



## CONCEPT NOTE

### 10<sup>TH</sup> EISA ANNUAL SYMPOSIUM

#### RECENT TRENDS IN CONSTITUTIONAL REFORMS IN AFRICA: HOW DO CONSTITUTIONS HELP OR HINDER DEMOCRACY?

##### Introduction

EISA will organise its tenth annual symposium on 18-19 November 2015, in Johannesburg, South Africa, to share experiences, harness lessons, and examine good practices on constitutionalism and democratic consolidation in Africa. The symposium will take place in the light of recent occurrences of popular discontent in several countries on the continent<sup>1</sup>, as a public indictment on the capture of constitutional supremacy by political leaders.

The symposium will primarily focus on the recent constitutional reforms and promotion of constitutionalism on the continent and how these impact on the progress of democratic governance in Africa. It will take stock of the identifiable trends, challenges and lessons learned on fostering constitutional democracy on the continent. The symposium will provide a platform for dialogue among key democratic governance stakeholders such as representatives of political parties, members of parliament, election management bodies, civil society organisations, academia, as well as the African Union and Regional Economic Communities (RECs). The symposium aims to generate policy-oriented recommendations with a view to shaping future direction in fostering constitutional democracy in Africa.

##### Background

In recent years there has been a surge in constitutional reforms in a remarkable number of countries on the continent of Africa. This is not a coincidence, as many African states continue to grapple with the consolidation of democratic norms and institutions into their legal frameworks, whilst simultaneously dealing with the legacy of colonial era or colonially-influenced constitutions. Although the renaissance in constitutional reforms on the continent is a by-product

of varying political trajectories that most African states have traversed, the problematic of governance appears to be the common impetus. Most of these reforms have continued to manifest the perpetual dynamics of power symmetries and political contestations and have created a renewed interest in the evolution of constitution-making and constitutionalism in Africa.

More than 38 constitutions in Africa have been rewritten since 1990<sup>2</sup>. In the last decade alone, at least 20 African countries have either overhauled or amended their constitutions (Burundi, Cameroon, Chad, Côte d'Ivoire, Democratic Republic of Congo (DRC), Egypt, Guinea, Guinea Bissau, Kenya, Madagascar, Nigeria, Uganda, Senegal, Sudan, Tunisia and Zimbabwe) or currently are undergoing constitutional reform processes (Central African Republic, South Sudan, Libya and Tanzania). Most of these constitution-making or constitutional amendment processes are a product of elite entrenchment impulses (Senegal, Cameroon), internal political implosions such as violent intra-state conflicts (Burundi, Côte d'Ivoire, Kenya, Zimbabwe, DRC and Madagascar) or as a response to socio-political forces which characterise the organic evolutionary nature of political development (Tanzania and Zambia). These processes have continued to echo early post-independence decades of struggles for political and democratic transformation in Africa. It is further worth reflecting on the political processes in which existing constitutions were negotiated in these countries (for instance, Tanzania's political elite ignored the stated preference of the Tanzanian electorate through a popular referendum and dispensed with one-party statehood in the mid-1990s).

Paradoxically though, is that while there has been an emphasis on constitution-making processes to be more inclusive and democratic, evidence in Africa suggests that most recent constitutions have been products of crises rather than organic forces of political development. In fact, "democratic" processes in countries such as Tanzania and Zambia have not succeeded in organically producing new constitutions. Similarly, Zimbabwe (2000) and Kenya (2005) constitution-making processes that were couched in organic processes of democratisation contributed, in effect, to democratic regression in these countries. In both countries, new constitutions which are relatively "progressive" were produced in 2010 and 2013 respectively as a by-product of political crises. These examples refer to wholesale changes and major revisions to the existing constitutional framework rather than the ongoing business of government amendments to the existing institutions.

The search for constitutionalism and entrenchment of democracy in Africa through state level processes has been paralleled with efforts at continental and sub-regional levels. Among key

regional frameworks, the African Charter for Democracy, Elections and Governance (ACDEG) that came into force in 2012 has been the most salient instrument with the promise of fostering constitutional democracy in Africa. In spite of these advances, the proliferation of regional “control” mechanisms has not necessarily ushered in a paradise of constitutionalism on the continent<sup>3</sup>. At the heart of popular movements for constitutional reforms in Africa has been the quest to de-personalise political power (in particular, executive powers), a characteristic feature that has marked the continent since independence of most African states. Indeed, since 1960, out of more than 180 presidents in Africa only 20% have relinquished power or retired voluntarily<sup>4</sup>. Since the ACDEG came to force in 2012, a number of countries including Senegal, Algeria, Burundi, Burkina Faso, and DRC have grappled with the problem of presidential-term limits.

### **Problem Statement**

The recent proliferation of constitutional reforms has mixed implications with regard to progress in democracy in Africa. Whilst a country’s constitution is the bedrock on which it builds a democracy, do countries have to go through political crises to secure sufficient political and social consensus to produce new or dramatically revised constitutions? In a continent that is already grappling with peace and stability challenges, political crises (especially those that precipitate violent conflict), as impetus for political development are ultimately undesirable even if they carry the long-term promise of democratic renewal through constitutional and institutional transformation.

Notwithstanding contexts within which constitutional reforms have been undertaken, it is also important to note that constitutions, however deftly written, cannot at all times guarantee healthy continuous democratic governance or rule<sup>5</sup>. Some countries in Africa, despite progressive constitutions that advance democratic principles and practices have now slipped into ‘constitutional dictatorship’, making constitutions themselves a potential hindrance to democratic consolidation<sup>6</sup>.

Recent policy debates in Africa have focussed attention mainly on the problematic of unconstitutional change of governments in response to a new wave of state collapse and coup d’états across the continent. Understandably so, since 2012 when the ACDEG came into force, five coup d’états have taken place on the continent, namely: Burundi<sup>7</sup>, Central African Republic (CAR), Egypt, Guinea Bissau and Mali. The successive nature of these coups reveals the limitations of regionalised institutional controls and leverage on constitutionalism in African states.

While military coups present rather obvious violations of constitutional rule in their respective countries, it obfuscates challenges relating to the interpretation and application of these constitutions. The conflict-prone electoral processes in Senegal (2012), Algeria (2014), and Burundi (2015) are clear manifestations of the challenge of constitutional interpretation and applications particularly with regard to the eligibility of incumbent presidents to contest for more than two terms in office. This problem seems to reinforce the tendency of constitutions being inadvertent vehicles of perpetuation of personal rule which is an anti-thesis to the democratic ethos of accountability and alternation of political power.

Constitutions cannot offer all solutions to societies' contradictions and challenges<sup>8</sup>. However, the issues raised above stimulate an inquiry into the extent to which constitutions in Africa are a facilitator or hindrance to democratic progress.

## **Objectives**

The overarching objective of the Symposium is to draw lessons from two decades of constitutional democracy in Africa.

Specifically, the 10<sup>th</sup> annual EISA Symposium will seek to:

- Interrogate the role and importance that constitutions play in promoting democracy in Africa;
- Review the recent trends in constitutional reforms in Africa, and specifically the political processes of constitution-making processes on the continent;
- Assess the role of continental and sub-regional organisations in fostering constitutionalism in African states;

In pursuing the above objectives, the symposium will distil the knowledge shared in the conference with a view to shaping future policy and practice in Africa.

## **Methodology**

The Symposium will be conducted over two days. The above objectives will be met through the holding of plenary sessions that will enable participants to share regional and national comparative case studies and experiences. The Symposium will be opened with a keynote address from an eminent African personality chosen for his/her scholarship, political and/or symbolic role in championing democracy on the continent. Prior to the workshop, selected authors will be selected and guided by Terms of Reference for writing papers as well as arrangements for their

participation to the symposium. Papers will be distributed during the workshop and will be considered for publication after the Symposium.

## **Participants**

Participants will be drawn from key democratic governance stakeholders including representatives of political parties, members of parliament, election management bodies, civil society organisations, academia, as well as the African Union and Regional Economic Communities (RECs).

## End Notes

---

<sup>1</sup> *The most recent popular discontents were witnessed in Burkina Faso, Democratic Republic of Congo and Burundi against extension of mandates of incumbent presidents*

<sup>2</sup> *Tripp, Aili Marri (2010) The Politics of Constitution Making in Uganda, in Miller, E. Laurel and Aucoin Louis (eds) Framing the State in Times of Transition: Case Studies in Constitution Making, United States Institute of Peace*

<sup>3</sup> *Mangu, André Mbata (2006) Constitutional Democracy and Constitutionalism In Africa, Conflict Trends, ACCORD Issue 2: page 3-8*

<sup>4</sup> *Fombad, Charles and Inegbedion, A Nathaniel (2010) Presidential Term Limits And Their Impact On Constitutionalism In Africa, in Fombad, Charles and Murray, Christina (eds) Fostering Constitutionalism in Africa, Pretoria University Law Press: Pretoria*

<sup>5</sup> *Oguto, Shadrack B.O (2010). Shared Values: Constitutions, Constitutionalism, Democracy, Development and Peace and Justice in the Era of African Renaissance, in Oguto, Shadrack B.O (ed) Shared Values, Constitutionalism and Democracy in Africa, Conference Report, UNISA.*

<sup>6</sup> *Ibid*

<sup>7</sup> *Attempted coup*

<sup>8</sup> *Ibid*