

## **Panel E: Political legality – Rule of law in Africa’s democratic transition (chair/coordinator: Jeremy Gould)**

### **1) Lalli Metsola (University of Helsinki): Rule of law & policing in Namibia: The interplay of violence and human rights**

This paper examines Namibian policing as a case that illustrates constitutive tensions in Namibian state formation in the context of the country’s transition to independence and human rights reforms. Violence appears as both an essential part of policing and an object of worries and control. Executive discretion and use of force were important in the maintenance of colonial power in Namibia (as elsewhere). Likewise, violence played a crucial role in Namibia’s protracted struggle for independence. At the same time, the current political order in Namibia wishes to set itself apart from the repressive pre-independence regime through a democratic political framework, liberal constitutional principles and rule of law. In policing, the legacies of authoritarian policing and war-time violence, combined with perceived threats of crime and social disorder lead into a constant, relatively high degree of ‘human rights violations’ at the same time as there are repeated efforts to reform the police. The paper examines the coexistence of police violence and its containment and proposes that the situation highlights the way in which the police stands at a strategic crossroads between ‘law-founding’ and ‘law-preserving’ violence, contributing both to the constitution of the sovereignty of the Namibian state and to its consolidation as the established and legitimate locus of political power.

### **2) Elísio Macamo (University of Basel): Rule of law and the legalization of governance in Mozambique**

### **3) Jeremy Gould (University of Jyväskylä): Lawfully illegal. Rule of law and the covert state in Zambia**

### **4) Marja Suomela (University of Helsinki): Linkages of corruption and anti-corruption discourses in Namibia**

The amount of people, NGOs, media and public offices devoting themselves to anti-corruption has been exploding in Namibia during recent years. At the same time, there is a general perception that corruption is and has been rising. On one hand, corruption is a popular topic of small talk, while, on the other hand, an accusation of corruption is a powerful act. Anti-corruption in Namibia is a field for global and local discourses where competitions over definitions and expertise take place. In this paper I will argue that anti-corruption is not simply the opposition of corruption but a political space of its own. In addition, I will examine the linkages and crossroads between corruption and anti-corruption discourses. What are the linkages between popular corruption talk(s) and anti-corruption agenda? What these two (and the increase in both of them) share in common is the context of political and social transformations in independent Namibia. Both the current corruption and anti-corruption talk can be seen as continuation of politics in a situation of societal transformation. My study takes into account three aspects. One is the birth of an international good governance agenda in the 1990s, which anti-corruption is part of. Second is the Namibian anti-corruption field, the actors that highlight the fight against corruption. I will examine how this is linked both to the global agenda and local political and social developments in Namibia. Thirdly, in the micro level, the popular accounts of corruption are being explored. The theoretical background of

this paper lies in the analysis of postcolonial state, or rather, politics. In the analysis of the various political meanings in the use of the concepts of corruption and anti-corruption in Namibia, I will make use of the views of e.g. Gupta, Bubandt, and the Comaroffs.

### **5) Oliver C. Ruppel (HRDC, Windhoek): The SADC Tribunal, Regional Integration and Human Rights: Major Challenges, Legal Dimensions and Some Comparative Aspects**

The Southern African Development Community (SADC) currently counts 15 states among its members, namely Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The SADC Tribunal which is seated in Windhoek, Namibia became operational in 2005 and received its first cases only in 2007, one of them being the case of Mike Campbell (PVT) Limited, challenging human rights violations by the expropriation of agricultural land in Zimbabwe by the government of Zimbabwe. The Campbell Case, which is still ongoing, will be reviewed critically in this paper, especially since it has become a first measure of the Tribunal in striving to become a key actor in the SADC legal and institutional integration process. It is the overall aim of this paper to point out some of the major challenges for the SADC regional integration process at large and the SADC Tribunal in particular. Major problems such as the overemphasis on state sovereignty, a lack of regional enforcement measures and the non-compliance with Tribunal judgements are critically reflected and in the final part of the article, some relevant aspects from the European legal order. No doubt, compared to the EU, the SADC Tribunal and its dispute settlement mechanism is still at an infancy stage. Yet, the cases before the SADC Tribunal and the one's that have been decided so far are of high relevance for the regional integration process and future recognition of the institution. After all, with the SADC Tribunal a central institution was created that can give impulses and guidelines for a community-wide common understanding of community law. In the light of the integrative effect of the Tribunal's function, it could become similar to the ECJ – a motor of regional integration.

### **6) Catharina Groop (Åbo Akademi University): Political institutions – an avenue towards curbing corruption? The impact of presidentialism and electoral systems on corruption levels**

The paper forms part of a PhD undertaking aimed at analyzing the linkages between political institutions and levels of corruption. The paper takes an interest in whether and how the building blocks (the institutions) of a state affect levels of corruption. A particular emphasis is placed on institutions such as the executive (parliamentarian / presidentialist) and the electoral system (party- / candidate-centered) since research to date indicates that these structures affect corruption levels differently. Geographically the paper analyses presidential regimes in southern Africa, among these Namibia and Malawi. It also analyses the electoral systems and the relative strength of political parties in these same countries during the 1990s, the overall aim being to identify incentive structures with a bearing on levels of corruption.

### **7) Louisa Lombard (Duke University): Raiding and the State: Policing Resource Exploitation in the Central African Republic**

This paper focuses on raiding and the state in the northeastern borderlands of the Central African Republic (CAR). This sparsely-populated territory has long produced bounty for militarized entrepreneurs and raiders from neighboring areas, who seek resources, land, and labor. Today, the raiders come mainly for ivory, meat, and grazing land. In this setting,

ECOFAC, a European Union-funded program, attempts to create the organs – guards and taxation – that would properly police CAR's “patrimony.” A branch of the Ministry of Water, Forests and the Environment, ECOFAC consists of anti-poaching patrols and the localization of safari hunting revenues. The program aims to put an end to the longstanding status of this area as a space for collection of resources by raiders, but it operates in a context in which raiders may have connections to state officials in Sudan, Chad, or CAR. This paper examines the ways ECOFAC employees conceive of the state, legality, and the management of space by analyzing two facets of their work: the way that many use the privilege of their positions to enter the (illegal) bush meat and diamond trades, and the mandate that permits guards to kill on sight the (heavily-armed) hunters who target the space. It argues that in this area of little state presence, the state nevertheless looms large in two main ways: it is a system that affords its employees special privileges to exploit resources, and it is a rhetoric and dream of power, control, and welfare.

### **8) Maja Janmyr (University of Bergen): The Legal Implications of Militarizing Displaced Persons in Northern Uganda**

This presentation highlights the human rights implications of military mobilization of civilians in camps in northern Uganda between 1996 and 2006. In 1996, the Ugandan government herded hundreds of thousands of civilians into camps scattered across the Acholi region of northern Uganda. This displacement policy continued into the 21st century and at its peak more than 1.5 million Ugandans were internally displaced. The camps soon emerged into magnets of human rights violations -the attacks by rebel group Lord's Resistance Army (LRA) and abuse by Ugandan People's Defence Force (UPDF) have been widely documented over the years. Less attention has however been given to another protection agent operating in virtually every camp in northern Uganda; the pro-government local militia. This militia was estimated to number approximately the same as UPDF, but remained more or less a shadow figure in the debates regarding the northern Ugandan conflict. At times displaced civilians sought no other option than to organize their own protection upon realizing that the Ugandan army often failed to protect them against LRA attacks. Yet, in other instances civilians were forcibly mobilized by the Ugandan government into protecting the camps. I argue that complex issues arise when militarizing civilian camp inhabitants. Not only were they specifically targeted by LRA, but displaced persons unwilling to join the militias voluntarily risked being considered rebel collaborators by the Ugandan authorities. Simultaneously the militias were under-trained and under-equipped to tackle attacks and instead ended up committing some of the worst human rights abuses in the camps. I further argue that a vacuum of unaccountability attributable to the vague domestic law persists, and that the practice of militarizing displaced persons is clearly in violation of well-established norms in international law.