



**FIFTH STELLENBOSCH ANNUAL SEMINAR ON
CONSTITUTIONALISM IN AFRICA (SASCA 2017)
19-22 September 2017**

CALL FOR PAPERS:

**Corruption and constitutionalism in Africa: Revisiting control
measures and strategies**

Dear Colleagues,

The Organisers of the Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA) are pleased to announce the call for papers for the Fifth Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2017) which will be held in Stellenbosch (South Africa) from Tuesday 19 September to Friday 22 September 2017. SASCA 2017 will be jointly organised by the Institute for International and Comparative Law in Africa (ICLA) of the Faculty of Law, University of Pretoria, and the Stellenbosch Institute for Advanced Study (STIAS) in partnership with the South African Research Chair in Multilevel Government, Law and Policy (SARChI) at the Dullah Omar Institute, University of the Western Cape and the Konrad Adenauer Stiftung Rule of Law Program for Sub-Saharan Africa.

A. Theme

The theme for this seminar is **“Corruption and constitutionalism in Africa: Revisiting control measures and strategies.”**

Over the years, particularly in the last three decades, the pressure on African governments to clean up corruption has been relentless. This has come from donor governments, the World Bank, the International Monetary Fund, the UN, the UN Economic Commission for Africa (ECA), specialist NGOs such as Transparency International (TI) and the African Union (AU), Regional Economic Communities (RECs) and civil society organisations (CSOs) that have recognised corruption as a major constraint to poverty eradication and human development on the continent. In spite of this, most of the anti-corruption measures that have been taken have generally been inadequate and ineffective and often turned out to be mere palliatives and tokenistic gestures designed to give the impression that something was being done.

Corruption is probably one of the biggest threats to peace and stability in Africa today. It casts an ominous dark shadow over the future political, economic, and social progress of the continent given the deleterious effects it is having on the faltering efforts to establish a culture of constitutionalism, democracy, respect for the rule of law and good governance. In fact, it

has been estimated that Africa loses US\$ 148 billion each year to corruption. The debilitating effects of corruption are sparing no African country. For example, in a letter of 3 May 2012, President Salva Kiir of South Sudan, Africa's youngest state (just before it celebrated the first anniversary of its hard-earned independence from the Republic of Sudan in July 2011), wrote to 75 former and current government officials to return an estimated US\$ 4 billion which had been stolen from a country that at the time was virtually bankrupt. In it, he said:

“We fought for freedom, justice and equality. Yet, once we got to power, we forgot what we fought for and began to enrich ourselves at the expense of our people.”¹

South Sudan in many respects epitomises the African paradox; how African leaders fought hard to liberate their people from exploitative, alien, cruel, despotic and undemocratic foreign rule but within a few years of getting to power, they became worse than these foreign oppressors. The gravity of the corruption problem in Africa was succinctly summarised by Moseneke DJP and Cameron J in the South African Constitutional Court case of *Glenister v The President of South Africa and others*² thus:

“There can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence, imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk.”

Although corruption is neither a new phenomenon nor is it unique to Africa, the scale and the debilitating effect it is having on the continent makes its control very urgent. Not only is it undermining economic development and growth, it continues to discourage foreign investment, diverts resources from priority areas in the economy and inflicts needless poverty and suffering especially on the most vulnerable, the poor and marginalised. Of great importance, especially to many African countries with fledgling democratic systems, is that pervasive bureaucratic corruption undermines the confidence and trust that citizens have in their governments.

It was assumed that the onset of the winds of democratisation, economic liberalisation and constitutional reforms in the 1990s that saw concerted attempts to entrench an ethos of constitutionalism, respect for the rule of law, good governance and respect for human rights would bring about greater transparency and scrutiny that will limit corruption. Instead, the level of corruption has increased as opportunistic politicians have misused national resources to entrench themselves or their parties in power. After almost three decades under the post-1990 new or revised constitutions, it is now clear that most of them failed to properly address the problem of corruption in any meaningful and effective manner.

¹ See, “S. Sudan asks officials to return stolen funds,” <http://www.aljazeera.com/news/africa/2012/06/201265233043136384.html>. On 8 July 2013, a “letter of concern to President Salva Kiir,” was written by “several long-term friends of South Sudan” in which they expressed their concern about the “increasingly perilous fate of South Sudan,” which barely two years after independence, has “become synonymous with corruption.” See, *Pambazuka News* Issue 638 of 10 July 2013, <http://www.pambazuka.org/en/category/comment/88191/print>.

² 2011 (3) SA 347 (CC) at para 166.

The discussion of the impact of corruption on constitutionalism, good governance and rule of law in Africa during the seminar will approach the issue from three main dimensions. First, whether the constitutional and legislative frameworks for combating corruption is sufficiently robust to deal with the matter. This will entail a critical review of the relevant constitutional and legislative framework to see how comprehensive they are, review the challenges of implementation and identify the gaps. And more broadly, also consider how to overcome the challenges to constitutionalism and respect for the rule of law posed by weak or defective anti-corruption legal frameworks and policies. The second dimension will look at the institutions, both formal and informal that have been provided for dealing with corruption. What are they, what are their roles and why have they not been very effective? The third dimension will look at the processes used and the measures provided to prevent, detect, punish, control and eradicate corruption. Why are these not working? What needs to be done to strengthen public accountability, limit avenues for corruption and bolster constitutionalism and good governance? What lessons can the rest of Africa learn from countries that have consistently been ranked as having low levels of corruption such as Botswana, the Seychelles, Cape Verde, Mauritius and more recently Rwanda?

The TI Report for 2015 indicates that 40 of the 46 African countries covered show a serious corruption problem and that the situation in the continent's powerhouses, Nigeria and South Africa continues to deteriorate. If corruption and impunity in Africa are to be brought under control, then there is a need to see how best we can make constitutional rights protection and enforcement mechanisms and institutions sufficiently robust to render corruption a high risk low returns activity to all regardless of their status.

B. Questions to be addressed at the seminar

The main issues that will be discussed during the seminar fall under the following sub themes:

1. **Corruption and constitutionalism in Africa: Overview of issues and challenges**
 - 1.1 corruption as a constitutional issue
 - 1.2 corruption and its impact on African development
 - 1.3 corruption and the phenomenon of state capture in Africa
2. **Responding to corruption: The impact of regional, international and multilateral treaties and initiatives on Africa**
 - 2.1 AU and REC initiatives
 - 2.2 Common international legal standards
3. **Responding to corruption: Use of anti-corruption agencies and/or special anti-corruption courts.**
 - 3.1 Anti-corruption agencies
 - 3.2 Ordinary courts, audit courts and specialised anti-corruption courts (combined or as alternatives)
4. **Responding to corruption: Criminalisation of corruption and use of other special measures and remedies.**

These special measures and remedies include:

- whistleblowing
- confiscation orders
- disclosure of assets
- freedom of information
- special prosecutors
- codes of conduct
- right to administrative justice
- civil remedies
- private prosecution

5. Responding to corruption: Specific measures to regulate public finances

- central bank
- auditor-general
- public service commissions
- finance commissions

6. Country case studies: Critical review of the operation of national anti-corruption legal frameworks and how to overcome their enforcement challenges

7. Parallels and insights from some international best practices

C. Papers

We are inviting abstracts of paper under any of these sub-themes. Whilst the papers under sub theme 6 should focus on a particular country, those under sub-themes 3-5 could focus on a number of listed issues in a particular country but preference will be given to papers that critically examine a number of or all the listed issues from a comparative perspective. Authors are particularly encouraged to undertake comparative studies across the different legal and constitutional traditions in Africa (Anglophone, Francophone, Muslim, Hispanophone and Lusophone). Under 2.2 of sub-theme 2, the papers could look at the impact of supranational anti-bribery regulations such as the Foreign Corrupt Practices Act (FCPA), and the UK Bribery Act, and their impact on combating corruption in Africa. To what extent can emerging international anti-corruption standards be used to advance constitutionalism and good governance in Africa? Other issues, such as mutual legal assistance and extradition, asset recovery etc could also be covered. Session 7 will be devoted to a discussion of some foreign practices that could serve as models for Africa.

All the papers must indicate the manner in which the overriding theme of entrenching a culture of constitutionalism, good governance and respect for the rule of law is threatened by responses to corruption and the ways and means to counter this. How can our constitutions provide a solid basis for financial management and probity that will limit the opportunities for corrupt activities?

D. Information on the submission of abstracts

We hereby invite all scholars and other persons interested in research in this area to submit a proposal on any of the sub-themes indicated above. The proposal should include:

- An abstract of the paper of about 1100 words.

- A brief c.v. of the author in which he/she **highlights the papers he/she has published on this topic.**

The deadline for submitting proposals is **28 February 2017**. Proposals should be sent as e-mail attachments to Dr. Lukman Abdulrauf at lukmanrauf@gmail.com and copy the two organisers, Prof. Charles M. Fombad, Institute for International and Comparative Law in Africa, Faculty of Law, University of Pretoria, Charles.fombad@up.ac.za and Prof. Nico Steytler, SARChI Chair in Multilevel Government, Dullah Omar Institute, University of the Western Cape, nsteytler@uwc.ac.za. Any questions on this call for papers should be directed to the addresses given above.

On acceptance of an abstract by the organisers, the author will be invited to submit a draft paper by **30 April 2017** on the basis of which a final invitation to the conference will be extended.

All authors whose papers are accepted will be provided with a return economy class air ticket, and board and lodging in Stellenbosch for the duration of the seminar.

All the papers presented during the seminar will be peer reviewed for publication in the fourth volume of the new series, *Stellenbosch Handbooks in African Constitutional Law*, which is published by Oxford University Press, Oxford.

Please, kindly distribute this call for papers as widely as possible to all colleagues in your faculty as well as to other interested persons such as legal practitioners and judges.

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