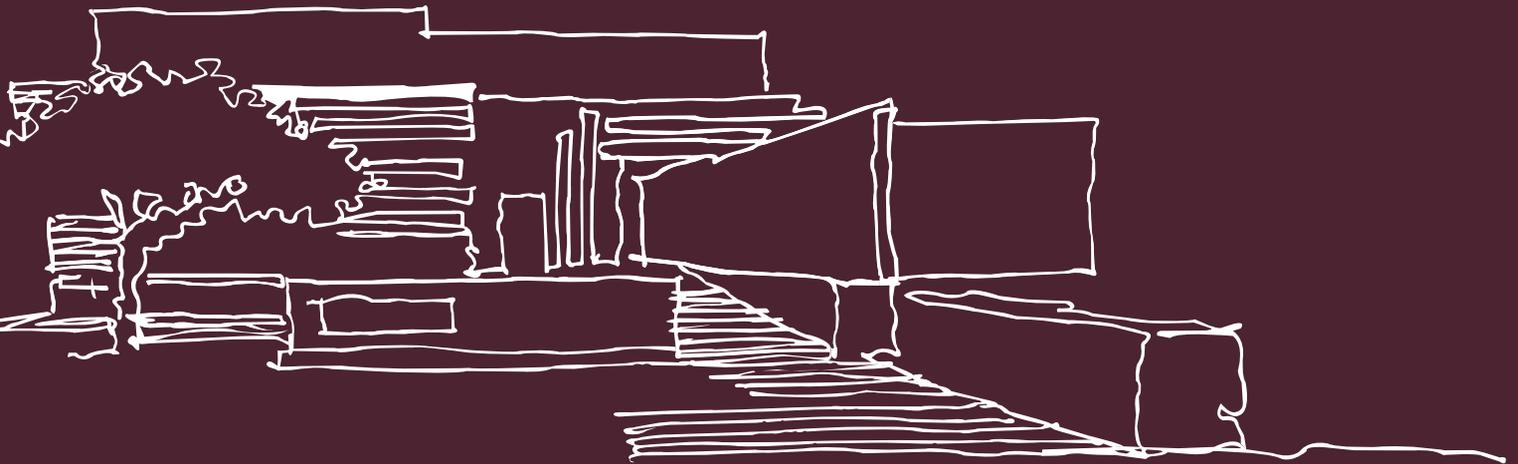


SEVENTH STELLENBOSCH ANNUAL SEMINAR
ON CONSTITUTIONALISM IN AFRICA (SASCA 2019)
CONSTITUTIONALISM AND THE ECONOMY IN AFRICA
18-20 SEPTEMBER 2019
PROGRAMME

A CREATIVE SPACE FOR THE MIND



Konrad
Adenauer
Stiftung



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

Institute for International and Comparative Law in Africa (ICLA)



DULLAH OMAR INSTITUTE
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

South African Research Chair in 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 seventh Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2019) will take place in Stellenbosch (South Africa) from Wednesday 18 September to Friday 20 September 2019.

ORGANISERS

SASCA 2019 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 2019 seminar is ***Constitutionalism and the economy in Africa.***

CONTENTS

Africa is the continent with the highest level of poverty in the world. Half of the population lives in poverty, not having access to basic amenities of life such as nutrition, water and shelter. The resulting food insecurity is most often the result of conflict and violence, as well as poor governance. The fight against poverty and all the ills associated with it, is much dependent on a vibrant and growing economy, first, to provide jobs and income, and should that fail, to deliver sufficient revenue with which the state could take anti-poverty measures. Overall, a strong economy stands central to the well-being of a country and its ability to exercise its sovereignty. The problem lies not only with a lack of material resources, but also with the distribution and sharing of available resources among the population as a whole.

The state plays no small role in the levels of both poverty and inequality. In every country, the state plays an important role in the economy, be it through ownership, control, regulation, the distribution of its benefits, or a combination of these. Different constitutional arrangements allow for diverse ways of shaping, defining and defending the interests of individuals and groups in the society. From this perspective, the role of the state in African economies has taken three principal modes: a command economy, a free market economy, and a mixture of the previous two.

After nearly three decades of the new wave of constitutional democracy, there is measurable economic growth overall, yet poverty is still rampant and inequality increasing. This raises a number of questions with regard to the nature of the economy, the nature of the state, the relationship between them, as well as the global economic order within in which they have to operate.

The first element in the mix is constitutions; how is the relationship between the state and the economy structured or managed through a constitution? Put differently, to what extent do constitutions determine the nature of economies? The first level of inquiry focuses on the constitutions themselves. How do they express different economic models? The second level of inquiry is whether the principles of constitutionalism, where they are embedded in a constitution, have any economic significance. Does the principle of democracy and accountability impact on the mode of the economy, the direction of economic growth, and the broad distribution of its benefits?

Secondly, how does the notion of limited government play out in the economy? Does it mean a market economy that is free from governmental interference? Is it limited to respecting property rights?

Thirdly, how does the rule of law – governance under rules and not by arbitrary discretion, which includes the supremacy of the constitution and its justiciability by an independent judiciary – structure and enhance economic growth?

Fourthly, one of the contributions Africa has made to the development of the notion of constitutionalism is that state power should be directed towards development. The new constitutional enterprise in Africa sees a larger role for the state – a transformative or developmental one – where equal citizenship is the goal through, among other legal measures, enforceable socio-economic rights and substantive equality.

The overall hypothesis to be examined in detail is that the economy and constitutionalism are inextricably linked. Could an economic constitution not only protect economic interests but also ensure that all fundamental principles of constitutionalism as well as the political system itself are also protected?

PROCEDURES

The call for papers opened in January 2019, 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 sixth volume of the *Stellenbosch Handbooks in African Constitutional Law*, series, to be published by Oxford University Press.



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CONSTITUTIONALISM AND THE ECONOMY IN AFRICA
 18-20 SEPTEMBER 2019

PROGRAMME

17 SEPTEMBER		
18.00-20.00	Informal dinner at STIAS	
DAY 1, 18 SEPTEMBER		
Session 1: Introductory session		Chair: Prof Charles Fombad (University of Pretoria)
09:30-10:00	Registration and refreshments	
10:00-11:00	Welcome	Prof Edward Kirumira (Director, STIAS) Dr Arne Wulff (Director, Rule of Law Program for Sub-Saharan Africa, Konrad Adenauer Stiftung, Nairobi, Kenya) Prof Nico Steytler (Chair, South African Research Chair in Multilevel Government, Law and Policy, Dullah Omar Institute, University of the Western Cape)
	Keynote address	Mr Trevor Manuel (Former Minister of Finance and Chairperson of Old Mutual Limited)
11:00-11:30	Refreshments and Photo Session	
Session 2: Introducing the Concepts and Context		Chair: Prof Charles Fombad (University of Pretoria)
11.30-12:45	1) Constitutions, constitutionalism and the economy: Concepts and questions	Prof Nico Steytler (University of the Western Cape)
	2) Sub-Saharan Africa: Economic performance, structure, fiscal dynamics and socio-economic outcomes	Prof Ramos Mabugu (Sol Plaatje University)
	Discussion	
12:45-13:45	Lunch	
Session 3: Introducing the Concepts (continued)		Chair: Dr Arne Wulff
13:45-15:00	3) Constitutional law and economic policy: A comparative survey	Mr. Stephan F.H. Ollick (Max Planck Foundation for International Peace and the Rule of Law)
	4) Overview of constitutional measures and devices in Africa shaping the economy	Prof Charles Fombad (University of Pretoria) and Dr Lukman Abdulrauf (University of Ilorin)
	Discussion	
15:00-15:30	Refreshments	
Session 4: Constitutionalising a market economy – case studies		Chair: Dr Arne Wulff
15:30-17:00	5) Constitutionalism in Ghana and the economy under the 1992 constitution: A critical appraisal	Dr Kwaku Agyeman-budu (Ghana Institute of Management & Public Administration (GIMPA)) and Prof Kwame Frimpong (University of Professional Studies)
	6) The Economy and the Constitution: An analytical appraisal of Kenya's 2010 Constitution as an economic charter	Prof Eric Kibet (USIU-AFRICA)
	7) The constitution, the economy and the vagaries of the developmental state in South Africa	Prof Nico Steytler (University of the Werstern Cape) and Dr Michelle R. Maziwisa (University of the Western Cape)
	Discussion	
18.30-20.30	Welcome dinner at STIAS	

DAY 2, 19 SEPTEMBER**Session 5: Constitutional framework for land and natural resources****Chair: Prof Zemelak Ayele (Addis Ababa University)**

09.00-10.30	8) Political economy of post-colonial constitutionalism in Southern Africa	Prof Heinz Klug (University of Wisconsin-Madison)
	9) Protecting the land, protecting the resources: A comparative assessment of constitutional protections within Kenya, Sudan and South Sudan	Mr John Hursh (Stockton Centre for International Law, U.S. Naval War College)
	Discussion	
10.30-11.00	Refreshments	

Session 6: Constitutional framework for land and natural resources (continued)**Chair: Prof Zemelak Ayele (Addis Ababa University)**

11.00-12.30	10) Land is the economy and the economy is land: A history of constitutional protection of land in Zimbabwe	Dr Makanatsa Makonese (Deputy Chief of Party, American Bar Association, Johannesburg)
	11) Namibia's constitution and the resource-based economy: Protection vs exploitation of nature	Prof Henning Melber (Uppsala University) – Skype
	Discussion	
12.30-13.30	Lunch	

Session 7: Constitutional framework for the state's role in a market economy**Chair: Prof Kwame Frimpong**

13.30-15.30	12) The new economic empire of the Egyptian military – a lesson in blurred lines and constitutional transgression	Dr Sherif Elgebeily (International Law and Policy in Africa Network / Centre for the Study of International Peace and Security)
	13) Taming the spectre of unsustainable public debt in Africa: The utility of constitutional regulation	Dr Adem Kessie Abebe (International Institute for Democracy, and Electoral Assistance) - Skype
	14) Determining the jurisdictions of regional states in promoting investment in Ethiopia: constitutional and practical inventory	Prof Solomon Negussie (Addis Ababa University)
	Discussion	
15:30	Excursion and Dinner	

DAY 3, 20 SEPTEMBER**Session 8: Economic globalisation, constitutions and constitutionalism****Chair: Prof Charles Fombad**

09.00-10.30	15) Why the turn to global constitutionalism at the WTO harms African constitutionalism	Prof Eva Maria Belser (University of Fribourg)
	16) Constitutionalism, regional economic integration and the harmonisation of business law in Francophone Africa through the lenses of state sovereignty and statehood	Dr Balingene Kahombo (Berlin/Potsdam Research Group on International Rule of Law) and Mr. Trésor Makunya Muhindo (University of Pretoria)
	Discussion	
10.30-11.00	Refreshments	

Session 9: State capture: The private sector, the constitution and constitutionalism – Panel discussion**Moderator: Prof Nico Steytler**

11.00-13.00	Panel discussion	Mr Mcebisi Jonas (former Deputy Minister of Finance)
		Prof Ramos Mabugu (Sol Plaatje University)
		Dr Ralph Mathekga (University of Western Cape)
		Prof Buhle Angelo Dube (University of South Africa)
13.00-14.00	Lunch	

Session 10: Theme of next conference**Moderator: Prof Charles Fombad (University of Pretoria)**

14.00-15.00	Discussion	
15.00	Closing session	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
	Refreshments & Departure	

SUMMARY OF PRESENTATIONS, SASCA 2019

18 SEPTEMBER: DAY 1

1 **Constitutions, constitutionalism and the economy: Concepts and questions – Prof Nico Steytler**

This paper discusses the relationship between constitutions, constitutionalism and the economy. The first line of inquiry is whether (and if so, how), since the second wave of democratisation, a market economy has been constitutionalised across Africa. How has the market influenced the constitution, and the other way around as well? The second area of inquiry focuses on a specific constitutional issue: the governance of land and other natural resources. Given their centrality to many African economies, what is the constitutional framework for determining who 'owns' such wealth and how the revenue derived from such wealth is distributed among the inhabitants of a country? The third line of inquiry is the constitutional scope for the state to intervene in the economy. The following aspects are pertinent: First, is there a clear framework to state regulation and intervention? Conversely, how does the state protect itself from the predations of the market, by being captured by some market forces? Secondly, where the state comprises multilevel government, how does that shape such a regulatory role? Thirdly, how have central banks, as constitutional institutions, imposed a substantive limit to the state's regulatory role in respect of monetary policy? Finally, where the market does not adequately distribute the benefits of the economy to all sectors of society, are there constitutional obligations on the state to do so? The fourth line of inquiry concerns the impact that global economic integration may have on constitutionalism in Africa. What is the impact of international trade liberalisation on democratic sovereignty and does it make a difference when home grown trade agreements seek a similar objective of lowering trade barriers? Finally, the big and most difficult questions are about the dynamic between constitutionalism and economic growth. Where the basic elements of constitutionalism – the practice of democracy, limited government and the rule of law – are present, what impact, if any, do they have on the economy: do they enhance, hinder, or are they neutral to economic growth?

2 **Sub-Saharan Africa: Economic performance, structure, fiscal dynamics and socio-economic outcomes – Prof Ramos Mabugu**

This paper begins with an informal introduction to sub-Saharan Africa, going on to specifications and concluding remarks. Sectoral detail and macro causality are central to this discussion. Based on calculations using International Monetary Fund and World Bank data from 2000 to 2020, for consistency, we look at sub-Saharan Africa's economic performance, structure (agriculture, industry, services etc.), evolution and fiscal dynamics. Main findings are that sub-Saharan Africa experienced substantial growth between 2000 and 2015, making significant strides in eradicating extreme poverty, to make the slogan 'Africa rising' credible. However, when comparisons are made between 2010-2015 to the more recent period of 2016-2018, sub-Saharan Africa has not fared as well, leading us to caution against unfettered optimism and indeed, question the validity of the 'Africa rising' slogan any more. Not only has sub-Saharan Africa growth decelerated, but also the economic powerhouses of the region – namely Nigeria, South Africa and Angola, which together account for almost 60 percent of the region's overall output – have significantly underperformed. Three policy areas based on the paper analysis are suggested: recalibrating sub-Saharan African economic models for not only higher growth but for this growth to be more inclusive, boosting domestic resource mobilization to correspond and be in line with recent impressive economic growth, fiscal scrutiny, in particular, quality of public investments being made and those in the pipeline

3 **Constitutional law and economic policy: A comparative survey – Mr Stephan F.H. Ollick**

"A constitution is not intended to embody a particular economic theory" - Justice Oliver Wendell Holmes This observation by Justice Oliver Wendell Holmes, if accurate, might call into question the whole endeavour of this paper. However, one may well doubt the accuracy of his observation, not least because Holmes did not trouble himself with giving reasons for his assertion, but also given that constitutions often do appear to advocate or at least presuppose economic theories. Constitutional prescriptions on economic ordering are instead manifold in form and substance. Some constitutions are outspoken, others subtle, though not quite silent, on the economic approach that is to govern the polity. In form, the devices used range from the formal labelling and proclamation of a system to the quiet privileging of select individual or collective rights. Likewise in substance, constitutional provisions on the economic order may advocate ideas from across the spectrum of liberal laissez-faire economics to the prescription of planning and regulation by governmental command. Between such ideal types, real-life constitutions exist along a continuum. States may largely permit the play of forces of the free market and still allow authoritative intervention in certain situations or exclude certain domains; other economic orders presume the state's centralised ownership of productive assets while still giving recognition to private property and corporate ownership even where this conflicts with longstanding and rigorous political rhetoric. Of particular interest to this paper are the approaches taken by France, the United Kingdom, the United States, and Germany. At this time, all of them subscribe in some form to the ideal of a free market, though with different scope and means.

4 **Overview of constitutional measures and devices in Africa shaping the economy – Prof Charles Fombad and Dr Lukman Abdulrauf**

Most studies of the profound constitutional renewal Africa has undergone in the past three decades have focused on its political dimensions. Major constitutional renewals took place after independence, in order to resolve citizens' civil and political rights. However, little attention was paid to economic aspects in the revised constitutions. The purpose of this paper is to provide an overview of the economic doctrines, principles, measures and devices that have been incorporated, explicitly or implicitly, in modern African constitutions to guide government action and promote development. In so doing, the chapter considers how 'economic constitutions' prepare the way for consolidating constitutionalism and respect for the rule of law. Regarding the new generation of constitutions, the critical issue is whether they introduced effective principles, measures and devices for addressing present and future economic challenges. In other words, do modern African constitutions provide an economic framework for shaping and directing national policies in such a manner that their implementation facilitates economic development through wealth-creation and -sharing and ensures proper management of the economic lives and well-being of all citizens rather than a privileged elite? Indeed, in the last few years there have been numerous reports about the risk that various African countries face of losing their sovereignty over strategic national assets due to predatory debt linked to infrastructure. In pursuit of answers, this study undertakes a comparative examination of the economic constitutions of selected African countries, the aim being to obtain an overview of the degree to which the constitutional recognition and protection of core economic principles shape contemporary African practice. The choice of ten countries analysed in this paper takes into account the variety of constitutional traditions in Africa, as well as other factors such as differences in post-colonial historical and political evolution, the extent of a country's endowment of natural resources, its geographical location, and its population size and diversity.

5 Constitutionalism in Ghana and the economy under the 1992 constitution: A critical appraisal – Dr Kwaku Agyeman-budu and Prof Kwame Frimpong

This paper examines how the tenets of constitutionalism underpinning the 1992 Constitution of Ghana has contributed to the sustained period of economic development in the country. The correlation between constitutionalism generally and the economy is thus analyzed through the lenses of the envisaged Ghanaian economy, which is deduced from specific provisions of Ghana's Constitution that provide for the structure, management and oversight of the economy of Ghana, as well as the history of the economy itself. The longevity of this current 1992 Constitution, unlike any of its predecessors has led commentators to suggest that the various tenets of constitutionalism, which are entrenched in the Constitution, have resulted in the sustained period of democratic and constitutional rule. The paper is divided into four parts. Part I is the Introduction. In Part II, there is a brief discussion of Ghana's economic history, fundamentals and structure, including the dictates of the current Constitution in that regard. Part III of the paper then focuses on the correlation between constitutionalism, as practised in Ghana, and Ghana's economic performance/development since the advent of the Fourth Republic. The aim of this exercise is to ascertain the contribution of those principles to Ghana's economic growth and development. The economic model envisaged under the 1992 Constitution is thus distilled in order to properly contextualize it. Some of the key questions addressed here include: Whether Ghana operates a purely market economy or a mixed one? Does the Constitution in any way balance the various categories of rights underpinning the Constitution? Part IV then provides recommendations to further strengthen the Constitution so as to ensure mutual reinforcement between the principles of constitutionalism it espouses, and economic development in the country.

6 The economy in the Constitution: An analytical appraisal of Kenya's 2010 Constitution as an economic charter – Prof Eric Kibet

In an effort to improve the lives and welfare of its people and the overall economic situation, the country has made commitments to socio-economic development blueprints such as African Union's Agenda 2063, East Africa Community's Vision 2050 and the United Nation's Sustainable Development Goals (SDGs). In addition, the country is a member of regional economic blocs such as the East Africa Community (EAC), the Common Market for Eastern and Central Africa (COMESA), and the African Continental Free Trade Area (AfCFTA). The country's current long term development goals are anchored on its vision 2030 which aims at transforming the country into 'a newly industrialising, middle-income country providing a high quality of life to all its citizens'. It is worth noting that these national and continental visions for economic transformation exist side by side with political and governance goals towards enhancing democracy, good governance, rule of law and human rights as articulated in regional instruments. The transformative nature of Kenya's Constitution from a legal and political standpoint has attracted significant attention in scholarly and judicial discourses. Very little, however, has been written about it as an economic charter. This paper attempts to appraise Kenya's Constitution as an economic charter that makes provisions on the economy and imposes certain obligations of an economic nature.

7 The Constitution, the economy and the vagaries of the developmental state in South Africa – Prof Nico Steytler and Dr Michelle R. Maziwisa

This paper questions whether economic policy is a matter for constitutional regulation in South Africa. The constitutions of 1993 and 1996 followed the dominant economic model of the post-Cold War era, and provided for the basics of a free market. The focus of this paper is on the following questions: First, why did the negotiations produce a constitutional framework more friendly to a market economy rather than a command economy? Second, how was this negotiated result cemented in the 1993 and 1996 Constitutions? Thirdly, over the past 25 years, has there been a positive link between a constitutionalised market economy and a productive and growing economy? If not, what is the future constitutional framework for the economy? This paper will argue that precisely because of the collapse of the East Bloc economies, and the stridency of the free market West, local and international pressures led to the ANC abandoning its yearning for a strong interventionist state in the economy. Second, the basic elements of the free market economy were firmly entrenched in the Bill of Rights, included the establishment of a 'social' state through enforceable socio-economic rights. The constitution posits a single national economy in terms of which national policy prevails. Thirdly, even having the most secure constitutional state on the continent has not led inevitably to a productive economy, as the slowly imploding South African economy suggests. This has prepared the ground for the reversal of the market economy; the softening of the property clause which is in the offing will not lead to greater prosperity but may be the harbinger of the ultimate success of the command economy, and with the spectacular failures witnessed in the previous century.

19 SEPTEMBER: DAY 2

8 Political Economy of Post-Colonial Constitutionalism in Southern Africa – Prof Heinz Klug

The political economy of Southern Africa rests on a range of economic pillars, including extractive industries, tourism and manufacturing, yet control over land remains a core and contested feature of the post-colony throughout the region. Tenure relations have been a central issue of conflict since the earliest days of colonization and while there have been significant shifts in tenure systems since the end of colonization, these changes have been contested and remain politically salient features of law and governance today. While conducting a comparative analysis of the relationship between the economic constitution and governance in Southern Africa specific emphasis will be placed on the significance of property rights and tenure relations to constitutionalism in the region. While each of the countries in the region has its own complex history of tenure relations which cannot be adequately addressed in a single paper, the task here will be to highlight some of the most significant features of the different histories to compare the relationship between land tenure and constitutionalism at a fairly general level of abstraction. This approach will of course be subject to fair criticism for eliding significant details however it is hoped that a general overview will allow for the identification of important trends that might raise questions for further research. Adopting a new legal realist approach this paper will first draw on the economic literature on the economic constitution to identify the relevant constitutional elements to consider in the comparison between four constitutional orders across Southern Africa. It will then focus on the institution of property rights in land as a specific example in this comparison. Finally, there will be an attempt to evaluate the relevant theoretical approaches to constitutional political economy as applied to the four countries in the comparison.

9 Protecting the land, protecting the resources: A comparative assessment of constitutional protections within Kenya, Sudan, and South Sudan – Mr John Hursh

Throughout the region, jurists, scholars, and civil society leaders have sought to challenge the unjust status quo in resource rich, conflict prone regions by securing constitutional provisions that safeguard land and natural resources from state misuse. Often, these actors have sought legal reform after armed conflict and civil unrest. This was the case in Kenya, Sudan, and South Sudan, where larger peace efforts included constitutional reform projects. Thus, Sudan's 2005 Interim Constitution, a product of the 2005 Comprehensive Peace Agreement that ended the Second Sudanese Civil War, included guiding principles for the equitable sharing of the country's resources. Likewise, the 2010 Constitution of Kenya, which followed the 2007–2008 electoral violence that led to an investigation by the International Criminal Court, included a land policy that would ensure the 'equitable, efficient, productive and sustainable' use of land as well as 'equitable sharing' of the accruing benefits of the country's natural resources. Despite these strong affirmations of equitable land and natural resource use, the implementation of these rights has been uneven at best. Building on the points discussed above, this paper addresses the constitutional protection of land and natural resources. It does so by offering a comparative assessment of how the Constitutions of Kenya, Sudan, and South Sudan safeguard land and natural resources for the citizens of these states. Kenya, Sudan, and South Sudan allow for a useful comparison of three distinct legal traditions within an important region of Africa. Likewise, these three constitutions emerged from violent armed conflict and contribute to the growing study of constitutional reform in post-conflict settings. Relatedly, the ongoing violence and vast inequality within Sudan and South Sudan suggest the limitations of constitutional reform during externally-imposed peace processes to produce meaningful change within the affected state.

10 Land is the economy and the economy is land: A history of constitutional protection of land in Zimbabwe – Dr Makanatsa Makonese

It has been noted that 'The land question is one of the central themes in Zimbabwean politics. This has been true for over a century.' The land as an economic asset is therefore enduring in Zimbabwe, even with the development, emergence and recognition of other platforms for economic development. This paper will therefore examine the history of law making in Zimbabwe from colonial times to the post-independence period and the role played by the Constitution in the management, control and protection of the country's natural resources, the economy and the players therein. It will discuss whether at independence in 1980, the new Zimbabwean Government succeeded in reversing the impact of colonialism on ownership and control of natural resources and economic exclusion of the previously disadvantaged populations through the Constitution and supporting laws. In this regard, the paper will seek to address the following key issues: i) The colonial laws and their impact on access to, ownership and control over land [and minerals] by the white minority and the black majority in the country. ii) The 1980 independence constitution and how it addressed the rights of the white land owners, the rights of the landless black majority, and whether it sought to address the social redistribution agenda of the liberation struggle between 1980 and 1998. iii) The land invasions from the years 1998-2000, the subsequent Accelerated (Fast Track) Land Reform and Resettlement Programme (Phase II), the country's indigenisation agenda and the implications on the rule of law and the building of an economy. iv) The making of the 2013 Constitution and the contestations around land and other natural resources. v) The acquired land and its designation as State land by the Constitution and implications on the economy.

11 Namibia's constitution and the resource-based economy: Protection vs exploitation of nature – Prof Henning Melber

This paper will contrast the effects and potential long-term implications and consequences of the country's resource based extractive economy with the constitutional principles and legal framework. It will argue that reconciling the implicit tension between a social and inter-generational contract and the current exploitation of resources with lasting environmental damages is a particularly tough challenge for good governance and depending on the decisions taken risks to be in marked contrast to the essentials of sustainable development. Several case studies illustrate the potentially antagonistic friction between a vulnerable economy and the damaging consequences of the (over-)exploitation of natural resources and the impact on the ecology and environment. It thereby seeks to contextualize the dilemmas facing a government, which inherited colonial structures of the economy combined with a world market dependency through the primary sector. Without fundamental changes in the economic trajectory the main factor for socio-economic development remains resource extraction of primary natural commodities, thereby reproducing unsustainable inherited patterns of exploitation. The paper also highlights the tensions between a socio-economic elite politics guided by rent-seeking interests and the activities by concerned civil society groups seeking protection of the habitat.

12 The new economic empire of the Egyptian military – a lesson in blurred lines and constitutional transgression – Dr Sherif Elgebeily

Egypt is the third largest economy on the African continent, a nation of over 100 million inhabitants and a Gross Domestic Product (GDP) of \$298.15bn. Though officially a non-aligned state during the Cold War, under the leadership of its first President Gamal Abdel Nasser, it functioned as a socialist state with a commensurate command economy. Later, under President Sadat, capitalism was welcomed through an 'open doors' policy and a shift towards a free market economy began to take place. Under President Mubarak, alongside heavy emphasis on foreign investment, tourism, and international trade, the government advocated – at least publically – a belief in the the 'invisible hand' theory of Adam Smith, where supply and demand organically creates an economic equilibrium; in reality, economic mismanagement, rampant inequality, and pervasive corruption widened the chasm between rich and poor, opening the door to grassroots organisations like the Muslim Brotherhood to fill the political gap. Egypt is one of only a handful of developing countries that has transitioned from a capitalist to planned economy before returning to a more capitalist economy. This paper begins by briefly exploring the development of the Egyptian economy under 5 stages: the Nasser era (1956-1970); Sadat era (1970-1981); Mubarak era (1981-2011); Egyptian Revolution (2011-2015); and Sisi era (2014-present). Today, the 2014 Egyptian constitution does not explicitly outline the type of economy used to govern; rather, it enumerates certain responsibilities of and protections by the state towards public and private enterprise. Egypt's constitution protects ownership of three types: public, private, and cooperative. The paper argues that the creation of a new economic empire under the control of the military, coupled with the political controls that President Sisi has assumed as head of state, places at his discretion control over both the economic and political levers of Egypt. Ultimately, this paper shows how the principles of constitutionalism in Egypt with respect to its economic protections has been undermined by a private military sector that blurs the line between public provision and private gain.

13 Taming the spectre of unsustainable public debt in Africa: The utility of constitutional regulation – Dr Adem Kessie Abebe

Public debt constitutes the source of a significant portion of the regular budget of African countries and is central to the management of their economies. Public debt involves decisions regarding the distribution of resources and burdens, including across generations, issues that lie at the heart of democratic theory. Considering its significant implications both to the economy and democracy, it is critical to assess the extent to which African constitutions regulate public debt. This is particularly important today with growing and in some cases unsustainable debt levels and reports of 'debt trap' where some African (and other) governments may be forced to hand over to foreign states key infrastructure to settle unsustainable debts. This paper presents initial thoughts on the potential role of constitutions in the proper management and control of public debt. There is currently very little on the constitutions and public debt, particularly in the African context. The contribution seeks to trigger a conversation at the political and scholarly level on the appropriate role of constitutions in regulating public debt and ensuring transparency and accountability in the mobilisation and use of public debt.

14 Determining the jurisdictions of regional states in promoting investment in Ethiopia: Constitutional and practical inventory – Prof Solomon Negussie

Ethiopia is hailed as one of the countries enjoying the fastest economic growth in Africa. Despite economic growth and policy directions to inclusive development, the country faced political unrest since 2015. Investments have been targeted by the protestors and some of them were burnt down. Some regional governments openly challenged federal investment decisions on the ground that they are not benefiting regions in terms of sharing revenue generated from investments. This contribution examines the jurisdictions of states on matters governing investment and whether investment decisions are guided by the principles of constitutionalism. It primarily reviews the constitutional and legal framework and analyses practical issues towards determining investment jurisdiction of regional states in Ethiopia. By doing so, the study identifies what the states can and cannot do with regard to conducting their own investment promotion work. And it defines the relationship between the federal and regional governments in their efforts to promote investment in the country within the general framework of efficient and accountable use of resources. With this background, the study employs a qualitative approach and investigates four important sub-themes related to each other. These are: general contending issues in promoting investment, the constitutional division of power and specific roles the states can play in promoting investment, federal –state relations in promoting investment, and investment and fiscal policy in Ethiopia. It is believed that other African federal or devolved systems will draw good lessons to promote multilevel investment promotion and the challenges against it.

20 SEPTEMBER: DAY 3

15 Why the turn to global constitutionalism at the WTO harms African constitutionalism – Prof Eva Maria Belser

The question this paper addresses is what the turn to constitutionalism at the WTO signifies for African member states and their constitutional law and practice. It is generally argued that a rule based global trading system guarantees more stability than bilateral treaties, often influenced by the geopolitical moods of the moment and affected by the unequal bargaining power of the trading partners. African countries therefore have an interest in international trade rules governed by law, not by the discretionary use of power. An entrenched principle of liberalisation guarantees equal access to markets and the principle of non-discrimination prevents irrational trading policies, in the North and in the South. In order to assess the impact of constitutionalised WTO law, I will first briefly present the liberal claim to global constitutionalism at the WTO (2.) and recall the making of the international trading regime (3.) and its main pillars (4.). I will then turn to human rights and show that, while these values are central in African constitutionalism, they are merely exceptions to free trade at the WTO (5.). In cases, where African constitutionalism clashes with liberal trade, human rights therefore run the risk of being compromised as some cases will illustrate (6.). Before concluding (8.), I will thus argue in favour of plural approach to global constitutionalism in which liberal trade is one value amongst others and which is open to contestation by domestic constitutions (7.).

16 Constitutionalism, regional economic integration and the harmonisation of business law in Francophone Africa through the lenses of state sovereignty and statehood – Dr Balingene Kahombo and Mr Trésor Makunya Muhindo

This chapter examines the extent to which the Organisation for the Harmonisation of Business Law in Africa (OHADA) embodies Pan-African ideals and constitutional issues which it raises within its member states. It also analyses the prospects for OHADA to foster a proper harmonisation of business law in Africa from a human right, democratic and Pan-African perspectives within the context of African economic integration. Today's neoliberal economic order strives to secure free economic markets for investors. While Africa has undertaken a process of continental integration since the 1970s with the view to mitigating the adverse effect of capitalism and economic crisis, OHADA emerges from the ashes of the Franc Zone. The Franc Zone is constituted with the French support and guarantee of stability. OHADA is, however, more than just a regime aiming at harmonizing business law in Africa. It is a supranational organisation established by the Treaty of Port-Louis of 17 October 1993. As of now, 17 African countries have membership with the OHADA. One of its innovations is that it seeks to provide to member states uniform business legislation, in various areas. These include company law, the definition and classification of traders, simplified recovery procedures and enforcement measures, liquidation and administration proceedings and arbitration, labour law, accounting law, carriage and sales of goods, and any such other matters determined by the Council of Ministers.

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Note

A: In person

B: In absentia

