



CONCEPT NOTE

2022 Joint Annual Conference of the African Network of Constitutional Lawyers

24 – 26 August 2022 | Hybrid

Constitutionalism and Sustainable Economic Development in Africa

Background

Following Africa's independence from the 1960s onwards, there has been a consciousness for a united Africa earmarked by sustained economic development. That this has been a sustained ambition for the continent is understandable. Patent by years of colonial rule most of Africa remained poor factored mainly by uneven economic leverage and fiscal and structural adjustment programmes suited and reflective of the developmental agenda of the global North. Although many African States gradually began to experienced investment booms, particularly from the 1990s onwards, these gains were not guaranteed. New policy approaches became imminent, drawing on the experience of both post-colonial and adjustment periods. To this end, and as a means to leverage economic competitiveness aimed at ensuring sustained development and safeguarding their economic interests while at the same time encouraging foreign investments, African constitutions in one form or the other incorporated State policy directives, including foreign policies, aimed at economic development. Moreover, the inclusion of socio-economic rights in some African Constitutions also raised state obligations for the realisation of these rights. This renewed culture and consciousness of sustained economic development has been transplanted and reflected in bilateral and multilateral engagements by African States, both locally and beyond.

The need to rethink development, socio-economic conditions and liberalisation of markets in Africa comes at a time when the rules and institutions that have governed international markets and economies since the end of World War II are increasingly questioned at the national, regional and global level. The future, or even survival, of core global economic institutions is seriously questioned and multiple proposals for reform of international trade, investment and financial law and governance have been tabled at various fora the world over.

One of the initiatives on the African continent that has pursued this aspiration for a united Africa oriented towards sustained economic development is the AU Agenda 2063. As an affirmation of their commitment to support Africa's new path for attaining inclusive and sustainable economic growth and development African heads of state and government signed the 50th Anniversary Solemn Declaration during the Golden Jubilee celebrations of the formation of the OAU /AU in May 2013. The Declaration marked the re-dedication of Africa towards the attainment of the Pan African Vision of an integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena. More recently the African continental body passed the African Continental Free Trade Agreement (AfCFTA), as one of its **Flagship projects of the First Ten-Year Implementation Plan (2014-2023) under Agenda**



2063. This Agreement, which has taken root in 2020 after receiving the required ratifications from member States, has the potential to create a continental free-trade zone with a combined Gross Domestic Product (GDP) of USD\$3.4 trillion. In a true spirit tailored on sustained economic development, the AfCFTA emphasises the reduction of tariffs and non-tariff barriers, and the facilitation of free movement of people and labour, right of residence, right of establishment, and investment. Despite its economic and developmental potential for the continent, the AfCFTA's agenda could experience a rebound effect if negotiations on some protocols and annexes become protracted. Primarily, there is a need to develop national strategies to guide the implementation of the AfCFTA, primarily premised in constitutional principles.

In understanding the undercurrents of African constitutionalism in harnessing the continent's economic and development potential, the 2022 ANCL Conference calls on, and invites participants to reflect on the central question, to what extent African Constitutions and the basic principles of constitutional law are capable of meeting the challenges of a liberalised and united economic system suited for sustainable economic development in Africa? This broad based question requires reflection on the actual or potential role of African Constitutions, more specially the principle of constitutionalism, in harnessing and shaping the full trade and investment potential of African States and generally beyond the continent. Intricate in the rule of law and the basic tenets of constitutionalism is an economic regime designed to ensure security from discrimination for all stakeholders, including the State and conferring standing on such stakeholders to sue in the event that their interests are impaired. It is therefore crucial to examine the agency of the stakeholders of economies, especially the State, in promoting rules and standards that conform to the rule of law and constitutionalism, including the actual or potential impact of these rules and standards in domestic constitutional regimes. An examination of this nature requires of us to deliberate about and assess whether African constitutionalism adequately address economic issues and the challenges brought about by competing economic interests and policy positions

on the continent? How best can African Constitutions and other enforcement mechanisms such as courts, aid in enhancing Africa's economic potential using constitutionalism, African ideologies, constitutional mechanisms, procedures and processes. What role if any does African NGO's and private multilateral entities have in shaping a sustained economic regime for Africa that is both conducive to local citizens and foreign investors? Can constitutionalism and the rule of law as paradigms of African Constitutionalism orient a conducive environment for foreign direct investment? What actual or potential role can African Constitutions play in cementing and sustaining the promises of the AfCFTA?

These question remains important for Africa given the ambition and growing political will on the African continent to allow free movement between borders, the ideals of a single currency, greater paradigm shift, the focus towards socio-economic rights and development, liberalised trade and investment among African States. Moreover, sustained economic development on the continent and the protection of socio-economic rights on the continent amongst others requires an integrated economic system informed first and foremost by African values premised in constitutionalism. The recently promulgated AfCFTA amongst others further requires of African governments to rethink their economic strategies by using constitutional means and principles in safeguarding and sustaining these renewed economic ambitions.

Given the above contextual background, the Conference is open to academics, researchers, legal practitioners, civil society organisations, trade experts, and government officials to present their views on these challenges and the ways to address them. The Conference Organizing Committee encourages the submission of proposals for papers and panels on topics of interest in all fields relating to Constitutionalism and sustainable development in Africa. Papers with international and comparative aspects relating to the theme are also welcome. Without excluding proposals on other topics, the Committee would welcome in particular proposals for papers and panels on one or more of the following themes:



Conference Themes

- Constitutionalism and the sustainable economic development in Africa
- Africa and International financial institutions
- African Constitutions, State policy directives and foreign direct investment
- Courts and sustainable economic development in Africa
- Socio-economic rights advancement through sustainable economic means
- The role, effect and impact of the AfCFTA
- Dispute settlement of conflicts between investment law and African constitutions
- The digitalisation of trade and finance, and the need for innovative international regulation regarding inter alia digital currencies and payments
- The impact of foreign aid in Africa
- Human rights and sustainable economic development
- Leveraging of international private and public financial systems for Africa's development
- Climate change, the environment and sustainable economic development in Africa
- African Constitutions and trade and investment in Africa
- Regional integration and sustainable economic development in Africa
- Gender equality, constitutionalism and sustainable economic development
- Constitutionalism, poverty and inequality in Africa
- The use of Constitutions in protecting socio-economic rights for sustained development
- Africa and Illicit financial flows

Objectives of the Conference:

The Conference aims to explore the theoretical and practical underpinnings of constitutionalism within Africa's aspiration for sustainable economic development. To this end, the Conference will seek in particular to engage with the following:

- Conceptualise constitutionalism within the realm of sustainable economic development in Africa;
- Interrogate and orient the place of law, particularly constitutionalism as a paradigm and praxis, within the sustainable economic development regime in Africa; and to
- Explore the actual and potential impact of economic initiatives, such as Namibia's Greenhydrogen production initiative and the African Continental Free Trade Agreement, from a constitutional perspective.
- Explore the role of African constitutionalism in the attainable of sustainable economic development in Africa;
- Reflect on the actual and potential impact of the African Continental Free Trade Agreement from a constitutional perspective; and
- Locating the place and scope of constitutionalism and practices in line with the rule of law within the African Continental Free Trade Agreement.

Methodology

The 2022 Conference is envisaged to be hosted under the theme "Constitutionalism and Sustained Economic Development in Africa" and intends to adopt a multidisciplinary approach. Its geographical focus is on Africa, although country specific reflections and comparative case studies are welcomed. As a result, papers and panel proposals need not be limited to legal issues although ideal, and may incorporate comparative, empirical jurisprudential, philosophical, practical, policy oriented perspectives, albeit from a constitutional paradigm. The Conference will be for a duration of two days from the **24-26 August 2021**, will be trilingual to cater for and be representative of all the linguistic realities on the continent.

In terms of set-up the Conference will be an interactive engagement, based on panel presentations. The



Conference organisers envisage a special plenary and session by the AfCFTA Secretariat, with the aim of direct engagement with those at the epicentre of this continental Agreement.

Following the deliberations of the Conference, the annual general meeting of the ANCL will be held in a closed session on 26 August 2021 where the 2021/2022 annual report of the ANCL will be tabled, followed by the election of office-bearers. In line with the standing practice of the ANCL, the Conference will be preceded with a publication, either in a refereed periodical or edited volume, comprising of selected papers. Participants wishing their papers to be considered for the subsequent publication should inform the organisers accordingly.

Deliverables

To foster its objective, more so in line with this year's theme, the Conference seeks to achieve one or more of the following outcomes:

- **Indicator 1 Social Media**

The ANCL and the UNAM School of Law have very active social media platforms. These platforms will be used to populate the conference and the activities of the conference before and during the conference.

- **Indicator 2 Publication**

Selected Papers presented during the Conference will be reviewed and published in open access accredited academic journal or in an edited volume to be published by a reputable publishing house.

- **Indicator 3 The Annual General Meeting of the ANCL**

African Network of Constitutional Lawyers will elect its next executive committee and the network will continue to grow its membership and importantly, to recruit upcoming constitutionalist in Africa.

- **Indicator 4 Commemoration of the Africa Continental Free Trade Agreement**

The Conference will contribute to the domestication and legal education of the AfCFTA in African law Schools. AS part of the conference, several presentations will be made about the AfCFTA directly by the Secretariat of the AfCFTA and modalities sought

on how best the Agreement can be popularised and domesticated by AU member States. The Conference will also seek to foster networking between the AfCFTA Secretariat with participants and their affiliated institutions.

Organisers:

The Conference will be hosted by the School of Law of the Faculty of Commerce, Management and Law of the University of Namibia, in collaboration with the Secretariat of the ANCL. It is envisaged to be held at Windhoek, Namibia.

Costs

The Conference organisers are in the process of raising funds to host the Conference in-person conference. However, airfares, accommodation and other minor conference costs are more volatile than in the past. This may require that participants (or their affiliated institutions) bear those costs. The Conference organisers will however make arrangements to negotiate for discounted rates at accommodation facilities. Should participants need clarity and assistance concerning flights and accommodation, kindly please contact Mrs Althea Husselmann as soon as possible at ahusselman@unam.na.

Contact persons

Dr. Elvis Fokala

President: African Network of Constitutional Lawyers

Department of Public Law

Faculty of Law

University of Cape Town

Cell: +27 63 818 8148

Email: ancl.radc@gmail.com / efokala@gmail.com

Dr. Kennedy Kariseb

Chair: Local Organising Committee

School of Law

University of Namibia

Tell: +264 61 206 3667

Cell: +264 81 3894508

Email: kkariseb@unam.na

karisebkennedy@gmail.com