

**Report on the Third Stellenbosch Annual Seminar on Constitutionalism in
Africa
(SASCA 2015)**

16 - 18 September 2015

Introduction

The Third Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2015), 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) was held in Stellenbosch, South Africa from Wednesday 16 September to Friday 18 September 2015. The theme for this year's seminar was 'Constitutional Adjudication in Africa'.

Seminar programme

The theme for this third seminar in the SASCA series was 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 and often controversial 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, the seminar investigated the different ways in which these courts are contributing to enhancing constitutionalism and respect for the rule of law on the continent.

The seminar was opened by Prof. Hendrik Geyer, Director of STIAS, who welcomed the participants on behalf of STIAS and ICLA. This was followed by a keynote presentation by Prof. Charles Fombad titled 'An overview of constitutional courts in Africa', which traced the evolution of constitutional adjudication in Africa from the colonial period to the present day, and identified the main models in operation currently on the continent. This presentation provided the necessary background and foundation for the presentations and discussions that followed.

The first two sessions were devoted to discussing archetypical examples of different models of constitutional adjudication in Africa. The different approaches to decentralised constitutional review were presented by Dr James Fowkes, who looked at the situation in South Africa, Prof. Kofi Quashigah who discussed the Supreme Court of Ghana, and Prof. Ameze Guobadia who looked at the Nigerian Supreme Court. For a typical example of centralised constitutional review, Prof. Andre Thomashausen discussed the Constitutional Court of Angola. The discussion of this aspect of the theme was concluded by Dr Adem Abebe who showed why constitutional review in Ethiopia is a unique, hybrid model.

The session on the impact of transjudicialism on constitutional adjudication in Africa, included two presentations. One by Dr Bonolo Dinokopila who examined the impact of regional and sub-regional courts and tribunals on constitutional adjudication in Africa and a presentation by Prof. Magnus Killander who examined the impact of international law on constitutional adjudication in Africa.

The issue of constitutional adjudication and the promotion of constitutionalism was covered in two sessions. In one of these, Dr Horace Adjolohoun presented a paper on constitutional adjudication and politics in African constitutionalism. In the other session, Prof. Enyinna Nwauche looked at the issue of expanding the scope of constitutional justice through direct access to constitutional courts in Anglophone Africa.

The role of constitutional adjudication in promoting constitutionalism in Botswana was presented by Mr Bugalo Maripe.

The last two sessions started with a paper on the rule of ultimogeniture in Botswana by Prof. Christa Rautenbach with a primary focus on the decision-making and working practices of African constitutional courts.

The final session included three presentations, one on the Constitutional Court of Benin by Prof. Theodore Holo (presented on his behalf by Prof. Charles Fombad), a second on Ghana by Retired Justice Date-Bah and a third by Retired Justice Richard Goldstone on the South African experience and his personal reflections of the setting up of the Constitutional Court in the post-Apartheid period.

The papers presented during the seminar will be reviewed for possible publication in the second book of the new Oxford University Press series, *Stellenbosch Handbooks on African Constitutional Law*.

Participants

As in previous years the seminar, was attended by both senior and junior academics from all over Africa (including Botswana, Benin, Cameroon, Ghana, Nigeria and South Africa). Also in attendance were eminent active judges (Justice Froneman of the South African Constitutional Court), as well as retired ones (Justice Richard Goldstone, former judge of the South African Constitutional Court, and Justice Kofi Date-Bah, retired Professor and former Judge in the Supreme Court of Ghana).

In keeping with our goal of disseminating knowledge and enhancing the capacity development of future scholars in this important area, doctoral students from Stellenbosch University, the University of Cape Town and the University of Western Cape also attended.

Other participants included Mr Calixt Mbari, the Head of the African Union Programme on Constitutionalism and Rule of Law, and Dr Arne Wullf, Director of the Rule of Law Programme for Sub-Saharan Africa at the Konrad Adenauer Foundation.

Plans for SASCA 2016

The closing session centred around discussions of the theme for next year's seminar. namely 'Decentralisation and constitutionalism in Africa'. Possible sub themes were discussed and the dates for next year's seminar were confirmed for 7 to 9 September 2016.

The 2016 seminar, will be jointly hosted not only by STIAS and ICLA, but also by the South African Research Chair (SARChI) in Multilevel Government, Law and Policy at the University of the Western Cape. The programme for this seminar will soon be finalised and circulated on the websites of the three host organisations.