



**THIRD STELLENBOSCH ANNUAL SEMINAR ON  
CONSTITUTIONALISM IN AFRICA (SASCA 2015)  
16-18 September 2015**

**CALL FOR PAPERS**

Dear Colleagues,

The Organisers of the Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA) are pleased to announce the call for papers for the Third Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2015) which will be held in Stellenbosch (South Africa) from Wednesday 16 September to Friday 18 September 2015. This seminar series is 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).

The theme for this seminar is **“Constitutional adjudication in Africa.”**

**A. Introduction**

The constitutional reforms that have been taking place in African since the 1990s has attracted a lot of international attention and aroused the interest of many scholars, especially political scientists and legal scholars. Although many of these scholars have commented on the general nature of these reforms, not much attention has been paid to the changing role of courts especially with respect to constitutional disputes. Yet one of the fundamental causes of the undermining of constitutionalism in post-independence Africa were the restrictions that prevented courts from intervening when constitutions were violated in some countries and the fact that the judiciaries in most countries were reduced into handmaidens of the various dictatorial regimes in place. As a result, they were weak and ineffective and thus incapable of operating effectively either as guardians of the constitutions, protectors of human rights or impartial enforcers of the rule of law. However, since the 1990 wave of constitutional reforms, the role of constitutional courts or courts exercising the powers to interpret and apply constitutions have become a critical aspect of promoting constitutionalism.

The changing role of constitutional courts or courts exercising a constitutional jurisdiction in Africa today, to some extent reflects the global expansion of judicial power which started in many advanced democracies from the Second World War. These developments appear, at least from the texts of the revised or new African constitutions, to have resulted in quite fundamental changes in the position and role of constitutional courts or courts exercising jurisdiction in constitutional matters. This has been particularly significant in Francophone Africa where before the 1990s, constitutional disputes were reserved to a chamber operating within the Supreme Court and access to challenge the constitutionality of laws was illogically reserved only to the very politicians who made these laws. Although one may talk of the expansion of constitutional justice in Africa mainly because of the developments in Francophone, Lusophone and Hispanophone Africa, the developments in Anglophone Africa have been equally dramatic and significant.

The theme for the third seminar in the SASCA series is premised on the fact that Africa now provides an excellent example of the interplay of the diverse forms of constitutional review models and the prospects for new developments in constitutional adjudication. Over the last two decades some of these courts have been asked to decide a litany of hotly contested social, political and economic questions. As the list of areas in which these courts intervene has grown, so too have their powers, actual or potential. By identifying the different models of constitutional review that have been adopted in the last two decades, this seminar seeks to investigate the different ways in which these courts are contributing to enhancing constitutionalism and respect for the rule of law on the continent. The seminar will also examine the extent to which the long-standing image of African courts as powerless, unimportant and irrelevant when faced with constitutional violations has been overcome.

The discussions will combine, *inter alia*, a number of country specific studies which illustrate the different constitutional review models on the continent, comparative studies on certain sub themes which cut across the different constitutional traditions and an attempt to understand how some of the more successful constitutional courts or courts exercising a constitutional jurisdiction operate. Although progress is uneven and there still remains, in many African countries, a wide gap between what the constitutional texts provides for and what actually happens in practice, such a comparative study is still very important. The numerous issues that will be interrogated during the seminar will provide a basis for identifying new trends, challenges, lessons, opportunities and future directions.

## **B. Sub-themes**

### **1. General Overview**

1.1

1.2 The evolution of constitutional adjudication in Africa \*\*

1.2 Current African constitutional courts or courts exercising constitutional jurisdiction.\*\*

1.3 Constitutional adjudication in Africa in the context of the global expansion of constitutional review\*\*

### **2. Archetypical examples of different models of African Constitutional adjudication**

Eight country case studies [selected on basis of being an archetype of the different models in use, significant lessons that can be learnt/insights gained]

Possible country studies are:

- 2.1 Centralised Constitutional Council Model: The Benin Constitutional Court.
- 2.2 Centralised Constitutional Council Model: The Cameroon Constitutional Council
- 2.3 Centralised Constitutional Council Model: The Constitutional Court of Morocco
- 2.4 Centralised Constitutional Council Model: The Constitutional Court of Angola
- 2.5 Decentralised Constitutional Court Model: Ghana
- 2.6 Decentralised Constitutional Court Model: Nigeria
- 2.7 Decentralised Constitutional Court Model: South Africa
- 2.8 Mixed model of constitutional review: Ethiopia

**Template:**

- *Introduction: brief background*
- *Concentrated or diffuse: reason(s) for the choice*
- *Composition of courts [manner of appointment, qualification for appointment, do appointments reflect gender, minorities and other diversity issues?]*
- *Powers [ nature of jurisdiction eg abstract, concrete etc scope eg general or restricted to certain matters etc]*
- *Access to constitutional justice [ general or restricted and effectiveness]*
- *Remedies[damages, temporary orders, declarations etc]*
- *Style of reasoning:*
  - *textual reasoning*
  - *precedential reasoning*
  - *analogical reasoning*
  - *others eg pragmatic and historical*
- *Transnational influences on decisions:*
  - *international law*
  - *foreign law*
- *Nature of decisions:*

- *majority, dissenting, concurring and separate opinions [ explain reasons for approach]*
- *Effect of decisions [finality, binding force etc]*
- *Brief assessment of impact of court on constitutionalism [devote at least a paragraph here to discuss the type of issues that have come before the courts in the last five years and the potential impact on constitutional development]*

### 3. **Impact of transjudicialism on constitutional adjudication**

Three papers that will have a comparative analysis across the different jurisdictions but each paper will focus on one of the following:

- 3.1 Use of precedents in constitutional adjudication [ intra- and – extra African influences] [eg, to what extent has the jurisprudence of the South African Constitutional Court as well as that of Benin or any other courts exercising constitutional jurisdiction influenced decisions in other African courts?]
- 3.2 Impact of regional and sub-regional courts on constitutional adjudication
- 3.3 Constitutional adjudication and the internationalisation/globalisation of constitutional law [ focus on role and impact of international law]  
**[Nevertheless, two or more abstracts on closely related topics under this sub-theme will be welcome]**

### 4. **Constitutional adjudication and promotion of constitutionalism**

Three or more papers with a cross jurisdictional analysis that will focus on the following 3 topics:

- 4.1 Constitutional adjudication and constitutional politics in African constitutionalism [ is there any sign of the so-called “juristocracy” taking place in Africa? Any issues of judicial legitimacy in constitutional adjudication? etc]
- 4.2 Constitutional adjudication and relevance of customary law, local culture and religion [ in the broad context of equality, non-discrimination and right to dignity ]
- 4.3 Constitutional adjudication and the evolution of sexual orientation

**[However, abstracts on closely related topics will be welcome]**

## 5. Decision-making and working practices

[Focus on 2 to 3 papers which explain some of the unique court procedures and other practices that some of the more successful Constitutional Courts on the continent eg the South African Constitutional Court and the Benin Constitutional Court have developed to decide cases eg use of court clerks or investigative court assistants etc]

## 6. African contributions to constitutional adjudication

[Discussions focused on concepts such as *ubuntu* will be welcome]

### C. 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, except those which have been marked with an asterisk which have been assigned to certain commissioned speakers. The proposal should include:

A c.v of the presenter

An abstract of the paper of about 1100 words or two pages.

The deadline for submitting proposals is **10 March 2015**. Proposals should be sent as email attachments to Ms. Jeanique Pretorius at [jeanique.pretorius3@gmail.com](mailto:jeanique.pretorius3@gmail.com) or Ms. Pumeza Matwa at [Pumeza.matwa@up.ac.za](mailto:Pumeza.matwa@up.ac.za) and copy Prof. Charles M. Fombad, Seminar Organiser at [Charles.fombad@up.ac.za](mailto:Charles.fombad@up.ac.za). Any questions on this call for papers should be directed to the addresses given above.

All authors whose abstracts and papers are accepted as well as some academics who will be specially commissioned to write papers 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 volume 2 of the new series, *Stellenbosch Handbooks in African Constitutional Law*, which is published by the Oxford University Press.

**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.**

*Stellenbosch Handbooks in African Constitutional Law* Series General Information:

**Series Editor and Organiser of SASCA:** Prof. Charles Manga Fombad, Institute for International and Comparative Law in Africa (ICLA), Faculty of Law, University of Pretoria.

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Sincerely,

Prof. Charles Manga Fombad  
Institute for International and Comparative Law in Africa  
Faculty of Law  
University of Pretoria