CALL FOR PAPERS

AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS BIENNIAL CONFERENCE
2020
University of Nairobi, School of Law

Theme: The Paradox of Constitutionalism in Africa: Reflecting on 10 years of the Kenyan Constitution

Conference dates: 26, 27 & 28 August 2020

The African Network of Constitutional Lawyers (ANCL) in collaboration with the University of Nairobi, School of Law, the Konrad-Adenauer-Stiftung (Nairobi Office), the Democratic Governance & Rights Unit at the University of Cape Town and the Faculty of Law at Stellenbosch University, will be hosting the ANCL biennial conference in 2020 to mark the 10th year anniversary of the 2010 Kenyan Constitution. This conference follows and builds on the discussions initiated at the 2018 conference in Gaborone, Botswana on the theme “Courts, Power and Constitutional Law in Africa”. The conference will offer a reflection on the status of constitutionalism in Africa through the lens of the aspirations, performance and challenges of the making and implementation of the 2010 Kenyan Constitution.

Background

Upon its adoption in 2010 the Kenyan Constitution was hailed as one of Africa’s most progressive constitutions, alongside that of the Republic of South Africa from which much inspiration was drawn. The adoption of the Kenyan Constitution marked the culmination of a long constitution-making process dating as far back as 1991 when the Constitution of the time was amended to remove the provision declaring Kenya a one-party state.

The 2010 Constitution is an ambitious document. It is the basis for broad reforms (social and other) envisioned in Kenya – a transformative constitution. The transformative nature thereof is for example evidenced in the comprehensive Bill of Rights, specific provisions for the redress of marginalization through various affirmative action programs and the creation of several bodies mandated with the enforcement of these ideals. Also, the attempt to legitimize and restrain the centralised presidency, through the introduction of the runoff system, devolution of power, empowerment of the judiciary and parliament, establishment of a number of independent fourth branch institutions, including those for appointment and removal of high officials, and requirements of ethical values and integrity for aspiring office holders further marks to its transformative objective.
However, several years after the adoption of the Constitution, the extent to which the promises of this aspirational document have been realized is debatable. The Constitution has, on one hand, overseen some high points, notably when Kenya successfully navigated the nullification by the Supreme Court of its 2017 presidential elections, and indeed on many instances when the judiciary has issued landmark determinations to protect individuals’ human rights. Yet, there also seems to be a growing disillusionment with the Constitution as Kenya’s foundational document and its central place as the driver of change within a democratic context. It has been tested on this aspect in several ways, most recently with respect to mounting calls for a referendum to amend amongst others, the executive structure from a presidential to a parliamentary system and the adoption of a deeper and more effective system of devolution to give the people greater power to (re)-organise their lives.

Indeed, the Kenyan constitutional story is a story of constitutions across the African continent. Despite notable but inevitably divergent progress in democratisation and constitutionalism in some countries, the concepts of constitutions and constitutionalism are often conflated. However, these concepts are distinguishable to the extent that the presence of a constitution does not necessarily mean that the spirit of constitutionalism is reflected within said context. At the core of the notion of constitutionalism is the need to check the excesses of power to ensure that a constitution does not become an ornamental document or sham that politicians can ignore or violate with impunity.

**Objectives:**
Considering the above, the overall objective of this conference is to engage in a critical discussion on the concept of constitutionalism in Africa and the extent to which the values and ideals of this concept are truly reflected within constitutional democracies. In furtherance of the above, this conference will also seek to discuss;

1. The extent to which constitutions can be a catalyst for social and political change;
2. The (re)organization of (state) power through constitutions;
3. Exploring the constitutionality of presidential term limits
4. The impact of constitutions in guaranteeing the rights of vulnerable populations.
5. Separation of power(s) and securing judicial independence through the Constitution
The conference will address (but not limit itself to) the following themes:

1. Restructuring the State: Executive power, the Legislature and National Security
2. The constitutionality of constitutional reforms and amendments;
3. Towards a shared understanding of national values and principles
4. Building a culture of human rights through constitutional governance
5. Devolution, reorganizing power and applying principles of equity in resource allocation
6. Access to Justice, Governance and Judicial Reforms
7. Election management and Constitutionalism
8. Land and Environmental Governance through the Constitution
9. Corruption, Public Finance and Management of public resources
10. Securing constitutionalism through Constitutional Commissions

The 10-year anniversary of the Kenyan Constitution provides a critical moment to deliberate and draw on pan-African lessons and experiences in building, maintaining and advancing constitutionalism and inclusive democratic governance in Africa. The organisers are inviting interested scholars, researchers and lawyers to submit abstracts of maximum 500 words on any of the themes indicated above. The organisers are specifically interested in papers that adopt an inter-African, inter-disciplinary, comparative approach.

All submissions including panel proposals should be sent to ancl.radc@gmail.com by July 31, 2019. Successful candidates and panels will be notified by August 30, 2019 and will be required to submit a draft paper March 30, 2020. Based on the feedback received at the conference and the quality of the work, it is envisaged that participants will be given an opportunity to revise their draft papers for publication in an edited collection of chapters on the different themes of the conference.

All participants will be responsible for their own travel and accommodation expenses. However, the organisers are currently sourcing funds to support some participants’ resident within the continent.