



Winter School on
**African Constitutionalism : *Confronting the “crisis”
of Undemocratic Constitutionalism in Africa***

29 July - 1 August 2024
Faculty of Law, University of the Free State



AFRICAN NETWORK OF CONSTITUTIONAL LAWYERS
RÉSEAU AFRICAÏN DE DROIT CONSTITUTIONNEL
REDE AFRICANA DE JURISTAS CONSTITUCIONALISTAS

UNIVERSITY OF THE
FREE STATE
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LAW

Aim of the Conference

The growth of constitutional democracy has been a feature of the last 30 years, but during the last decade it has suffered a dramatic decline. That decline is marked less by constitutional democracies being overthrown than by an increase in regimes that retain the formal institutional trappings while flouting the norms and values on which constitutional democracies are based.

Constitutional democracy is a modern regime that expresses a principle of 'self-government'. As Ginsburg and Huq note, this principle of self-government demands not just the formation of governments through electoral contestation, but also the establishment of institutional arrangements that ensure elections will be regular, free and fair, and that basic rights to freedom of speech, expression and association are respected. Such institutional arrangements are invariably bolstered by a documentary constitution that provides checks by way of a separation between law making, governmental and judicial functions.

However necessary the institutional infrastructure that Ginsburg and Huq specify may be, to function well, a constitutional democracy must also be underpinned by certain social conditions. These include active civil society associations that educate and formulate, and strong political parties that convert diverse views into a common will. But above all, it requires a culture that tolerates differences and recognizes the need for restraint in the exercise of power which may be challenging in contexts that are vastly diverse and plural. Yet the contexts in which this term is deployed, contemporary constitutional democracies, are invariably populous, culturally diverse with complicated histories and a variety of governmental and political arrangements.

One reason for the great variation in the character of modern constitutional democracies is the fundamental shift that has taken place in the function of modern constitutions. Invented to ensure the maintenance of limited government, constitutions have recently been transformed into blueprints for the good society. Initially, their task was to impose checks on governing institutions such that there would be no need to enumerate a citizen's basic rights; governments would be obliged to respect individual rights by virtue of constitutional design.

Africa is home to a range of democratic experiences, and the average level of democracy at the continental level remains relatively stable, despite advances and (more often) declines in particular countries. With a few notable exceptions, democratic governance in Africa has experienced a gradual decline in the past decade with adverse impacts on political stability. Growing evidence of a democratic regression includes tenure extensions by some democratically elected leaders through the manipulation of constitutional amendments, intimidation of opposition parties and independent media organizations, and declarations of victory after flawed or controversial elections.

Notably, there has been a relative democratisation of access to power, with a significant number of countries now witnessing alternations of power through credible elections, some repeatedly. Nevertheless, the democratisation of the exercise of power remains a daunting task, with political space narrowing, violation of rights pervasive and unconstitutional change and retention of governmental power common. Even in countries with relatively credible elections, the rewards of prevailing in elections remain too great with winner-takes-all consequences, reducing the possibility of the loser consent that is critical to nourishing, sustaining and strengthening democracy. This undermines good governance and the delivery of basic needs. Moreover, in many African countries, credible elections remain a mirage, with authoritarian incumbents flouting constitutionalism and seeking to establish life presidencies and coups d'état have returned to the continent, with seven countries currently under military regimes. Crucially, the ability of even the 'democratic' countries and those holding regular elections to deliver on fundamental security, governance and development needs has remained limited, with levels of insecurity and poverty reduction either stalling or regressing; and unemployment, especially of the youth, not improving and even worsening. Indeed, far too many people, especially the youth, are often more willing to tolerate and support military regimes or leaders promising 'strong' and personalised leadership, even preferring such regimes to democracy. Despite the existence and promise of a labyrinth of normative frameworks, the African Union and Regional Economic Communities have struggled to deliver on their promises of a stable, democratic, integrated and prosperous continent. These problems, in combination, undermine the legitimacy of the idea of democracy. In this context, it would not be overblown to suggest that democratic constitutionalism, and broadly politics and governance, and in some cases even the state, are in crisis.

The school seeks to gather prominent and emerging African intellectuals and practitioners, judges and policy drivers to take stock of the state of democratic constitutionalism in Africa, explore the progress and failures of the past decades, place the developments in Africa in a global context, identify current problem analysis and propose solutions in building an African version of democratic constitutionalism that draws on its unique circumstances, challenges, experiences and popular preferences.

Thematic areas:

The key thematic areas to be addressed in this school include:

1. Towards a theory of African constitutionalism
2. Confronting the past – constitutionalism and the making of a nation state
3. Locating decolonisation within constitutional theory
4. Human rights and constitutionalism
5. Institutions for securing democracy
6. Constitutional petitions as a tool for entrenching constitutionalism
7. The role of elections and electoral processes in a constitutional democracy
8. Effect of undemocratic changes of government on principles of constitutionalism

Approach

Participants from all over the world are invited to apply. Doctoral researchers, field researchers, policy makers, government officials and scholars wishing to deepen their knowledge or expertise in a particular area of relevance to their study or research may also apply. This one-week course attempts to fill this gap by offering participants a chance to acquire the latest knowledge and information in African constitutionalism, an analytical and critical appraisal of current issues, and the singular opportunity to conceptualise solutions to these problems while practising the much-talked-about art of networking.

The school shall be physical and hosted at the Faculty of Law, University of the Free State, in Bloemfontein, Mangaung, South Africa. The faculty will include frontline constitutional scholars of African descent and colleagues from others parts of the world with a deep sense and knowledge on African constitutionalism. It shall be preceded by a day long planning meeting geared towards constituting a steering committee for future planning of the school that shall be held annually at the Faculty of Law, University of Free State.

To apply please submit

- A brief CV – maximum 2 pages
- A letter of motivation – maximum 1 page
- A reference letter from your immediate supervisor maximum 1 page

Important dates

- Applications closes - 15 May 2024
- Selection of participants – 30 May 2024

Course Fees

- The cost of the course is R3000 (ZAR).
- Limited scholarships are available for selected participants.

Contact the organisers

For more details, please contact Mr Khanya Motshabi (MotshabiKB@ufs.ac.za) copying the Secretariat of the African Network of Constitutional Lawyers (secretariat@ancl-radc.org.za).