

**NIMD-ARP Conference on Constitutional Reforms, Constitutionalism and Democratic
Consolidation in Africa**

Sharing Experiences and Lessons from the Praxis

**18-21 September 2011,
Hotel Cardoso, Maputo, Mozambique**

Background and Context

The Africa Regional Programme (ARP) of the Netherlands Institute for Multiparty Democracy (NIMD) in cooperation with Mozambican political parties that are represented in Parliament hosted an Africa Regional Conference on Constitutional Reforms and Constitutionalism in Africa at Hotel Cardoso in Maputo-Mozambique. His Excellency Joaquim Alberto Chissano, Former President of the Republic of Mozambique and Chair Person of the Africa Forum of Former Heads of State and Government officially opened the conference on Monday, 19th September 2011.

The conference brought together the senior leadership of governing and opposition political parties from all the nine countries in Africa that are participating in the NIMD programmes: Burundi, Ghana, Kenya, Malawi, Mali, Tanzania, Uganda, Zimbabwe and the host Mozambique.

This conference was quite relevant as it was organized at a time when quite a number of countries in Africa have in the recent past embarked on constitutional reforms or constitutional reviews of one form or the other with the hope of coming up with a constitutional order that is not only democratic and legitimate, but also inclusive and popularly accepted. The conference therefore offered participants an opportunity to share their own experiences from the praxis and jointly identify best practices that will go a long way in ensuring that constitutional reform processes contribute to the further deepening of democracy in Africa.

At the end of the conference, participants issued the following communiqué that outline key outcomes and conclusions of the deliberations.

The Communiqué

1. Some 50 delegates from 30 parties representing 9 African countries plus the Netherlands Institute for Multiparty Democracy (NIMD) met under the auspices of the NIMD's Africa Regional Programme from 18th - 21st September in Maputo-Mozambique, to share their experiences and challenges on constitutional reforms, constitutionalism and democratic consolidation in Africa.
2. The delegates hailed from Burundi, Ghana, Kenya, Malawi, Mali, Mozambique, Tanzania, Uganda, Zimbabwe and the Netherlands.
3. The keynote address was delivered by the former president of the Republic of Mozambique and current chairperson of the Africa Forum of Former Heads of State and Government, the Honourable Joaquim Chissano. He commended the ARP programme for bringing African politicians together to afford them the unique opportunity to exchange their experiences and find common solutions to the challenges the African continent face. He also noted that a signal moment for democracy in many countries was the move away from the single party system in order to allow for minorities to express themselves through their own political parties; thus opening the way for multipartyism.
4. It was noted that the conference was being held at a historically opportune moment when a number of countries in Africa had already embarked on constitutional reforms or reviews in one form or the other, with the aim of designing constitutional dispensations that were democratic, legitimate, inclusive and popularly accepted.
5. It urged those states where constitutions have been completed, to follow the process to its logical conclusion by operationalising and implementing them.
6. The conference observed that the first wave of post-independence constitutions were largely aimed at ensuring development and therefore provided for strong executives, while the current wave was more focussed on entrenching a culture of human rights, limiting the power of the executive, and providing strong oversight institutions.
7. The conference declared that while constitutions are supreme legal documents, constitutional reform processes are highly political. Political parties are key stakeholders in the process of constitutional reform and renewal and as such, should be at the forefront of guiding and informing such process.
8. The conference, however, also emphasised that constitutional reform processes need to be inclusive and therefore allow for all groups in society (including minorities and traditionally marginalized groups) to participate as equals.
9. Furthermore, mechanisms and procedures are needed to provide for ordinary citizens to be well informed, educated and to be consulted in the process.

- Ownership of the revised or new constitution by a vast majority of citizens is considered essential. In this regard, the conference agreed that civic education and awareness on the constitutional issues was important. It further recognised the innovative ways in which social media, the press and the internet were used in some countries to facilitate this.
10. The conference further noted the usefulness of agreeing beforehand on a set of fundamental guiding principles that would direct the crafting of the constitution or amendments.
 11. Therefore, while acknowledging that each country's process has to take account of its unique circumstance, the conference suggested that the following important matters should ideally be agreed to in advance of the designing and writing of the constitution or amendments:
 - a. The mechanism through which this reform process will be carried out
 - b. The method of decision-making, and
 - c. The mode by which the new constitution or amended text will be legitimised and made law (these were often contained in the constitution under review)
 12. The conference also emphasised the importance of 'ring-fencing', by legal means or otherwise, the drafters of the constitution from 'capture' by discreet groups.
 13. The conference recommended that the draft texts resulting from these processes should be in line with international and regional protocols acceded to by the state concerned.
 14. The conference also emphasised the importance of constitutions accommodating and reflecting important values in society. This was considered essential for the legitimacy of the constitution.
 15. Constitutional writing processes on the continent should endeavour to reflect the wishes and aspirations of the African people.
 16. After receiving and discussing the experiences of the processes and challenges of constitutional reforms in Burundi, Ghana, Malawi, Kenya, Uganda and Zimbabwe, the conference discerned similarities in the processes adopted by these countries. Four main phases of constitutional reform were identified, each with its own guiding principles. It cautioned that the principles were generic and would have to be subject to further consultation and adaptation to suit country specific contexts, including translation into the local languages. Each phase and its guiding principles are outlined below.

Preparatory Phase

- An agreement that explicitly states **why** a country wants to embark upon constitutional reform, **the main objectives** and **actors in the process**.
- A preliminary agreement between the main political and civic actors on the **guiding democratic principles** as benchmarks for the constitutional reform process; and on the **institutional mechanisms** and their mandate.
- An informal or legally binding political agreement whereby all major political parties commit themselves to **adopt the outcome** of the upcoming constitutional deliberations without fundamental changes.
- A widely accepted preliminary agreement, by both political and civil society, on the **decision making process**.
- A widely accepted preliminary agreement, by both political and civil society, on the **roadmap, timeframe** and **budget** of the process.
- An **enabling environment**, notably press freedom and freedom of expression as well as a vibrant independent civil society, to inspire and facilitate participation of an informed public in the process.
- Identification and agreement on **the main constitutional issues** to be presented to the general public for awareness raising and consultation.
- Agreement on a system to analyze the various contributions (quantitative and/or qualitative) and identify issues of common interest and major contention.

Awareness Raising & Consultative Phase

- Mechanisms and processes to provide **information**, in a balanced and accessible way, to citizens about the main **issues** at stake
- Enabling an environment in which citizens **feel free and secure** to express their views.
- **Civic education** on the main constitutional issues in order to enable wide popular participation in an informed manner.
- Avenues and processes for any citizen to **participate in**, follow up, and observe the process.

Deliberative Phase

- Agreement on a **deadlock breaking mechanism where** ordinary decision-making processes fail.

- Deliberations should be conducted in a way that enhances the **legitimacy** of the process.
- A high level of **inclusivity that will** allow for all groups (including minorities and traditionally marginalized groups) to participate as equals.
- The recognition that constitutional reform must **serve the public good before** partisan specific interests.
- A well functioning **decision making/consensus building mechanism for bridging** divergent views.
- **A transparent feedback loop** between participants in the deliberations, their interest groups and the general population.
- Institutional guarantees providing a high level of **autonomy and integrity** to the deliberations and limiting direct external interference in the process.
- Input from legal experts to ensure that there is **coherence** between the various constitutional articles agreed upon.

Adoption and Implementation Phase

- A political agreement that the agreements reached during the deliberative phase are presented to parliament (or a referendum) by the Executive and adopted by parliament **without fundamental changes**.
 - Transparency of the process in order to enable **monitoring** of the process and implementation of the agreements reached.
 - A political agreement that the adopted articles will be translated into **subsidiary law**.
 - Ensuring **mechanisms** for citizens to hold their representatives accountable over the agreements reached.
 - Strategies to **educate and inform the general citizenry** in an accessible manner about the final results of the deliberative stage (for instance, in preparation for a referendum).
 - A mechanism which ensures that the results of the deliberative stage obtain **wide popular legitimacy** (e.g. referendum, final consultation).
17. Finally, the conference cautioned that a new constitution by itself does not guarantee a new democratic dispensation. Political will and committed leadership were needed to ensure that the ideals enshrined in the text were implemented at various levels of the state.