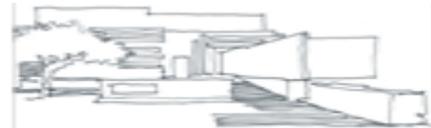


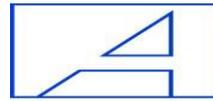
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CALL FOR ABSTRACTS

Sixth Stellenbosch Annual Seminar on Constitutionalism in Africa 2018 (SASCA 2018): Democracy, elections and constitutionalism in Africa

4-7 September 2018

A. Theme

The theme for the 2018 SASCA seminar is, **Democracy, elections and constitutionalism in Africa.**

The seminar, as in previous years, will take place in Stellenbosch at the STIAS-Wallenberg Research Centre, South Africa, from 4-7 September 2018.

Introduction

Since the end of the Cold War, multiparty elections have widely been regarded in Africa as the only way to constitute a legitimate government. This norm has now been captured in the African Union's Charter on Democracy, Elections and Governance of 2007 (African Charter on Democracy), namely 'regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments' (article 2). The Charter has by 2017 been endorsed (signed or/and ratified) by over 70 per cent of African countries.

Multi-party elections have over the past two decades been held in most African countries. Eritrea and Swaziland may be the only countries where multiparty democracy is not tolerated in principle. Other exceptions are, of course, countries engulfed in civil war, such as Libya and South Sudan, where no elections can be held. Even in the failed state of Somalia, elections of sorts (though not the one person one vote variety) have been held to legitimise the ruling regime. Although elections at local level have been held less frequently, there are nevertheless encouraging signs of making democracy a reality also at grassroots.

However, as many scholars, such as Larry Diamond and Nic Cheeseman, have pointed out, since 2006, the world has been in a mild but protracted democratic recession. This has been particularly so in Africa. Whilst there have been reasonably competitive elections in some countries, resulting even in regimes changes, such as in Malawi, Zambia, Ghana and Senegal, in many others such as Cameroon, Ethiopia, Equatorial Guinea and Zimbabwe, elections have

produced nothing more than competitive authoritarian regimes. The trend towards competitive authoritarianism is hardening. There is no African country where democracy, constitutionalism and respect for the rule of law can be said to be firmly consolidated or even secure. This point can be proven by referring to recent developments in countries that appeared to be shining lights of democracy in Africa, such as Botswana (where President Ian Khama has become even more autocratic by imposing media restrictions amidst growing intolerance of dissent, intimidation and even suspected murder of members of opposition parties) and South Africa (where President Zuma and his cronies have for over a year gotten away with credible allegations of capture and corruption that almost dragged the country into an economic depression).

Whilst some survey results, such as that of Afrobarometer (2011-2013) suggest that support for democracy is hardening, the signs of authoritarian revival using sham elections as a cover are increasing. For example, only 15% of all presidential elections between 1990 and 2000, were won by opposition candidates. In fact, the evidence compiled from numerous surveys and democracy indicators over the last three decades in Africa strongly suggest that democracy is not working. This has even led some scholars, such as Nic Cheeseman, to question the “feasibility of democracy in Africa.” (See, *Democracy in Africa: Successes, failures and the struggle for political reform*, OUP 2015 at p.143).

There are several reasons to suggest African constitutional designers did not display sufficient foresight and imagination in designing the post 1990 constitutions that paved the way for multiparty democracy on the continent. Firstly, political parties lie at the heart of competitive politics and democracy but their mere legalisation has not guaranteed that they are able to freely and fairly compete. Lack of funds, intimidation and an unfavourable operating environment has made it easy for the one-party syndrome to resurface in the form of dominant parties. Besides this, most often political parties have little to do with policy or ideology, but serve as a vehicle for ethnic mobilisation or even personal enrichment. They are neither democratic in their organisation nor transparent in their functioning. The separation of ruling parties from the state is often only on paper, with the state usually being the adjunct of the party. The degradation of genuine political pluralism through the political hegemony of a dominant party has resulted in partisan control over the judiciary and bureaucracy.

Secondly, the electoral systems of turning votes into seats in the legislatures or electing a president have often produced results that are antithetical to democracy. The use of the first past the post system which secures minority (by popular vote) governments, can fuel conflict rather than legitimate the government. On the other hand, a purely proportional representation system with fixed party lists, such as in South Africa, entrenches the rule of party bosses, rather than voters. In some countries positive requirements are imposed on parties to secure support from outside their home base.

Thirdly, the electoral processes often do not ensure free and fair elections. The dominant hand of the executive in the electoral process often predetermines the outcome. Where ‘independent’ electoral bodies are provided for in constitutions, they may be decidedly partisan (having been captured by the ruling party) or face resource constraints to perform their functions adequately. At the centre of the recently annulled Kenyan presidential election was an electoral commission that was either biased or incompetent, or both. The Kenyan Supreme Court, in annulling the August 2017 presidential election was the first to do so in Africa; most often courts avoid the question of the freeness and fairness of elections or show undue deference to the incumbent ruling party. The political-social environment in which elections take place militates against testing the popular will: ruling parties misuse their position of incumbency; there is repression of freedom of speech and the media; and state sponsored intimidation and violence permeate

opposition parties. Often, as the recent Kenyan elections clearly showed, the international community through election observer missions may support the status quo rather than properly assessing the freeness and fairness of an election. In the final analysis, there is a risk that electoral coups, such as happened in Kenya and Zimbabwe in 2008 and the soft coup in Zimbabwe in 2017, may now replace the notorious military coups of the yesteryears.

In between elections, the results of which may not necessarily reflect the will of the people, the electorate is most often forgotten or neglected and their voice is not heard. The opportunities for participatory democracy are in the main undeveloped. The overall result of poor representative and participatory democracy is that there is often a great distance between the governors and the governed. Accountability is poor and the basic principles of constitutionalism neglected.

The critical issue then is this: how can we stabilise the rocky African constitutionalism boat through the stormy seas of authoritarian revival and prevent the democratic recession spiralling into a depression? How can we design systems that will ensure that elections will be genuinely competitive and be a real contest between competing approaches to nation-building and not a contest between enemies. How can we reduce the cost of losing an election and encourage incumbents and opposition parties to accept defeat and continue to play by the rules of the democratic game?

In short, we need realistic and imaginative variations to existing designs that adequately take account of our present predicaments. Whilst there are no easy and obvious answers to this unfolding conundrum, it is an issue which needs to be seriously interrogated. Whilst support for democracy may be hardening, every failed election makes it harder to build trust and faith in democracy and constitutionalism and renders future failure more likely. Constitutionalism and democracy may not be working well today in Africa but there is no better alternative. The only other alternative is dictatorship or its modern African variant, competitive authoritarianism, but this will only take the continent back to the dark and ugly past. The seminar will therefore focus on a number of questions aimed at provoking fresh, critical and original thinking on how the present challenges can be overcome and genuine democracy, constitutionalism and the rule of law can become a living reality in Africa.

B. Questions to be addressed at the seminar

The overall question to be addressed at the seminar is whether, and if so, how can polities develop / engineer through constitutional and democratic processes a political will conducive to, or supportive of constitutionalism: that is, genuine democracy; limited government through the separation of powers and enforcement of a bill of rights; the rule of law rather than arbitrary rule; and development rather than self-enrichment?

The key themes to be examined include:

1. Making multiparty democracy work in Africa

- African concepts of democracy and multipartyism
- AU and regional instruments on democracy
- Multiparty elections as a peace-making device or consequence of peace?
- Democratising traditional leadership

2. Conceptualising a more effective role for the international community to promoting democracy

- Conditionality of elections for regime recognition and foreign aid
- Role and impact of international election observer missions

3. Enhancing the role political parties in making democracy to work

- Political party regulation in constitutions and/or legislation; the objects of such regulation: ensuring non-ethnicity and nation-building?
- Internal party democracy and transparency
- Policy competition or patrimonial politics (who will be next at the trough of state largesse)

4. Designing electoral systems that reflect the popular will

- Majoritarian vs proportional systems in practice
- Consociational models of electoral politics for peace-building

5. Enhancing democratic quality of elections through electoral processes

- Independent electoral commissions: functioning and failings
- Levelling the playing fields: the use of the state machinery during elections
- Adjudicating electoral disputes – the judiciary
- Institutional infrastructure for informed competitive politics – a free media and civil society

6. Promoting inclusive and participatory democracy

- Direct democracy, including referenda
- Processes and practices of participatory democracy at national and local levels
- Participatory budget formation

C. Papers

We are inviting abstracts of paper under any of these sub-themes. Papers could focus on a particular country, or deal with an issue from a comparative perspective. Authors are particularly encouraged to undertake comparative studies across the different legal and constitutional traditions in Africa (Anglophone, Francophone, Arabophone, Hispanophone and Lusophone).

All the papers must indicate the manner in which the overriding theme of the intersection of democracy and constitutionalism is addressed.

D. 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:

- An abstract of the paper of about 1000 words.
- A brief c.v. of the author in which he/she **highlights the papers he/she has published on this topic.**

The deadline for submitting proposals is **28 February 2018**. Proposals should be sent as e-mail attachments to Dr. Lukman Abdulrauf at lukmanrauf@gmail.com and copy the two organisers, Prof. Charles M. Fombad, Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria, Charles.fombad@up.ac.za and Prof. Nico Steytler, SARChI Chair in Multilevel Government, Dullah Omar Institute, University of the Western Cape, nsteytler@uwc.ac.za. Any questions on this call for papers should be directed to the addresses given above.

On acceptance of an abstract by the organisers, the author will be invited to submit a draft paper by **30 May 2018** 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 fifth volume of the new series, *Stellenbosch Handbooks in African Constitutional Law*, which is published by Oxford University Press, Oxford (see first information on the first two volumes attached).

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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