CONSTITUTIONAL REFORMS IN AFRICA: IMPLICATIONS FOR CIVIL SOCIETY PARTICIPATION, GOVERNANCE AND DEMOCRACY WORKSHOP.

17 – 18 August 2012 Nairobi, Kenya

Organized by MWENGO and CCP-AU

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September 2012
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Executive Summary

Constitutions, constitution making/reform and constitutionalism contribute to the major discourse about the establishment of democratic system of governance where the rule of law is respected. Since constitutions provide the wider and defining framework and principles of governance, their making and reform needs to be inclusive of all the concerned actors in a society. Moreover, the trend and the culture to be governed by the agreed principles on a constitution i.e. constitutionalism is also a vital trend that need to be institutionalized in the political process of most African countries.

The workshop attempted to scrutinize constitutional reforms in Africa and the role that CSOs have played in the process. The workshop enabled the participants to identify the lessons learned from the experiences of various CSOs in different countries context, their success and challenges and to recognize the points of convergence and divergence of the political systems within the eastern and southern Africa region.

The background paper presented identified two broad trends in constitution making or reform. These are either constitutions made for the purpose of deepening democracy and strengthening democratic institutions or constitutions that are made as part of the peace building process. The workshop entertained presentations from countries that have experienced both scenarios and it helped the participants to squarely emphasize that constitution making/reform is a contextually determined process where the socio-historical, political and cultural context of countries play a significant role.

The workshop has also helped to draw on the trends and immerging issues that were presented along each country cases to deliberate on challenges, lessons learned and the expected intervention points at national, regional and continental level. These deliberations were made on the themes of good governance and human rights, socio-economic and environmental rights and on the gender & youth participation and inclusion.

Objectives of the Workshop

The overarching objective of the two-day workshop is to bring the civil society together for a time to reflect on their role in the Constitutional Reform processes, input/content, and the aftermath thereof. More specifically the workshop served to afford civil society activists an opportunity to stimulate critical discussion and analysis of the democratic implications of civil society’s engagement with the constitution-making process as well as ascertain the appropriateness of civil society actors’ strategies and methods in pushing for people-driven constitutions that deliver to citizens their democratic rights, citizenry rights and good governance. It also enabled civil society to identify and treasure good practices and lessons from the processes which can inform future engagements and also help civil society in the region and elsewhere.
Outputs

- A platform for continuing dialogue and sharing of insights and lessons learned by civil society.
- Drawing lessons and good practices from other countries that have recently underwent a similar process.
- Monitoring and evaluation of the constitution-making process; enhancing standards and quality assurance;
- Contribution to the increased comparative understanding of the nexus between constitutions and civic participation and the way civil society can drive and shape constitution making.

Participants

The participants of the workshop come from various civil society groups in the eastern and southern Africa that are working on issues of constitutional reform, governance and human rights. The workshop (for comparative reasons with West Africa) was also attended by participants from Ghana who contributed immensely to the content of the workshop by presenting the constitutional making process in the West African country.
Session 1 – Welcoming and Opening Remarks

Ms. Janah Ncube, Executive Director, Center for Citizens' Participation on the African Union (CCP-AU) delivered welcoming remarks to the participants. Ms. Janah introduced and briefed the participants about the CCP-AU by stating that it is a network of African civil society organizations mandated with the task of coordinating and facilitating African CSOs engagement with the continental and regional organs and institutions in Africa. She noted the relevance of the workshop particularly to look at and reflect on issues of constitutions, constitutionalism and constitutional making/reforms and relating national level scenarios and experiences with regional and sub-regional perspectives.

In his opening remarks, Mr. Charles Mutasa, Executive Director, MWENGO set the tone of the workshop by emphasizing the need to discuss issues of constitutionalism and constitutional reform/making since it is in constitutions that issues of good governance, democracy and human rights are contextualized. He has also noted the experiences from some African countries where political concessions are made during constitution making which do not empower ordinary citizens of Africa but only politicians. Such scenarios are attributed to the presence of weak institutions and constitutionalism. He pointed out the need to set up checks and balances for the sake of accountability and transparency on those who are in power or on the corridors of power. In doing so, it is also equally important to identify what are the right paths of citizen participation in constitutional making or reform process and also to ensure the suitability of the new constitutions to the norms and values of the society for which they are produced for.

Mr. Charles expounded that the objective of the workshop is among other things to bring together the experiences of constitution making and reform from the Eastern and Southern African region. The workshop has also included a session from the Western Africa region for the purpose of having a comparative understanding on how the constitution making process has been made with respect to democratic values and practices. The workshop further aims to bring together best practices and lessons so that the constitutional reforms in Africa can be meaningful to the people.

Session 2

The Road Map to Constitution Making: Challenges and Prospects for Inclusion in East & Southern Africa: Mr. Winluck Wahiu, International IDEA

Mr. Winluck made a presentation which highlights the general features, challenges and prospects of constitutional reforms and constitution making in the African context. He stressed the important role that a constitution plays as supreme law of the land and as a document which governs both the political and legal spheres of society. He also
mentioned that constitution building should not be confined or limited to the technical aspects rather it should also be accompanied by changing political culture and behavior.

He pointed out that one of the central elements of constitution making or reform is the issue of inclusion and participation of citizens. Though we have the international and continental protocols like the ICCPR and ACHPR which put the normative definition of participation, the pragmatic context detects the nature of citizens' participation. The nature of citizens' participation in the constitution making or reform process depends on the constitution making patterns. There are two patterns with this regard:

1. Conflict Triggered Constitution Making: in such cases constitutions are made with a prime objective of creating and maintaining peace and order. Constitution making is usually part and parcel of the negotiation process among the conflicting parties which restricts the inclusion of other actors of society, particularly ordinary citizens into the process. Such cases were witnessed in Mozambique, Angola, DRC, Burundi, Rwanda, and South Sudan.

2. Deepening Democracy: constitutional reforms are also made with the objective of strengthening the institutional framework of the state and to thereby to address the democracy deficit. In most cases, such kinds of cases have a high tendency of being participatory and inclusive tend to entertain citizens' role in the process.

Mr. Winluck also stressed that, the conceptualization of democracy is also one of the significant factors in determining the role of citizens in the constitution making process. In a case where representational democracy is practiced the participation sphere might become limited to political parties only. Whereas in a context where direct democracy is practiced; the participation of citizens also increases and so does the inclusiveness of the process. Hence, one of the most important tasks in either constitution making or reform process is to clearly identify the purpose of the process.

In doing so, it is also equally important to determine who is driving the process. In most African countries, the Executive arm of the government has more power and dominant over the Legislature. Such kinds of challenges can be addressed by setting up a comprehensive legal framework which will clearly stipulate the role of actors including local interest groups, ethnic and minority groups, international actors and most of all the participatory role of citizens the degree of their involvement. Having a legal framework is also helpful to determine the time framework within which the constitution has to come into effect.

**Plenary Comments, Questions and Response**

Issues raised after the presentation include: the challenge of conceptualizing participation where we have various cases in which citizens have participated in the process but could not have a sound impact in influencing the final outcome; plus a
reflection on whether it is possible to produce a good constitution from conflict cases spearheaded by either the Executive or the Legislature.

Mr. Winluck responded by stating that public consultation and participation may not necessarily end up in incorporating citizens’ views in its entirety. There are mechanisms of ensuring public participation either at the input or output level. A public consultation (input) may bring a document to be negotiated in a political context which may need to pass through a legitimization process through a referendum (output). There are some practical challenges in making a decision to ensure participation both at the input and output level are taken into consideration.

On the other hand, conflicts rarely produce good constitutions since most issues will be dominated by cases that emerged during the conflict and negotiations will be dominated by the position of the conflicting parties than the will of the citizens.

Session 3 – Experiences, Lessons and Good Practices in Constitutional Making

3.1 The case of Ghana

3.1.1 Presentation by Dr. Raymond A. Atuguba, LADA

Dr. Raymond made an extensive presentation on the activities of CSOs during the constitutional reform in Ghana. The major lessons that can be drawn from the Ghanaian experience include:

- The wider network of partnership with all citizens’ groups that can mobilize people from all walks of life. The use of such networks to ensure citizens’ participation

- The mechanism employed to include the views of people who are usually marginalized like citizens in the most remote parts of the country and children

- The use of technology particularly mobile telephones to mobilize people and also as a means of collecting submissions (Text messages, Facebook, Twitter, Websites) in addition to the formal method of gather submissions i.e. workshops and conferences (a total of over 83,000 submissions in a number of issues)

- The high cost of running a constitution reform program

- The presence of Independent Commission tasked with the mandate to oversee the process ensures neutrality and transparency.

- A functional relationship established with Development Partners that contributed to nearly 49% of the total budget required for the reform process
After the presentation on Ghana’s constitutional reform process questions were raised on the credibility of the Constitutional Reform Committee, the inclusion of minority rights in the constitution, and the structural adjustments that were required to materialize the new constitution in the Ghanaian context. Dr. Raymond responded by saying that the Constitutional Reform Committee was established in a credible and open process of selecting experts. On the issue of the inclusion of minority rights particularly gay rights, he pointed out that 99.9% of Ghanaians indicated that they did not want gay rights to be included into the constitution. However, the hastily qualified that the qualitative process of gathering information from citizens does not show that the stand against gay rights is that much strong. With regard to the setting up of institutional frameworks that help to contribute the implementation of the new constitution, the commitment from the President in ensuring a strict adherence to the constitution was very much instrumental.

3.1.2 Presentation by Mr. Samuel Mensah Mawutor, Civic Response, Accra, Ghana

The presentation by Mr. Mawutor focused on the process of the constitutional reform and CSOs engagement especially in the sector area of natural resource management. From the onset of his presentation he pointed out that Constitutional Reform was one of the key recommendations made by the APRM that Ghana completed in 2007 and it was also included in the political campaign promises during national elections. With a particular focus on the reforms pertinent to natural resources, CSOs established a Coalition (Rights and Natural Resource Coalition) to ensure their meaningful participation in the review process.

The Coalition’s prime objective was to ensure meaningful participation of citizens on issues of natural resource management in the review process. And the activities were divided among coalition members to specifically deliberate and consult with their constituencies on pertinent issues of their concern. In doing so, one of the major challenges was the contradiction between customary and national laws with regard to natural resource managements and also achieving harmony among the different traditional groups and their mechanism of governing natural resources.

He pointed out that some of the major issues identified by the coalition in its outreach during the Constitutional Review process include:

- The limited capacity of CSOs to critically articulate their issues
- The incoherence within the CSOs fraternity
- Cost and expenses involved in sustaining the interventions
- Addressing crosscutting issues where each group has its priority

The mechanisms employed in dealing with such challenges and ensuring citizens’ participation includes: sector oriented dialogue among like minded CSOs on a very broad based representation of actors and also reorganization of the campaign strategy against the respective issues.
3.2 The Country Case of Kenya

Presented by, Mr. Wambua Kawive, Executive Director, Constitution & Reform Education Consortium (CRECO)

The presentation by Mr. Kawive took participants through the historical process that Kenya has gone through since independence with regard to constitution making and reforms and role of various actors in the process. The historical review highlighted the following major points - the university activists and underground movements that were very influential during the 70s and 80s and their independence from any kind of donor support for their cause, the 1997 ‘No reform, No election’ movement led by CSOs and citizens, and also the 2001 National Civic Education Program-I, which was criticized for being highly politicized and used as a means of mobilizing the people against President Moi. The latest experience is what Kenya passed through during the post-election violence in 2007 and the role of the regional and continental organs played in facilitating the negotiation between the rival parties was also mentioned as a background to the constitutional making and reform process in the country.

The role of CSOs in mobilizing political will and support from the ruling elite was witnessed when CSOs drafted a model constitution in 1994 which triggered the then President to declare the year 1995 as a year of new constitution. But this did not materialize. This is one of the cases where CSOs initiatives were hijacked by the powerful political elites. Hence, this brings in the lesson that CSOs need to be strategic in their engagements and avoid ignoring the power interest and the challenge posed by actors against any progressive intention. In doing so, one of the suggested strategies for CSOs is to devise a means of tapping the help from expert groups, governments, movements etc since constitution making process is not an isolated process rather a process which needs to be open and inclusive. Major issues of concern highlighted in the case study include the confrontation between the National Constitutional Conference and the Constitutional Review Commission.

After the presentation on the Kenyan experience various discussion points were raised by the participants. One such question was on whether the idea of assigning an appointed commission either by the legislative or by the executive with the task of gathering information and presenting a draft constitution document for consultation to a national conference for examination and presenting the final output to a referendum for approval is a good practice? The response was that the performance of the national conferences and referendums needs to be interrogated thoroughly. Issues were also raised on the relationship between the appointed Commission and the CSOs. In general it was noted that there are cases where the Commission becomes too powerful to the point of excluding other players. A case was noted where an appointed commission in Tanzania used its power to stop CSOs from running civic education program. On the substantive role that CSOs play in the constitution making process; it was noted that they play a significant role in the making process but in most cases the constitutional amendment rests solely in the hands of the parliament. In line with this, concern was
raised on how CSOs can ensure that the constitutional amendment process is equally citizen driven.

In response, Mr. Kawive pointed out that the appointed Commission does not have power to monopolize the civic education program at the national level. He added that the whole process would be untrustworthy if the commission decided to take everything by itself. On the role of the CSOs and the parliament in the constitution amendment process, he stressed that the current framework confirms that it is only the legislature that will have a final say but everything has to be in line with the constitution. Nonetheless, this does not mean that CSOs are totally neglected or unable to influence the process. Still there are rooms to lobby individual parliamentarians to infuse their position so as to influence the parliament.

3.3 The Case of Tanzania

Presentation by: Mr. Deus Kibamba, Chairman, Jukwaa La Katiba, Tanzania

The presented Mr. Deus described the constitution making process in Tanzania as a power struggle between those who have power and those who do not. He stressed that there are Tanzania who want a radical change in the constitution and those who do not want any change. He recalled the moment when the President calls for a process of new constitution making where the Ministry of Justice and the Attorney General has refused. But from the CSOs side, there have been a consistent call for constitutional reform since independence.

The presenter represents a network of NGOs that was started by 25 NGOs in 2011 which reaches to 181 members currently. The Network made a significant contribution for the enactment of the Framework Act which governs the function of the Constitutional Commission. In general, the role of the Network can be summarized in four specific areas. These are:

- The democratic formation of actors in the process of constitutional reform including the passing of the Framework Act
- Democratic process of establishing the Commission with the President inviting actors for the nomination and appointment
- The structure of the Constitution Assembly
- The planned referendum in adopting the New Constitution
The Constitution Review Committee has restricted CSOs from the civic education program. Any breach of the law may result in sanctions, imprisonment and fine. CSOs have identified 11 gaps in the law and calling for amendment. The current constitutional reform is on progress in collecting public views through various methods including the available technologies and the Constitutional Assembly is expected to deliberate on the draft constitution on the first half of 2013 before it is tabled for a referendum.

The presentation on the case of the Tanzanian CSOs raised some crucial questions that may also be referred to other countries context. For instance, the issue of managing the diversified views and interest of the 181 member CSOs was a question raised and an experience shared with the participants. Mr. Deus stated that the CSO coalition is functioning on the principle of unity is strength and focusing on issues that are beyond the capacity of an individual organization. The coalition intends to build the capacity of the organizations along their specific focus (like gender, disability, environment …) in line with the constitution. It is also attempting to fill the gap that might be overlooked by individual organizations because of their specific focus and specialization. Even though it is not a smooth and harmonious process, the coalition is managing the diversified focus and interest of its member to the best its capacity.

One of the other major points of discussion forwarded after the presentation is the role of actors in the constitution reform and making process and the expected outcome they aspire, which might not necessarily be in line with the interest of the majority. For instance, particularly by raising the two major reasons that trigger constitutional reform and making the Tanzanian process is questioned for further inquiry. It is stressed that constitutional reform/making is a context specific which can happen either as a democracy consolidation process where the state is playing a facilitation role (like Ghana and Tanzania) or as a transitional justice framework where actors outside the state are initiating the process and states are very fearful of the transformation (Kenya and Zimbabwe). For instance, in the Kenyan situation, there was a feeling that once there is a new constitution there will be a new government. But this was not the case mainly because the leading political actors did not want to relinquish power so easily. Hence, CSOs need to understand the dynamic context and the interest of actors in the constitutional making and reform process.

Moreover this, according to the theory of Institutional Interest the actors and the people that are driving the process of constitutional reform and making are most of the time in a position of ensuring their interest and benefits. Plus, the dominant actor hardly compromises on the benefits that it will get from the new constitution. The Tanzanian process is initiated by the government, so what is the major expectation of the CSOs? What do they want to put onto the table of the Constitution Assembly?
Mr. Deus recognizes the dynamic context in which constitutional reforms are being initiated and driven. Moreover he also described that the Tanzanian Constitutional Assembly is constituted by the Parliament, the house of representatives of the Zanzibar region plus 166 members from the public. On the expectation and major agenda of the coalition, he stressed that promoting diversity within the country and putting a place an institutional framework for the citizens to echo their voice of concern to the responsible government body can be seen as some of the major issues they would like to present.

3.4 The Case of South Africa

3.4.1 Presentation by Mr. Piroshaw Camay, Director, CORE, South Africa

Mr. Camay made a brief presentation on the historical process of the constitution making in South Africa. He mentioned that the constitutional process dates back to hundreds years particularly in the context of the two provinces: the Cape and the Natal. Moreover Unions in South Africa have been very vocal in the political process particularly in seeking for the pay rise and challenging the political structure from this angle. In the later days, particularly after South Africa was sanctioned and marginalized for the international sphere because of Apartheid, the economy was significantly affected.

The post Apartheid period constitution making process was influenced by the legacy of the past regime and also the socio-political processes that were dominant by that time like the activities of the Truth and Reconciliation Commission. Indeed there was a significant mobilization from the wider public and citizens’ alliances where more than 240 thousand submissions were made and more than 1.3 million people participating in the draft constitution making consultation processes.

3.4.2 Presentation by Ms. Corlette Letlojane, HURISA, South Africa

Ms. Corlette presented the historical aspect of the Constitutional Making process in South Africa. There are a total of four constitutions in South African political history: the Union of South Africa constitution (1909), the Republic of South Africa constitution (1961), the Apartheid constitution (1983) and the current constitution which came out in 1996. The current constitution of the country is a result of a long process of negotiation which happened under the framework of the Convention for Democratic South Africa. The major point of argument within this framework was the position of ANC for the protection of the rights of the majority against the protection of the minority rights. After the negotiations and compromises an agreement was reached through the Multi Party
Negotiating Process which initially provides substantive principles for drafting an interim constitution which was adopted in 1993.

The 1996 constitution is considered as a progressive constitution in many aspects. But the widespread socio-economic challenges within the South African society like economic inequalities, HIV/AIDS, unemployment, corruption and insecurity presented a practical challenge in the realization of the rights that are entrenched in the constitution. Even at the present time, South Africa is presented as the most unequal society in the world.

With regard to constitutional reforms in South Africa, there have been 16 amendments into the 1996 constitution. Moreover there is still a case presented for constitutional amendment by the ANC Youth League which calls for Land reform and nationalization of mines.

Both presentations on South African case raised a number of discussion points and questions for clarity. For instance, it was mentioned that there are lots of unfinished business in the South African society that are yet to be addressed properly. For instance, one can mention the re-distributive principles that are putting the minority rights ahead of the majority rights, the recent cases of strike and violation of the life of miners. The land issue is considered as a time bomb which may create a dire socio-economic and political crisis if not addressed timely. What is the role of CSOs with this regard? The case of incorporating traditional leaders in the constitution making process is also raised as one of the limitation of most countries cases. On the hand, the case of formulating a far-sighted constitution needs to be considered so that frequent constitutional amendments are avoided.

Ms. Corlette recognized that indeed the South African case has lots of unfinished businesses and most issues may not be addressed adequately in the near future. But with regard to the role of the CSOs in hindering any possible socio-economic and political chaos, she argued that South African CSOs have a very strong and well founded position in their society and the strong societal bond built during the struggle is glue that holds the South African society.

3.5 The case of Zimbabwe

Presentation by Shastry Njeru, Zimbabwe Human Rights NGO Forum, Zimbabwe

The presentation indicated that Zimbabwe now has a draft constitution which is expected to be presented for a referendum before end of December 2012. The constitution is a result of the Global Political Agreement reached between ZANUPF and
MDC mediated by SADC in 2008. The historical reality with regard to constitutional reforms in Zimbabwe can be referred to the 1979 Lancaster House Constitution which was amended 19 times. There was also a draft constitution presented by the ruling party, ZANUPF, in 2000 which was utterly rejected by the public. The role of CSOs in educating and mobilizing the public during the constitutional reform referendum in 2000 was very significant. The CSOs vigorously and successful campaigned for a rejection of the constitution during the first-ever held constitutional referendum in the country.

The present 2012 draft constitution to be presented for referendum is already receiving rejection through some media outlets. There are serious concerns on the process of the public consultations carried out in drafting the draft constitution. In ideal terms, constitution making must be made in an open and communicative public sphere where peoples’ participation is achieved at the optimal level. However, the Zimbabwean case present a situation where citizens were spoon-fed on what to say during the public consultations and intimidation was used and participation was marred.

With regard to the role of CSOs, their extremely one-sided position in the political process compromised the expected role they could play in the process. The partisan position of the CSOs hampered the presence of civilized dialogue where positive and constructive contribution could have been made.

The question and comment plenary session following the Zimbabwean case presentation raised a number of issues. One of the issues raised was the fact that constitutional reform does not happen in a neutral process rather in a highly political, sometimes polarized context. Hence, it is sometimes unrealistic or challenging to see a neutral civil society action in such context. On the other hand, the case of regionalism and its inclusion in constitutions was also highlighted.

The Zimbabwe case presenter Mr. Njeru reiterated that indeed it is unrealistic to perceive that constitutions are being made in a tabularasa – in a context which is void of any substantive knowledge about the past experiences; and CSOs are aware of this reality. But in the current Zimbabwean case what exists is a negotiated document of ZANUPF and MDC without any proper consultation and engagement of other stakeholders especially the citizenry. CSOs must have played their role so that the process would have been participatory and well-balanced. On the question of including or relying on traditional leaders and other formal governance structures in the consultation process, Mr. Njeru pointed out that from the Zimbabwean experience the challenge is that some traditional practices/structures only serve to undermine any democratic participation. He cited cases in Zimbabwe where the chiefs were treated as the ultimate voice of their communities assuming some conclusive and exclusive decision with finality by the norm "The chief has spoken; hence no one is allowed to add
anything.’ Such an approach shows the impartiality and biasness of the chiefs which is averse to democratic practices of citizens’ inclusion and participation.

The Zimbabwean case is a good example where CSOs have failed to play their expected role but instead fell victim to partisan politics and also becoming too elitists loosing the base of the community where the transformation is needed. This case has raised a crucial question about the role and position of CSOs in their respective societies and the mandate they claim to have. This differs greatly from the constructive and meaningful role that Zimbabwean CSOs have played in the past in sensitizing and mobilizing the wider public against the 2000 draft constitution. The change in CSOs stance could easily be explained by the fact that they are now feeling the fatigue of being very proactive in a protracted political process where they are now being easily co-opted by political parties. This can also be associated with the decreasing source of funding and the phasing out of certain programs and projects by donors who are facing economic difficulties due to the global economic meltdown.

**General Reflection Points, Trends and Immerging Issues**

The presentations made focusing on the experience of different countries have raised a number of issues that are pertinent to the understanding of constitutions, constitution making or reforms and constitutionalism in Africa. One of the major understandings that came out clearly is the fact that constitutions and constitutional reforms are deeply located in the socio-historical and political context of societies hence the difference among countries is very natural. Contextualizing the sphere of action with regard to constitutions helps to avoid an attempt to come up with a single perspective of inquiry and a one size fits all solution. Indeed, some of the questions could only be reflected, discussed and remain as food for thought than being answered by the participants.

Some of the broad question raised include, but not limited to; do we have the values and guts to maintain the institutions of governance that were introduced during the colonial periods? Can we come up with an alternative system of governance? How can we make sure that every new constitution making process equally results in the desired changes that address the needs or expectations of the majority, the disadvantaged and the marginalized? Are we trying to fit into a template of democracy, good governance etc from elsewhere, or are we truly responding to our contexts? What do we really want constitutions to do? What can a constitution realistically fix and achieve?

The following general trends and emerging issues in relation to constitutions and constitutionalism, in respect to the role of CSOs and the common challenges they are facing were also shared by the participants:
- **Funding and resource limitation**: CSOs participation in the constitution building process is a costly engagement and usually the extent of their participation is hampered by limited financial and technical resource which may also compromise the quality and inclusiveness of their contribution.

- **CSOs, their role and position in society**: The question of who is defined as civil society remains key and dominant in this discussion? It remains blurred as to who is included or excluded from the definition of civil society and hence operationalization of the term ‘civil society” has remained debatable.

- **The capacity of CSOs**: CSOs must build their own capacity to produce appropriate knowledge and information to their own context through documentation of their practices, conducting rigorous researches and studies. Over dependence on the knowledge from outside should be discouraged since all actors have their own agenda and interest. This can be fostered by building solidarity and organic partnership between local CSO actors at the ground level. There has to be a means to establish African philanthropy so that it can support indigenous organizations with an African agenda and end the begging mentality that has been institutionalized through donor dependence. In the same manner that African governments meet on a regular basis to share their common agenda and experiences, African CSOs toned to have an institutionalized mechanism to do so the same to build their shared capacities.

- **Constitutionalism: time, citizens’ participation and outcome**: CSOs must recognize that both constitutional reform and constitutionalism are lengthy processes to be achieved. Understanding the time that is needed to realize the rights entrenched and enshrined in the constitution may not fit with the high expectation of citizens after a new constitution. On the other hand, in most cases civil society and citizens’ participation is higher in the process towards the new constitution making process which is minimized during the post adoption period with limited role in following up the implementation process with citizens. Hence CSOs engagement need to continue to the extent of measuring the outcome of the new constitutions and monitoring its implementation and the fulfillment of the promises to citizens

- **Empowerment**: there has to be a continuous effort of empowering communities in general and women’s groups in general so as to ensure their substantive contribution and participation in the constitution making process and during its implementation
Session 4 – Key Features of a Democratic Constitution

The last session of the program follows a thorough discussion and deliberation on constitutional making and reform process in Africa both in specific and general terms. The purpose of this session was to further consolidate the understanding of constitutional reforms in Africa both at country and regional level in the eyes of CSOs along some specific entry points. The participants were asked to break into groups to deal with specific issues in a detailed manner and then report back to the plenary.

The break-away groups question was considering the deliberations of the workshop and for personal experience with constitutional reform/reviews in Africa:

a. What challenges and opportunities does the process present for CSOs?

b. What are the good practices and lessons learnt from the process so far?

c. In order to improve the way things are done, what needs to be done/put in place by CSOs, governments and continental and regional bodies?

There were three break-away groups. Each group was expected to deal with the question with specific reference to their thematic focus i.e. Governance and human rights; Socio-economic and environmental justice; Gender/youth participation and inclusion.

The following are the briefings of each group’s feedback to plenary:

**Group 1 – Governance and Human Rights**

- **Challenges**
  
  o There is power imbalance on how NGOs respond and get funded for their work in the area of constitutional reform. Some big NGOs are able to get big sums of money but their output does not always reflect the level of inputs;

  o There is the possibility of confusing the agenda of CSOs in engaging in constitutional reforms and the whole purpose of constitutional reform:
    
    ▪ Determination of agenda by funding agencies
    ▪ Internal control dynamics – CSO have not been in control of the process
    ▪ Diversity [due to infiltration+polarization] - confusion and competing objectives, ambitions and interests marred meaningful CSOs participation
    ▪ Copying and pasting other countries’ blue prints without reflection on one’s country context – lack of homegrown/indigenous solution
oriented visionary constitutions capable of addressing true issues at the grassroots – constitutions should not be superimposed tools of elites from imperialists

- There is absence of indigenous system of governance – capable of addressing indigenous issues!

- **Opportunities**
  
  - Constitutions are fundamental laws – which presents a possibility of expanding the scope of protection of human rights through the constitution making processes,
  
  - The process is a space for dialogue and consensus building,
  
  - The process as an awareness raising tool to inform and empower people
  
  - Reducing the dependence on leaders and prove the power and role of people - people begun to believe on themselves-
  
  - Process as a learning tool - brings an opportunity to the nation to have a dialogue with itself
  
  - Revival opportunity of renewal of social contract and the state machinery plus the peoples – change of attitude
  
  - The opportunity of engagement of deferent actors at different level
  
  - Renewal of social contract- demand for accountability,

- **Good practices and lessons learnt in the areas of good governance and human rights**

  - Ghana and Tanzania – as good examples of constitutional reform for the consolidation and deepening of democracy in a peaceful manner

  - Kenya – expansion of human rights in a progressive way

  - South Africa – a strong constitutional framework makes it difficult for the politicians to abuse power and do constitutional amendments to their interest

  - Wider citizens’ participation and the use of various media to mobilize people including electronic media and new technologies

  - Maximizing the available opportunities to bring reforms – i.e. Kenya ‘s 4th Agenda was the constitutional reform demand from CSOs during negotiations to end conflict between politicians after post-elections violence.

  - Putting in place a prior water-tight legal mechanism that would control the whole process of constitutions and constitutionalism with definite time frame helps avoid abuse by politicians
- What needs to be done by different actors

  o CSOs
    - Proper internal organization and mobilization among CSOs is important for meaningful engagement
    - Non aligning and non affiliation to party politics – CSOs must be faithful to their identity
    - Vigilance, dedication, objectivity and persistence – before and after the constitution is finalized
    - Creation of networks and encourage cross country information sharing
    - Monitor and challenge the processes
    - Resource mobilization and utilization plan - mobilizing resources from different actors to avoid been used for one donor's hidden agenda /interest
    - Create capacity - for indigenous knowledge

  o African Governments should:
    - Adopt a servant and listening to people attitude - Learn to serve the people
    - Protect and defend the constitutions
    - Ensure that there is no subvention of the principles
    - Mobilize and allocate sufficient resources for the constitution making processes

  o African Union/ RECs
    - Set up minimum standards
    - Refrain from patronage and presidential gangsterism
    - Set up reviewing/critique , peer reviews as in APRM
    - Receive and critically address issues from shadow reports
**Group 2 – Social Economic and Environmental Justice**

**What are the social/economic & justice issues?**
- Poverty, education, health, housing, etc

**Challenges**
- Governments are not willing to bring these rights to the constitutional conversation-Making them justiciable, political suicide?
- Bill of rights absent in Tanzanian constitution, for instance
- Rights neutralized/limited by some enabling laws enacted after the constitutions
- Governments violating the law-power cannot be taken through the pen (country liberated by a gun)
- Corruption
- Conflict between environmental rights and social rights
- Distribution of resources-(extractive resources)
- Resources also missing-
- Extractive Industry Transparency Initiative-not being utilized fully
- Constitutional requirement for the governments to consult even on Budgets

**Opportunities**
- Most of the states ratified the African Charter and it is easier to demand and domicile these rights
- Socio-Economic and Environmental rights need to be non-negotiable in view of International Humanitarian Law
- Taking advantage of the APRM and NEPAD and UN World Review

**Good practices and lessons learnt**
- SA-BEE, black empowerment, HIV/ARVs, Gender, education, MDGs, pro-poor development thrust; the Right to protect,
- India –has good social justice programmes-
- Civil society pushing for progressive laws e.g in Tanzania, on Gender Based Violence and FGM
• Position paper on Domestic violence, FGM, natural resources discovery-CSOs active in all this (Uganda)
• Fighting the re-centralization of natural resources
• Land deals/land grab-civil society stopped that (Mabira Forest)-civil society demanding re-negotiation of contracts between the government and private companies

**Improving the way things are done**

• Regional level: agreed standards need to be domiciled
• Donor transparency-political economy fundamentals/interests-should the reviewed/civil society need to improve vigilance here
• Civil Society: pro-active in monitoring the way things are done at national, regional, and international levels
• Develop common voice at regional level on issues affecting us; need to set agenda at regional, national, and civil society levels
• Government level: rule of law, end corruption, reduce the executive powers

**Group 3 – Gender & Youth Participation and Inclusion**

- **Challenges**
  - Poor political will – an attitude to listen, accommodate and create space for gender engagement and adoption of issues they raise but very little commitment to genuinely implement those much needed reforms
  - Participation of youth/gender is spoken of in very idealistic terms and not usually translated into the work done. Usually the louder in society continue to dominate consultations crowding out the small voices
  - The ability to contextualize the issues of gender to be truly representative and locally rooted in the commoners’ experience. CSO runs the risk of becoming irrelevant for failing to articulate the concern of citizens
  - Inability to follow through on implementation with the minimum of changes or advancements for gender is a challenge.
• Focusing on the structures of implementation – bureaucracy and the substructures that actually deliver on political decisions and consensus that is arrived at.

• An opportunity for CSOs to follow through by making proposals that advance or participation realized. Administrative proposals beyond the political.

• Participation of women and youth is seen in the light of the immediate political advantage it gives to politicians. However the empowerment should go beyond just process participation to socio economic empowerment.

• The need to define clearly what are the ends that participation is expected to reach. What are the challenges, what the expectations are and what is expected to be achieved? An internal reflection of these in the youth movement is critical to clearly defining their goal. (internal civic education)

• Civic education goes very deeper than paper throwing. The need to invest time and resources to reach the larger constituency to empower and to mobilize.

• Civic education is under threat of skewed political education. The need for its inclusion in a conscious effort to be built over a long period rather than quick mobilizing around reforms. Civic education should not be about the citizen versus the state but the relation between citizens

• Civil society has let this role slide to government who has donor funding to socialize in a state-centric approach which is not truly civic

• The internal competition, contestation and clattering among CSOs due to competition for scarce donor resources. Donors have not harmonized their support and this has scattered CSOs

• Regular meeting with CSOs to drive relations with donors to advance ends they propose and not those determined by donors. CSOs should specialize and do what we do best with our limited capacities.

• The need for CSOs to reflect on its own processes and strategies to ensure they are consistent with the expectation of society.

- **Good practices and lessons learnt in the areas of gender & youth participation and inclusion**
  
  • Mobilizing and organising around specific clearly couched objectives and proposals which were developed.
- Identifying specific targets in different levels and positions that are able to make the change expected happen.

- Democratizing the discussion for a broader mobilization

- Anticipating and planning accordingly

- The use of social media to reach the youth and the wider audience. Using various strategies to reach the people in their own comfortable zones.

- Cross learning with other civil society organisations

**What needs to be done by different actors**

**African Governments**

- Government must deliver on accountability and the public mandate. The institutions of administration should be resourced to deliver on their functions.

- A need to critically look at the nature of independent bodies which are autonomous, with constitutional powers but are not responsible or accountable to the people. There are many examples of how they conflict with public offices if not mere repetitive of government functions.

- Decentralizing functions of government and building the capacity of the bureaucratic system to make the system operational.

- Meritocracy versus the challenge to meeting regional and ethnic balances.

- The capacity of government agents/officials to understand functions that is required of them by law rather than for civil society providing education. The officials need to understand what is capacity building and not to have it misrepresented.

**African Union and RECs**
Developing models to unpack principles from the regional level and simplifying how they are to be incorporated into national decision making.

The direction of accountability of the AU is far away from the peoples of the continent.

Mapping the Way Forward

In regard to the next steps, Mr. Charles Mutasa, Executive Director, MWENGO stressed on the crucial role such kind of workshops play and the need to continue building regional lessons learning platforms by documenting and brainstorming on specific opportunities and challenges. He pointed out that MWENGO will attempt to organize a more substantiated conference in the near future which builds on the outcomes of this brainstorming workshop. This will help to extend the sphere of focus to a regional context building on the different country level scenarios. It will also facilitate the creation of a regional knowledge framework platform by actors that have been working on constitutional reforms like in Kenya, Tanzania and Zimbabwe. MWENGO will continue to work with the Commonwealth Foundation, the AU and RECs linking the issue of constitutional reforms to regional instruments and protocols.

The future engagements may have two different, but not necessarily mutually exclusive approaches i.e. deepening the focus on specific issues or expanding to relate the focus in the regional context. In both terms, strengthening MWENGO’s collaboration with partners at the national level will be very crucial to promote its agenda at the regional level.

Closing Remarks

The closing remarks were given by Mr. Ezra Mbogori one of MWENGO’s board of directors who is also a former Executive Director of MWENGO. In his speech, he expressed his appreciation of the relevance of such kind of brainstorming workshops. He stressed the importance of such kinds of platforms in expanding the positive impact that CSOs can introduce to the society. Mr. Mbogori also mentioned that such kinds of occasions are ideal platforms to learn from each other but they also need to be used for CSOs to check on each other and demonstrate a high level of demand accountability with everyone sharing what they are doing in their respective location/area of work. This will substantiate the network and interaction that we are creating on such kinds of platforms.
## ANNEX

### List of Participants

<table>
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<th>Organization</th>
<th>Contact Information</th>
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<tr>
<th>DAY ONE</th>
<th>17 AUGUST 2012</th>
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<tr>
<td>8:00-8:30</td>
<td>Registration</td>
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<tr>
<td>8:30-9:00</td>
<td><strong>SESSION 1: OPENING SESSION</strong>&lt;br&gt;Welcome and Introductions&lt;br&gt;Opening Remarks</td>
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<tr>
<td>9:00 –10:30</td>
<td>Session 2:&lt;br&gt;The Road Map to Constitution Making: Challenges and Prospects for Inclusion in East &amp; Southern Africa&lt;br&gt;West Africa experience of Constitution Making/reform: Lessons and good practices learnt –&lt;br&gt;Plenary Discussions</td>
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<tr>
<td>10:30-11:00</td>
<td>REFRESHMENTS &amp; GROUP PHOTO</td>
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<td>11:00-13:00</td>
<td><strong>SESSION 3: EXPERIENCES OF CONSTITUTION MAKING: COUNTRY FOCUS</strong>&lt;br&gt;Kenya Experience of Constitutional Making: Lessons and good practices&lt;br&gt;Zimbabwe experience of Constitution Making: Lessons and good practices&lt;br&gt;Plenary Discussions</td>
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<td>13:00-14:00</td>
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<td>14:00-16:00</td>
<td><strong>Session 3 continued</strong>&lt;br&gt;Ghana Experience of Constitution Making/Reform: Lessons and good practices&lt;br&gt;A Critical Analysis of South Africa's Constitutional Reforms - implications for civic participation and good governance&lt;br&gt;Plenary Discussions</td>
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<td>REFRESHMENTS</td>
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<td>16:30-17:30</td>
<td>Plenary Discussions: Emerging Issues and Trends</td>
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**DAY TWO**  
18 AUGUST 2012

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<tr>
<th>Time</th>
<th>Session Title</th>
<th>Chairperson</th>
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<tbody>
<tr>
<td>8:30-9:00</td>
<td>Re-Cap of Day 1</td>
<td>Rapporteur</td>
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<tr>
<td>9:00–11:00</td>
<td><strong>SESSION 1: KEY FEATURES OF A DEMOCRATIC CONSTITUTION</strong></td>
<td>Session Chair: Mr. Charles Mutasa, MWENGO</td>
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<td>GROUP DISCUSSIONS:</td>
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<tr>
<td></td>
<td>1. Identify key gender issues and recommendations for constitutional reforms in Africa</td>
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<td>2. Identify key governance and human rights recommendations</td>
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<td>3. Identify key socio-economic justice issues and recommendations</td>
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<td>11:00-11:30</td>
<td>REFRESHMENTS</td>
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<tr>
<td>11:30-12:00</td>
<td><strong>SESSION 2: GROUPS FEEDBACK AND DISCUSSIONS</strong></td>
<td>Session Chair: Ms. Caroline Mvalo Chisi, CECOWDA</td>
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<td>Group reports and discussions</td>
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<td>12:00-12:30</td>
<td>Mapping of and adoption of plan of action to the Commonwealth leaders/ governments and other advocacy targets</td>
<td>Session Chair: Mr. Charles Mutasa, MWENGO</td>
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<tr>
<td>12:30-13:15</td>
<td>Closing Remarks</td>
<td>MWENGO</td>
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<td>13:15</td>
<td>End of Day and Lunch</td>
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