2nd ANNUAL HIGH LEVEL DIALOGUE ON GOVERNANCE AND DEMOCRACY IN AFRICA: TRENDS, CHALLENGES AND PROSPECTS

DAKAR, SENEGAL
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SUMMARY OVERVIEW AND CONCLUSIONS OF 2nd ANNUAL HIGH LEVEL DIALOGUE ON GOVERNANCE AND DEMOCRACY IN AFRICA: TRENDS, CHALLENGES AND PROSPECTS
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1. The 2nd Annual High Level Dialogue on Governance and Democracy in Africa: Trends, Challenges and Prospects took place in Dakar, Senegal, from the 25 to 27 November 2013. The Consultation was attended by representatives from African Union Organs, Member States of the African Union, United Nations Agencies, Development Partners, Think Tanks, Civil Society, and Academics.

2. The dialogue sessions provided participants with an opportunity to exchange views on the theme of the 2nd High Level Dialogue: Enhancing Constitutional Order and Rule of Law in Africa. The objectives established for the high level dialogue incorporate assessment of the state of constitutionalism and rule of law in Africa, the sharing of good practices from across AU Member States and the development of strategies that would assist in enhancing constitutionalism and the rule of law for the development of the Continent.

OPENING SESSION

3. The Opening Session served to establish the context and provide guidance on the overall aims of the 2nd High Level Dialogue. The session incorporated a focused input on the 2013 Ibrahim Index of African Governance and an address by His Excellency Macky Sall, President of the Republic of Senegal.

4. H.E. Mr Abdoulaye Janneh, the Chairperson of the African Governance Institute Governing Board and Executive Director at the Mo-Ibrahim Foundation welcomed His Excellency and participants. In locating the dialogue in the context of the 50 years celebration of the OAU/AU and the evolving 2063 Development Agenda, Mr Janneh affirmed the centrality of legality and constitutionalism for the socio-economic development of the Continent.

5. In her address, the Commissioner for Political Affairs, H.E. Dr Aisha Abdullahi, thanked the People and Government of Senegal for hosting the event and the partner organisations for their contributions to the organisation of the event. She further highlighted the importance of the event to the youth of the Continent and emphasised the importance of establishing concrete actions that would ensure that Constitutions serve to emancipate and empower the citizens of the Continent.

Presentation of the 2013 Ibrahim Index of African Governance

6. In presenting the results of the 2013 Ibrahim Index of African Governance Mr Janneh highlighted the extensive data collected and collated across four categories for the production of the index. He further detailed the progress that has been registered and some of the broader trends within the Continent. Although there have been positive strides in development across AU Member States, the data collated indicate that there are still many challenges within the terrain of safety and the rule of law and in the area of participation and human rights.

Presidential Address

7. In his address President Macky Sall outlined the commitment of the Republic of Senegal to the African Union and in particular, to the strengthening of the democracy and governance agenda. He further outlined the challenges embodied in ensuring that constitutionalism and the rule of law prevail within Member States and the significance of
the African Charter on Democracy, Elections and Governance to strengthening governance and consolidating democracy in Africa.

ASSESSING THE STATE OF CONSTITUTIONALISM AND THE RULE OF LAW IN AFRICA

8. This high level panel served to outline some of the challenges and opportunities for change that prevail on the Continent in the terrain of Constitutionalism and the Rule of Law. Discussions from the panel and participants served to demonstrate the complexities embedded in securing peoples commitment to Constitutions and the rule of law. Issues raised include:

a. Whilst all countries in Africa have formally adopted Constitutions, the level of active constitutionalism remains low and hence brings into question the value and relevance of these instruments for the development process.

b. There is a gap between adopted Constitutions and practices as they unfold in the wider society and as is often reflected in the actions or inactions of Governments.

c. The failure to uphold Constitutions and to affirm the exercise of the rule of law is very often the product of weak institutions and poor leadership commitment.

d. In view of the reality that contracts are often not upheld and implementation is weak, it is questionable whether there is value in emphasising the importance of constitutions and legality as central to the development of African society.

e. There is a propensity to focus attention on national elections and a winner takes all approach, at the expense of strategies that enhance political inclusivity.

f. The commitment, aspirations and participation of people in crafting Constitutions is often neglected and results in a widening gap between adoption and enforcement.

g. Where there is a failure to develop and people don’t feel that they are a part of the economy or recipient of distributive strategies, the commitment to uphold the Constitution and the rule of law declines.

h. The role of the military in Africa needs wider consideration so as to militate against their entry into power and hence the subversion of a Constitutional system.

i. The value of independent institutions in the organisation of elections and in the upholding of the rule of law needs to be appreciated at an operational level.

j. The absence of a balance between legality and legitimacy often poses challenges and hence a propensity towards establishing wider acceptability for actions that are deemed illegal.

k. The existence and capacities of political parties and capable legislatures is fundamental to securing a constitutional order and the application of the rule of law.

l. In strengthening the rule of law and constitutionalism, it is imperative that there is due consideration of strategies that enhance inclusivity and decentralised governance structures.

m. Development in Africa needs to be appreciated in a wider context as often there are interests that are served as a result of particular approaches to a Constitution and to the application of the rule of law.

n. There is a proclivity amongst political leaders to focus on re-election and not on the importance of building the society for the long-term, hence creating a momentum for constitutional change and other actions that go against the upholding of the rule of law.
NEW GOVERNANCE ARCHITECTURE, CONSTITUTIONS AND TRANSFORMATION IN AFRICA

9. This session served to explore the gap that exists between articulated formal legal instruments and actual practices within society. The critical issues raised by the presenters, discussant and participants are as follows:

   a. Historic analysis suggests that the gap between articulated formal laws and the reality of peoples’ practices often emerge because of a failure to appreciate historic and continuing ‘culture specific’ practices within communities.
   b. Conflicts that emerge within countries are often reflective of the fact that Constitutions and related laws have not established an adequate basis for the management of competing interests and interpretations
   c. Experiences across the world suggest that stability and buy-in from the wider society are important for securing a culture of constitutionalism and the rule of law.
   d. A balance needs to be established between values and principles that may be considered universal or regional and those that serve to accommodate specificity within each Member States.
   e. There is a need to move away from strategies that seek to limit plurality towards those that accommodate diversity and differential voices within the society, even if these unfold on the basis of ethnic affiliation.
   f. It is imperative to stike a careful balance between expert guidance, inclusive of wider universal values and norms and particularities within each Member State.
   g. It is essential to focus attention on the value of a Constitutional and legality for the improvement of the development conditions of people as this relationship would serve to establish the required societal support for constitutionalism.

EMERGING TRENDS IN CONSTITUTIONAL REFORMS IN AFRICA: EXPERIENCES FROM AFRICAN COUNTRIES

10. This session served to explore, through country case studies, the gap that exists between articulated formal legal instruments and actual practices within society. The presenters focused on Kenya, Senegal, Gabon and South Africa The critical issues raised by the presenters, discussant and participants are as follows:

   a. It is imperative to appreciate the particularities and struggles that contribute towards establishing a particular Constitutional order.
   b. The role of people, especially women and the youth cannot and should not be underestimated as we seek to secure constitutionalism and the rule of law.
   c. Current trends suggest that is increasing appreciation of the importance of securing the participation of minorities and diversity in the governance process.
   d. A review of the first past the post electoral system model should be considered by the AU and Member States in order to ensure the accomodation of minorities and equitable representation of all citizens within polity – especially in light of comparable experiences and lessons drawn from power sharing arrangements in countries emerging from conflict.
   e. A critical understanding of constitutionalism and the rule of law requires an appreciation of the link between socio-economic development and substantive rights and equality within a society.
   f. A study conducted by the African Network of Constitutional Lawyers served to highlight the importance of the independence of the judicial sector, capabilities of civil society and the need to strengthen human rights and socio-economic rights within a constitutional system.
THE IMPERATIVES OF THE RULE OF LAW FOR IMPROVED PUBLIC SERVICE

11. This session paid specific attention to the relationship between the rule of law and effective delivery of public services. In particular, it served to capture the voices of those involved in the delivery of public services within communities. The following issues were highlighted during the session and subsequent discussions:

   a. It is at the local level that people experience the real connection between law and actual service delivery. It is hence imperative that there is an appreciation of the role of local authorities across the Continent as they remain at the forefront of securing constitutionality and the rule of law.
   b. Where there is a failure of service delivery or where actions are contrary to legal provisions, people can seek redress through courts.
   c. People often don’t know their rights and hence are unable to engage with public servants to secure their rights.
   d. Even where rights have been established and there is expectation of administrative justice, the challenges often relate to institutional capacity to deliver and respond appropriately.
   e. In face of the reality that it is necessary to mobilising people to ensure accountable governance, it is important to focus on civil education and establishing an ethics revolution.
   f. We need to build on recent positive efforts directed at ensuring that those who fail to be accountable are prosecuted and stolen assets are returned.

STRENGTHENING CONSTITUTIONAL ORDER AND UPHOLDING THE RULE OF LAW IN AFRICA

12. This session provided an overview of efforts directed at enhancing constitutionalism and the rule of law across all African Union regions. Detailed inputs were provided on developments in each of the five regions and served to highlight the following specific trends:

   a. Stability and the absence of violence are imperative for securing a coherent political order and for ensuring that there is respect of Constitutions and the rule of law.
   b. The gap that exists between defined laws and actual practices suggest that further efforts need to be focused on closing the gap through active civic engagement processes.
   c. We need to appreciate the strong interconnection that exists between political parties and the stability of a Constitutional system.
   d. Experiences suggest that it may be more appropriate to reflect on how constitutionalism can be entrenched through a strategy that facilitates the construction of regional Constitutions within countries.
   e. In continental engagements it is essential that there is an appreciation of the delicate balance that needs to be struck between the rule by law and the rule of law.
   f. It is imperative to appreciate that a Constitution is a political instrument and hence needs to be constructed on the basis of wider social support and activism.
   g. The role and voices of young people must be incorporated into efforts directed at securing democracy and the application of the rule of law.
   h. We need to appreciate that tensions will always exist around a Constitutional order and the rule of law. This tension is what makes constitutionalism and the rule of law relevant.
REPORT BACK FROM THE BREAKOUT SESSION ON THE AFRICAN CHARTER AND THE ACHIEVEMENT OF THE AFRICA 2063 AGENDA

13. Two breakout sessions were held in order to facilitate more detailed engagements on the opportunity afforded by the African Charter on Democracy, Elections and Governance and the unfolding efforts around the Africa 2063 Agenda of the African Union. Report back from the sessions reflect the following importance considerations:

The African Charter and the AU doctrine on Unconstitutional Changes in Government

a. Greater attention needs to be focused on ensuring that the African Charter on Democracy, Elections and Governance and other instruments are ratified and that the Member States of the Union begin to report on the extent to which there is compliance.
b. The African Union Commission and, in particular, the Peace and Security Council and other stakeholders need to use the Charter in the interactions with Member States and hence ensure that there is compliance and sanctions in instances where there is a failure to comply.
c. The African Governance Architecture and Platform is a useful mechanism to facilitate engagement between Member States and AU organs and regional Economic Communities especially in ensuring coherence, synergy and coordination of efforts in addressing unconstitutional changes in Government. The AGA and Platform should work closely with the Peace and Security Architecture in that regard.
d. In addition to serving as a punitive instrument, it is imperative that the Charter be used to support Member States where there are weaknesses and capacity gaps.
e. It is imperative that the African Union works on the modalities of actions that unfold when there are unconstitutional changes of government and when there are challenges in electoral processes.
f. There needs to be further consideration of the existing normative frameworks to ensure that they accommodate the realities that are brought forward because of the popular uprising in North Africa on the AU doctrine on unconstitutional changes in Government.
g. It is necessary to review the approach and rules in the peace and security process, which incorporates preventative diplomacy through the active work of structures, such as the AU Panel of the Wise and Regional Economic Communities structures.

Constitutionalism, the Rule of Law and the achievement of the 2063 Agenda

a. Since the 2063 agenda will define future regional actions, it is imperative that it incorporates consideration of the governance imperatives within the overall agenda and should ideally build on previous plans, such as the Lagos Plans of Action, NEPAD and work that has unfolded on establishing the Union Government with more substantive authority.
b. The Agenda serves as an important opportunity for establishing a new narrative and hence wider ownership for constitutions and the rule of law. This should incorporate careful considerations of fundamental macro-policy issues that are essential for development – such as the structure of the state, level of de-concentration, integration and monetary policy.
c. There needs to be greater clarity on the essence of Agenda 2063 and how it will, in practice, enhance state capacity for development and the management of the Continent’s natural resources.
d. As agenda 2063 seeks to change mind-sets and facilitate inclusions, it needs to incorporate the voices of the people of the Continent and, in particular, should incorporate the role of women and the youth as critical actors in securing the rule of law for the realisation of Agenda 2063.

e. We need to focus greater attention on establishing what shared values are, as this remains ambiguous at the continental and national levels.

f. It is important that there is consideration of culture and traditions as we shape Constitutions – this incorporating the role of traditional leaders.

RECOMMENDATIONS AND CONCLUSION

14. Drawing on the varied inputs, debates and discussions during the dialogue, the following emerge as the central overarching recommendations for future orientated actions on the part of the African Union Commission:

a. It is imperative that the African Union Commission has the required resources to act on its mandate. Such authority and ability to act can be secured through further efforts of civil society and wider public engagement.

b. The AU, Regional Economic Communities, Member States, civil society and partners should support the full operationalisation of the African Governance Architecture, in order to connect, empower and build the capacities of Member States to strengthen governance and consolidate democracy in Africa.

c. The African Union should focus on the elaboration and implementation norms, values and standards on constitutinalism and the rule of law that all Member States have to comply with as part of securing rights and facilitating Constitutional convergence.

d. Civic education and active mobilisation of African peoples is needed in order to secure wider ownership of the values and norms that are enshrined within AU legal instruments, and in particular the African Charter on Democracy, Elections and Governance.

e. The African Union needs to establish a coordinated process that would ensure that the adopted values and norms contained in legal instruments are not contradicted when the AU engages in negotiated arrangements directed at the avoidance of violent conflicts.

f. The AU and Member States should reflect on the issue of enforcing presidential term limits and encourage intergenerational leadership changes amongst Member States.

g. The African Union should explore and promote strategies and standards for the incorporation of the voices of young people within political structures and spaces on the basis of the African Youth Charter.

h. It is imperative that the African Union establishes strategies for securing further ratification of the African Charter on Democracy, Elections and Governance and in ensuring that there is monitoring mechanism of the implementation of AU norms.

i. More systematic studies should be undertaken on the state of Constitutionalism and the Rule of Law in partnership with Academia and others stakeholders.
j. It is imperative that the African Union Commission ensures that standards on governance, democracy, constitutionalism and the rule of law features in the unfolding Agenda 2063 process.

k. The African Union should revisit with experts, the modalities of actions that unfold when there are unconstitutional changes of government and when there are challenges in electoral processes. This should include measures to deal with impunity within and outside of government.

l. The Commission needs to drive forward a process that leads to a more detailed analysis of existing AU instruments to assess their adequacy in light of recent social economic and political developments on the Continent.

15. In conclusion, participants at the high level dialogue called on the Commission to distribute the recommendations widely in order to facilitate future actions and support efforts towards effective implementation. The Commission is also requested to ensure that the conclusions are implemented in partnership with all stakeholders and experts.

16. Participants expressed their immense gratitude to the Government and people of the Republic of Senegal for hosting the meeting and for the warm hospitality accorded during the stay in Dakar. Participants furthermore thanked the AU Commission and its partners UNDP, the African Governance Institute, GIZ and International IDEA for hosting the event.