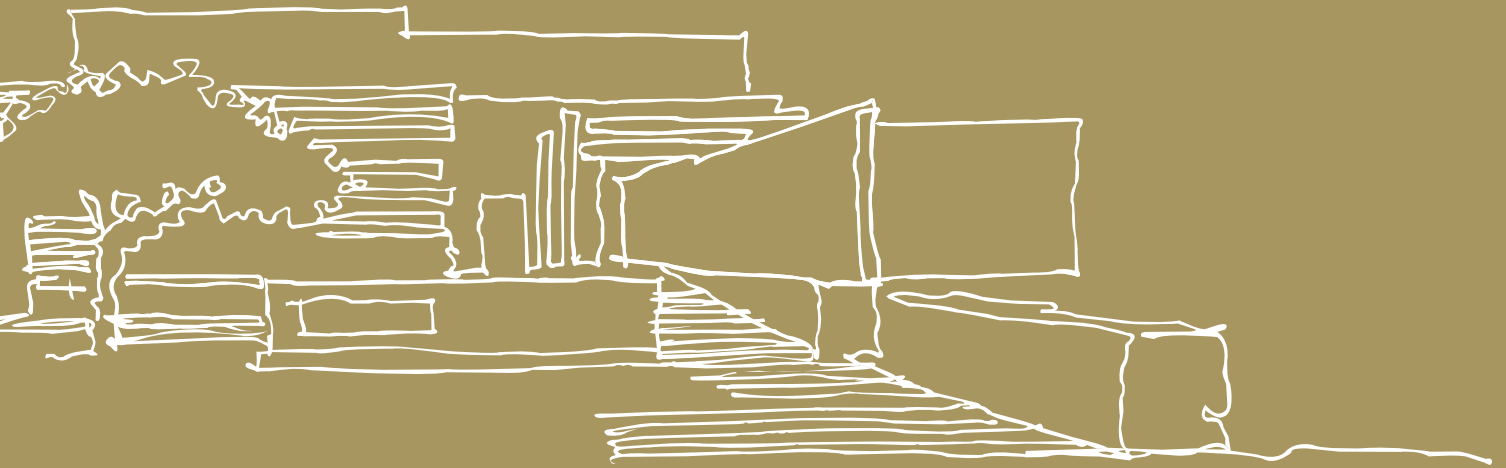


TENTH STELLENBOSCH ANNUAL SEMINAR ON
CONSTITUTIONALISM IN AFRICA (SASCA 2023)
ETHNICITY AND CONSTITUTIONALISM IN AFRICA
20-22 SEPTEMBER 2023
PROGRAMME

A CREATIVE SPACE FOR THE MIND



INTRODUCTION

The Tenth Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2023) will take place in Stellenbosch (South Africa) from Wednesday 20 to Friday 22 September 2023.

ORGANISERS

SASCA 2023 is jointly organised by the Stellenbosch Institute for Advanced Study (STIAS) and;

- The Institute for International and Comparative Law in Africa (ICLA) of the Faculty of Law, University of Pretoria;
- The University of the Western Cape Research 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 Konrad Adenauer Stiftung (KAS) Rule of law Programme Sub-Saharan Africa (Anglophone Countries), based in Nairobi.

THEME

The theme for SASCA 2023 is **“Ethnicity and Constitutionalism in Africa”**.

CONTENTS

The emergence of ethnicity as a potent force in politics in Africa is as old as the postcolonial state. African leaders were confronted with the complex problem of maintaining the territorial integrity of the newly independent but deeply divided states they inherited from the departing colonial powers. They thought recognizing ethnic diversity that defines the basic feature of their society would give rise to divisive politics, instability and disintegration. The attempts to make ethnicity a non-issue through constitutions that ignore or suppress diversity have not been able to produce the desired results of political stability and economic development. In the recent past three decades, the reality of disgruntled ethnic groups and political violence, spilling over, in many cases, into intractable armed conflicts, has forced countries to adopt new constitutions in order to manage their divided societies. These constitutions have introduced different mechanisms with the view to accommodate ethnic diversity and dampen communal tensions. Other countries are either unwilling or do not appreciate the relevance and propriety of using constitutions to recognise distinct identities.

This seminar will try to breathe life into an aspect of ethnic diversity management that is largely neglected in the literature: constitutional design. It does so by bringing 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. Through detailed comparative and country case studies, it interrogates the extent to which the tensions in ethnically divided societies can be managed, reduced or exacerbated by a country’s constitution.

The main sub-themes that will be examined during the seminar include the following:

- Ethnicity, colonialism and nation-building in Africa: The historical context and its evolution
- Ethnicity, constitutionalism and constitutional design
- Case studies
- Constitutional accommodation of ethnicity and its impact on “the others”
- African Union’s and Regional Economic Communities’ role in dealing with challenges of ethnic diversity.

PROCEDURES

The call for papers opened in December 2022, and targeted African legal scholars, judges and legal practitioners from Africa as well as international scholars who have researched and published on the various issues raised in the call for papers. In the first of the two-stage selection process, abstracts were selected and the authors were invited to submit draft papers. In the second round of the process the first drafts were reviewed and an invitation to submit revised papers was extended to some of those whose first drafts was approved by the organising committee.

EXPECTED OUTCOMES

The participants during this seminar will examine the complex issues that have arisen since the recent wave of reforms designed to counter these problems and see how best these can be addressed. All the papers presented during the seminar will be peer reviewed for publication in the eight volume of the *Stellenbosch Handbooks in African Constitutional Law* series, to be published by the Oxford University Press.



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PROGRAMME

| DAY 1: WEDNESDAY, 20 SEPTEMBER 2023 | | |
|---|---|--|
| 8.30-09.00 | Registration | |
| OPENING SESSION | | Chair: Charles Fombad, Director, Institute for International and Comparative Law in Africa (ICLA), Faculty of Law, University of Pretoria |
| 09.00-09.30 | Welcome | Edward Kirumira, Director, Stellenbosch Institute for Advanced Study (STIAS) Stefanie Rothenberger, Director, Rule of Law Program for Anglophone Sub-Saharan, Africa, Konrad Adenauer Stiftung, Nairobi, Kenya Yonatan Fessha, UWC Research Chair in Constitutional Design for Divided Societies |
| SESSION 1 | | Chair: Charles Fombad |
| 09.30-11.00 | Keynote addresses | Nicholas Haysom, Special Representative of the Secretary-General for South Sudan and Head of the United Nations Mission in South Sudan Albie Sachs, Former Justice of the Constitutional Court of South Africa |
| | Theme: Overview | |
| | 1) Constitutional management and ethnic diversity: An overview of options used in Africa | Yonatan Fessha |
| 11.00-11.30 | Group photo and refreshment | |
| SESSION 2 | | Chair: Nico Steytler |
| Theme: Constitution and the politics of non-accommodation? | | |
| 11.30-13.00 | 2) The Illusion of 'One Namibia, One Nation': Vignettes of Ethnic Plurality and Politics of Accommodation in Contemporary Namibia | Rui Tiyitende |
| | 3) The State, ethnicity and constitutional accommodation in Zambia | Sishuwa Sishuwa |
| | 4) Indigenous people and the African Human Rights System | Frans Viljoen (virtual) |
| 13.00-14.00 | Lunch | |
| SESSION 3 | | Chair: Yonatan Fessha |
| Theme: Comparative Observations in Constitution- and Nation-building | | |
| 14.00-15.30 | 5) Ethnicity and the constitutional recognition of minority rights in Southern Africa | Heinz Klug (virtual) |
| | 6) Nation (polity) building and cleavages | Assefa Fiseha |
| 15.30-16.00 | Refreshments | |
| SESSION 4 | | Chair: Lahra Smith |
| Theme: Constitution, ethnicity, and representation | | |
| 16.00-17.30 | 7) Ethnic party bans and constitutionalism in Africa | Johannes Socher & Charles Fombad |
| | 8) The Best Loser system: Accommodation of diversity and the Constitution of Mauritius | Ramola Ramtohol |
| | 9) Representation and the federal character in Nigeria | Abdulmalik Bello (virtual) |
| 18.30-20.30 | Dinner at STIAS | |

DAY 2: THURSDAY, 21 SEPTEMBER 2023

| SESSION 5 | | |
|---|---|-------------------------------------|
| Theme: When Ethnicity Serves as a Constitutional Basis | | Chair: Theunis Roux |
| 09.00-10.30 | 10) Accommodation, empowerment and marginalization in Ethiopia's ethno-territorial federalism: A never-ending quest for an inclusive constitutional design | Beza Dessaiegn |
| | 11) From ethnic amnesia to ethnic quotas and back? Ethnicity and constitutionalism in Burundi's constitutional design | Stef Vandeginste |
| | 12) Balancing Cultural and Ethnic Identities: Exploring the Process of "De-ethnicization" within the Moroccan Constitutional Framework | Khalid Chegraoui (virtual) |
| 10.30-11.00 | Refreshment | |
| SESSION 6 | | |
| Theme: Accomodationist, Integrationist or Hybrid? | | Chair: Jaap de Visser |
| 11.00-12.30 | 13) Managing Ethnic Diversity under South Sudan's Transitional Constitution: A Perpetual Challenge | Mark A. W. Deng (virtual) |
| | 14) Ethnicity, constitutional design and marginalised groups: Exploring the intersection of ethnic tensions and inclusive constitutionalism in Kenya | Victoria Miyandazi |
| | 15) (Re) building robust oversight institutions in a deeply divided society: The missing link in Nigeria's constitutional designs for managing Ethnic Conflicts | Rotimi Suberu (virtual) |
| 12.30-13.30 | Lunch | |
| SESSION 7 | | |
| Theme: Ethnicity, Democratization and Gender | | Chair: Stefanie Rothenberger |
| 13.30-14.30 | 16) Democratization and Ethnic identity in Sub-Saharan Africa: Evidence from Ghana and Guinea | Elliott Green |
| | 17) Ethnicity and Gender in Constitutional Design: Principles and Practice | Lahra Smith |
| 14.30-15.00 | Refreshment | |
| 15.00-18.30 | Free afternoon | |
| 18.30 | Dinner in Stellenbosch (town centre) | |

DAY 3: FRIDAY, 22 SEPTEMBER 2023

| SESSION 8 | | |
|---|---|--|
| Theme: Constitutional design in the context of limited political saliency of ethnicity | | Chair: Joel Modiri |
| 09.00-10.30 | 18) Constitutional approaches to promote ethnic diversity: The case of Ghana | Maame Efua Addadzi-Koom (virtual) & Afia Agyeman Amponsah-Mensah |
| | 19) Ethnicity and constitutional design in mono-ethnic societies: The Case of Lesotho | Hoolo Nyane |
| | 20) Preserving ethnicity without diversity; constitutionalism concerns with Botswana's national ethnic identity | Maame AS Mensa-Bonsu |
| 10.30-11.00 | Refreshment | |
| SESSION 9 | | |
| Theme: Constitution and ethnicity: Regional perspectives | | Chair: Ronald Naluwairo |
| 11.00-12.15 | 21) African human rights system and ethno-cultural diversity in Africa: Implications for constitutional accommodation of ethno-cultural diversity | Solomon Ayele Dersso (virtual) |
| | 22) The African Union and the question of ethnicity: The quest for a positive debate on constitutionalism in Africa | Mwiza J. Nkhata (virtual) |
| 12.15-13.15 | Lunch | |
| SESSION 10 | | |
| Closing Session – Planning the future | | Chair: Charles Fombad |
| 13.15-14.45 | Discussion of theme for SASCA 2024 | Charles Fombad |
| | Closing remarks | Johann Groenewald, Coordinator: Strategic Initiatives, STIAS |
| | Vote of thanks | Nico Steytler |
| 14.45 | Departure | |

SASCA 2023 SUMMARY OF PRESENTATIONS

1 Constitutional management and ethnic diversity: An overview of options used in Africa – Yonatan Fessha

Ethnic based political divisions dominates the political landscape of African states. Whether the tensions in ethnically divided societies can be managed or reduced by constitutional design is a question that is particularly relevant to Africa and, yet, it has not been the subject of a major work. It is against this background that this chapter seeks to discuss the constitutional responses that African states have adopted to deal with the challenges of ethnic diversity. The paper does not aim to provide a complete and detailed expose of the different constitutional options used by African states. The aim is rather to set the stage for discussion by providing an overview of the different constitutional options African countries have employed to respond to ethnic concerns.

2 Democratization and Ethnic identity Sub-Saharan Africa: Evidence from Ghana and Guinea – Elliott Green

There is now a large and growing literature on the role that ethnicity plays in African development, with much of this evidence accumulated during a period of substantial democratization on the continent. However, the effect of democratization on ethnic identification itself has remained largely unexamined. As such this chapter examines the two West African case studies of Ghana and Guinea to understand how democratization can ease ethnic tensions and lead to more stable ethnic identification over time. I show how democratization has been feeble and superficial in Guinea, while in Ghana democratization has taken hold and generated a stable party system with regular executive turnover. I then use survey data on ethnic identification to show that leadership turnover has generated changes in ethnic identification in Guinea but not in Ghana. I then conclude with broader thoughts on the two cases as well as the relationship between democratization and ethnicity.

3 Ethnicity and Gender in Constitutional Design: Principles and Practice – Lahra Smith

The intersectional nature of ethnic and gendered inequalities and innovations in constitutional design provide critical insights into the ways that expanding citizenship can provide new opportunities and new challenges. As societies confront legacies of inequality and exclusion based on race, ethnicity and national origin, at times rights for these communities have been resisted based on how they might disproportionately harm women. I explore women's citizenship status in Ethiopia and Kenya, countries with relatively new constitutions that include innovative provisions for protecting ethnocultural rights, as well as long-sought rights for women. In turning to the questions of how federalism and ethnocultural provisions impact women's citizen-expansion, there are evident tensions between these two sets of rights. There are also compelling examples of cultural traditions within ethnic communities that may do a better job of supporting the rights of women than principles of individual rights, and cultural traditions are strikingly persistent.

4 Indigenous people and the African Human Rights System – Frans Viljoen

Although ethnic difference and variety is a stark reality on the African continent, with these realities and complexities expressed in numerous African Constitutions, the African regional human rights system has not paid much attention to this issue. An analysis of the norms (human rights treaties) and soft law developed within the OAU, and subsequently, the AU, will be undertaken, with a view to indicating the relative invisibility

of ethnic diversity in this framework. Explanations will be sought for this lack of prominence. The extent to which the OAU/AU human rights bodies have been confronted with and dealt with matters pertaining to ethnicity will be scrutinised, by analysing the complaints/case procedure (eg the African Commission decision in *Malawi African Association v. Mauritania*, Decision, Comm. 54/91, 61/91, 98/93, 164/97, 196/97, 210/98 (ACmHPR, May. 11, 2000)); the state reporting process (see eg the Concluding Observation in respect of Cameroon), and its promotional mandate (see eg its 2023 statement "Press release on the Tunisian President's Statement on the situation of sub-Saharan migrants in Tunisia"). The link between ethnic minority status and indigeneity will also be explored. The Commission established a Working Group on Indigenous Populations, but paid little institutional attention to ethnic (and other) minorities, until it recently enlarged the scope of the Working Group to be extended to minorities. The reasons behind this evolution will be explored. The Commission's practice will also be contrasted with the practice in respect of the UN CERD Committee, as far as African states are concerned.

5 Ethnicity and the constitutional recognition of minority rights in Southern Africa – Heinz Klug

The protection of ethnic minorities in Southern Africa is a question of unique sensitivity since the system of apartheid practiced in the region and recognized as a 'crime against humanity' in the Rome Statute of the International Criminal Court (1998) was a system designed to benefit and protect the privileges of a dominant minority ethnicity: the white colonial settler population. At the same time there are clearly justified reasons to protect the cultures, languages, religions and identities of many marginalized minorities in this region. It is the interplay between the legacies of settler colonialism and concerns for minority protection that frames policy responses to diversity in Southern Africa. To explore these issues this Chapter compares the ways in which the status and role of different minorities has evolved in the constitutions of South Africa and Zimbabwe. While settler colonialism and apartheid were based on domination by the white minority in both South Africa and Zimbabwe, it was during the long postcolonial transitions towards democracy that constitutional provisions for group rights, minority protection and multiculturalism began to be seriously considered, albeit in rather contrasting ways.

6 The State, Ethnicity and Constitutional Accommodation in Zambia – Sishuwa Sishuwa

This chapter examines the interaction between constitutional reform, marginalisation of the elite, and ethnic politics in Zambia. Drawing from interviews, and archival and newspaper sources, the chapter argues that at opportune moments since independence from Britain in 1964, particular ethnic groups in the country have used the failure of the constitution or constitutional reform to accommodate ethnic demands as a strategic political resource to advocate an independent territorial entity. To achieve this aim, the chapter provides an outline of the country's ethnic demography, the political relevance of ethnicity in Zambia and the attempt by successive constitutions to accommodate ethnicity. It then uses a case study of the ethnic Lozis found in Zambia's Western Province to explore this relationship in detail, demonstrating how the independence constitution provided for the autonomy of the Lozis and how successive constitutions have both undermined the original settlement and failed to accommodate the Lozi demands. As well as discussing the role of intra-ethnic divide within this ethnic language group, the chapter also shows that the demands of the Lozis today are not

simply limited to the return of constitution-based autonomy but extends to the extreme solution of secession.

7 Nation (polity) building and cleavages – Assefa Fiseha

Owing to the colonial legacy that divided communities sharing the same language into different artificial boundaries, African states are inhabited by different ethnic, religious and regional groups. African leaders have resorted to different mechanisms such as Pan Africanism, Pan Arabism, assimilation, integration, nation building, socialism, liberalism to nest the different identities living in their territories. Yet decades after such efforts, the continent continues to grapple with the one of the fundamental issues of nation building. How do countries build the sense of shared common hood amidst the myriad of differences that exist among the different groups that inhabit the same territory? Is it possible to build a shared common hood that prevails over the different manifestations of local identity such as ethnic, religious or regional? What are the appropriate instruments that states can deploy to achieve this lofty task? The papers aims to address these crucial issues based on the theories of polity building in a context of deep divisions. Experts continue to use nation building without problematizing the concept and at times without distinguishing it from related but different concepts such as state building. In some countries, there are many nations in a state and they continue to challenge the state led nation building process. Indeed they articulate sub state based nationalism that not only deconstructs the one projected by the state but also present alternative theories for polity building. The concept, itself could thus be subject to controversy depending on whether one is referring to one the projected by the state or by sub state entities. The paper thus aims review the debates in this field and suggest appropriate instruments that countries may deploy to nest the different identities together.

8 Ethnic party bans and constitutionalism in Africa – Johannes Socher & Charles Fombad

Despite being a significant limitation to the right to freedom of association, the vast majority of constitutions in Sub-Saharan Africa provide for a prohibition of ethnic political parties. Written from a comparative constitutional perspective, this paper outlines and analyses the justifications, relevant international and regional legal framework, historical evolution, types and scope of constitutional ethnic party bans as well as their actual implementation and potential impact on constitutionalism in Sub-Saharan Africa. As will be shown, while types and scope of ethnic party bans vary significantly across countries, some patterns emerge, particularly along shared colonial backgrounds and past experiences with ethnic conflict. It will furthermore be argued that although ethnic party bans are rarely implemented based on ethnicity, they have potential negative impacts on all core elements of liberal constitutionalism, that is the realisation of fundamental rights, separation of powers, and democracy.

9 The Best Loser system: Accommodation of diversity and the Constitution of Mauritius – Ramola Ramthul

Constitutional design plays a major role towards the accommodation of diversity in plural and divided societies. This chapter analyses the measures taken to accommodate diversity in the Constitution of Mauritius. Mauritius has a plural society and the population is divided along ethnic, linguistic, religious, caste and class lines. During the decolonisation process, the main challenge was to balance identity with political interest in order to avoid ethnic conflict. The independence constitution crafted by the British was the result of negotiations between

different political, ethnic and religious groups with the main point of contention being identity and representation in independent Mauritius. The chapter argues that although the accommodation of diversity in the Constitution of Mauritius focused mainly on ethnicity and community, it has contributed to peace and political stability in the country. It has, however, crystalised ethnic and communal identities, weakened nation-building and overshadowed other aspects of diversity.

10 The Federal Character – Abdulmalik Bello

The composition of the Nigerian cabinet is regulated by what the constitution calls the federal character. First introduced in the 1979 Constitution during the Second Republic, the federal character mandates the representation of the country's diversity in the organization of the federation. The current Constitution, which was adopted in 1999, has, more or less, retained the same provisions. Section 14 (3) of the Constitution provides that "the composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the Federal Character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or a few ethnic or other sectional groups in government or any of its agencies'. This paper examines the relevance and effectiveness of the federal character in ensuring wider representation in government institutions.

11 Accommodation, empowerment and marginalization in Ethiopia's ethno-territorial federalism: A never-ending quest for an inclusive constitutional design – Beza Dessalegn

Although Ethiopia's nation building predicaments precipitated for long, an ethno-territorial constitutional solution to these problems was only designed in 1995. The constitution declared ethnicity as the organizing principle for political and administrative affairs of the state. The response contained both accommodationist and integrationist elements. However, its strong emphasis on communal rights has made it to tilt in favor of the strategy of accommodation. In so doing, the constitutional management of ethnic diversity, apart from providing ethno-territorial autonomy, has also brought marginalized ethnic communities to public visibility. Yet, the constitutional paradigm has failed to avert nonstop competing ethnic nationalisms, incessant ethnic conflicts, and ever-increasing demands for own ethno-territorial administrations. These quandaries have now concretely exposed the design limitations of the constitution, over and above, its implementation setbacks. The paper makes a detailed account of these design limitations and contends that it is high time that these flaws are, once again, addressed at a constitutional level.

12 From ethnic amnesia to ethnic quotas and back? Ethnicity and constitutionalism in Burundi constitutional design – Stef Vandeginste

Adopting a life-cycle perspective, this chapter analyzes the accommodation of ethnicity in Burundi's constitutional architecture. Against many odds, it enabled the country to put an end to recurrent cycles of violent ethno-political strife and institutional instability. Constitutional engineering, affecting the political institutions as well as the security sector, turned out to be a crucial pacification strategy. The transition from constitutional ethnic amnesia to constitutional ethnic quotas happened through various stages, involving a considerable degree of trial and error. African diplomatic and expert involvement was critical during the peace negotiations and the drafting a new constitutional blueprint in 2000. Since 2005, the electoral commission and the constitutional court have

played an important role in the implementation of the sophisticated electoral enforcement of ethnic position-sharing. The future of the constitutional entrenchment of ethnicity – and in particular of ethnic quotas – is uncertain following the introduction of a sunset clause in the 2018 Constitution

13 Balancing Cultural and Ethnic Identities: Exploring the Process of “De-ethnicization” within the Moroccan Constitutional Framework – Khalid Chegraoui

This presentation aims to provide an insightful historical perspective on the intricate concept of “de-ethnicization” within society. This process has been pursued by the Moroccan state and monarchy since gaining independence to counteract the lingering effects of French colonial policies in Morocco and the broader North African region. The focus is on the interplay between ethnic identity and cultural identity within the context of the Moroccan constitutional system. This is achieved by promoting a multicultural Moroccan identity as the official framework, bridging Arab and Amazigh Muslims and Jews. This distinctive approach stands in contrast to the lack of similar developments in the rest of North Africa. The presentation seeks to delve into the evolution of the Moroccan constitutional system in tackling the intricacies linked to ethnic and cultural identities. Discussions highlight the tension between preserving ethnic heritage and promoting a collective cultural identity that extends beyond geographical boundaries. These dialogues encompass political and ideological processes post-independence, intricately woven with colonial and historical legacies. Additionally, the study scrutinizes the implementation of postcolonial, colonial, and nationalist historical narratives.

14 Managing Ethnic Diversity under South Sudan's Transitional Constitution: A Perpetual Challenge – Mark A. W. Deng

Like the rest of the states in post-colonial Africa, South Sudan is made up of many ethnic and cultural groups. It is estimated that there are 64 ethnic groups in South Sudan, making up South Sudan's approximated 11 million people. This chapter provides an account of the management of ethnic diversity in South Sudan. There are two primary ways in which this is done. The first is the recognition of ethnic diversity in South Sudan's Transitional Constitution 2011. This is intended to promote peace and national unity if it also serves a symbolic purpose. It is found, however, that the constitutional recognition of ethnic diversity has had little success in promoting national unity as South Sudan is deeply divided along ethnic lines. The second is the accommodation of ethnic diversity in the institutions of government at both the states and national levels through appointment to government positions. However, there is very little accommodation of ethnic diversity in these institutions. Part of the reason may be the fact that the government is a settlement between the parties to the 2018 Revitalised Agreement, meaning resolving the war as a matter of urgency is the objective of that agreement, not the accommodation of ethnic communities.

15 Ethnicity, constitutional design and marginalised groups: Exploring the intersection of ethnic tensions and inclusive constitutionalism in Kenya – Victoria Miyandazi

This paper delves into an in-depth analysis of Kenya's 2010 Constitution's provisions regarding ethnicity and their practical implementation in the post-2010 era, with a specific focus on emerging case law. The examination of these cases sheds light on significant issues that have thus far been overlooked in existing literature. It explores how Kenya's unique historical experience with ethnicity influenced the design of the 2010 Constitution and the extent to which this constitutional framework

fosters constitutionalism in Kenya. Further, the paper assesses the role of Kenya's reformed judiciary in exercising judicial review to ensure political adherence to the Constitution in combating negative ethnicity. It also evaluates the effectiveness of Kenya's approach to addressing negative ethnicity and its future prospects. While primarily a legal study, this study draws on insights from various related disciplines, including history, political science, and sociology, to provide a comprehensive contextualisation of the intricate issues at hand.

16 (Re) building Robust Oversight Institutions in a Deeply Divided Society: The Missing Link in Nigeria's Constitutional Designs for Managing Ethnic Conflicts – Rotimi Suberu

Nigeria is widely celebrated as a pioneer and innovator in designing and reconfiguring constitutional institutions for managing ethnic (including regional and religious) conflicts. The country's reinvented multi-state federalism, iconic federal character principle, reorganized local government system, vote spread requirements in presidential and gubernatorial elections, and informal arrangements for ethnically sharing and rotating key political positions, among other innovative strategies, are examples of Nigeria's ingenuity in formulating and re-conceptualizing constitutional principles for managing ethnicity. Yet, the country is plagued by major separatist insurgencies and by intensive existential agitations about its future viability as a multi-ethnic federation. This paper seeks to explain Nigeria's contemporary ethnic travails and contentiousness in terms of the country's deeply flawed constitutional designs of key oversight institutions with formal responsibility for arbitrating, depoliticizing, and broadly defusing or regulating inter-ethnic (albeit elite-driven) struggles for power and resources in the federation. The paper focuses especially on the constitutional fragility, overt politicization, weak enforcement, or general emasculation, debilitation, or even obliteration of such key institutions for managing inter-group conflicts as the federal character commission, the revenue allocation commission, the code of conduct bureau, the electoral commission, and the national judicial council. It goes beyond a focus on formal institutional designs to explore how actors in civil and political society might contribute to activating, reenergizing, or implementing constitutional agencies for regulating and alleviating ethnic conflicts.

17 Constitutional approaches to promote ethnic diversity: The case of Ghana – Maame Efua Addadzi-Koom & Agyemang Mensah

In this chapter, we address the question: *what constitutional approaches has Ghana adopted to promote and sustain ethnic diversity?* Ghana is ethnically diverse with several ethnic groups, although ethnicity has not been a major source of conflict under the Fourth Republic. The 1994 Konkomba-Nanumba tribal war and the secessionist demands of some minority Ewe ethnic groups between 2017 and 2020 are exceptions. Ethnic diversity under Ghana's Fourth Republic has been largely controlled by various constitutional apparatuses. We discuss five of them, namely the: (a) Bill of Rights, (b) cultural autonomy, (c) empowerment of traditional authorities, (d) land tenure systems; and (e) organisation of political parties and government. We show how these approaches have worked and where they have been less successful. The chapter's conclusions provide workable alternatives that other ethnically diverse African states, especially those suffering from pronounced ethnic divisions or in a 'zero-sum conflict' situation can draw from.

18 The Illusion of 'One Namibia, One Nation': Vignettes of Ethnic Plurality and Politics of Accommodation in Contemporary Namibia – Rui Tiytende

The attainment of political independence from Apartheid- South Africa in 1990 catapulted one of Africa's 'last born babies' into a palatable and belated state of conviviality. SWAPO, the governing party that has dominated the policymaking making space and its political grammar as a former liberation movement, has primarily been anchored on the political language of 'unity', 'peace' 'justice', and 'solidarity'. More so is the mantra of 'One Namibia, One Nation' which is rooted in the politics of assimilation. Central to this ideological profundity is the construction of a common identity that will give preference to being a Namibian above all other identities. More importantly is the grammar of 'unity in diversity'. The order is not *diversity in unity*, the order is *unity in diversity*. The question is, 33 years after political independence, is it still salient or has it been eclipsed where it cannot go further and something new has to be developed? The Namibian constitution makes no reference to specific ethnic groups and most, if not all legal frameworks lament on Namibia as if it were a homogeneous society, and not one of a heterogeneous nature. These has not prevented an ethnic group from the Zambezi region of attempting to secede in 1999 and still said to harbor such ambitions. Can there be unity in ethnicity? Is it really a stable construct that works independently? This paper will explore the salient issues on ethnicity and "tribalism" and how it may derail the democratic project, and more importantly, the rule of law and the promotion of social cohesion.

19 Ethnicity and constitutional design in mono-ethnic societies: The Case of Lesotho – Hoolo Nyane

Lesotho is a tiny enclave country – surrounded by South Africa – with an estimated population of 2.2 million. Most of its inhabitants (99%) identify as one ethnic group, Basotho. Consequently, the country's Constitution is based on the pervasive presumption of monoethnicity. This presumption runs across all the critical aspects of the Constitution: it is integral to the edifice of the Constitution despite other minority groups in the country, such as Zulu, Phuthi and Xhosa. Hence, the paper aims to investigate the ramifications of the presumption of monoethnicity on constitutional design in Lesotho, particularly its impact on the rights of minority groups in the country. The principal question that this paper seeks to investigate is whether, due to the presumption of monoethnicity, the Constitution does not disregard the rights of minority ethnic groups in the country.

20 Preserving ethnicity without diversity; constitutionalism concerns with Botswana's national ethnic identity – Maame AS Mensa-Bonsu

Botswana is unusual among postcolonial African states in its handling of the ethnicity challenge. It chose to embrace the existence of a pre-statal identity among its citizens and rather than expend energy undermining or eliminating it, leverage it. This it did in two ways. First, it chose a single ethnic identity and repurposed it into a new national ethnicity. It also incorporated into its statal apparatus the traditional governance structures. This merging of the two identities of the Botswanan- ethnic and statal- seems to have enabled Botswana avoid the pitfalls of dissonance that bedevil other African states. To what extent can the state's success in Botswana be attributed to its handling of ethnicity? What has been the cost she has had to pay for it? Does the bicameral configuration in which the Chiefs form a second chamber allow the state to involve all her ethnic components and thereby create a convergence of constitutional principles across ethnic entities, and between them and the nation-state? Has the single national ethnic identity with which the state cooperates solved the problem of distinct politico-constitutional entities butting heads over the same subjects? This paper engages with

these questions with the intention of determining whether Botswana's method holds a model that other African states would be well advised to emulate.

21 African human rights system and ethno-cultural diversity in Africa: Implications for constitutional accommodation of ethno-cultural diversity – Solomon Ayele Dersso

The problem that ethno-cultural diversity in general, and in Africa in particular, presents, as far as democratic constitutional design is concerned, relates to the question of whether and in what ways ethno-cultural diversity and inequality should be considered in the political, socio-economic and cultural processes of the state. The nature of ethnic diversity in Africa, as in other post-colonial societies elsewhere in the world such as Asia is such that democratic constitutional framework can enable all members of the constituent ethnic groups of the post-colonial African state to feel that they are justly included and accommodated in the political and socio-economic processes of the state, only if it provides specific institutional guarantees to ensure that members of all groups are guaranteed effective opportunity a) to take part and have their say in political decision-making without discrimination and b) enjoy a fair share from the socio-economic opportunities of the state, freed from historically inherited cultural and socio-economic disadvantages. This contribution, which draws on the work of the African Commission on Human and Peoples' Rights & its other works including soft laws and fact finding reports, seeks to interrogate whether and what kind of guidance the human rights regime in Africa proffers on the question of addressing ethno-cultural diversity in Africa and the implication of that, if any, on the form and/or content that a constitutional design that is committed to equality, freedom, dignity and justice for all members of society should take.

22 The African Union and the question of ethnicity: The quest for a positive debate on constitutionalism in Africa – Mwiza J. Nkhata

Ethnicity, notwithstanding its amorphous nature, continues to affect African states in multiple ways. Ethnicity acquires particular importance in Africa given that boundaries among African countries do not neatly place ethnic groups in the same countries. In managing ethnicity, therefore, African states must contend with the peculiar circumstances relating to the creation of nation states in Africa. This Chapter finds that despite the common negative connotations associated with ethnicity in Africa, it can be harnessed for positive effects. In relation to the African Union (AU), the Chapter contends that the AU can play a role in creating a framework for the positive management of ethnicity within a constitutional setting. To achieve the preceding, the AU may have to consider making accession to its core governance treaties mandatory for member states while it takes a more direct role in assisting states to design constitutions through inclusive and participatory processes.

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