



SECOND STELLENBOSCH ANNUAL SEMINAR ON CONSTITUTIONALISM IN AFRICA (SASCA)

17-19 September 2014

ADDITIONAL INFORMATION ON SASCA 2014

1. INTRODUCTION

The first Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2013), 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) took place in Stellenbosch from 4-6 September 2013. It brought together a carefully selected group of experts consisting of political scientists, legal practitioners, judges, active constitution-builders and legal scholars from all the four regions of Africa as well as some from America and Europe. This group of experts, after three days of extensive discussions and planning laid down the foundation for a series of SASCA seminars which will run for the next four years, with a possible extension, by a further five years. During this first inaugural seminar, the programme for the next series of seminars was laid down.

The SASCA series plans a programme that will engage with contemporary issues of constitutionalism on an annual basis in a format which promotes discussion, comparison and the exploration of ways in which constitutionalism in Africa can be strengthened. The programme is designed to avoid a mere repetition of the now well-rehearsed concerns about constitutionalism in Africa and instead identify, analyse and work on issues that can deepen and refine the discussion. It is hoped that by presenting robust arguments, SASCA will be able to invigorate the field and draw more scholars to it from both Africa and abroad and thus address the absence of serious work on constitutionalism in Africa internationally. It proposes to do this through a combination of comparative African studies and country-focused reviews and will pay particular attention to relevant regional and international practices that are concerned with democracy and constitutionalism in Africa.

It is worthwhile noting that most of the existing literature on the rapidly expanding area of comparative constitutional law focuses almost exclusively on Western and Asian countries. Apart from South Africa that has attracted a few chapters in some of the latest books, there

are hardly any contributions discussing the significant developments that have been taking place in Africa since 1990s. Although there have been a few books that try to present some perspectives on African comparative constitutional law, the focus has usually been narrow. In fact, most of these books and other existing literature in this area deal exclusively with developments in Anglophone, Francophone or Arabophone Africa but with nothing cutting across these divides. It is thus no surprise that the syllabi of the African faculties that offer comparative constitutional law continue to rely extensively on books that hardly address the issues concerning the continent.

One of the crucial aspects of the SASCA project is to fill the gap in the literature on comparative African constitutional law. The plan is that at the end of each seminar series, all the papers presented will be published in an annual volume. There are presently discussions taking place with respect to the publication of the SASCA 2014 papers. **Each volume will contain not only papers presenting a general overview across the different jurisprudential systems on the continent** but also country studies on each topic from authors drawn from the different jurisprudential traditions (Anglophone, Francophone, Lusophone and Arabophone). This will not only provide accessible material on all the different jurisprudential traditions but also promote an intra-African judicial dialogue through the sharing of experiences and the cross-fertilization of ideas. This should also for the first time provide useful teaching material that exposes students to contrasting perspectives on current developments on the continent. Furthermore, it will also provide practitioners, judges and policy makers with information on developments in other African countries. The sharing of knowledge of good practices, innovative approaches to Africa's peculiar constitutional challenges and other issues of constitutional design and implementation is critical to entrenching an ethos of constitutional governance on the continent.

A detailed outline of how chapters in each volume will be structured and presented will inevitably vary from topic to topic but will be circulated after authors have been identified from the call for papers. **All the papers submitted will be peer reviewed.** This, essentially, is the background to this first open call for papers, the theme and details of which are indicated below.

One very important objective of ICLA and STIAS is to build an indigenous African technical knowledge base of constitution-builders and constitutionalists. Each seminar series will therefore seek to attract established scholars as well as young promising scholars and in this way try to also build a strong foundation for future co-operation and networking, especially - amongst legal scholars, practitioners and judges across the Anglophone/Francophone/Lusophone and Arabophone divide.

2. THE SEMINAR THEME: SEPARATION OF POWERS AND CONSTITUTIONALISM IN AFRICA: COMPARATIVE PERSPECTIVES

2.1 Introduction

The excessive concentration of powers is arguably one of the greatest impediments to the promotion of constitutionalism, good governance, democracy and the rule of law in Africa.

This is manifested in numerous ways and cuts across many facets of constitutional governance. At the heart of it, is the issue of separation of powers. The effective division of powers between the three branches of government is critical to repelling the different threats to liberty.

The allocation of powers between the three branches of government viz, the executive, the judiciary and the legislature, the extent to which they should be separated from each other and the different degrees of reciprocal checks and balances has been one of the fundamental preoccupations of constitutionalism over the centuries. Finding the balance that will prevent the twin dangers of tyranny and anarchy has remained a challenge. Although African constitution-designers in the new or revised post-1990 constitutions introduced provisions providing for separation of powers, the constant friction in the relationship between the three branches and the resurgent threats of authoritarianism clearly suggest that there remain serious problems in both constitutional design and implementation. The purpose of this seminar will be to try to critically examine, and understand some of the issues that have arisen.

Although constitutions today no longer merely focus on outlining the mechanisms of government but also respond to other broader challenges such as issues of inclusion and protection of minorities, equitable resource allocation and corruption etc, the problem of separation of powers is critical to dealing with all these other issues. It is therefore hoped that this topic will provide the foundation for more specific issues of excessive concentration of powers and the abuse of powers that go with this to be identified and discussed in subsequent seminars.

The approach will be comparative. The papers will start with a comparative overview across the different jurisprudential traditions and seek to identify the common patterns that are emerging. They will try to highlight problem areas and indicate countries which are making good progress in terms of finding innovative approaches which are working and those where problems remain. The focus should be whether or not the checks and balances provided in the division of powers is effective and if so or if not, why.

From this, country studies will focus in specific approaches and developments within different systems of governments operating on the continent. The selection of country studies will therefore be informed by the general patterns that emerge and will seek to illustrate the different approaches adopted within the different systems of government. They will try to highlight fresh and imaginative approaches and any new constitutional law principles that are emerging and the lessons that can be learnt, especially from decided cases.

2.2 Themes to be explored

Part 1 Introduction

Section 1: Constitutionalism in Africa: looking back to see ahead

This will provide a background to modern African constitutions from the colonial era to the present day. The focus will be on their influences which one can summarise as:

- Colonial legal systems/families/traditions
- Religious influences
- Ideological influences (socialist ideologies in some early constitutions
- Internationalisation and globalisation (post 1990)

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It will consider whether there can be any taxonomic classifications of African constitutional “systems”.

For purposes of the topic the approach that will be adopted in the discussion is to classify African countries from the perspective of the systems of governance prevailing:

- Monarchies
- Presidential systems
- Parliamentary systems
- Semi-presidential systems

Section 2: Diverse approaches to separation of powers in Africa

This will provide an overview of the meaning, nature and scope of the concept
The different models (generally)

End with an attempt to identify the different models that operate in Africa

Part II Legislative and Executive Relations

Section 3: An overview of legislative and executive relations

Building on section 2, this section will try to see if there are different patterns emerging in Africa and see what this gives rise to.

Sections 4, 5, 6: Country Studies¹

The choice of country case studies will take account of factors such as, ensuring a mix of presidential, parliamentary and mixed systems; one-party dominant and fragmented party systems; federal and unitary systems etc. The scope of the papers should cover (but not be limited to):

- the nature of the system of governance including electoral management as they have a direct impact on the way power may be exercised and the relationship between the executive the legislature
- legislative independence (amendment of bills, private member’s bills, money bills etc)

¹ Please note that authors are free to decide on the specific title for their country study provided this falls squarely within and focuses on the issues raised by that particular theme. The selection of country studies for presentation will be also based on the fresh insights that the paper brings and its contribution to constitutional theory, law and practice.

- legislature's power to conduct oversight and its effectiveness.
- presidential veto/deadlock breaking mechanisms
- the role of courts in managing these relationships (eg will courts review impeachment proceedings? Proceedings related to executive appointments?)

Part III Legislative and Judicial Relations

Section 7: An overview of Legislative and Judicial relations
The overview will be same as in section 3.

Sections 8 and 9: Country Studies

- These should briefly touch on judicial review (briefly because a future seminar will be devoted to this).
- degree of judicial control over legislative proceedings (quorum; majorities, minority party protection and participation, public participation etc).
- Legislature's role in appointments and ensuring accountability.
- The choice of country studies will try to reflect the different approaches identified in the overview (section 7).

Part IV Judicial and Executive Relations

Section 10. An overview of diverse approaches to judicial and executive relations

Same as in preceding overviews

Sections 11, 12 and 13: Country Studies

- appointments and control
- judicial overview of executive action (brief because a separate seminar will discuss the whole issue of administrative justice).
- conflicts between the judiciary and the executive

Part V Conclusion

- are there any distinctive patterns emerging which take account of and reflect the national context and history of the different countries?
- can one identify some elements indicative of new trends or patterns?

3. DEADLINES FOR SUBMITTING PROPOSALS AND PAPERS

3.1 Submission deadlines:

1. Date of call for papers: 13 January 2014.
2. **Deadline for submission of proposals 25 March 2014.**
3. Deadline for notification of acceptance of proposal: **11 April 2014.**
4. **Deadline for submission of first draft of paper: 16 June 2014.**
5. **Deadline for submission of revised draft of paper 29 July 2014.**

3.2 Format for submission of proposals and papers

1. The length of the abstract should not exceed 1100 words (or two type pages) and must clearly explain the nature and scope of the issues that the author intends to discuss. There must be evidence that it is well thought out, original and well researched.
2. The author must submit a c.v and their contact details.
3. The final paper must not exceed 10,000 words (including footnotes).

4. SEMINAR ORGANISATION AND TRAVEL INFORMATION

Although of the 30 participants that will be invited, a few will be specially commissioned, all scholars in this area are invited to submit proposals. The authors whose proposals and papers are accepted as well as those specially commissioned to write papers will be provided with a return air ticket, and board and lodging in Stellenbosch for the duration of the seminar.

5. CONTACTS

Send all submissions to Ms. Rufaro Mavunga, Conference Secretary at Rufaro.mavunga@up.ac.za or _mavungarufaro@gmail.com and copy Prof. Charles M. Fombad, Conference Organiser at Charles.fombad@up.ac.za

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

Sincerely,



Prof. Charles Manga Fombad

Organiser,

Institute for International and Comparative Law in Africa.