



**FOURTH STELLENBOSCH ANNUAL SEMINAR ON
CONSTITUTIONALISM IN AFRICA (SASCA 2016)
7-9 September 2016**

**CALL FOR PAPERS:
Decentralization and Constitutionalism in Africa**

Dear Colleagues,

The Organisers of the Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA) are pleased to announce the call for papers for the Fourth Stellenbosch Annual Seminar on Constitutionalism in Africa (SASCA 2016) which will be held in Stellenbosch (South Africa) from Wednesday 7 September to Friday 9 September 2016. SASCA 2016 will be jointly organised by the Institute for International and Comparative Law in Africa (ICLA) of the Faculty of Law, University of Pretoria, the Stellenbosch Institute for Advanced Study (STIAS) and the South African Research Chair in Multilevel Government, Law and Policy (SARChI) at the Dullah Omar Institute, University of the Western Cape.

The theme for this seminar is **“Decentralization and Constitutionalism in Africa”**.

A. Theme

The objective of the seminar is to examine the dynamic relationship between decentralisation and constitutionalism in Africa.

‘Decentralization’ in the context of the seminar is used as a generic term for the dispersal of governmental authority and power from the national centre to subnational levels of government. The nature of decentralization varies considerably along a continuum which has, at one end, a strongly centralized system with local authorities exercising limited powers, and, at the other, highly decentralized federations.

Whatever form of decentralisation is adopted, it contains both a formal and a substantive component. The formal component (sometimes referred to as geographic decentralization) deals with the structure of government and determines both the levels of government, from the national, regional and level, and the number of subunits within each of these levels of government. The substantive component (also referred to as functional decentralization) determines the actual powers and competences assigned to the subnational levels of government, which indicates the depth of decentralization. The degree of decentralization is determined by three core elements viz, administrative, political, and fiscal decentralization.

Under 'constitutionalism' we usually understand three basic elements. The first is that of limited government; the limitation of state power under a supreme constitution through a bill of rights, the separation of powers, and an independent judiciary. The second element is that of democracy and the establishment of accountable government both in terms of representative and participatory mechanisms. The third element is that of the rule of law -- governance under rules and not arbitrary discretion – which entails compliance not only with the constitution but the laws made in terms of it. A further element could be added; if the aim is limited government the main quest is thus to tame the Leviathan nature of centralized government. One strategy is to have multiple political decision-making bodies where subnational governments limits the exercise of centralized power; the central government is limited to the extent that the subnational governments can make final decisions on some matters entrenched in a constitution.

The end of the Cold War led to the return of multi-party democracy in many African countries within the paradigm of constitutionalism. In some decentralization formed part of the democratisation process. It came in various forms to meet the different challenges that African governments faced since independence. Although the objectives of decentralization varied from country to country as well as the weight that attached to each, the main ones have been threefold. The first is peace-making and state building in fragile states. The aim is to keep the state intact or settle conflict by accommodating minority (often ethnic) and marginalized groups in an inclusive system of government. A second objective is to limit the abuse of centralised government, usually concentrated in the hands of an authoritarian president, by devolving some powers away from the centre to subnational governments. A third objective is to enhance development: bringing government closer to the people to ensure that development projects reflect regional and local preferences, and resources are spread more equitably across the country. This will also ensure better service delivery and encourage greater public participation in development. A fourth objective could be added – democracy: the establishment of democratic governance at subnational level not only provides a legitimate basis for local government, but also allows for a democratic ethos to permeate the entire polity from the bottom up.

In highly divided countries decentralization in the form of federal-type arrangements was adopted as a way out of conflict. Since the 1990s federal-type systems, establishing regional governments, have emerged in South Africa (1993, 1996); Ethiopia (1995); Nigeria (1999, re-establishing earlier federal constitutions); the Comoros (1996, 2001); DR Congo (2005); Sudan (2005), Kenya (2010); South Sudan (2011) and Somalia (2012). These constitutions were designed hold fragile countries together and allow for unity in diversity. A necessary condition for effective federalism is a supreme constitution that cannot be amended unilaterally by one level of government. It then requires an independent judiciary that will enforce the contours of the compact, including the division of powers. Also at the core of the compact is democracy; the ability of groups to exercise some autonomy at regional level, and make multiparty democracy a reality.

Decentralisation to local governments is found in most countries. Their place in the structure of the state is not often entrenched in constitutions. There are, however, a number of examples of entrenchment including South Africa (1993, 1996), Uganda (1995), Nigeria (1999), Zimbabwe (2013) and Tunisia (2014). In most countries local authorities are established by statute.

The formal and substantive forms of decentralization a country adopts, determining the level of autonomy, are dictated by several contextual factors. One such factor has been the distinct

approaches and traditions to decentralisation in Anglophone, Francophone, Lusophone and Arabophone countries, respectively. A further element to consider is the recognition of traditional authorities and institutions performing governance functions at local level.

Many African countries are still plagued by intra-country conflict, and under- and uneven development, where power is centralised and abused to the narrow patrimonial advantage of political elites or in a sectarian manner for the benefit of a section of the population. In many countries the adoption of constitutions reflecting the objects of limited and accountable government has not resulted in constitutionalism. Some countries have remained or become fragile, and some failed. While multiparty democracy is accepted in theory at the national level (and increasingly in practice as well), opposition-held governments at subnational level are often not tolerated. The rule of law remains an ideal rather than a daily practice.

B. Questions to be addressed at the seminar

The central question to be examined is the dialectic between decentralisation and constitutionalism: can they be mutually reinforcing processes? Has constitutionalism enhanced the achievement of the objects of decentralisation, and, in turn, has effective decentralisation advanced constitutionalism? If not yet in practice, can a mutual reinforcing beneficial relationship emerge?

Three broad sets of questions are to be addressed:

First, to what extent has the decentralisation of power to subnational governments been constitutionalized? While all federal-type systems have been constitutionalised, to what extent has local government been entrenched in constitutions? Are different patterns apparent in the different legal systems: Anglophone, Francophone, Lusophone, and Arabophone Africa? If there are different patterns, what may be the reasons?

Where decentralisation has been constitutionalised, what form has it taken? To what extent are there sufficient safeguards built into the constitution to protect against the unilateral revocation of powers and authority by the national centre?

Second, what has been the value in practice of constitutionalising decentralisation? Have regional governments effected a limitation of central powers? Has the constitutionalisation of local government had a meaningful impact on development? To what extent has democracy (and multi-party democracy in particular) been implemented at regional and local level in practice? To the extent that traditional authorities and institutions have been incorporated in modern African governance systems, what are the tensions with the demands of democratic local governance, and how have they been managed?

Are the rules of decentralisation observed in practice? What mechanisms have been put in place to ensure that the constitutional provisions on decentralisation are implemented by the various governments?

In respect of all these questions, have the courts played a significant role in enforcing compliance and protecting decentralised autonomy and democracy?

Third, to the extent that both decentralisation and constitutionalism are elusive goals, what role can the constitutionalisation of decentralisation contribute to constitutionalism? Can democratic local government build democracy from the bottom up? Can it foster a political culture of democratic accountability? Overall, can decentralisation advance constitutionalism,

and, conversely, can constitutionalism strengthen decentralisation in a mutually supportive manner?

Although the wide diversity and complexity of the different models, forms, degrees and levels of decentralization practices across African countries make a comparative study a challenging task, it nevertheless provides an excellent opportunity for cross-national learning. It enables us to get a better understanding of recent developments in the design, content and forms of decentralization in the context of constitutional reform on the continent and learn lessons from what is working or not working and what needs to be improved and why.

C. Papers

We are inviting abstracts of paper that could either be comparative in approach or country specific case studies, along the following sub-themes:

1. An overview of the theoretical and definition issues concerning decentralisation and constitutionalism and their implications for Africa.
2. Comparative studies on the emergence and functioning of federations and federal-type arrangements in Africa.
3. Given the emergence of a significant number of federal or federal-type constitutions in Africa, case studies of individual countries.
4. Comparative studies on the constitutionalisation (or not) of local government in Africa to cover:
 - Anglophone countries
 - Francophone countries
 - Arabophone countries
 - Lusophone countries
5. Case studies of individual countries in Africa.
6. Traditional authorities and institutions in modern African governance systems

The papers, especially the case studies, should address the following questions:

- i) What motivated the constitution designers in a particular country to adopt a particular approach? For example, what factors influenced the depth and form of decentralization (ethnic, linguistic, religious, geographic, historical, economic, pre-existing administrative units, conflict potential, others, combination of these?)
- ii) What levels of government have been provided for and what powers do they have? Do the different levels have the same powers or are there asymmetries?
- iii) What resources have been allocated to the subunits? What are the financing models underpinning subnational governance?
- iv) What legal safeguards have been provided to safeguard against arbitrary revocation of powers and authority?
- v) What conflict resolution mechanism has been put in place to resolve the inevitable conflicts that may arise between the centre and subnational governments?
- vi) Where the constitutional design was aimed at dealing with specific issues, such as minorities, political exclusion, marginalisation etc., has it been successful in practice? If not, why?
- vii) In the context of the decentralisation of power, what are the measures to ensure national cohesion and solidarity?

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 c.v. of the author

The deadline for submitting proposals is **31 January 2016**. Proposals should be sent as e-mail attachments to Ms. Jeanique Pretorius at jeanique.pretorius3@gmail.com or Ms. Pumeza Matwa at Pumeza.matwa@up.ac.za 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 2016** 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 third 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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