

Constitutions and the Rule of Law in Africa since Independence: an African Dialogue

Programme and Biographies

28 – 29 October 2010

Old Mess Hall, Old Fort
Constitution Hill



Institut de recherche et débat sur la gouvernance
Institute for research and debate on governance



CONSTITUTION HILL



Gouvernance
en Afrique

Programme

The issue of constitutions in Africa as the cornerstone of independent and democratic societies is not new: in the 1960s, the era of the Independences in both anglophone and francophone Africa, just like that of the liberation struggles in Southern Africa in the 1970s and the 1980s, gave way to reflections and processes on constitution-building.

In the 1960s, debates focused mainly around the writing of the constitution. A constitution was needed to herald the birth of a new state. It was supposed to describe the future state of the nation and was not supported by constitutionalist movements. The constitutional text was supposed to be self-sufficient and little interest was paid to the support it received from political elites or the people. In general, these texts were directly derived from the constitution of the relevant colonial powers (and in francophone Africa, from the French constitution of 1958, see Fauré 1981 in this regard). As a result these texts were fragile, contested and unable to act as safeguards against political rivalries and coups. Little interest was paid to the political aspects of law.

In the late 1980s, early 1990s, a wind of change started blowing over the understanding of constitutions in Africa, and particularly in francophone Africa. Constitutionalism became a major ideology around which large parts of civil societies gathered to support the making of a new social contract and promote the rule of law. The birth of these constitutionalist movements heralded a renewed interest in the constitution as a primary tool for implementing a democratic state run by the rule of law (for a review of these movements in West Africa, see Mbaye, 2008) and for organising a new type of social contract. It also marked the beginning of a convergence on the continent between the various types of constitutions derived mostly in their initial stage from the model of former colonial powers. Although the forms, processes and tools used in francophone and anglophone African countries remain substantially different, clear convergences are at work: one could question whether the tools adopted as democratic safeguards and means of implementing the ideals of constitutions, as well as the actual form of the texts, are not converging towards an African model, or whether this homogenization reflects the imposition of international standards coming from outside of Africa (see Du Bois de Gaudusson, 2009 in this regard). Another central question remains with regards to issues of legitimacy attached to such converging constitutions: while a few dominant features are now broadly incorporated across the continent (multiparty systems, open elections, etc.) it does not guarantee the social appropriation of these features by the population (on this issue in Senegal, see Thiam 2007). The francophone experience, vitality and sometimes failures of constitutionalist movements since the 1990s could fruitfully be compared to the Southern African situation, which is not currently immune to discussions around constitutional transformation (see for instance the beginning of the Zimbabwean process of constitutional change or current debates in Namibia and Mozambique in this regard) for the implementation of democracy and the rule of law.

Thursday 28 October 2010

- 08:30 Welcome Coffee + Registration
- 09:00 – 10:30 Guided tour of Constitution Hill
- 10:30 Opening and introduction to the conference:
- Director of Constitution Hill, Mr Derek Petersen
 - HE the Ambassador of France in South Africa, Mr Jacques Lapouge
 - IFAS-Research Director, Dr Sophie Dider
- 11:00 – 13:00 **History of the Implementation and Transformations of African Constitutions**
- Panel Chair: Andre Mbata Mangu, University of South Africa – Pretoria & University of Kinshasa
 - Dominique Darbon, Centre d'Etudes d'Afrique Noire – Bordeaux
 - Alain Didier Olinga, Institut de Relations Internationales du Cameroun – Yaoundé
 - Roger Southall, University of the Witwatersrand – Johannesburg
 - Questions and debates
- 13:00 – 14:00 Lunch
- 14:00 – 16:00 **Constitutions Currently in Africa: Legitimacy and Appropriation**
- Panel Chair: Steven Gruzd, SAIIA – Johannesburg
 - Séverine Bellina, Institut de Recherche et de débat sur la Gouvernance – Paris
 - Mundjozi Mutandiri, National Constitutional Assembly (NCA) – Zimbabwe
 - Assane Mbaye, Alliance pour Refonder la Gouvernance en Afrique – Dakar
 - Questions and debates
- 16:00 – 16:30 Coffee/Tea Break: 30 min
- 16:30 **Projection / debate, *Cuba, an African Odyssey***
by Jihan El Tahri, in the presence of assistant producer, Djo Munga
- 18:30 Cocktail
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Friday 29 October 2010

- 08:30 Coffee
- 9:00 – 11:00 **Prospective: What Role Do the Former and New Powers Play in the Assertion of the Rule of Law in Africa?**
- Anne Sophie Ducreux, MAEE – Paris
 - Annie Chikwanha, ISS – Addis Ababa
 - Panel Discussant: Yarik Turianskyi, SAIIA – Johannesburg
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Panel 1

History of the Implementation and Transformations of African Constitutions

During the sixties, access to independence led many new States to formulate constitutions and thereby establish institutional bases. These constitutions, which were drafted without any form of public consultation by a class of political leaders trained in Europe, were strongly inspired by the judicial traditions of former colonial powers and, generally, were not widely adhered to by citizens. In time, these constitutions proved fragile and became increasingly contested, unable to prevent military coups and one-party systems.

In Southern Africa, constitutional issues were, from the beginning already, central to the claims of national freedom movements, following the example of the Freedom Charter that, already in 1955, was spelling out the principles of a non racial and democratic South African society. The endeavours of various Southern African countries during the political transition, involved above all the elaboration of consensual constitutions gathering various actors around a new political and societal project. The constitutional texts then led to the crystallisation of agreements sealed during the negotiations, although these did not always make it possible to consolidate the new institutional and political order.

In the light of the different African constitution writing histories, the panel will specify and compare experiences in francophone and anglophone African countries, and Southern Africa in particular. The main question will be to understand whether the fragility of the first constitutions was due mainly to the conditions under which they were elaborated, to the transposition of foreign rules and principles to the societies they were supposed to govern, or to the nature of the normative and institutional systems being implemented. As such, we will question the absence of consultation or, on the contrary, the long negotiation processes that contributed to de-legitimise or finalise new constitutions.

Panel 2

Constitutions Currently in Africa: Legitimacy and Appropriation

At the end of the 1980s, beginning of the 1990s, many African countries, and in particular francophone African countries, began to grasp constitutions differently. Civil societies used this wave of change to carry out a democratisation process to initiate real changes. Central to the political debate, these new texts intended mainly to guarantee political pluralism and to act as a safeguard against abuse of power. This period also marked the beginning of a convergence on the continent between the constitutions of francophone countries and those of anglophone countries, in a context where governments were urged by sponsors and international organisations to practice good governance.

In this panel, we will consider whether the tools adopted as democratic guarantee, the means for implementing constitutional ideals and the actual text form, converge towards an African model or whether, on the other hand, this homogenisation again reflects the imposition of external standards. Moreover, while many constitutions paradoxically favoured the big man syndrome, the panel will also question the effectiveness of constitutional practices as well as their social appropriation by the population; in short we will need to tackle the issue of the legitimacy of the authorities in these countries.

Projection / debate

Cuba, an African Odyssey

by Jihan El Tahri, in the presence of assistant producer, Djo MUNGA

Cuba, an African Odyssey tells the story of the Cold War through the prism of its least known theatre: Africa.

From 1961 to 1991, this continent was the battleground for a war between four competing and opposing interests: the Soviet Union which sought to extend its influence; the US interested in capturing Africa's natural resources; former European colonial empires and young African nations trying to defend their newly-won independence. Called on to help these new nations in their revolutionary struggle, Cuba played a central, yet little known, role in supporting African national liberation. *Cuba, an African Odyssey* attempts to understand the world today through the saga of these internationalists who won every battle but finally lost the war.

Panel 3

Prospective: What Role Do the Former and New Powers Play in the Assertion of the Rule of Law in Africa?

During his famous speech given in La Baule on the 20th of June 1990, former French President François Mitterrand expressed a strong wish to see France give her support to the democratisation process in francophone Africa during the 1990s. Shortly after, South Africa, with a democratic transition and a constitution set up as international model, came out as the new lifeblood of the continent, and was led to intervene a few years later as mediating power in the political crises of her neighbours. In time, former colonial powers together with South Africa expressed their intention to play their part in the advancement of democracy in Africa.

What actions can these actors implement today to support the development of the rule of law in Africa, and what intellectual debate can they contribute as regards African Constitutions?

Participant Biographies

BELLINA, Séverine

Séverine Bellina holds a doctorate in public administration. Her area of expertise is public governance, institutionalisation of power, normative pluralism and development cooperation in Africa. She is associate researcher at the *Centre d'Études et de Recherche sur le Droit, l'Histoire et l'Administration Publique* at the University of Grenoble II. From December 2004 to March 2008, she acted as a consultant on democratic governance issues with the Directorate of Development Policies of the French Department of Foreign and European Affairs, and actively contributed towards drafting the French governance strategy for development co-operation. She was also responsible for the governance programme with the Democratic Governance Group of the Bureau for Development Policies of the UNDP (BDP-PNUD), posted in Dakar and at the Centre on Governance in Oslo. Séverine Bellina was a consultant for the European Commission in Brussels. She currently lectures at SciencePo in Paris.

CHIKWANHA, Annie

Dr Annie Barbara Chikwanha is a Senior Research Fellow in the Institute for Security Studies and heads the African Human Security Initiative (AHSI) project at the institute's Addis Ababa office. AHSI is a network of eight African organizations that work on enhancing human security from different angles. The project aims to raise awareness of the impacts of crime on democratization and development. Her professional background is university teaching, research in democracy, governance and poverty, public opinion surveying and outreach training in democracy, governance and criminal justice and she has published on these areas. She holds a PhD in Political Science from the University of Bergen in Norway and is a member of the Board of Advisors of the International Institute for Democracy and Electoral Support (IDEA).

DARBON, Dominique

Dominique Darbon is a French political analyst and is specialised in African political systems. He is a graduate of the IEP of Bordeaux and holds a doctorate in African Studies and Political Science. He is senior lecturer in Political Science at the University Montesquieu - Bordeaux IV. His research focuses mainly on political transaction processes in Southern and Western Africa in particular, public administration management, political institutions and State and civil service reform in Africa. Dominique Darbon uses organisational sociology as well as sectorial and comparative approaches to analyse African public administrations and their specific operational modes. He is also a member of the CEAN and is a project leader for the online review Afrilex, dedicated to the analysis of rights and institutions.

EL TAHRI, Jihan

Jihan El-Tahri is a Franco-Egyptian writer, director and producer. In 1984 and 1986, she obtained an Honours' and a Master's degree respectively in Political Science, from the American University in Cairo. She worked as a correspondent on political affairs and events in the Middle East and Africa, with the US News and World Report, Reuters, TV Researcher. In 1990, Jihan El-Tahri began to produce documentaries for French television and the BBC. In 1992, she managed to film the training camps of Osama Ben Laden in Sudan. She also contributed towards the four films of *Steps for the Future* in 2001. She received several international prizes for her documentaries. Today, Jihan El-Tahri is based in South Africa.

GRUZD, Steven

Steven Gruzd is a researcher at the South African Institute of International Affairs (SAIIA) and has been heading the Governance and African Peer Review Mechanism programmes since May 2008. In 2006, he became deputy head of this programme at SAIIA, having worked as research manager of SAIIA's NEPAD and Governance Programme from 2003 onwards. Before that, he worked as a researcher at the Centre for Development and Enterprise from 1999 to 2003. He obtained an MSc in International Relations at the London School of Economics and Political Science (LSE), and did his BA and Honours Degree at the University of the Witwatersrand.

MBAYE, Assane

Assane Mbaye is a graduate of Robert Schuman University in Strasbourg, France (DEA in international law and DESS in environmental law). He was a trainer at the National School of Administration and Magistracy in Senegal. He is currently based in Senegal and teaches at Cheikh Anta Diop University in Dakar. He is member of the resource centre of ARGA and mainly charged with the initiative group on pluralism, and with coordination of publications.

MUNGA, Djo

Djo Tunda Wa Munga studied art at school and later joined the National Film School of Belgium, INSAS. During his studies he directed his first short films. He worked a couple of years in Europe before returning to the Democratic Republic of Congo to work as an executive documentary producer, with projects for the BBC, ARTE and the Danish TV.

He established the first production film company in the DRC - SUKAI! - which produced the feature film for TV entitled *Papy*, that he directed. He also directed the acclaimed documentary *State of Mind*, and mentored young Congolese directors as producer on the film *Congo in four acts* (Berlinale, Hotdocs 2010). In 2010 he was named African Trailblazer of the year by MIPTV, and shot the feature film *Viva Riva*, which was presented at the Toronto International Film Festival 2010.

OLINGA, Alain Didier

Alain Didier Olinga is a Cameroonian jurist who lectures at the Institute of International Relations of Cameroon, where he heads the International Law Department. He is also a senior lecturer in Public Law at the University of Yaoundé II. His research focuses mainly on humanitarian international law.

SOUTHALL, Roger

Prof. Roger Southall is Professor of Sociology at the University of the Witwatersrand. Before that he worked in other universities in Uganda, Lesotho, Canada and England. He is the author of *Imperialism or Solidarity? International Labour and South African Trade Unions* (UCT Press), and a dozen other publications. Prof. Roger Southall is the founder of the State of the Nation project of the Human Science Research Council. He also published many articles in scientific reviews on politics, economics and labour in South Africa and is the editor of the Journal of Contemporary African Studies and takes part in ARGA's project on Constitutionalism.

TURIANSKYI, Yarik

Yarik Turianskyi arrived in South Africa from Ukraine at the end of 2001 in order to study at the University of Pretoria where he completed his Honours and Master's degree. He then worked as a lecturer at the Department of Political Science at both Hatfield and Mamelodi campuses of the

University of Pretoria before joining SAIIA (South African Institute of International Affairs) where he is currently working as a researcher on the Governance and African Peer Review Mechanism Programme (APRM).