



CONCEPT NOTE

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

THEME:

ENHANCING CONSTITUTIONAL ORDER AND RULE OF LAW IN AFRICA

DAKAR, SENEGAL

DATE:

25 – 27 NOVEMBER 2013



Background

The African Governance Architecture (AGA)¹ is the overall continental framework for promoting, nurturing, strengthening and consolidating democracy and governance in Africa. The AGA seeks to achieve these objectives by among other initiatives facilitating dialogue among Member States, African Union organs, institutions, Regional Economic Communities (RECs), African citizens, civil society and other stakeholders on emerging trends, threats, challenges and opportunities on democratic governance in Africa.

The principle aim of the High Level Dialogues is to provide a conducive avenue for Member States, AGA Platform Members, civil society and other stakeholders including the private sector, philanthropists, and development actors to engage and share comparable experiences and lessons on how to improve governance, consolidate democracy and foster effective realisation of human and peoples' rights on the continent.

The inaugural High Level Dialogue was held in November 2012 in Dakar Senegal and focused generally on the state of governance and democracy in Africa.² At that consultation, delegates reiterated the need to ensure a systematic African Union driven assessment and review of Member States compliance and implementation of continental norms and standards on democracy, governance and human rights. The envisaged review complements other democracy assessment initiatives in Africa such as the African Peer Review Mechanism and fosters constructive dialogue on the state of play in Africa relative to democratic governance, with emphasis on addressing the challenges of compliance and effective implementation.

The 2013 High Level Dialogue: 28-30 November 2013: Dakar Senegal

In line with a key resolution of the inaugural High Level Dialogue to convene the consultation annually, and the offer by the Senegalese Government to co-host the Annual Dialogues, the AGA Platform Secretariat - the Department of Political Affairs, African Union Commission - in consultation with the Platform Members identified the issue of **strengthening constitutional order and the rule of law** as an appropriate and timely theme for the 2013 High Level Trends consultation.

The 2013 Dialogue hosted by the Government of Senegal will be held in **Dakar Senegal on 28-30 November 2013**, and coincides with the year long 50th anniversary celebrations of the Organisation of African Unity. The OAU/AU

¹The mandate to establish the African Governance Architecture (AGA) is highlighted by Decision Assembly/AU/Dec.304 (XV) adopted by the 15th Ordinary AU Summit dedicating the theme of the 16th Ordinary AU Assembly to Shared Values of the African Union, and the putting in place of a Pan-African Architecture on Governance. The decision recalls Decision EX.CL/Dec.525 (XVI) adopted by the Sixteenth Ordinary Session of the Executive Council and endorsed by the Fourteenth Ordinary Session of the Assembly in February 2010.

² See the Key Outcomes of the 2012 High Level Dialogue on Governance Trends at <<http://pa.au.int/en/sites/default/files/Governance%20Trends%20Outcome%20Statement-%20English%20-30%20November%202012.pdf>> accessed 20 July 2013.

Golden Jubilee celebrations whose theme is Pan Africanism and African Renaissance are an opportune moment for Africans on the continent and the diaspora to reflect upon the state of the continent for the past 50 years, take stock of their achievements and progress and forecast a better future. It is therefore appropriate and ideal to examine one of the most fundamental issues facing the continent today – constitutional order and rule of law - by scoping and reviewing the challenges in that regard over the last half century and discussing and proffering innovative solutions on how best to strengthen good governance and democracy in Africa as the AU crafts an Africa 2063 agenda.

Constitutional order and the rule of law in Africa

The Constitutive Act of the African Union clearly states that the promotion of democratic principles and institutions, popular participation and good governance are key objectives of the African Union. While there has been marked progress in Africa towards democratisation and rule of law, there are remnants and emerging pockets of concern, among several Member States. The imperative of upholding constitutional order and rule of law in Africa cannot be overemphasised in terms of ensuring accountable governance to the people, respect and realisation of human and peoples rights and in attracting and ensuring investor confidence and development of the continent.

During the last decade AU Member States under the auspices of the African Union and Regional Economic Communities have taken progressive approaches to addressing various challenges related to good governance and democratisation. Beyond adopting numerous standards and norms, they are increasingly taking commendable initiatives such as providing technical and logistical support to other member states to improve governance on the continent. The African Charter on Democracy, Elections and Governance (ACDEG), is one of the most recent normative frameworks whose objectives among others seek to promote and enhance adherence to the principle of the rule of law premised upon the respect for and the supremacy of the Constitution and constitutional order in the political arrangements of State Parties. Overall, the Charter is expected to improve and promote higher standards of democratic governance across African Member states. The challenge however remains on the extent to which Member States implement the normative frameworks they have committed themselves to.

Constitutionalism, generally understood, refers to the respect for the fundamental law empowering and limiting government. It is premised on well enunciated principles, processes and procedures, such as the separation of powers between the legislature, the executive and the judiciary. It encompasses the independence of the judiciary, due process and respect for human and peoples' rights. The rule of law, on the other hand, embodies key standards that define the characteristic virtues of a legal system to avoid arbitrariness in the legal order ensuring legal certainty in processes and substance and ensuring equality of all persons before the law.³

³A Companion to Contemporary Political Philosophy, Robert E. Goodin, Philip Pettit and Thomas Pogge 2007.

In Africa, the need to assess the state of Constitutionalism and Rule of Law cannot be over-emphasized. Often, disregard for the constitution and non-adherence to the dictates of the law have triggered crisis often leading to breakdown of law of order, disruption of institutions and in extreme situations undermining democratic practices. Having emerged from several years of military dictatorship, most African countries today are beginning to entrench democratic principles and practices rooted in constitutionalism and rule of law. However, these efforts continue to endure significant challenges across the continent.

The strengthening of democratic institutions, encouraging multi party systems and ensuring the independence of judiciary has meant that hitherto powerful individuals and elites have to submit themselves to the dictates of law therefore cushioning institutions from subjectivity. This has sometimes led to efforts by the ruling elite to interfere with constitution making and reforms which impacts adversely on constitutionalism. Challenges of diversity management, popular participation of the people in constitutional making, independence of the judiciary and separation of powers are some of the key issues the proposed dialogue will seek to address.

Specific Objectives of the 2nd High Level Dialogue

The specific objectives of the Consultation include;

1. Assess the state of constitutionalism and rule of law in Africa
2. Examine the socio-political dynamics of constitution making and reforms processes in Africa.
3. Assess the emerging trends, challenges and opportunities to strengthen constitutional order and rule of law in Africa.
4. Address the emerging phenomenon of popular uprisings and protests and their political and legal ramifications on the principles of constitutionalism and rule of law in Africa.
5. Share comparable lessons and practices on strengthening constitutional order and upholding the rule of law among African Member States and relevant stakeholders.
6. Develop an agenda for promoting constitutionalism and the rule of law in Africa.

Expected Outcomes of the Dialogue

1. Publication of the Annual State of Governance and Democracy Report-whose theme will also focus on constitutionalism and the rule of law.
2. Substantive contribution to the crafting of the African 2063 agenda in the area of strengthening constitutional order and rule of law as a key ingredient of continental integration and development.
3. Share best practices and lessons with Member States and stakeholders on how to strengthen good governance and democracy in Africa.
4. A policy brief on the current state of constitutionalism and rule of law in Africa by highlighting emerging trends, challenges and opportunities.

5. A viable strategy and action plan by the AGA Platform on promoting constitutionalism and rule of law in Africa.
6. The dialogue hopes to renew, enthuse and reignite the call to action and of the African Union doctrine on unconstitutional changes in Government.

Consultation Methodology

The consultation will be held in plenary sessions and will be moderated by leading African journalists and/or media personalities and will include past and sitting heads of governments and continental institutions to share their experiences and ideas with ample time allocated for feedback and discussions.

There will be parallel breakaway working groups after the plenary sessions to address specific issues and topics as highlighted above. Each will be facilitated and introduced by leading experts some of whom have already been commissioned to prepare regional trends reports of the state of constitutionalism and rule of law in the five geographical regions of the continent. Sufficient time will be allocated for analytical dialogue and identification of specific recommendations on how to address the challenges presented.

The Meeting will be conducted in English and French.

Consultation Sub Themes

Possible sub themes of the consultation will include;

1. Constitution making and reforms in Africa: Trends, challenges and prospects
2. Preventing unconstitutional changes in Government and preventive diplomacy; Coup d'état, illegitimate changes in government and failure to hand over power and transitions
3. The role of the AU organs, institutions and RECs in restoration of constitutional order and the rule of law; transitional government and power sharing arrangements
4. Effects of the North African uprising on the AU doctrine of unconstitutional changes in Government
5. Role of judiciary and constitutional courts in Africa in upholding constitutionalism and rule of law

Participation

Delegates will be drawn from present and former Heads of Governments from AU Member States; senior leadership of the AU organs, and RECs, CEOs from the private sector and development partners, philanthropists, civil society actors, members of academia, think tanks, CSOs and development partners.

Conveners and Partners

The 2nd Annual High Level Dialogue on Governance and Democracy in Africa: Trends, Challenges and Prospects is jointly convened by the Department of Political Affairs of the Africa Union Commission and the Government of Senegal.

The Dialogue is also supported by the United Nations Development Programme, Mo Ibrahim Foundation, International IDEA, GIZ and host of other partners.

Date and Venue

The Dialogue will be held at the King Fahd Hotel, Dakar on the 25 – 27 November 2013.