TENTH STELLENBOSCH ANNUAL SEMINAR ON CONSTITUTIONALISM IN AFRICA (SASCA 2023)
19-22 September 2023

CALL FOR PAPERS:

ETHNICITY AND CONSTITUTIONALISM IN AFRICA

Dear Colleagues,

The Organisers of the Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA) are pleased to announce the call for papers for the Tenth anniversary of the Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2023), which will be held in Stellenbosch (South Africa) from Tuesday 19 September to Friday 22 September 2023. SASCA 2023 will be jointly organised by the Institute for International and Comparative Law in Africa (ICLA) of the Faculty of Law, University of Pretoria, the UWC Chair in Constitutional Design for Divided Societies, the South African Research Chair in Multilevel Government, Law and Development (SARChI) at the Dullah Omar Institute, University of the Western Cape, and the Stellenbosch Institute for Advanced Study (STIAS) in partnership with the Konrad Adenauer Stiftung (KAS) Rule of law Programme Sub-Saharan Africa (Anglophone Countries), based in Nairobi.

The theme for this seminar is **"Ethnicity and constitutionalism in Africa"**.

A. Introduction

Ethnicity as a potent force in politics in Africa is as old as the postcolonial state. In fact, the historical use of ethnic identity markers and even the "creation"[1] of ethnic groups to rule and conquer is one of the enduring legacies of colonialism. Post-independence African leaders when confronted with the complex problems of ethnic diversity used the pretext of forging national unity and maintaining territorial integrity to perpetuate the colonial policy of suppressing ethnic diversity

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[1] Jeremie Gilbert, "Constitutionalism, Ethnicity and Minority Rights in Africa: A Legal Appraisal from the Great Lakes Region," (2013) 11(2) I.CON at p.429

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when it did not suit their political agenda. The declaration of the post-colonial states as "indivisible and unitary" became one of the defining features of most African independence constitutions.

The post-independence attempts at forging national identity in the midst a wide diversity of ethnic groups were carried out in the face of countervailing concern among some ethnic groups who desired a system that provided them with some space to manage their own affairs without being vetoed by the dominant group. From Kenya to Uganda to the Democratic Republic of Congo (DR Congo), various ethnic groups demanded a constitutional system that recognised their distinctiveness, protects their interests, guarantees them a place in important national institutions and allowed them to exercise control over matters that are relevant to them without interference from the dominant groups. Although the tension was resolved predominantly in favour of those that championed constitutions that espoused a unitary vision of the state, it was not without concessions that saw the inclusion of accommodative measures in some of the independence constitutions. For example, Kenya's first constitution was imbued with strong elements of 'Majimbo', a system decentralisation that was meant to facilitate self-rule for smaller ethnic communities. The Constitution of Uganda recognised the distinctive status of the Buganda Kingdom. Mauritius introduced the "best loser system" that was aimed at guaranteeing ethnic representation of minorities in the national parliament. The 1964 Articles of Union that established the United Republic of Tanzania allowed Zanzibar to be represented in national institutions while at the same time maintaining a distinctive executive and legislature, accommodating, albeit unintentionally, the distinctiveness of Zanzibar. The independence Constitution of DR Congo declared the establishment of "autonomous provinces". The basis for a re-unification of the former British Cameroons and French Cameroun in 1961 was the adoption of a federal system that allowed each of the two communities to retain their distinctive culture.

However, most of the concessions contained in the independence constitutions, with a few exceptions, were short-lived. The various constitutional responses to address ethnic diversity were quickly abandoned as more measures to centralise and personalise power were increasingly adopted. Rapid amendment of the independence constitutions discouraged or prohibited the political expression of ethnicity. Some of them imposed the language and/or religion of the majority or dominant group over the rest of the population. However, the attempts to make ethnicity a non-issue through constitutions that ignored or suppressed diversity were not been able to produce the desired promises of political stability, national unity and economic development. Instead, the ethnic heterogeneity policies imposed by the centralised and increasingly authoritarian regimes that had sprouted up all over the continent became one of the major the sources of frequent ethnic tensions, civil wars, inter-state conflicts and even genocide.

The revision and/or adoption of new constitutions in the 1990s provided African constitution drafters with an opportunity to deal with the issue of ethnic diversity in the different countries. Some of these constitutions have introduced different mechanisms designed to accommodate ethnic diversity and reduce the risks of communal ethnic tensions. For example, the 1994 Constitution of South Africa relies largely on the bill of rights to manage its divided society although the contribution of its "distinctive, interrelated and interdependent" spheres of government is also not negligible. The 1995 Ethiopian Constitution is primarily designed to accommodate the country's ethnic diversity as it is evident from the territorial organization of the Ethiopian federation. Nigeria's 1999 constitution, in addition to maintaining federalism and the federal character principle for sharing executive positions, implemented the derivation principle that mandates the return of 13 percent of the oil revenue to the oil-producing states. The 2005 constitution of Burundi

provides for an extensive power sharing arrangement that involves both political parties and ethnic groups. Fostering unity by recognising diversity is one of the explicitly stated objectives of the 2010 Constitution of Kenya. Accommodating "the ethnic, cultural, linguistic, religious and racial diversity of the South Sudanese people, promot[ing] political pluralism and maintain[ing] peace" is the stated aim of the 2011 Constitution of South Sudan. The key objectives of the 2012 constitution of Somalia was to manage the clan-based politics and the apparent anarchy that had characterized the country after the overthrow of its former dictator, Siad Barre, in 1991. Other countries have either been unable or unwilling to recognise and accommodate the needs of the distinct ethnic communities that live within their territories. For example, Rwanda, unlike its neighbour Burundi, appears to distance itself from a formal constitutional recognition of ethnicity. The Constitution of Cameroon is yet to seriously deal with the frustrations of its Anglophone community. Senegal's constitutional design does not respond to the concerns of the Casamance that continue to agitate for independence. The Constitution of Angola does not seem to acknowledge the situation in Cabinda that is known for its secessionist sentiments. Mali's promised constitutional reforms, aimed at bringing about peace and stability by among other things, taking into account the aspirations of the Tuareg people, have not materialized. The decision of the constitution of Namibia to pick English as the only official language has provoked law suits from the Afrikaans speaking section of the population.

After more than three decades of constitutional reforms with attempts in many constitutions to deal with the ethnic problem, it is clear that there are still many ethnic tensions with varying degrees of severity in many African countries. In fact, it is said that virtually every African conflict has some ethno-regional dimension to it.[2] Ethnic tensions are at the root of the present civil wars raging in Ethiopia, Cameroon, Somalia, South Sudan and Chad. Similar ethnic tensions are at the heart of the conflicts in other countries such DR Congo, Libya, Mali and Nigeria.

This seminar seeks to bring together leading experts on constitutional design and ethnicity to examine the relevance and use of constitutions to deal with the challenges of ethnic diversity in African states. The focus is on how through creative principles and practices of inclusion and equality opportunity, feelings of vulnerability and marginalisation can be eliminated at best or significantly mitigated. How can modern constitutions promote diversity in a manner that fosters unity, stability, development and sustains constitutionalism and good governance? The seminar will address a number of key questions.

i) To what extent are the challenges of ethnicity and the risks it poses to constitutionalism still a legacy of the colonial past.
ii) How can Africa deal with ethnicity in a manner that takes account of the burdens of the past, the present and the challenges of the future?
iii) To what extent, if any, is ethnic identity 'constructed' and mobilised by political parties for political ends?
iv) What is the relationship between ethnicity, democracy and constitutionalism in Africa?
v) What are the challenges and opportunities of constitution making in divided societies?
vi) To what extent and in what way have post-1990 African constitutions dealt with the changes posed by ethnicity to constitutionalism?
vii) What lessons can be learnt from the different approaches adopted by the different countries in dealing with ethnic diversity?

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[2] Francis M. Deng, "Ethnicity: An African Predicament," June 1, 1997 https://www.brookings.edu/articles/ethnicity-an-african-predicament/

- The use of Bill of Rights
- Electoral systems
- Power-sharing arrangements
- Territorial autonomy within federal or decentralised frameworks
- Empowerment of traditional authorities
- Cultural and personal autonomy

viii) At the supranational level, to what extent have the AU and its RECs helped in dealing with the conflicts provoked by ethnic tensions?

B. Sub-Themes

The following sub-themes will be explored

1. Ethnicity, colonialism and nation-building in Africa: The historical context and its evolution

This will deal with issues such as:
- Ethnicity and democratic nation-building efforts in Africa
- Ethnicity and the state in Africa

2. Ethnicity, constitutionalism and constitutional design

- Ethnicity, citizenship and the nation-state in Africa: are ethnic identity and loyal incompatible with national belonging and citizenship?
- Ethnicity and multiculturalism
- Ethnicity and multilevel governance
- Ethnicity and the rights of ethnic minorities
- What theoretical principles can inform the approaches that should be adopted in Africa?
- The process of constitution-making in ethnically divided societies

3. Case studies

Different countries have adopted different constitutional approaches to deal with the issue of ethnicity. These range from outright ban of the use of ethnic markers (Rwanda), to carefully crafted mechanism for power sharing (Burundi), to full protection of minorities (DR Congo), to centrally imposed top-down solution (Cameroon) etc. Constitutional entrenchment is one thing and effective implementation is a different thing.

Country or cross-country case studies need to indicate what approaches have been adopted, whether they are or are not working and what lessons can be learnt from this.

4. Constitutional accommodation of ethnicity and its impact on "the others"

- The constitutional accommodation of ethnicity and individual rights
- How ethnic identity groups intersect with women and gendered identity in Africa
- The constitutional accommodation of ethnicity and its impact on the inclusion or exclusion of other identity-based groups (including women, disabled groups, etc...)

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5. **African Union's and Regional Economic Communities' role in dealing with challenges of ethnic diversity**

- What is the legal framework that has been laid down?
- Is the legal framework working or not working and why?
- What lessons can be learnt by critically analysing one or more incidents when the AU and/or the RECs intervened? Are they doing enough?
- What has been the response of the African Commission on Human and Peoples Rights on claims related to ethnicity?

C. **Information on the submission of abstracts**

We hereby invite all scholars and other persons interested in research in this area to submit a proposal on any of the sub-themes indicated above. The proposal should include:
1. An abstract of the paper of about 1000 words (clearly indicate the sub-theme you want your abstract to be reviewed under, or if it is general, then say "other").
2. A c.v. of the author.

The deadline for submitting proposals is **30 January 2023.** Proposals should be sent as e-mail attachment to Dr. Lukman Abdulrauf at abdulrauf.la@unilorin.edu.ng and copy the three organisers, Prof. Charles M. Fombad, Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria, Charles.fombad@up.ac.za, Prof. Nico Steytler, SARChI Chair in Multilevel Government, Law and Development, Dullah Omar Institute, University of the Western Cape, nsteytler@uwc.ac.za and Prof Yonatan Fessha, UWC Research Chair in Constitutional Design for Divided Societies, Department of Public Law and Jurisprudence, University of the Western Cape, yfessha@uwc.ac.za. Any questions on this call for papers should be directed to the addresses above.

On acceptance of an abstract by the organisers, the author will be invited to submit a draft paper by **15 May 2023** on the basis of which a final invitation to the conference will be extended.

All authors whose papers are accepted will be provided with a return economy class air ticket and board and lodging in Stellenbosch for the duration of the seminar.

All the papers presented during the seminar will be peer-reviewed for publication in the ninth volume of the *Stellenbosch Handbooks in African Constitutional Law*, which is published by Oxford University Press, Oxford.

Please, kindly distribute this call for papers as widely as possible to all colleagues in your faculty as well as to other interested persons such as legal practitioners and judges.

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