⁴³ Ségnon Gilles BADET, Op.cit, P278.

political bargaining⁴⁴, characterized by negotiations between political actors outside of any judicial or legal framework. This approach has repeatedly proven to be a temporary fix for paralysis, often resulting in departures from the rule of law. Moreover, the resolution of such institutional within this framework remains contingent upon the political will of various political factions, which is frequently lacking.

This has prompted the regulatory function to judicially frame this paralysis through a lawsuit to preserve the constitutional system⁴⁵. This lawsuit takes the form of judicial oversight of the actions of one or more political actors, replacing political settlement. By legally defining tensions that affect the constitutional system, it aims to circumscribe the actions of public authorities more comprehensively, ensuring their stability and replacing the African custom of resorting to force in the face of political disagreements. Instead, it promotes a genuine liberal principles for African systems by reducing disparities, adopting legal framework in governance, and transcending the aforementioned customary, ethnic, and authoritarian framework. This provides African systems with a continuous functional order, independent of internal political fluctuations, and grants them a truly liberal principles.

2.2 Section Two: Establishing Evidence for Political Practice :

It can be stated at the outset that the limitation of power is a fundamental aspect of liberal democracy⁴⁶, alongside a relative awareness among various political and social actors regarding how power is exercised and transferred, as well as the fundamental problems facing contemporary societies and their solutions. These conditions are essential for the effective functioning of the liberal system, which is largely absent in African countries.

Consequently, political instability and chaos have been the enduring reality of these states, manifested in recurrent military coups, civil wars, and chronic unrest. The root cause of this can be attributed to the relative novelty of the African liberal political experiment, coupled with the absence of effective mechanisms for resolving political crises that affect the various components of the system⁴⁷. African societies have sought to overcome these challenges by revisiting their constitutional systems and operational modalities.

To adapt to contemporary realities grounded in a legal approach to political life, the African constitutional judge embodies a comprehensive oversight and guidance policy for various political public authorities and institutions. This is achieved by delineating the boundaries of political activity through a legalistic approach to all potential political disputes⁴⁸. This dynamic approach has enabled African constitutional courts to expand and enforce constitutional principles in the political realm to the greatest extent possible. It is seen as the sole effective means of reconciling African political systems with liberal ideas, given the imperative of sustained political competition within defined parameters. The constitutional judge is considered the ultimate legal reference and guide in any arising political dispute, with a general jurisdiction over any institutional dysfunction.

Only in this way can the concept of constitutional prevention and the protection of the constitutional system be realized, by ensuring its continued existence and functionality amid⁴⁹ modern African transformation. This is achieved by adopting judicial interpretations as a source for framing and guiding the peaceful practice of politics.

Conclusion :

In a nutshell, the adoption of liberal principles in the African context does not mirror contemporary democracies. Rather, it exhibits unique characteristics that intersect with social, cultural, and political aspects. The constitutional framework has been oriented towards granting the constitutional court system a regulatory function that accommodates these specificities by framing the operations and activities of public authorities to adapt and interact

⁴⁴ Ibid, P269.

⁴⁵ Ibid, P252.

⁴⁶ M. Duverger, Op.cit, PP(78-80).

⁴⁷ Sègnon Gilles BADET, Op.cit, P249.

⁴⁸ M.Nicas, Op.cit, P51.

⁴⁹ M.Camau , Op.cit, P385 .

with the normative deficiencies observed in political practice. This function is manifested through the oversight of the actions of political actors with the aim of establishing stability by anticipating and securing against any disruption that may affect the constitutional system, resolving institutional paralysis, and filling any potential legal vacuum.

The regulatory function of the African constitutional judge represents a new form of the judiciary's function in embodying the constituent's will to accompany a state's transition towards liberalism. This is achieved through the legal framing of all the state's structural components and working to ensure its durability in the face of intense competition for political power within it. Moreover, it entails refraining from granting absolute freedom to political actors in determining their fate and supporting this with a reporting judicial oversight.

Thus, through its regulatory power, the African Constitutional Court plays a fundamental function in establishing institutional stability for the state by curbing internal political confrontations, thereby achieving a balance and stability of the overall constitutional system. Moreover, it contributes to the development of African constitutional law, which has been anchored in a modern approach primarily based on the desire for coexistence among various segments of society within a defined framework and with significant complementarity, a situation that can foster political peace and prevent resorting to political solutions to overcome instability, a goal that every political system aspires to.

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