In its “Consensus Statement on the Way Ahead” the African Development Forum 111, in defining priorities for regional integration, summarizes the most important priorities for the African continent and nations in paragraph 7 of the document:

“Ensuring peace, security, human rights and democracy is a precondition for any form of development as well as political and economic integration. Peace and security are the essential requirement for the African Union. Peace and security in Africa is first and foremost a responsibility for Africans and must therefore be a priority for the African Union.”

How does one ensure peace, security, human rights and democracy in any society? First of all, without peace and security, it would be very difficult to have a democratic society and to protect and defend human rights. It is therefore right that priority should be given to the process of bringing about a peaceful and secure society. It is indeed necessary for Africans and our fractured societies to come together again. Needless to say, there is dire need for justice and reconciliation among the people and societies of Africa, to enable the healing process to begin. How can this process of justice and reconciliation begin when the continent is still plagued by many violent conflicts and human rights still being violated in so many countries with impunity? In many of these countries, no sooner is a peace process started, an agreement negotiated and internationally supervised elections put through, than the conflicts and violence break out again. Yet there seems to be general agreement here that a great majority, if not all of the people, both victims and perpetrators are tired of violent conflicts and wars. Why are these negotiated settlements, in the many regions in Africa where there is violence, so hard to hold together? Violent conflicts and civil wars are only the symptoms of a disease and if we only cure the symptoms without touching the root cause, there is no guarantee that they will not break out again. We must examine very carefully the root causes of these conflicts, so that lasting solutions can be found. Unless the cause of a quarrel in any dispute, whether it is between individuals or communities, is established, it is near impossible to bring about true reconciliation. Peace building and peacekeeping must have as their primary objective, the need to find the root cause of the dispute and bring a lasting solution to it. How can we help bring justice to these societies that have been torn apart, so that they can come together again?

There is indeed a general consensus among Africans today, that what is needed most, to bring peace and stability in our societies, is not only the cessation of conflicts and their accompanying violence, but also a need for reconciliation. On the continent of Africa, the people and the leaders of the Republic of South Africa, have shown us, how a people and a society, torn apart by more than a century of colonization, oppression, racial and economic discrimination, and the denial of basic
human rights, can through the process of justice truth and reconciliation, pick up the pieces and start to peacefully build a new society. The people of Africa and indeed many people in the world have looked upon South Africa and her people, with great admiration as, political prisoners come out of prison to shake the hands of their former jailors, and those who returned from exile, found room to co-exist with their former persecutors and oppressors. These were indeed great gestures that set in motion the process of reconciliation among the people of South Africa. This process was most certainly helped along by the prosecution of some of the most notorious violators of human rights and the work of the Truth and Reconciliation Commission.

Last but not least were the repeal of all the apartheid laws and the adoption of a new constitution. The repeal of the discriminatory laws of the apartheid era and the adoption of a new constitution provided a new basis for the existence of the South African society. Without this new basis, the criminal prosecutions and the work of the Truth and Reconciliation Commission would have provided only temporally relief and represented meaningless acts of reconciliation. Yet, in the process of seeking reconciliation in the fractured societies of Africa, emphasis is usually placed on judicial procedures and the truth and reconciliation commission. The new constitution of South Africa is seldom mentioned as one of the important elements that will produce a true and lasting reconciliation and enable a new and peaceful South Africa to emerge. In Rwanda the same emphasis is being placed on the judicial process and on a unity and reconciliation commission, as primary tools for reconciliation. Although the process of drafting a new constitution for Rwanda started a year ago, very few people or international organizations are focusing on this important event as one that will provide the genuine basis for a true and lasting reconciliation.

What does the word ‘reconciliation’ really mean? The Concise Oxford Dictionary describes the word “reconcile” in the following terms “Restore friendly relations between, i.e. settle a quarrel” It also gives other definitions but it is the one cited above which captures best the image I wish to convey. To ‘restore friendly relations’ is much more than dealing with the past. To restore friendly relations requires finding a solution to the immediate bone of contention and also laying down certain rules, duties and obligations that would ensure that the future would remain friendly. Similarly, to settle a quarrel requires more than dealing with a past incident, it also requires that groundwork of some sort be laid to ensure that similar quarrels do not break out in the future.

The re-establishment of friendly relations between the people and societies of South Africa required judicial prosecutions, a truth and reconciliation commission and above all a new constitution. The judicial process and the Truth and Reconciliation Commission may have settled past quarrels, especially at the level of individuals. However, it is the new constitution that has really restored friendly relations between the people and the societies of South Africa. The new constitution removed the bone of contention, which was, the apartheid laws and along with them all other provisions which denied the black majority basic civic and political rights as well as fundamental human rights. Now, removing those discriminatory provisions was not enough, new provisions were provided for in the constitution to guarantee equal rights and equal protection to all the citizens of South Africa. “Restoring friendly relations or settling the quarrel” in South Africa needed, more than anything else, the provision of a new basis for the existence of all the peoples of the South African society.
It is this new basis that has enabled all the parties to the quarrel in South Africa, to find room for reconciliation and co-existence. The basis of real and meaningful reconciliation in the Republic of South Africa lies in its constitution.

It is quite clear that all the conflicts and civil wars to which so many African countries have been subjected to have their roots in politics and the struggle for power. This has mainly been due to the fact that African nations were the creation of colonial and imperial powers. The many tribes and ethnic groups that constitute the nations of Africa today were grouped into single territorial entities by the colonial powers to serve the interests of the latter. For societies living in these entities, African nationalism was more about getting rid of the colonial powers than creating united and harmonious nation states. The departure of the colonial powers, left little, to hold these new nations together. The difficulties of maintaining control over the various ethnic and tribal societies that had hitherto been held together by colonial powers emerged and competition for political power took on tribal and ethnic dimensions. Nationalism and patriotism weakened, as ethnic and tribal loyalties dominated national politics. It was in such a volatile political atmosphere, that conflicts emerged and many became violent or developed into civil wars. Military dictatorships and other forms of authoritarian rule emerged in many countries. As governments lost popular support many political leaders turned to their own ethnic and tribal groups as the only means of holding on to power. In quite a number of instances minority groups became more oppressed, marginalized and alienated, violence spread and societies were torn apart. In this atmosphere of political instability, the violation of human rights increased in many countries. The fact that political parties were separated by ethnic and tribal loyalties, not ideological differences, in a multi-party system of politics, increased the likelihood of political conflict and violence.

It is the people living in such torn societies that truly badly need peace and reconciliation. They are haunted by the nightmares of the past, and to be truly healed they need to be entranced by the vision of the future. To fully restore relations in such societies and settle the quarrels, the people must be convinced that the injustice suffered in the past will not re-occur in the future. This is the only basis for a genuine and lasting reconciliation. It is constitutions drafted through truly participatory processes to respond to the specificities and particularities of the ethnic and tribal societies of Africa that can provide firm foundations for true reconciliation.

A constitution therefore is an important vehicle for reconciliation. It is an instrument in which the general and particular interests of all the parties concerned should find protection. Constitutions provide protection to personal and individual rights as well as collective and group interests. Constitutions must provide the genuine basis for peace and reconciliation between ethnic and tribal groups, if African nations are to survive as peaceful and progressive societies. This requires the removal of all the elements that have hitherto been the constant cause of friction and violence in the society and the provision of elements that will promote cooperation, concert, participation and harmony.

The International Criminal Tribunal for Rwanda may indeed succeed in bringing to trial and convicting those who were principally responsible for the genocide and the serious violations of international humanitarian law, in 1994. Genocide survivors and other victims of human rights violations in Rwanda may as a result, feel that some measure of justice has been done, and on this basis, they may decide to put the past behind them and get on with their lives. Further more, this may indeed help the process of reconciliation among the people of Rwanda but without a constitution that provides for a society, which is differently structured from the pre-
genocide one, the different ethnic groups in the country will not feel secure. Without the security of minorities, majorities cannot really be secure. When the security of the members of the society is not ensured, peace cannot be guaranteed.

It may well be said that many African nations did and do have constitutions that contain provisions guaranteeing political and civil liberties as well as human rights, and that, these constitutions have not prevented the political conflicts, civil wars and other violations of human rights that are still rife on the continent today. This cannot be entirely denied. Indeed, unless as said above, a constitution is specifically drafted to address the needs of the people and the society concerned, it cannot truly be a vehicle for reconciliation. In any process of reconciliation, it is the specific issues separating the parties that are always put on the table and addressed. General statements of philosophy concerning the advantages of good neighbourliness and peaceful co-existence are of little use to disputing parties if the bone of contention is not addressed. A constitution may contain many clauses of laudable ideals on how society should be managed and citizens treated but such a constitution will be of little use to any nation if it does not address and settle the specific tensions and divisions that are the causes of conflict.

In a recent essay that titled, “Drafting Constitutions for Multi-ethnic Multi-tribal and Multi-cultural Societies“ I attempted to explore the main reasons for the failure of constitutionality in Africa. It is indeed the failure of constitutionality in Africa, that has caused so much misery, generated so many political conflicts, resulted in the mass violation of human rights and produced so many civil wars. It is again the failure of constitutionality that has produced so many ethnic and tribal conflicts and violence. The main reason for the failure of constitutionality in Africa is simply that constitutions adopted were not designed to respond to the specific needs of African societies and nations. African nations adopted political systems that did not take into consideration, the customs, traditions and culture of her society. The constitutions that Africa adopted were designed to serve European societies and nations that are essentially dissimilar to Africa’s. This is not a new finding. The late President of Tanzania, Julius Nyerere, writing in his book, “Democracy and the Party System“, in 1963, noted that, ‘the desire to imitate the political structure of a totally dissimilar society, … the desire to imitate where conditions are not suitable for imitation can easily lead us into trouble. To try to import the idea of a parliamentary opposition into Africa may very likely lead to violence…” This canny observation by President Nyerere was justified in his lifetime, by the violence that followed the reintroduction of the multi-party system in many African countries in the 1990’s. The introduction of parliamentary opposition in Africa has indeed led to violence and bloodshed in many African countries.

In this essay, I contend that the idea of a democratic society, that is, a society in which humankind enjoy certain individual, personal as well as civil and political rights was not introduced on the African continent by colonial powers. Many African scholars now hold that most African societies had political structures that ensured that their kings and rulers did not become autocratic and oppressive. Some early European visitors on the continent also noticed and recognized this fact. G. M. Childs, writing in “Umbundu Kinship and Character “ cites a Portuguese traveller, visiting what is now Angola, in 1837, who noted in his journal “ the government of Bailundu is democratic. These heathens mix with the infamous humiliations of the Orientals, the unbridled coarseness of the English at election time in England. The kings defer to and flatter their councillors: these are those who elevate a king to the throne and cast him down. “ A similar finding is made by Dr. Margaret Field, who
wrote that it was not British colonization that introduced democratic ideas in Africa. On the contrary, she maintains that British colonialism did much to destroy the indigenous democracy in Africa. She observed that in the Ashanti region of Ghana, among the chief’s noblemen and councillors was a Monkrado, who is required by tradition to be institutionally opposed to the Chief, hence the saying, “every mankrado is opposed to the Chief.”

The decision-making process in the governing structures of African societies was a system that sought general agreement and consensus. African noblemen and elders sitting under the proverbial baobab tree, would certainly discuss and debate issues openly and vehemently but at the end of the day, would arrive at a general consensus. Traditional African systems of governance did not include the system of organized political parties or the adversarial system of party politics, but that did not rob them of their democratic character. On the contrary, it is in western democracies today, that a growing opinion exists, especially among scholars, that the adversarial style of party politics, carried to an extreme, does not render good service to the society. In a Charter 88 publication, titled, “Debating the Constitution”, James Cornford making the case for wholesale constitutional reform writes:

“The exaggerated majorities provided by the present electoral system reinforce the adversarial style of party politics, lead to a continuous emphasis on the differences of policy, rather than the areas of agreement, to rapid changes of policy where stability and continuity are essential conditions of success, and to a failure to develop the consensus which would allow those conditions to be met. In effect, the lack of the need to compromise, to reach agreement as a condition of getting things done, leads to the adoption of policies, which do not command support and fail to be implemented. Constitutional reform, which is justified in its own terms, may also be a necessary condition for economic and social renewal.”

Constitutions can be effective vehicles for reconciliation if they are drafted; to promote cooperation rather than disagreement, to emphasize areas of agreement rather than differences, to seek compromise rather than conflict, and to seek consensus as conditions for getting things done. Africa needs to build consensual democracies and not democracies that thrive on division and conflict. Africa must build truly participative democracies that will allow ethnic and tribal minorities to truly belong to the society and not feel alienated or neglected in any way. Such democracies must truly be “The government of the People by the People for the People”.

I further contend that western democracies can no longer be truly described as “the government of the people by the people for the people.” Western democracies have become “the government of the people by a majority of the people for a majority of the People”. Because of the adversarial nature of party politics western nations are governed by parties with political majorities which may not actually represent the majority of the population. If one asked a member of the Conservative Party of Great Britain, whether Mr. Tony Blair is his or her prime minister, the answer would most probably be “No he is not! He is the labour Prime Minister.” Such a person will admit that Mr. Blair is the Prime Minister of Britain, but may contend that he does not represent his or her views on how the British society should be governed. Such democracies which work on the principle of alternation cannot at all times be described as governments of the people by the people for the people. I contend that in such cases democracy is devalued. However they represent the democratic structures that have been adopted by their system of government and that respond to the specific needs of their societies. In the United Kingdom the system has been forged through
traditions, customs and usage. In other western democracies, they have their foundation in written constitutions.

Africa needs to find and adopt structures that reflect African realities and will allow real participatory democracy which would encourage all the diverse ethnic and tribal components of the nation to take part in the decision-making process. A democracy that can really be described as a government of [all] the people by [all] the people for [all] the people. A truly representative democracy in which everybody participates, where minorities do not only have a fair hearing but also a say, where their interests are acknowledged, protected and respected. To run a truly democratic society, it is not enough that minorities be represented, take part in the debate and cast their vote. Minorities do often have special interests that need to be taken into consideration during the process of decision making, otherwise a situation which Professor Lani Guinier has described as the “Tyranny of the Majority” will develop. In her book of the same title, she has the following to say about such a situation:

“Any form of less-than-unanimous voting introduces the danger that some group will be in the minority and the larger group will exploit the numerically smaller group. This is especially problematic to defeated groups who do not possess a veto over proposals and acts that directly affect them or implicate concerns that they value intensely. Thus, the potential for instability exists when any significant group of people ends up as permanent losers.

The fundamentally important question of political stability is how to induce losers to continue to play the game. Political stability depends on the perception that the system is fair to induce losers to work within the system rather than to try to overthrow it. Where the minority experiences the alienation of complete and consistent defeat, they lack incentive to respect laws passed by the majority over the opposition.”

A constitution that can succeed as a vehicle for reconciliation, must ensure that it does not create permanent loser, it must promote justice and fair play. If it is perceived by some of its members to be unfair, it will not encourage peace and stability. It must be a system where political parties compete to share power rather than to monopolize power. Such a system is less likely to produce alienated and defeated minorities, who would regard the system as irrelevant to their needs and interests and causing the to start believing that it would be better to overthrow it. Constitutions can therefore be veritable instruments for reconciliation especially in our multi-ethnic and multi-tribal societies. The conflicts, violence and civil wars that have ravaged African nations for so long have their origins in political disputes arising out of conflict but understandable interests that fuel the struggle for power. If a real basis for the settlement of these political disputes can be found, then we shall be half way there. There is indeed need for justice to be done to victims of past violations, and need for reconciliation between victims and perpetrators of violence. There is also need to put an end to impunity, and establish some moral and ethical equilibrium within the society. However the results of these conciliatory acts will not be of any lasting effect if the society is not rebuilt on a more equitable and fair basis. Constitutions can provide such a basis by ensuring that all the members of the society are treated fairly and equally in every sphere of the social and political life of the nation. The peace and stability that is established by the adoption of a constitution that really reconciles all the interest groups of the society, will indeed restore friendly relations between its members. In the end, constitutions are only the vehicles whose effectiveness will depend to in large part on those who shall be called upon to pilot
them and to an even greater extent on those of us who choose to travel in the vehicles in question.