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**REGIONAL CONSULTATION WITH PARLIAMENTS AND JUDICIARY TO
PROMOTE CONSTITUTIONALISM AND RULE OF LAW IN CENTRAL
AFRICA REGION**

21-23 February 2017

Malabo, Equatorial Guinea

DEPARTMENT OF POLITICAL AFFAIRS



I. Context

There has been a growing interest on issues of democracy and good governance in Africa that reinforces the idea according to which democracy and good governance are a prerequisite for sustainable socio-economic development on the continent. Democracy and good governance is both a matter of duty and rights for any citizen. These civic rights and responsibilities are also based on the assumption that people participate effectively and that their voices are taken into account on issues that have a direct bearing on their lives; that public actions or decisions taken by government are managed in a transparent, efficient, responsible and fair manner while abiding by the rules.

The Democratic triptych that establishes the essence of participatory democracy today is based on the idea that people should have the opportunity to choose their leaders and to be able to hold them accountable for their governance and decision by lot of means including judicial ones. Choosing their leaders is directed at the polls, while holding accountable is fulfilled by the establishment of restrictions and safeguards for the exercise of power. These found the basic principles of separation of power between the Executive, the Legislature and the Judiciary that is governed and guided by the Rule of Law. It fosters ownership of the system by the population, helping them to ensure the smooth functioning and stability of the State.

The continent's democratization wave in the early 90s has helped in entrenching and highlighting the role of parliaments as being crucial to ensure the rule of law and promote constitutionalism and, because of its place in the separation of powers. The idea of parliamentary supremacy is directly related to the idea of Constitutionalism in which the executive is subject to rules and exercises state power in accordance with laws and regulations as enshrined in the Constitution and other rules imposed by the Legislature. Beyond the legislative, parliaments have a power bestowed upon it by the Public or acts as a control mechanism to make the executive's actions accountable. These features make the Parliament a valuable instrument for promoting Constitutionalism and the rule of law.

On the other hand, the judiciary is tasked with the role of promoting adherence to such rule of law and constitutional order. It ensures compliance with the limitations of power

placed on state organs by the constitution, fair and equitable adjudication of disputes and protection of human rights¹. Because of the judiciary's role in promoting adherence to the rule of law, the African Charter on Democracy, Elections and Governance recognizes the judiciary as a guarantor of constitutionalism and the rule of law and encourages Member States to protect the independence of the judiciary.

Despite these respective crucial roles played by Parliaments and Judiciary, they still face many challenges to fulfil their various mandates at national level, regional and continental levels.

II. Background

On 15 February 2012, the African Charter on Democracy, Elections and Governance (ACDEG) entered into force. In distinction to the Constitutive Act of the African Union and the other legal instruments of the AU that together constitute the AU normative framework on constitutionalism and the rule of law, the ACDEG provides overarching guidance on Member States' obligations under the AU system. These obligations include but not limited to the respect of constitutional supremacy (Art 2), the promotion of democracy (Art 4), the constitutional rule and constitutional transfer of power (Art 5), the constitutional independence of democratic institutions (Art 15), the holding of free and fair elections (Art 17), and the decentralization of power (Art 34). Member states are obligated to implement the ACDEG in good faith by bringing national laws into conformity and by becoming engaged in cooperation to provide remedies for violations of the ACDEG. To date, 25 Member States of the African Union have signed and ratified the ACDEG, and 22 Member States have signed but have not ratified the ACDEG. Still, parliaments have prominent role to play in ensuring signature, ratification of the ACDEG and the alignment of national laws to its values and principles.

Furthermore, the African development agenda (Agenda 2063) in its aspiration 3, dreams of an "Africa that has implemented good governance, democracy, respect for human rights, justice and the rule of law" through the consolidation of democratic gains of the

¹Thoko K. 2004. "ADC and Human Rights: Fighting Human Rights into the Trade Matrix". *African Security Review*, V.13 No. 1 109-117.

continent and improving the quality of governance, the establishment of strong institutions, development oriented and the emergence of visionary leadership.

The Economic Community of Central African States (ECCAS) made up of 11 countries², aims to further regional economic cooperation and integration as well as political and security cooperation among the 11 Central African states. It aims to do this through building institutions to promote economic development where human rights, democracy, constitutional culture and the rule of law are observed. To achieve this, it has established regional Organs including regional parliament (CEMAC Parliament) and regional Court of Justice which respectively aim at ensuring (1) democratic control of institutions and organs involved in the decision making process of the Community and (2) respect and adherence to rule of law in the Community. These respective mandates are in line with Article 2 of the African Charter on Democracy, Elections and Governance (ACDEG).

Some countries in the Region are in the process of constitutional review. In the light of the number of countries undergoing this review in the region, and their respective roles as lawmakers and as interpreter and guarantors of the constitution, it is imperative to engage these two bodies, build their capacity and strengthen the Rule of Law in the Region.

III. Justification

The ACDEG encourages parliaments and Judiciary as the guarantor of the constitutional order, to work with more collaboration, cooperation, interaction to facilitate the experience sharing and good practices on democratic principles and good governance.

A consultative meeting held in July 2015 in Abidjan, Côte d'Ivoire to promote the ratification and implementation of ACDEG highlighted the important role played by parliaments and judiciary in strengthening broadly democracy and governance. Recommendations were also made for more consultations with parliaments and judiciary at regional levels to better understand their respective realities in promoting rule of law and constitutionalism.

² Angola, Burundi, Central Africa Republic, Cameroon, Chad, Congo, Democratic Republic of Congo, Gabon, Equatorial Guinea, Sao Tome & Principe, Rwanda

Additionally, a consultation with PAP and Regional Parliaments held in November 2015, while discussing ways to address the fundamental challenges faced in fulfilling the three traditional functions of parliaments in advancing constitutionalism (law making, representation and ensuring accountability through oversight) called for such dialogue with national parliamentary and Judiciary. The current consultation is partly a response to these calls and is part of a series of regional consultations that will be held throughout 2016-2017.

IV. Objectives

The meeting is being organized with the representatives of the Parliaments, Judiciary and traditional justice systems in Central Africa as a key stakeholder in the promotion of constitutionalism and rule of law in the Region. It is within the framework of the implementation of the work plan of African Governance Platform (AGP) Cluster of Constitutionalism and Rule of Law, which seeks to promote and enhance adherence to constitutional order and the principles of the rule of law in Africa.

The overall objective of the Meeting is to engage national parliaments and Judiciary of Central Africa Region to promote Constitutionalism and Rule of Law in the region.

More specifically, the meeting aims to:

- Provide a space for introspection by the members of the Judiciary and Parliaments on some of the challenges they face and engage them in promoting the Rule of Law and Constitutionalism in the Region;
- Provide opportunity for further familiarization of Central Africa Parliaments and Judiciary with AU Legal instruments, norms, pronouncements and decisions related to Democracy and Governance, namely the ACDEG;
- Provide opportunity for experience, best practices and ideas sharing amongst practitioners to on handling potential risks of relying on it as a judicial and legislative decision-making support mechanisms;

- Reflect and brainstorm on the role of traditional justice system in the context of promotion of constitutionalism and rule of law;
- Seize opportunity to advocate for signature, ratification and implementation of the ACDEG.

V. Expected Results/Outcomes

The main expected outcomes of the meeting include:

- Identification of strategies and best practices for a strong, effective, impartial and independent legislature and judiciary in the Central Africa Region;
- Coordination and collaboration between the parliaments and Judiciary themselves and between Parliaments and Judiciary in the Region are strengthened;
- Increased awareness by Central African Countries on the norms, pronouncements, decisions and instruments adopted by the AU in order to promote good governance and democracy through adherence to the Rule of Law and Constitutionalism;

VI. Methodology

The meeting will be held from 21 to 23 February in Malabo, Guinea Equatorial. It is organized by the Department of Political Affairs of the African Union Commission in collaboration with the Government of the Republic of Equatorial Guinea, the Pan-African Parliament as Chair of the AGA Cluster on Constitutionalism and Rule of Law, the Parliament of CEMAC, the Economic Community of Central African State, with the support of the International Alert.

It will be held in plenary sessions and working groups in three languages: French, English and Spanish.

VII. Participants

This meeting will be attended by thirty (30) Members of the CEMAC Parliament, Representatives of national parliaments from ECCAS Region, Judiciary and traditional justice system of Central Africa Region, the Pan-African Parliament, the African Union Commission, Experts in Constitutionalism and Rule of Law, representatives of civil society, think tanks and other organizations.

VIII. Coordination

The meeting will be coordinated by: Mr. **Calixte Aristide Mbari**, Ag. Head of Democracy, Governance, Human Rights, and Election Division at the Department of Political Affairs: Tel. 00 251 115182611 / Mob. 00 251 913361605; mbaricalixte@hotmail.com , Mrs **Kebebouch Tessema**, Political Affairs Department: KebebouchT@africa-union.org

IX. Working Documents

To facilitate and guide interventions during the meeting, the following working documents will be sent electronically to participants before the meeting and available in print during the meeting:

- Outcome document of the Consultation with PAP and Regional Parliament referred in the concept note
- AU Constitutive Act
- African Charter on Democracy, Elections and Governance
- African Charter on the Values and Principles of Public Service and Administration
- African Charter on Human and Peoples' Rights
- AU Convention on Combatting Corruption
- AU Convention on Internally Displaced Persons
- Durban Declaration
- Lomé Declaration on Unconstitutional Changes of government
- Concept Note
- Any other relevant document

Draft Agenda

Day 0 : 20 February 2017	
ARRIVAL OF PARTICIPANTS AND CHECK-IN AT THE HOTEL	
DAY 1: 21 February 2017	
09.00 – 09.30	Registration of Participants
09h30 – 10h15	<p>OPENING CEREMONY President: Representative of the Government of Equatorial Guinea</p> <p>Welcome and Opening Remarks:</p> <ul style="list-style-type: none"> • Allocution of Representative of the Pan-African Parliament, Chair of the Cluster • Allocution of Representative of CEMAC Parliament • Allocution of Representative of ECCAS • Allocution of Representative of Conference of Constitutional Jurisdiction in Africa • Representative of International Alert • Allocution of Dr. Aisha L. Abdullahi, Commissioner for Political Affairs, AUC <p>Opening speech Representative of the Government of Equatorial Guinea</p>
10h15 – 10h30	Photo Session / Coffee-Tea Break
10h30-11h30: Session 1	<p>Chair: H.E Dr. Aisha L. Abdullahi, Commissioner for Political Affairs, AUC</p> <p>Topic 1: African Union Normative Framework aiming at promoting Constitutionalism and the Rule of Law and States' compliance</p> <p>Presenter: Prof. Mbata Mangu André, Research Professor, College of Law, University of South Africa / Ordinary Professor, Faculty of Law, University of Kinshasa / Board Member: APN/SSRC and Council for the Development of Social Science Research in Africa (CODESRIA) /Executive Director: IDGPA</p> <p>Topic 2: CEMAC Normative Framework aimed at promoting Constitutionalism and the Rule of Law and States' compliance</p> <p>Presenter: Prof. Ibrahim MOUICHE, Professeur Titulaire de Science Politique Université de Yaoundé II- Institut des Relations internationales du Cameroun</p>
11h30 - 12h30	Plenary Discussion
12h30 – 14h00	LUNCH
14h00 – 15h00 Session 2	<p>Chair: President of the ACHPR</p> <p>Topic 3: Parliaments and Implementation of Rule of Law and Adherence to Constitutionalism in Central Africa</p> <p>Presenter: Mrs Danielle Darlan, Doctorate in Law, Prof of Law at the University of Bangui/ Vice President of the Constitutional Court of Central African Republic</p> <p>Topic 4: The Judiciary and Implementation of Rule of Law and Adherence to Constitutionalism in Central Africa</p> <p>Presenter: Prof Jean-Louis Esambo, Doctorate in Law, Professor at the Faculty of Law of the University of Kinshasa / Judge of the Constitutional Court of DRC</p>
15h00 – 16h00	Plenary discussion

16h00 – 16h15	Coffee break
16h15-16h45 Session 3	<p>Chair: Chairperson of CEMAC Parliament</p> <p>Topic 5: The role of Alternative Dispute Mechanisms and Traditional Justice Systems</p> <p>Presenter: Dr. Karekezi Urusaro Alice, Researcher and Lecturer, Head of Resources Mobilisation, Seminar Convenor. Center for Conflict Management, College of Arts and Social Sciences, University of Rwanda</p>
16h45 – 17h30	Plenary discussion
17h15 -	End of day 1
DAY 2: 22 February 2017	
9h00 – 9h30 Session 4	<p>Topic 5: Presentation of the policy proposals made during the consultation with PAP and Regional Parliaments towards Promoting Constitutionalism and Rule of Law in Africa</p> <p>Presenters: Mr. Calixte Aristide Mbari, Ag. Head, DGHRE Division, Department of Political Affairs, AUC</p>
9h30-10h00 Session 5	<p>Topic 6: Working groups</p> <p>How to Strengthen Rule of Law and Constitutionalism: reflections and policy proposals</p> <p>What role does the Judiciary and Legal Profession and Civil Society play and how can they improve their role</p> <p>Group 1: What role does the Parliament play and how to improve it: Challenges and recommended actions for National bodies, CEMAC Parliament, African Union organs, Civil Society and Other related institutions Facilitator: Executive Secretary of ECCAS</p> <p>Group 2: What role does the Judiciary play and how to improve it: Challenges and recommended actions for National bodies, CEMAC Court of Justice, African Union organs, Civil Society and Other related institutions Facilitator: President of the CEMAC Court of Justice</p> <p>Group 3: How to further promote separation of power between the Legislature, the Judiciary and the Executive: Challenges and recommended actions Facilitator: Representative of Traditional Justice System</p>
10h00 – 10h20	Coffee Break
10h20 – 13h00	Session 5 Continued
13h00 – 14h30	Lunch break
	Topic 7: Report back from the working groups

	Presentations and discussions on the working groups topics
14h30 – 15h30 Session 6	Chair: Hon. Nkodo Dang Roger, President of PAP and President of the CRL Cluster Group 1: Reflections from the working group 1 by the Rapporteur Group 2: Reflections from the working group 2 by the Rapporteur Group 3: Reflections from the working group 3 by the Rapporteur
15h30 –15h45	Coffee Break
15h45 - 17h30 Session 6 continue	Discussions
17h30 -	End of day 2
DAY 3: 23 February 2017	
09h00-11h00	Report drafting
11h00 – 12h30 Session 7	Review and Adoption of the meeting Outcomes Statement President: Director for Political Affairs, AUC (Secretariat of the CRL Cluster)
12h30-13h15	Closing Remarks: President: Representative of the Government of Equatorial Guinea <ul style="list-style-type: none"> • Allocution of the Representative of the President of the Pan-African Parliament, Chair of the Cluster • Allocution of Representative of CEMAC Parliament • Allocution of Representative of ECCAS • Allocution of Representative of Conference of Constitutional Jurisdiction in Africa • Allocution of Representative of International Alert • Allocution of Dr. Aisha L. Abdullahi, Commissioner for Political Affairs, AUC Closing speech Representative of the Government of Equatorial Guinea