



# **CHALLENGES FOR CO ORDINATED LAWMAKING AND LEGISLATIVE DRAFTING IN AFRICA**

**Abdul Funnah**

*‘As users parliaments have an intimate understanding of the potential of information and communication technology (ICT) to enrich and renew democracy. As legislators, parliaments must play a proactive role in defining and the shape of information societies’*

Pier Ferdinando Casini, President  
Interparliamentary Union (IPU)

world Summit on the Information society



# Importance of Legislation

- Represents the vision of a country
- Contains broad statements of national goals and priorities
- Sets aspirations of a country
- Defines the direction for the implementation of mechanism aimed at achieving targets outlined in pre-determined goals



# In Africa national legislation relates:

- Millennium Development Goals (MDG's)
- New Partnership for Africa's Development (NEPAD)
- Cairo Agenda for Action
- Declaration on the Political and Socio-economic Situation



# Coordinated lawmaking in Africa

- Determines the performance of economics of a country at national and international level
- Influenced by the growth in trade routed both to individual states and private consumers



# Benefits of coordination

- Brings about practicable rules for the determination of the appropriate law in solving practical problems on a uniform basis.
- Enhances the interplay-play of legal collaboration and mutual respect between the various legal systems.
- Encourages co-operation and systemization of rules of law of various states



# Benefits of coordination...(2)

- Avoids the costly, confusing and delay in implementing procedures which are necessary incidents of divergent choice of law rules
- Brings about cross fertilization of ideas and enriches community laws.
- Encourages globalization of private business. Rules of law become uniform and predictable and international trade is better served and developed.



# Challenges...

## Plurality/Diversity of legal Systems

- Common law (English law)
- Civil codes (French and continental law)
- Traditional indigenous customary law
- Religious law (*Sha'ria* law)



# Plurality...(2)

- Different judicial systems
- Different legislative procedures
- Different hierarchical types of legislation (decrees, acts, statues, ordinances, rules, directives etc)
- Militant and self-protective democracy



# Language\_

- In legislative drafting language is the tool of communication
- Anglophone
- Francophone
- Lusophone



# Language...(2)

- No uniformity in Africa
- Gives rise to differences in administrative structure and educational systems
- Link between colonial masters
- Divergence in legal terminologies



# Language...(3)

- Legal use of language distinct from ordinary use
- Requires training to understand



# Political/constitutional systems

- Degree of cooperation between branches of government required
- Most modern democracies characterized by sheared decision making
- Structured by a countries constitution



# Types of political systems

- Democratic
- Autocratic
- Parliamentary
- Presidential
- Western
- Traditional
- Civil
- Supreme justiciable constitutions



# Culture and ethnicity

- Eurocentric dominate political culture
- Afrocentric socio-political culture
- Sex
- Gender



# Culture and ethnicity...(2)

- Tribal
- Ethnic cleavages



# Other pertinent challenges

## 1. Training as drafters

- Legal writing not included in some university curricular
- Generic practical skills (e.g. problem solving, analysis, research etc)



## 2. Literacy rate in Africa

- Should legislation be drafted to be understood by the general population
- High level of literacy in Africa
- Data collection



# 3. Budgetary considerations

- Estimation of cost
- In essence: can all countries [participating] afford it
- Two aspects:
  - Cost of legislative drafting process
  - Cost of implementation of legislation



# Budgetary considerations...(2)

- No uniformity in currency
- Need for a common currency that goes beyond boundaries (e.g. as seen in the EU)



# 4. Differences in Infrastructure

- Access to modern technology
- Communication networks
- Electricity
- Distances between countries



# Conclusion/Recommendations

- Regional Parliamentary Fora (RPF) should strengthen their relations with their respective parliaments.
- A formalized structure be set up to coordinate the activities and policies of the various RPFs.
- The PAP and RPFs should link up and cooperate with intergovernmental organizations, research institutions, business organizations and other actors working in the field of harmonization of laws



# ABDUL KARIM FUNNAH

[abdul.funnah@up.ac.za](mailto:abdul.funnah@up.ac.za)

[abdulkarim.funnah@gmail.com](mailto:abdulkarim.funnah@gmail.com)

**Mobile: +27827641778**

**work: +2712 4203377**

**Fax: +27 12 4202991**

