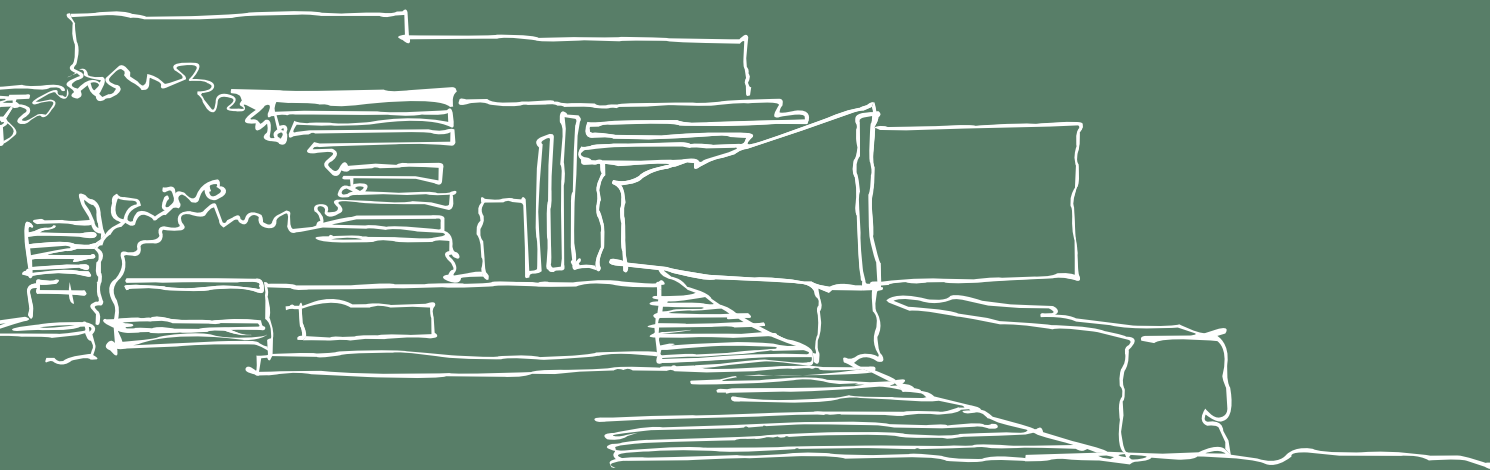


SIXTH STELLENBOSCH ANNUAL SEMINAR
ON CONSTITUTIONALISM IN AFRICA (SASCA 2018)
DEMOCRACY, ELECTIONS AND CONSTITUTIONALISM IN AFRICA
4-6 SEPTEMBER 2018
PROGRAMME

A CREATIVE SPACE FOR THE MIND



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Faculty of Law

Institute for International and Comparative Law in Africa (ICLA)

South African Research Chair
**Multilevel Government,
Law and Policy**

University of the Western Cape

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STELLENBOSCH INSTITUTE FOR ADVANCED STUDY
STELLENBOSSE INSTITUUT VIR GEVORDERDE NAVORSING

INTRODUCTION

The sixth Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2018) will take place in Stellenbosch (South Africa) from Tuesday 4 September to Thursday 6 September 2018.

ORGANISERS

SASCA 2018 is jointly organised by

- The Institute for International and Comparative Law in Africa (ICLA) of the Faculty of Law, University of Pretoria;
- The Stellenbosch Institute for Advanced Study (STIAS);

In partnership with

- The South African Research Chair in Multilevel Government, Law and Policy (SARChI) at the Dullah Omar Institute, University of the Western Cape; and
- The Konrad Adenauer Stiftung Rule of Law Program for Sub-Saharan Africa.

THEME

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

CONTENTS

Since the 1990s, multiparty elections have widely been regarded in Africa as the only way to constitute a legitimate democratic and accountable government. Multi-party elections have over the past three decades been held regularly in most African countries. In spite of this, the prospects of such multiparty elections forming the basis for entrenching a culture of democratic governance, constitutionalism and respect for the rule of law have diminished, particularly in the last few years. Whilst support for democracy is hardening, the democratic quality of elections has steadily declined. The recent harmonised elections in Zimbabwe have generally been described by most international election observers and election monitors as reasonably free and fair. The same was said of the 2017 presidential elections in Kenya until the courts shocked the international community by proving that this was not the case!

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. 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. The need for serious reconsideration of the nature and direction of Africa's unsteady strides towards genuine democracy has become particularly urgent with the rise to power of Trump, Brexit, the neofascist and other populists governments in Italy and Eastern Europe, and the crisis of legitimacy in Latin America.

PROCEDURES

The call for papers opened in January 2018, 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 round of the two-stage selection process, abstracts were called for on the various aspects of the seminar theme. The first round ended with invitations to submit draft papers to some of the authors of the abstracts. The second round of the process ended with the extension of final invitations to participate in the seminar, issued to the authors of approved draft papers.

EXPECTED OUTCOMES

Apart from sharing insights on the challenges faced by elections, democracy and constitutionalism in Africa today, the overall intention is to see what needs to be done to lift the continent from the present democratic doldrums. 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*, to be published by Oxford University Press.



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 4-6 SEPTEMBER 2018

PROGRAMME

DAY 1: 4 SEPTEMBER 2018		
10.00-10.30		Registration
10.30-11.00	A. Opening session	
	Introductory Remarks	Prof Charles Fombad
	Welcome	Prof Hendrik Geyer, Director STIAS
		Dr Arne Wulff, Director, Rule of Law Program for Sub-Saharan Africa, Konrad Adenauer Stiftung, Nairobi, Kenya
		Prof Nico Steytler, SARChI Chair, University of Western Cape
11.00-13.00	B. Keynote addresses	
		Chair: Prof Nico Steytler
	1.	Judicial Adjudication of Election Disputes in Developing Democracies and the Changing Constitutional Context: A Kenyan and Comparative Discussion
		Honourable David Maraga, Chief Justice of Kenya
	2.	Democracy, Elections and Constitutionalism in Africa
		Honourable Mogoeng Mogoeng, Chief Justice of South Africa.
		Discussion
13.00-14.00	Group photo and Lunch	
THEME 1: MAKING MULTIPARTY DEMOCRACY WORK IN AFRICA		
14.00-15.00	Session C	
		Chair: Prof Kwame Frimpong
	3.	Democracy, elections and constitutionalism in Africa: The continuing challenges
		Prof Charles Fombad
	4.	How can we design democracy to work in the African context?
		Prof Nicholas Cheeseman
		Discussion
15.00-15.30	Refreshments	
15.30- 17.00	Session D	
		Chair: Prof Francois Venter
	5.	The African Union and the advancement of democracy on the continent
		Proff. Adem Abebe, Busingye Kabumba, Charles Fombad
	6.	“Little Aberrations Here and There” – The Difficulties of improving Democracy through Elections in Africa
		Dr Nicholas Schmitt
	7.	Subnational multiparty democracy in Africa
		Prof Nico Steytler
		Discussion
19:00	Dinner (STIAS)	

DAY 2: 5 SEPTEMBER 2018**THEME 2: AUTHORITARIAN MULTIPARTY DEMOCRACY: CASE STUDIES**

9.00-10.30		Session E	Chair: Prof Yash Ghai
	8.	The Rule of Law vs The Rule of (big) Men – Power, Law and Legitimacy in Rwanda	Dr Teresa Nogueira Pinto
	9.	Electoral democracy and constitutionalism in Ethiopia	Dr Zemelak Ayele
	10.	Authoritarian Multiparty Democracy: A case study of The Gambia	Ms Satang Nabaneh
		Discussion	
10.30-11.00		Refreshments	
11.00-12.30		Session F	Chair: Prof Roger Southall
	11.	Competitive authoritarianism within a constitutional democracy: The case of SWAPO in Namibia	Prof Henning Melber
	12.	Egypt's Plasticine Constitution: Autocratic Democracy and the 2018 Presidential Elections	Dr Sherif A. Elgebeily
	13.	Multiparty democracy in Zimbabwe after the 2013 Constitution: A false dawn?	Dr Tinashe Chigwata
		Discussion	
12.30-13.30		Lunch	
13.30		Excursion: (tba)	

DAY 3: 6 SEPTEMBER 2018**THEME 3: ENHANCING THE ROLE OF POLITICAL PARTIES IN MAKING DEMOCRACY WORK**

9.00-10.30		Session G	Chair: Dr Arne Wulff
	14.	Multipartyism and the question of intraparty democracy: a reflection on three decades of multiparty politics in Tanzania	Dr Edwin Babeiya
	15.	Political Finance and the Process of Democratization in Ethiopia	Mr Zelalem Eshetu Degifie
		Discussion	
10.30-11.00		Refreshments	

THEME 4: ENHANCING DEMOCRATIC QUALITY THROUGH ELECTORAL PROCESSES

11.00-12.30		Session H	Chair: Prof Jaap de Visser
	16.	Constitutionalism and the credibility of elections: the role, constraints and prospects for electoral management bodies (EMBs) to deepen constitutional democracy in Africa	Prof Mandla Mchunu
	17.	Nigeria in Search of a Credible Electoral Administration: Recent Reforms and Persistent Challenges	Prof Rotimi Suberu
	18.	Deciding or counting the vote? Kenya's experience with the management and administration of elections	Dr Conrad Bosire
		Discussion	
12.30-13.30		Lunch	

THEME 5: PROMOTING INCLUSIVE AND PARTICIPATORY DEMOCRACY

13.30-15.00	Session I	Chair: Prof Kwame Frimpong
	19. Youth Participation in Elections in Tanzania: A Cure for Democratic Deficit?	Dr Victoria B. Makulilo
	20. Women's participation in elections and legislatures in Kenya under the 2010 Constitution	Dr Jill Ghai
	21. Women's participation in elections and legislatures in Zimbabwe	Dr Makanatsa Makonese
	Discussion	
15:00-15:30	Refreshments	
15.30-16.30	Session J	Chair: Prof Charles Fombad
	Discussion on theme of next conference	
	Closing Remarks	Dr Arne Wulff, Director, Rule of Law Program for Sub-Saharan Africa, Konrad Adenauer Stiftung, Nairobi, Kenya.
		Prof Johann Groenewald, Coordinator: Strategic Initiatives, STIAS
	Vote of Thanks	Prof Nico Steytler

SUMMARY OF PRESENTATIONS, SASCA 2018

1 Honorable Chief Justice David Maraga – Judicial adjudication of election disputes in developing democracies and the changing constitutional context: a Kenyan and comparative discussion

World over, in both developed and developing democracies, there is an increased trend of judicial intervention in electoral disputes. The “judicialisation of electoral disputes”, however, is taking a constitutional dimension in developing democracies. After the “third wave of democracy”, many developing democracies adopted constitutions that sought to curb excessive powers of the executive, enhance separation of powers and general democratic accountability. In this new constitutional dispensation, judiciaries that were subordinated to the executive have become more independent. Decades of abuse of power led to a mistrust of political arms of government (executive and legislature) and a popular call for constitutional constraints on public power, resulting in judiciaries with a more prominent role in safeguarding constitutionalism and shepherding political processes, such as electoral disputes. The paper will examine the emerging role that judiciaries play in adjudicating electoral disputes and the resulting constitutional impact in emerging democracies. Using the Kenyan example and other developing country contexts, the paper will focus on how the emerging role of judicial adjudication of disputes is augmenting constitutionalism.

2 Honorable Chief Justice Mogoeng Mogoeng – Democracy, elections and constitutionalism in Africa

3 Prof Charles Fombad – Democracy, elections and constitutionalism in Africa: The continuing challenges

This paper provides an overview of the continuing challenges to entrenching a culture of democracy, elections and constitutionalism in Africa. This is manifested by the decline in the democratic quality of elections over the last two decades leading to suggestions of a democratic recession that may, if not reversed, end in a democratic depression. The paper starts by examining the link between democracy, elections and constitutionalism. It shows that the three concepts are inextricably linked because, for a democracy to be stable and function properly, it requires a constitutional framework that facilitates free and fair elections; and for constitutionalism to thrive, it needs a democratic pedigree based on the free will of the people expressed through elections. The paper then identifies some of the main strides made in promoting democratic governance as well the challenges inhibiting it. Based on some of the evidence pointing to a decline in the quality of elections, it concludes that the continent’s transition to democracy remains at serious risk of degenerating into a mere exercise in attempting to contain a ‘zombie’ democracy.

4 Prof Nicholas Cheeseman – How can we design democracy to work in the African context?

Alan Kuperman’s recent edited collection, *Constitutions and Conflict Management in Africa* (2015), has triggered a vibrant debate about whether African countries seeking to promote democratic consolidation should pursue “integration” or “accommodation”. The former refers to the strategy of maintaining heavily centralized constitutions on the basis that stability and gradual progress is the best way to achieve peaceful democracies. The latter term model of consociationalism and other forms of power sharing. Kuperman argues that forced or rapid attempts to promote inclusion can generate instability, and in extreme cases civil conflict. On this basis, he argues for “integration” – while noting that the strategy has some limitations. This paper argues against Kuperman’s conclusion. Developing ideas first presented in *Democracy in Africa: Successes, failures and the Politics of Reform* (2015), it is argued

that cleverly designed institutions that promote political inclusion have a critical role to play in enabling African states to manage democracy in the context of fragmented societies and histories of winner-takes-all politics. Drawing on many of the same examples as Kuperman, the paper argues that strategies of accommodation have been more successful than previously recognised.

5 Prof Adem Abebe, Busingye Kabumba, Charles Fombad – The African Union and the advancement of democracy on the continent

The African Union has as one of its goals the promotion of democracy, human rights and constitutionalism. A critical element of this goal is the rejection of unconstitutional changes of government, particularly in the form of coup d’états. The AU has consistently rejected coup d’états and called for reinstatement of a democratic system. While there have been some inconsistencies, and challenges of coordination with regional economic communities, the AU has rejected coup d’états. Nevertheless, the UCG framework has been unable to stem more subtle mechanisms of retaining power including through the suspension of elections and ostensibly acceptable constitutional reform initiatives. This article calls for increased attention to the new problem and forms of extension of government power. It recommends mechanisms that could be used to enhance the detection and rejection of these new forms.

6 Dr Nicholas Schmitt, “Little Aberrations Here and There” – The Difficulty of improving Democracy through Elections in Africa

This paper investigates Western election observation missions and democratic conditionality on the African continent and their evolution over the last twenty years. It will first look at motives and aims of foreign election support and then examine a number of cases in order to critically assess whether the aims have been achieved. The hypothesis of the paper is that democratic conditionality is usually designed and implemented in order to respond to democratic requirements in the country imposing the conditions and has little to do with the country subjected to conditionalities. More than to press and cajole non-democratic regimes towards more political openness and participation Western diplomacy is deployed because ministers and diplomats have to be seen to be “doing something for democracy abroad” to assuage public opinion back home. The presumption to be explored is therefore whether the EU commission and other international actors fidget with carrots and sticks in Africa as a sop to the European parliament and other Western audiences. If this were the case, anything that looked from far like a democratic election would be sufficient for rewards and benefits and only frank and widely publicised authoritarian turns would require their temporary interruption.

7 Prof Nico Steytler – Subnational multiparty democracy in Africa

Although the regular holding of national multi-party elections is becoming the norm, however authoritarian they may be, democratic elections at local government level are much less frequent, often not held at all, or frequently postponed. Yet, local elections have played at times an important role in bolstering national democracy: ushering in democratic elections after periods of military rule, consolidating a democratisation process, and allowing multiparty democracy (MPD) to take practical effect by providing multiple centres of power, some of which are controlled by national opposition parties. The question is thus why is local MPD marginalised when they can play a vital role in deepening democracy? The paper argues that although there is increased constitutional recognition of local government, the compulsory holding of regular elections is not part of the equation. Both the existence of local

government and democratic elections are dependent upon statute law, and hence central executive control. More importantly, local democracy is shaped by the style and mode of national, often authoritarian, politics. Precisely because democratic local government holds the prospect for effective MPD (multiple centres of power held by diverse parties), ruling parties have often been reluctant to implement MPD at local level.

8 Dr Teresa Nogueira Pinto – The Rule of Law vs The Rule of (big) Men – Power, Law and Legitimacy in Rwanda

The general aim of this paper is to contribute to the scientific debate about ‘presidents for life’ in Sub Saharan Africa. More specifically, based on the analysis of Paul Kagame’s leadership in Rwanda, our goal is to understand which legitimizing criteria may explain the resilience of personalized and authoritarian regimes, and to what extent these criteria compromise the consolidation of constitutionalism and democracy. This article is divided into three sections. Section 1 briefly examines the phenomena of personal rule and power legitimation in Sub Saharan Africa, and how it was impacted by colonial rule, independence, ‘Democracy’s third wave’ and by the more recent period of ‘democratic recession’. Section 2 analyzes the case of Rwanda through three different perspectives: history, power and law, and relates them to the justifications adopted by the RPF regime to legitimize the 2015 constitutional review process. Section 3 presents some preliminary findings.

9 Prof Zemelak Ayele – Electoral democracy and constitutionalism in Ethiopia

After centuries of monarchical rule, 14 years of military rule and three of years one-party political system, Ethiopia has adopted a constitution that provides for a multiparty democratic system. The Constitution establishes democratic institutions and contains democratic principles that are vital for competitive multiparty democracy. It also guarantees civil liberties and political rights, including freedom of expression and association, that are critical for a functioning multiparty democracy. However, currently there is no competitive multiparty democracy in Ethiopia. Instead electoral authoritarian system has been instituted which allows EPRDF and its affiliates to enjoy exclusive control over every level and unit of government. This is, among others, because even if domestic and global political dynamics existing when EPRDF came to power in the 1990s left the party with no choice but to constitutionalise multipartyism, its violent history, vanguardist self-view and, the developmental state paradigm that it later endorsed, drove it to be an electoral authoritarian. The various formal and informal mechanisms that the party put in place, the socioeconomic structure of the country, and minimal international pressure that it faced to democratise allowed the party to successfully retain its incumbency for over two decades. Now new domestic and international political dynamics are putting pressure on it to open up the political space and allow genuinely competitive multiparty democracy

10 Ms. Satang Nabaneh – Authoritarian Multiparty Democracy: A case study of The Gambia

The rare occurrence in which a dictator loses his own ‘window-dressing’ election to the opposition begs the question of how a self-proclaimed autocrat lost an election in a country where he dictates the rules and determines the results. The anomalous case of the 2016 Gambian election- a ‘military-turned-civilian’ dictator- lost an election serves as a good case study. This article argues that elections, the constitution and its institutional features that are commonly associated with democracy, play pivotal roles both in survival of authoritarian regimes and in facilitating rapid transitions to democracy. For elections conducted in authoritarian regimes, opposition parties are supposed to lose elections. However, owing to the stunning opposition coalition victory in The Gambia, this paper argues that the tactics of opposition parties might have changed. The decision to form a coalition can play a major role in a dictator losing

elections because it directly affects the election results, which in turn, might lead to the collapse of the authoritarian regime. This paper further posits the idea that constitutions in authoritarian regimes are not only for window dressing purposes (in contributing to regime survival), but rather they can also play a major role in defeating authoritarian leaders with the same tool that facilitates the consolidation of their power. While constitutions in authoritarian regimes are viewed as “shams”, this may not always be the case.

11 Prof Henning Melber – Competitive authoritarianism within a constitutional democracy: The case of SWAPO in Namibia

After more than twenty years of armed resistance to the illegal South African occupation, negotiated decolonization transferred political power to the South West African People’s Organisation (SWAPO of Namibia) through general elections under supervision of the United Nations in a rather peaceful way. Since then, Namibian society had a remarkable social and political stability. The country ranks in all comparative surveys of African states among the top-ten performers in terms of good governance. But of lately, these indexes suggest a decline, not least influenced by a dismal economic performance, which affects social expenditure and fails to live up to the promises of meaningful improvement of the living conditions of ordinary people. Symptoms such as exceptional high rates of suicides, so-called passion killings, baby dumping, child abuse, rape and other forms of gendered violence indicate a high degree of social anomy and a deeply entrenched daily brutality. This signifies a lack of compassion and empathy in human interactions and can be seen as a sign of despair in coping with the challenges of daily life. The contrast between the relative political stability through a national narrative anchored in the liberation struggle and a largely uncontested de facto one-party democracy on the one side and the relatively deprived living conditions of the majority of the population in one of the most unequal societies of this world in terms of income distribution on the other side is a striking feature of Namibian society. This paper focuses on the political-ideological engineering within the environment of a de facto one-party state fulfilling all formal requirements of a plural democracy through the discourses and narratives of the party in power.

12 Dr Sherif A. Elgebeily –Egypt’s Plasticine Constitution: Autocratic Democracy and the 2018 Presidential Elections

This paper examines AMPD through the lens of the 2018 Egyptian Presidential elections and makes two core arguments: the Egyptian constitution is an excessively malleable document that fails to enshrine many of the key components that one would expect to find in a robust and progressive democratic government; and that Egyptian President Sisi has succeeded in manipulating this document and its omissions in his favour, like a ball of Plasticine. The paper focuses on three core pillars. Firstly, it examines the constitutional protections of eligibility criteria that exist to support the presence of multi-party candidates in presidential elections. The paper explores the vital gaps that exist and how those which do exist have been abused by the Sisi regime in the run-up to the elections. Secondly, this paper will analyse the abuse of independent judicial and monitoring bodies related to election governance, notably the National Elections Authority (“NEA”) and Supreme Council for the Regulation of Media (“SCRM”), which have been shaped in recent years to support Sisi’s re-election or bolstering his power. Thirdly, the paper will also examine the abuse of existing state machinery in the run-up to the elections and will highlight how this has undermined authentic, free elections. Sisi has consistently manipulated the military, the legislature, and the judicial branch both to eliminate presidential candidates and to intimidate members of the public into voting in his favour. Finally, the paper will discuss future developments in Egyptian multi-party democracy and will identify how the 2018 elections have set the scene for even greater future abuses, including the potential amendment of presidential term limits. In this way, the paper abstracts the essential

ingredients of authoritarian multi-party democracy in Egypt, which in turn will be useful in understanding other countries where elections results are equally predictable.

13 Dr Tinashe Chigwata – Multiparty democracy in Zimbabwe after the 2013 Constitution: A false dawn?

All the elections held in Zimbabwe after 2000 has been disputed both in relation to the electoral process and outcome. The 2013 Constitution sought to give greater legitimacy to multiparty democracy (MPD) by, among other ways, providing for an independent electoral commission and multilevel government elections. The recently held harmonized elections of July 2018 did not seem to have changed the previous patterns of authoritarian democracy. Again, both the electoral process and outcomes are being disputed and are subject of a court challenge. The opposition Movement for Democratic Change (MDC) is once more crying foul that the election has been stolen in favour of the ruling Zimbabwe African National Union–Patriotic Front (ZANU-PF). The paper addresses the question whether the new Constitution has been able to prevent a continuation of the authoritarian multiparty democracy of the past. If not, how was effect given to authoritarian MPD again. Will the fact that there were elections also to provinces and local government in terms of which the opposition captured sections a countervailing force in advancing democratic rule? These and other issues, to which there are no easy answers, are the subject of the paper.

14 Dr Edwin Babeiya – Multipartyism and the question of intraparty democracy: a reflection on three decades of multiparty politics in Tanzania

This paper discusses the state of intraparty democracy in Tanzania. Through documentary review, it traces the functioning and management of political parties since the country adopted plural politics in 1992 by looking at both the ruling party and the opposition. Intraparty democracy is conceived of in this paper as a key ingredient towards ensuring stability, harmony and growth of political parties. The paper shows that intraparty democracy across almost all political parties is limited but that the situation is more alarming on the side of the opposition. Using four parameters namely: elections, decision-making, financial management and accountability, the paper further reveals that the parties' top hierarchies have an upper hand in the management of party affairs. This situation is attributed to several factors such as undue influence of party founders, the dysfunctional nature of party structures/organs resulting from the dearth of their demand from within the parties as well as low voice of ordinary members resulting from consistent disengagement by top leadership. Other factors identified include the influence of opportunistic clientelistic networks, the weaknesses of oversight bodies and the legal framework, just to mention some. Against this backdrop, the paper insists making a progress in promoting intraparty democracy would require a number of interventions including: building the capacity of political parties on several aspects such as leadership and resource mobilization/management. Other recommendations include more involvement of the office of registrar of political parties in issues such as financial management and constitutionalism as well as empowering the demand side within parties.

15 Mr Zelalem Eshetu Degifie – Political Finance and the Process of Democratization in Ethiopia

This study focuses on the interplay between political party financing regulation and democracy in Ethiopia. The findings suggest that defectively designed and poorly enforced rules impede the process of democratization. The party financing framework and its implementation favours the ruling party- Ethiopian People's Revolutionary Democratic Front (EPRDF) – and imposes restrictive conditions on the potential sources of income to the opposition political parties. Thus, the system

makes political parties, except EPRDF, poor and under-funded. In addition, the ruling party tends to use state resources such as government vehicles, government facilities, public media and civil servants for its campaign and day-to-day activities. Additionally, the contentious party affiliated businesses make EPRDF one of the wealthiest parties in the continent. As a result, there is a wide discrepancy in financial capacity between the ruling party – EPRDF – and the opposition political parties. Moreover, the study finds that political parties are not transparent in financial matters and the National Electoral Board of Ethiopia (NEBE) is reluctant to enforce the rules of transparency. So, the absence of a level playing field and lack of transparency are the main challenges of party financing that hinder the process of democratization in Ethiopia. Specifically, the income inequality between the EPRDF and opposition parties restricts fair competition and participation among political parties and this negatively affects the quality of national elections. The lack of transparency also causes corruption as well as finance-based factionalism within opposition political parties and then weakens political parties so as not to play their democratic role. So, the law and practice of party financing eventually entrench a dominant party system in Ethiopia and makes it impossible for opposition parties to compete EPRDF meaningfully, in the electoral process. Finally, the author urges reconsideration of the party financing framework in order to level the playing field of political competition and to ensure transparency in the realm of political finance.

16 Prof Mandla Mchunu – Constitutionalism and the credibility of elections: the role, constraints and prospects for electoral management bodies (EMBs) to deepen constitutional democracy in Africa

This paper examines the relation and interchange between the concepts of electoral credibility, constitutionalism and democracy with the view to establishing how regular, free and fair elections ought to strengthen democracy and impact on constitutionalism. The constitutional status and role of EMBs is reviewed, not only regarding their capacity and electoral authority but whether EMBs are sufficiently enabled and therefore reasonably expected to promote and govern democracy, in addition to managing elections. Focusing on South Africa and Kenya and with reference to other countries like, Zambia, Uganda, and Rwanda etc. the paper discusses constitutional, legal and institutional challenges, and other contributory factors constraining EMBs from fulfilling their constitutional roles without fear, favour or prejudice. The ramifications of these constraints on the current state of constitutionalism and democracy including their effect on society, and the judiciary in particular, is also discussed. Drawing from experiences of the author as a practitioner in African elections, the paper proposes constitutional, legal, institutional and other mechanisms to strengthen the authority of EMBs in Africa to enable them to take on their rightful constitutional role of establishing a sustainable broad-based democratic culture that bolsters constitutionalism. In conclusion, the paper attempts to describe the ideal circumstances for EMBs to act as rightful agents for constitutionalism, as a systemic matter of constitutional course.

17 Prof Rotimi Suberu – Nigeria in Search of a Credible Electoral Administration: Recent Reforms and Persistent Challenges

Partisan struggles regarding the partiality, incompetence, and dishonesty – in short, lack of credibility and integrity – of electoral administration or management bodies have dominated political conflicts in post-independence Nigeria, as in many other new, fragile or developing democracies. Indeed, with the possible exception of a few elections conducted by relatively non-partisan colonial British and post-colonial military governments, the administration of elections in Nigeria has been contentious and tumultuous, leading to the collapse of two civilian republics, the abortion of a third democratic experiment, and to persistent challenges to the legitimacy of the country's current Fourth Republic.

Nonetheless, Nigeria's Fourth Republic has witnessed remarkable attempts to break with the country's conflicted and calamitous electoral history. Following widespread domestic and international condemnations of the farcical 2007 elections, in particular, the Nigerian federal government launched major electoral reforms that produced significant improvements in the quality of general elections in 2011 and 2015. Although vexed by half-measures and glaring imperfections, the electoral reforms improved the operational and financial autonomy of the Independent National Electoral Commission (INEC), Nigeria's constitutionally entrenched federal election management body, leading to electoral processes and outcomes that were generally adjudged to be credible by domestic and international observers. Indeed, reflecting the growing credibility and competitiveness of the electoral process, the 2015 elections produced the first inter-party electoral alternation at the national level in Nigerian history. Yet, as claimed by Attahiru Jega (2015, 15), who oversaw the aforementioned improvements in Nigerian elections as INEC chair during the 2011-2015 election cycles, "profound challenges" continue to plague the Nigerian electoral process. Especially portentous from the perspective of this paper is the persistence of an appointments process that continues to leave INEC open to presidential or partisan manipulation and direction.

This paper will examine Nigeria's struggles to build a credible and independent electoral administration in light of the country's chronically conflicted and corrupt electoral history, recent electoral reforms, and continuing attempts to improve national electoral integrity.

18 Dr Conrad Bosire – Deciding or counting the vote?: Kenya's experience with the management and administration of elections

Democratic and electoral reforms encompass the restructuring of electoral management bodies. At the heart of these reforms is the desire to ensure that political arms of government (legislatures and executives) are shielded from control of bodies that manage elections. This is to ensure that real or perceived bias of these institutions is adequately addressed and ensure that the work of these bodies leads to free and fair elections. Ideally, electoral management should translate the votes of the electorate to the choice of voters. This paper will focus on electoral management and administration in Kenya. After the disputed general election of 2007, part of the reforms that followed was the disbandment of the then body and the establishment of a new body. These reforms were cemented by the adoption of the Constitution of Kenya 2010, which established the Independent Electoral and Boundaries Commission (IEBC). Along with these reforms is the belief that use of technology can enhance transparency and efficiency of elections management. This paper will examine the electoral reforms that have been undertaken against the previous elections (2007, 2013, and 2017). The argument presented in the paper is that the quality of elections management often depends on the overall will of political arms of government to guarantee space for free and democratic elections.

19 Dr Victoria B. Makulilo – Youth Participation in Elections in Tanzania: A Cure for Democratic Deficit?

Election is one utmost aspect of democracy. It is because people are involved regularly in choosing their leaders. Democracy is primarily concerned with respecting political authority over citizens. Others say democracy is a government by the people. Succinctly, elections lie at the heart of democracy (International IDEA, 2015). This is to say people's participation in aspects that affect their lives is fundamental. Youth participation, therefore, is very important. EACEA (2013) argues that youth participation fosters a sense of citizenship and makes policy processes more transparent and accountable towards young people. Despite the fact that 50% of the global population is under 25 (i.e. young people account for 3.5 billion) and 70% of African population under 29 years are young people; youth participation in elections has been low

globally and Africa in particular. Moreover, youth influence in election process is also limited despite their ability to bring change all around the World. Among various reasons for low participation of youth in elections are the legal and institutional framework, and growing distrust of political leaders and institutions. This work is set to examine the trend of youth participation in general elections from 1995 to 2015. In order to answer two crucial questions; (a) why are young people not engaging with politics? And (b) to what extent does the decrease in levels of participation affect democracy? The paper uses qualitative approach to analyse data from various documents, and electoral cycle approach to guide examination of youth participation in elections in the election cycle.

20 Dr Jill Ghai – Women's participation in elections and legislatures in Kenya under the 2010 Constitution

This paper considers the extent of women's participation in elections in Kenya. It starts by given a brief historical context of level of participation of women in politics in the past before considering the reforms introduced by the 2010 Constitution of Kenya. The paper examines scope of protection afforded to women in participation in election and politics generally. A brief survey is furthermore carried out on the situation on ground and it is found that performance of women has not really improved. The paper then analyses why this is so and presents several explanations among which are the problem with the constitution, the electoral system, money and muscle, social attitudes and weakness of parties. From this discussion, a number of strategies to achieve the promise of improving women's participation are considered.

21 Dr Makanatsa Makonese – Women's participation in elections and legislatures in Zimbabwe

This paper examines women's competitive participation in elections in the country and whether this competitive participation has increased or decreased over the years, and in particular since the promulgation of the 2013 constitution of Zimbabwe. The country has held two national elections since the adoption of the Constitution. The first elections following the new constitution were held in August 2013 and on the 30th of July, the country held the second round of national harmonised elections; that is for president, parliament and local government. The focus of this analysis will be on the gender based attacks that are often directed at women participants; both as contestants for political office and as supporters of the contestants. Such attacks range from physical violence to attacks on the sexuality of the targeted women. The attacks on political office contestants are directed at the women as they campaign for political office but also during their tenure in Parliament with their contributions in Parliament often interpreted through sexist lenses. What is the effect of these attacks on women's political participation as well as the effect on democracy and constitutionalism in the country? Finally, the paper will look at the role of women as electoral administrators and how they are viewed in that role.

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Note

A: In person

B: In absentia

C: Support staff

