

**The challenge of democratization and the role of
Constitutional Courts –
Judicial review in francophone West Africa**

International Workshop at Justus Liebig University Giessen , 24-25 May 2013

**JUDICIAL REVIEW AND DEMOCRATIZATION IN
FRANCOPHONE WEST AFRICA II**

WORKSHOP CONCEPTION

The workshop aims to explore the link between effective judicial review and democratization processes in francophone West Africa. It is part of a comparative constitutional law project on judicial review and democratization in this region at the University of Giessen. The project is funded by the German Research Foundation (DFG).

The institutionalization of judicial review is nowadays widely perceived as a key element in consolidating newly established democratic regimes, serving as a “democracy insurance”. The 20th century has witnessed growing support for Constitutional Courts and equivalent institutions in many parts of the world. As African states embarked on a renewed democratization process in the 1990s, they, too, implemented strengthened judicial review mechanisms. Since then the countries have undergone very different developments. Many African states have experienced a slow or deficient democratization, in some cases even backlashes in their transition to democracy since the 1990s, others proved to be relatively stable. Ever since independence, a strong executive coupled with a weak parliament remains a typical feature and challenge of African politics. Four expert roundtables will explore the different roles Courts could play in this specific environment and aim to assess their actual impact on democratization.

The workshop concludes the first phase of the research project “Judicial review and democratization in francophone West Africa”. Since the launch of the project in July 2012, eight country studies are being drafted based on a purposely designed questionnaire. The workshop will take the completed research further and investigate how the constitutional review mechanisms are being used by the Constitutional judges in the countries under study. Its central aim is to find out if and how Constitutional Courts contributed to democratization or democratic consolidation in the region and to draw comparative conclusions from the case studies.

Eventually, the workshop will serve to kick off the next phase of the research project, from June 2013 up to its finalization in July 2014. The themes of the four roundtables will structure the further research activities in the project. Accordingly, the results of the workshop will be taken up, discussed and developed in order to be integrated in the final project publication as well as in the closing conference in 2014.

The roundtables bring together international researchers from different (francophone as well as nonfrancophone) regions for a valuable exchange of experiences and views. The workshop language will be English and French, translation will be provided. The event is designed as a highly participatory expert workshop with up to 30 participants. Participants of the conference are experts in the field of comparative and constitutional law or political science.

Instead of writing and presenting papers, participants in the workshop will be asked to provide background information on their country of expertise by way of answering to a standardized set of questions on the judicial review mechanism in the respective country. In the workshop they will give statements (5 to 10 minutes) based on their own work and experience. The comments should take up different aspects of the session topic (as agreed on with the organizers) and give examples from the countries under study. This workshop format is designed to facilitate as much discussion as possible between participants.

Starting with an assessment of competencies and a positioning of the Courts in the system of powers, the first session aims to initiate the discussion by outlining what constitutes the specific context and basis of constitutional adjudication in West Africa. Given the still young and fragile democratic structures, Roundtable 2 looks at opportunities for action of Constitutional Courts when crises occur and the constitutional and/or political stability and democratic values are in danger. The backgrounds on how the different Courts actually interpret and execute their tasks will be highlighted by the following session. Finally, current challenges for the countries of the region will be analyzed and in order to draw comparative conclusions with regard to the previously discussed issues.

PROGRAMME

ROUNDTABLE 1: CONSTITUTIONAL COURTS IN THE SYSTEM OF POWERS

The first session explores the statutory/institutional capacities and actual influence Constitutional Courts have within the system of powers. It aims to assess whether and how courts have executed their role as guardian of the separation of powers and actually checked the elected branches, in particular an overreaching executive. When and how have they arbitrated constitutional disputes and averted crisis (on both substantive issues and interbranch power struggles)?

Chair: Thilo Marauhn

Lead Discussants: Alioune Badara Fall / Adama Kpodar / Frédéric Joël Aïvo / Anne Winter

ROUNDTABLE 2: CONSTITUTIONAL COURTS AND MANAGEMENT OF CRISES

As crises cannot always be prevented, the second roundtable looks at the constitutional mechanisms or solution of constitutional, electoral, and political crises in West Africa. Are the constitutions well equipped for those perils to democracy? Where did Constitutional Courts play a role in conflict resolution? How did they solve the crisis and add to the stability of the constitutional and political order and contribute to safeguarding democratic values?

Chair: Chadidscha Schoepffer

Lead Discussants: Babacar Kanté / Mamadou Dagra / Abraham Gadji / Gilles Badet

ROUNDTABLE 3: ACTIVISM AND SELF-RESTRAINT OF CONSTITUTIONAL COURTS

The session analyses the role and self-conception of Constitutional Courts more thoroughly. The roundtable considers the jurisprudence (and other actions) of the courts in selected countries. How do the courts exercise their jurisdiction and discretion? How do the courts justify their decisions and what methods of constitutional interpretation do they use? The focus is on whether and how the courts play an active role in developing constitutional democracy.

Chair: Brun-Otto Bryde

Lead Discussants: Tayhuh Ngenge / Heinz Klug / Fatima Diallo / Christian Boulanger

ROUNDTABLE 4: CURRENT CHALLENGES AND PERSPECTIVES FOR CONSTITUTIONAL COURTS

The session reviews recent developments in francophone West Africa. What are the challenges for the existing courts? What conclusions can be drawn from crises as in Mali? Do the newly established Constitutional Courts incorporate lessons learned from the region and is there a comparative convergence or divergence of models?

Chair: Michael Riegner

Lead Discussants: Sory Balde / Ousmane Diallo / Stéphane Bolle / Kangnikoe Bado