

REPORT ON THE FIRST STELLENBOSCH ANNUAL SEMINAR ON CONSTITUTIONALISM IN AFRICA

1. INTRODUCTION

The first Stellenbosch Annual Seminar on Constitutionalism in Africa, took place at the Wallenberg Research Centre of the Stellenbosch Institute for Advanced Study (STIAS) from 4-6 September 2013. It was jointly organised by STIAS and the Institute for International and Comparative Law in Africa (ICLA) of the Faculty of Law, University of Pretoria. The participants were welcomed during the first session on Wednesday 4 September 2013 by one of the Co-Directors of ICLA, Professor Christof Heyns and later, during a welcome dinner by the Director of STIAS Professor Hendrik Geyer and the former Director of STIAS, Professor Bernard Lategan. On both occasions, the importance of this series of seminars was underscored.

This brief report will briefly explain the objectives of this first seminar, the programme that was followed, the participants that were present and end with a look at plans for future seminars.

2. OBJECTIVES

For this first seminar, a group of a carefully selected African and some non-African experts (see section 4 below) were invited in the hope that they could lay down a solid foundation for future seminars. It was also hoped this group will constitute a core group around which a network of people who are actively engaged in the evolution of constitutionalism in Africa can be built and serve as a repository for the accumulation of knowledge, experience and expertise on the continent.

3. PROGRAMME

The general focus was on a critical examination and discussion around a number of issues affecting the efforts being made to entrench and consolidate constitutionalism in Africa. The three-day programme was made up of 5 sessions. During each session there were short presentations followed by discussions. Each of the presenters tried to identify specific issues which in his/her opinion needed to be discussed.

The programme was as follows:

Session 1: Wednesday 4 September 14.00-16.45pm

Chair: Professor Christof Heyns

Inaugurating the Seminar and keynote addresses

14.00pm	Welcome
14.15pm	Introductions
14.30pm	Keynote addresses: The state of constitutionalism in Africa: Challenges and Prospects Professor Yash Ghai

16.00pm Professor Roger Southall
Discussion
Preceded by Professor Francois Venter on
Constitutionalism

18.30-20.30pm Welcome dinner

Session 2: Thursday 5 September 9-12am

Chair: Professor Yash Ghai

Constitution-Making in Africa- Case studies on the reality of popular participation and other issues.

9.00am “The Oxford Constitutions of the World Project and African Constitutions.” Professor Dr. Rainer Grote

“Constitution-making in Ghana: Case study of the 1992 Constitution and the 2010 Constitution review exercise.” Professor Kofi Quashigah

10.45am **Tea and Coffee break**

Session 2 **Continued**

11.00pm Case study of DR Congo: Professor André Mangu

Case study of Tunisia: Mr. Geoffrey Weichselbaum

12.30 **Lunch**

Session 3: Thursday 5 September 14.00-17.00pm

Chair: Professor Christina Murray

The Challenges of Constitutional implementation in Africa- Case studies

14.00pm Constitutional implementation: General Theoretical framework: Dr. Jill Cottrell

Issues arising from constitutional implementation: Professor Charles M. Fombad

15.30pm **Tea and Coffee break**

15.45pm **Continuation of Session 3**

Challenges of constitutional implementation in Africa: Case Study of Egypt: Judge Khaled Attia

Challenges of constitutional implementation in Africa:
Case Study of Francophone Africa: Professor Djedjro
Meledje

17.15pm End

Session 4: Friday 6 September 9-12am
Chair: Professor Kofi Quashigah

The Problems of Separation of Powers in Africa

9am Conflicts between the executive and the judiciary
“Challenges to judicial power in South Africa.” Proff.
Koos Malan and Charles Fombad,

“The law/politics divide in constitutional adjudication
and interpretation.” Professor Dieter Grimm

“The impact of entrenching administrative justice as a
constitutional right.” Adv. Glenn Penfold:

10.45am Tea and Coffee break

11.am Continuation of Session 4

Courts and socio-economic rights: Professor Frank
Michelman

“African courts and the judicial review of the exercise
of executive power.” Professor Enyinna Nwauche

12.30pm Lunch

Session 5: Friday 6 September 14.00-16.00pm
Chair: Professor Enyinna Nwauche

14.00 Teaching of constitutional law in Africa
Professor Charles Fombad

Planning for future seminars

16.00 End

4. PARTICIPANTS

As pointed out in section 2 above, the participants for the first seminar were carefully selected African and non-African experts. These consisted of a political scientist, (Prof. Roger Southall), legal practitioners (Advocates Glenn Penfold, Mandla Mchunu and Richard Sizani), active constitution-builders (Proffs Yash Guy, Christina Murray and Mrs Jill Cottrell

Ghai all involved in Anglophone Africa and Mr. Geoffrey Weichebaum in Francophone Africa) legal scholars from all the four regions of Africa namely, Prof Babacar Kante (Senegal), Prof. Djedjro Meleje (Cote d'Ivoire), Prof. Kofi Quashigah (Ghana) Prof. Enyinna Nwauche (Nigeria), Prof. Andre Mangu (DR Congo), Prof. Charles Fombad (Cameroon), Dr. Khaled Attia (Egypt), Prof. Koos Malan(South Africa), Prof. Henk Botha (South Africa), Prof. Francois Venter (South Africa) and Prof. Erika de Wet (South Africa). There were also academics from the US (Prof. Frank Micheman) and Germany (Prof. Dieter Grimm). The debates were also enriched by the presence of some eminent judges or retired judges such as Retired Chief Justice Sandile Ngcobo (formerly of the South African Constitutional Court), Justice Yak Yacoob of the South African Constitutional Court, Prof. Babacar Kante (former Vice President of the Constitutional Council of Senegal) and Prof. Dieter Grimm (former Justice of the Federal Constitutional Court of Germany). We also an expert in comparative African constitutional law, Prof. Rainer Grote of the Max Planck Institute for Public Comparative Law and Public International Law and Geoffrey Weichsebaum, Country Director for Tunisia on the Democracy Reporting International Programme.

The full list of participants with their detail addresses is as follows:

Andre (Mbata) Mangu	Andre Mangu holds LLD and LLM degrees from the University of South Africa (UNISA). Research Professor at UNISA, he also teaches constitutional law at the University of Kinshasa.	manguamb@unisa.ac.za
Babacar Kante	Professeur à l'Université Gaston Berger de Saint-Louis. Ancien Vice-président du Conseil constitutionnel du Sénégal	babacarkante@hotmail.com
Bernard Lategan	Founding Director STIAS	bcl@sun.ac.za
Charles Fombad	Head of the Constitutional Law Unit at the Institute for International and Comparative Law in Africa and Professor of Law University of Pretoria (ICLA)	Charles.Fombad@up.ac.za
Christina Murray	Professor of Constitutional and Human Rights Law University of Cape Town	Christina.Murray@uct.ac.za
Christof Heyns	Co-Director: Institute for International and Comparative Law in Africa (ICLA), University of Pretoria; UN Special Rapporteur on extra-judicial, summary or arbitrary executions	Christof.Heyns@up.ac.za
Dieter Grimm	Professor of Constitutional Law, Humboldt University Berlin and Yale Law School; former Justice, Federal Constitutional Court of Germany; former Rector, Wissenschaftskolleg	Dieter.Grimm@wiko-berlin.de

	zu Berlin, Institute for Advanced Study.	
Djedjro Meledje	Docteur d'Etat in Public Law. Agrégé des Facultés de Droit. Professor of Public Law and Political Science. Former Dean of the Law Faculty of University of Cocody Abidjan. Member of the Executive Committee of International Association of Constitutional Law	dmeledje@gmail.com
Enyinna Nwauche	Faculty of Law, Rivers State University of Science and Technology Nigeria	enyinnanwauche@yahoo.com
Erika De Wet	Co-Director of the Institute for International and Comparative Law in Africa and Professor of International Law University of Pretoria (ICLA)	Erika.DeWet@up.ac.za
Francois Venter	Research Fellow, Faculty of Law, Potchefstroom Campus North-West University, South Africa	Francios.Venter@nwu.ac.za
Frank Michelman	Robert Walmsley University Professor Emeritus Harvard University	fmichel@law.harvard.edu
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HB Geyer	Director STIAS	hbg@sun.ac.za
Henk Botha	Professor & Char, Public Law University of Stellenbosch	hbotha@sun.ac.za
Jill Cottrell	Professor of law in numerous universities, including Ife and Ahmadu Bello Universities in Nigeria, Warwick University and University of Hong Kong. She also has extensive experience in advising on constitutions, including in Kenya, Nepal and Iraq.	jill.ghai@gmail.com
Johann Groenewald	Coordinator: Strategic Initiatives STIAS	jpg@sun.ac.za
Khaled Attia	Former judge – Former prosecutor in the office of the prosecutor general Egypt –lecturer at law school, Ain Shams University – Partner at Sarieldin & Partners Law Firm.	khaledattia@yahoo.com
Kofi Quashigah	Dean, Faculty of Law University of Ghana	kquashigah2001@yahoo.com
Koos Malan	Professor of Public Law University of Pretoria	Koos.Malan@up.ac.za
Mandla Mchunu	Former Chief Electoral Officer of the IEC South Africa. Former Director- General of KwaZulu-Natal Province. Former Director of the Centre for Socio-Legal Studies at the then	mandla@africore.com

	University of Natal, Durban Campus.	
Rainer Grote	Max Planck Institute for Public Comparative Law and Public International Law	grote@mpil.de
Richard Khaliphie Sizani	Former Secretary of the Office of the Chief Justice; Constitutional lawyer, National Commissioner of the Public Service Commission South Africa	sizanirk@mweb.co.za
Roger Southall	Staff Associate and Head of the Department of Sociology University of Witwatersrand Johannesburg	Roger.Southall@wits.ac.za
Rufaro Mavunga	Assistant: Institute for International and Comparative Law in Africa (ICLA) University of Pretoria	Rufaro.Mavunga@up.ac.za
Sirral Sandile Ngcobo	Former Chief Justice of the Constitutional Court of South Africa.	Sheleni01@gmail.com
Yash Ghai	One of the Directors of Katiba Institute, Nairobi (devoted to implementation of the Constitution). Professor Emeritus, University of Hong Kong. Constitution making consultant.	yashpal.ghai@gmail.com
Zak Yacoob	Justice, Constitutional Court of South Africa.	zak.yacoob@gmail.com

5. FUTURE PLANS

The last session of the seminar was devoted to a discussion of the plans for the future. As pointed out earlier, this was one of the main objectives of this inaugural seminar. To facilitate the discussions, the participants were divided into three groups with chairpersons and rapporteurs.

Group A consisted of Francois Venter (Chair), Roger Southall (Rapporteur), Babacar Kante Frank Michelman, Mandla Mchunu, Enyinna Nwauche. Group B consisted of Christina Murray (Chair), Rainer Grote (Rapporteur), Andre Mangu, Kofi Quashigah, Sandile Ngcobo and Geoffrey Wesichsebaum. Group C consisted of Erika de Wet (Chair), Koos Malan (Rapporteur), Dieter Grimm, Djedro Meledje, Glenn Penfold, Richard Sizani and Zak Yacoob.

The groups were asked to consider what in their opinions should be the main theme or themes for next year? They were also required to consider what could be the specific sub-themes or topics that should be addressed? They had to also consider whether participants should be given specific themes or topics to research and write on as well as whether there should be any specific goal or objective that this particular seminar should aim to achieve?

After the group discussion, the rapporteurs presented their recommendations during a plenary session and these were discussed. It is the recommendations made by this eminent group of persons that has informed the plans for the future which are outlined below.

6. PLANS FOR THE 2014 SEMINAR

6.1 General Objectives:

The need to:

-enhance consolidation of constitutionalism in Africa through research and discussion of topical issues at seminars

-fill a big void in international and national literature where there is little or no literature on comparative study of constitutional systems in Africa and in this way promote intra-African academic and judicial dialogue

-promote networking and dialogue between African academics from different legal traditions amongst themselves and with other Africanists and Africans in the diaspora

6.2 Theme for 2014

In line with the general objectives mentioned in 5.1, it is suggested that an appropriate theme for 2014 should be “Setting the Stage: Constitution-building in Africa.”

The expectation is that this theme will:

-lay down the foundation for future themes

-will lay down foundation for comparative approach

-will also pave the way for trying to fill the gap on the absence of studies on the nature and evolution of African constitutional systems and the problems that appear to be emerging

The plan is to ask as many of the participants to the 2014 annual seminar as possible to prepare in advance written papers. They will also be told in advance that the goal is to publish the papers in the form of an edited book possibly with the Pretoria University Law Publishers (PULP) or other reputable publishers such as Oxford University Press.

Numerous other themes were also recommended but it would be prudent to finally agree on themes for the next seminars at the end of each seminar to ensure that the theme effectively seeks to address a pressing topical issue.

7. CONCLUSION

In every respect, this first seminar met and probably surpassed our expectations. Almost all the prominent participants that were invited responded positively to the invitation. Each of them played a very active part in the discussions and debates and the suggestions that were made at the end were carefully considered by people who are really the top experts in the field. It is hoped that in future years, the seminar will build on this core group to attract other

experts and build a strong network of people from diverse legal background committed to promoting the entrenchment of an ethos of constitutionalism in Africa.

Most of the participants have since written back to the organisers to express their gratitude to STIAS and ICLA for this great initiative which they believe will open new vistas and generate interest in research in constitutional developments in Africa.