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Summary Report on the 'Exchange Programme between Young Lawyers from Burundi, Rwanda and the Democratic Republic of Congo and the Judiciary of Baden-Württemberg (Germany)' from 5 to 18 October 2014

Balingene Kahombo[*]

It is a heavy burden, but a passionate one, to be given the responsibility to draw a summary report on a diversified exchange programme between young lawyers from Burundi, Rwanda and the Democratic Republic of Congo (DRC) and the judiciary of the German Federal State of Baden-Württemberg. The meeting took place during two weeks (from 5 to 18 October 2014) in Stuttgart (Germany). It was organized under the aegis of the *Robert Bosch Stiftung,* in collaboration with the *African Law Association*, and coordinated by Professor *Hartmut Hamann*.

In such an exercise, it is wise to already warn against the risk for the reporter of being mistaken, either by writing what could not correspond to the content of the programme or substituting his own views to those of the participants. The difficulty arises here from the importance in number of countries concerned by the programme. It means that the reporter, for the efficiency of his assignment, is supposed to have captured, and in a comparative perspective, different opinions and sensibilities expressed by participants from four distinct national legal systems. Moreover, the attendance was relatively diversified, but also very limited. There were seven African lawyers (three from the DRC, two from Rwanda and two from Burundi), all of them being young practitioners (two prosecutors, a judge and four advocates of high courts) and lecturers from the law schools of their respective countries, assisted by the same number of German mentors (judges and prosecutors) belonging to the judiciary body of Baden-Württemberg. In fact, many things were seen, said, discussed or learnt during the programme. But, it would be ambitious to pretend that everything could be

* *Balingene Kahombo* is Doctoral candidate at the Free University of Berlin (*Freie Universität Berlin*), Germany, Collaborate researcher at the Institute for Democracy, Governance, Peace and Development in Africa (IDGPA) and Judge in vacation (Democratic Republic of Congo). Email: internationaliste82@yahoo.fr. I sincerely thank *Tom Mulisa*, advocate at the Rwandan Bar Association and lecturer at the School of Law of the National University of Rwanda, for his contribution to the elaboration of this report. The briefing he wrote on performed activities during the first week of the exchange programme, in which he himself participated, was fully taken into account. For an introductory report on the exchange programme see *Sippel, Harald,* Förderung der Justiz in Afrika – Austauschprogramm zwischen Baden-Württemberg und zentralafrikanischen Staaten, in: Recht in Afrika • Law in Africa • Droit en Afrique 17 (2014), pp. 113-115.

seized here in such a limited report. Hence, this earlier request to tolerate some misses and particularly its imperfections.

Methodologically, the report tries to stick as much as possible on the primary objective of the meeting, at least in the way that the African participants perceived it. In fact, they were invited to experience how the judicial/justice system operates in a context of an economically more developed State, with a stable liberal democratic experience and a long 'civil law' legal culture, so that they grasped some available positive practices which they could try, then, to implement in their different fields of work for the building or consolidation of the rule of law in their respective countries. Therefore, this report does not constitute just a mere recall of what was done over the two weeks meeting. It also and mainly gives account of what the African participants understood and learnt from various exchanges which introduced them into the specificity of the German legal system (law, institutions and legal culture) as it functions in the State of Baden-Württemberg. It thus extends to four topical issues: 1) performed activities; 2) African lessons from the specificity of the German judicial organization; 3) African lessons from some distinctive judicial practices in Germany; 4) conclusion and recommendations.

1. What was done or the performed activities

A set of diversified activities were listed on the agenda to ensure that participants achieved their principal expectations. Four questions specifically attracted their attention. First of all, the African guests wanted to capture the foundations of the German federal system and the role that play regional levels in the State judicial governance and in relation with the European Union (EU). But, more significantly, it was questioned how the independence of the judiciary is perceived and guaranteed in Germany. Secondly, participants were interested in issues relating to the right to justice access. This justifies why some expected to know, among other things, the powers of courts and prosecutors in Germany, the status of victims in criminal proceedings, the role of the German Federal Constitutional Court (*Bundesverfassungsgericht*) in the protection of human rights and the impact of the European law in German domestic matters. Thirdly, they also expected to experience some legal practices on judicial cooperation between Germany, other countries of the European Union and the rest of the world, including Africa, with much more interest on the German practice about the punishment of international crimes. Fourthly, the African guests intended to listen to German professionals, to discover the legal culture, the culture of people and thus the society itself, for which the judiciary system operates.

The agenda tried to meet these expectations in three different ways. One part of it invited participants to follow not less than six lectures introducing them into the German legal system. Delivered by a selected number of German lawyers, judicial practitioners and officials, these lectures covered a set of seven topical issues: i) function, purpose and supervision of the department of the public prosecutor's office; ii) international legal assistance and cooperation in criminal proceedings; iii) tax system and tax collection in Germany; iv)

the executive in a federal system; v) German constitutional law; vi) European law: law-making from the view of a German ministerial practice; vii) insight into the education of jurists in Germany.

Another dimension was the support to the African guests by their German mentors. With this assistance, they had the opportunity to attend courts sessions in criminal, civil and trade matters, received technical explanations by German practitioners and interacted between them in order to get a better, but minimum, technical understanding of the German justice system.

Meanwhile, at last, beyond a handle of proposed cultural activities (including visits to the Opera House Stuttgart and the *Staatsgalerie*, a museum of fine arts), various public institutions were visited, such as the regional Parliament (*Haus des Landtages*), the Ministry of State (*Staatsministerium*) and the Ministry of Justice *(Justizministerium),* the *State Office for Criminal Investigation (Landeskriminalamt)*, the Correctional Facility Heimsheim *(Justizvollzugsanstalt),* the Federal Constitutional Court *(Bundesverfassungsgericht),* Public Prosecutors' Offices (*Staatsanwaltschaft*) and other regional Courts (*Amtsgericht*, *Landgericht* and *Oberlandesgericht*) sitting in Stuttgart.

However, the programme could not be complete. In terms of participation, the agenda was a little bit unbalanced, since German advocates as such were not associated to the programme, as well as members of the civil society, while they could maybe provide the visiting African lawyers with another sound of the bell, not only the official one, about the functioning and other concrete practices of the judiciary in the State of Baden-Württemberg. Besides, some important issues even missed on the programme, for example, the procedures and guarantees for the implementation of judicial judgments in Germany, while this topic is, from an African sight, quite a significant test of the efficiency of any judicial system. The same could be said about the relevance of extra-judicial mechanisms of justice within the German legal system: importance of arbitration, parties' arrangements, mediation out of the courts, etc. After all, it has to be admitted that the programme was already very satisfactory for the African guests and, anyway, the meeting time was so short that it could not enable to cover all desired subjects.

2. African lessons from the specificity of the German judicial organization

The first face of such specificity is that the German judiciary and the justice system attached to it are much more a local matter than an issue governed from the summit of the State, at the federal level. As it was explained during the visits at the *Haus des Landtages*, the *Staatsministerium* and the *Justizministerium* of Baden-Württemberg, each of the sixteen German Federal States (*Länder*) governs its own part of the judiciary, next to federal courts, defines its organization, its priorities, its needs in terms of staff personnel, facilities as well as equipment and allocates budget to this effect. In short, it proves to be an unbalanced federal system on the benefit of the *Länder*.

In this context, it was observed, for example, that the State of Baden-Württemberg is capable to provide the judiciary with minimum, but reasonable, means of work, as attested by the state of visited judicial institutions, the prison in Heimsheim and the equipment provided to the police of criminal investigation, with its cybercrime and digital division, as well as the forensic science laboratory. It is obvious that an efficient criminal justice will not effectively operate if it does not acquire support from there. The rights of the accused and those who seek justice are re-affirmed when investigations deliver the accurate and timely findings. The State Office for Criminal Investigation (*Landeskriminalamt*) serves this purpose in Baden-Württemberg.

This means, at least, that justice is not what is just pronounced by judges, but also the efficiency and efficacy of the whole criminal justice system. This begins with the period of arrest, investigations, appearing in Court and then sentencing. In addition, the file storage system at the prosecution was outstanding. The files are well kept and information for each individual who has been in conflict with the law safely computerized. In case someone is recidivist, then courts would be able to administer the right therapy aimed at assisting the individual in conflict with the law. Having data for all cases and a proper storage system facilitates courts and prosecution to have full data of all the cases they are handling. Instead, that is a big challenge for the African judiciary systems.

Of course, Germany is a different judicial model, even if it shares with the three African countries (but Rwanda changing to become part of common law system) its belonging to the family of civil law system. However, there was a common view among the African participants that this judicial model remains attractive for two main reasons. On one hand, Germany gives the example of what can be called the judicial governance of proximity, which contrasts with the situations in Rwanda, Burundi and much more in the DRC, where the judiciary is but centralized, politically managed from the respective capital cities (Kigali, Bujumbura and Kinshasa). On the other hand, the centralized judicial governance results, to some extent, in the asphyxia of justice, which becomes an objective of second plan at the national level, if it does not serve the interests of the central governments. In small countries like Rwanda and Burundi, this problem could be avoided with a minimum political will of their leaders. However, for a country like the DRC, which is as large as the entire Western Europe, the German model is very instructive. Even if the DRC is not a federal State, it is feasible, with a fair allocation of collected national resources between the central government and the regionalized provinces, to alleviate the system by giving more responsibility to the latter in taking charge of the judiciary. This autonomous decentralized governance from provincial bases could help to put an end to the political and financial asphyxia of the judiciary at the summit of the country.

The second face to be mentioned is the valorisation of the independence of magistrates (judges and prosecutors) in the heart of and before the independence of the judiciary. In fact, Germany does not have any *Conseil supérieur de la magistrature* (Supreme Council of the Judiciary) like in Rwanda (which has in addition the Supreme Council of the Prosecution Service), Burundi and DRC in order to promote self-governance of the judiciary as a

constitutional guarantee for its independence from the executive and the legislative bodies. Instead, in Germany, except for its federal part, the judiciary and the career of magistrates (recruitment, nomination, retirement, etc.) are managed by each Ministry of Justice *(Justizministerium)* at the *Länder* levels. This surprising discover rose a legitimate curiosity among the visiting African lawyers to know what were then the secrets of the independence of the judiciary, if it is totally organized by governments within the *Länder*.

A part of the answer was given by Dr *Steinle*, the President of the Higher Regional Court (*Oberlandesgericht* Stuttgart) during his welcome address to the participants in his office, and by *Günter Geiger*, the leading prosecutor before this Court, who gave his lecture on the functions of the public prosecutor's office in Germany. One point is that the Ministry of Justice cannot do whatever it wants. For example, for the recruitment process of magistrates, the only criterions under consideration are based on personality, conduct, academic and practical legal competences. In the African countries, where the work is done by the presupposed independent *Conseil supérieur de la magistrature*, group representation (Burundi) and provincial equilibrium (DRC) are also implicitly relevant. Another point is that, although the Minister of Justice has the power to order a criminal inquiry to the justice, the political culture is such that, as *Günter Geiger* explained it, he/she rarely resorts to it. However, he/she keeps the right to be informed about the work of public prosecutors' offices. In addition, much more striking is the protection of the tenure of magistrates, who are designated for life, like in the African countries (except members of constitutional courts or non-professional judges), and particularly the fact that a German judge or prosecutor cannot be moved away by the Ministry of Justice, unless he or she demands by her or his own the change of position or decides otherwise for personal reasons. The latter specificity, if adopted and fully implemented in a country like DRC, could maybe resolve the chronic instability of the judiciary which broadly reduces its independence.

Another part of the answer was given by German politicians themselves. This came out of the meetings at the *Haus des Landtages*, the *Staatsministerium* and the *Justizministerium*. It looks as if there is a common understanding and commitment between magistrates and political actors to secure an independent judiciary. The legal texts come only to nourish this environment already conducive to the administration of a fair justice. The difference is remarkable from the African countries perspective where the independence of the judiciary is reversely promoted by departing from tremendous legal texts reforms, but with a few results in practice. Therefore, it may be convened that such an independence has to come not only from legal texts reforms, but must be and mainly associated with the reform of political and personal culture of actors intervening in the functioning of the entire legal system. Hence, participation in future exchange programs should be extended beyond judicial professionals if there might be created a concrete dynamic of change of this kind in Africa. However, it has to be warned that legal systems will become here only what Africans want them to be like.

Finally, the typical specialized organization of offices (courts and public prosecutor's offices) in Baden-Württemberg was appreciated. Each magistrate focuses on one field of

work which appertains to a specialized department within the judicial institution where he or she is affected: family law, property rights, rape, sexual violence and abuse against children, trafficking of drugs and cross-border crimes, economic crimes, etc. Such a division of judicial work does not exist in the DRC, neither in Rwanda and Burundi. In principle, in these countries, magistrates deal at the same time with matters relating to any legal issue falling in the competences of their respective jurisdictions. There is only an administrative possibility for heads of offices, who can decide to allocate cases to magistrates on the basis of their educational backgrounds or set down special chambers within tribunals. In this regard, the German system seems to be more practical; but, it can also be very harmful for the magistrates' experience, as it might limit them in many other areas of law. It may thus be suggested to adjust the system on a rotation basis, so that German magistrates become able to vary their fields of work in the same tribunal or the same public prosecutor's office, while working, period after period, under the basis of specialization. This system could be much better than the one which now exists.

3. African lessons from some distinctive judicial practices in Germany

In three distinct practical legal issues, the German system raised more questions than perspectives of adaptation for the African participants. First of all, concerning the powers that magistrates hold from the law, it was noted that the system was quite similar to the African ones. But, except in the case of Rwanda, the limited role of public prosecutors just on criminal matters was merely a surprise in regard to the situations in Burundi and the DRC. Unlike in Germany and Rwanda, prosecutors there also assist judges during courts sessions in private cases and provide them with advisory opinions on various pending legal issues. They are like providers of councils to courts and tribunals. In certain cases, written advisory opinions are even peremptory formalities for them; otherwise their judgments would be subject to cassation. Anyway, if the system particularly fits for Germany, there were reasons for that: education rate is high among its citizens and advocates are sufficient in number all over the country. Such factors exceed, to some extent, the African countries. Therefore, by giving prosecutors the duty to attend private cases before courts and tribunals, it is merely for a realistic reason that those justice seekers, who lack sufficient education or cannot secure an advocate for their cases, could at least find an eventual support from the prosecutors, of which mission is to ensure that human rights and law, in all its aspects, are protected and well respected. Does Rwanda meet the German standards? That is another question for discussions.

Besides, the African participants appreciated the German expeditious justice, which is another chronic problem in Africa countries. Of course, expeditious justice does not mean that justice is necessarily better administrated. It only shows that the judicial system functions in respect of ascertained procedural rules and judgments are pronounced in due course without delay. One positive impression was got from the power for the judge to close a criminal case by her or his own, without any further hearings, out of the prosecutorial refer-

ral, provided that the accused accepts charges written in the judicial mandate (*Strafbefehl*) delivered against him or her. A system of this kind avoids waste of time and is much recommended to respective African States, particularly the DRC, where any criminal case referred to a court by the prosecution must be closed by a written judgment; what is quite making heavy the judges' work, with all the procedural implications.

Another positive point for that expeditious justice was found in the (mandatory) prelitigation conciliation of parties in all civil cases. As practiced, it not only helps the courts to avoid a huge backlog, but also saves parties from unnecessary waste of time and money. The same could be said about noted practices in divorce cases. The parties are given much ability to settle many details and come to the judge for almost only a formal court decision. It was observed that, in divorce hearings, parties agree to settle property, child custody and child visits, pension benefits, etc., beforehand and take their decisions to Court. This reduces the time the court would have spent in settling such issues. Although this may not appear in all cases, especially concerning non-cooperating parties, the few cases attended reflected the benefits of such a process. This was always facilitated by the judges and created/improved harmony among the parties.

Secondly, the status of victims in criminal cases appeared radically different from what one could have thought before. On one hand, a victim of an offence in Germany cannot directly present her or his private demand to a criminal court by her or his own, except when that offence is among those which are supposed to blemish one's honour or individual personality. There has to be, in fact, a referral from the prosecution. On the other hand, even when the prosecution has referred to the Court, the German system does not give the victim, except in the case of crimes against the life or the physical integrity of persons, etc., the right to join her or his private demand to the public accusation, unlike in the DRC, Burundi and Rwanda. In both situations, her or his only right is to appear before the court and be heard as witness. The victim will then wait until the end of the criminal proceeding in order to introduce, afterwards, her or his private demand before a civil court. Such a system facilitates a waste of time and money for the victim. He or she also loses a big institutional support for her or his private demand that could have been, eventually, backed by the prosecution. As such, this system is actually lower than the ones which apply in many African countries. Even in comparison with military tribunals' practices in the DRC, the right of the victim to join her or his private demand to the prosecution is fully guaranteed. Moreover, in some cases, a tribunal (civil or military) could automatically allocate compensations to identified victims who could not meanwhile forward their private demands for various reasons. Could this be seen as a fallback of the German legal system? Could Germany learn about legal progresses and experiences from African legal systems? That might be indeed one of the positive unexpected results of the exchange programme.

Thirdly, and last, African participants were interested by the right to judicial recourse in Germany. *Anne Schroth* practically helped, in her lecture on German constitutional law, to make understand the relevance of the individual complaint before the Federal Constitutional Court and the imbrications stemming from similar proceedings before the European

Court of Human Rights. Two things were particularly striking. One is the scope of the individual complaint before the Federal Constitutional Court. It was noted that the mechanism extends to judicial judgments and decisions which allegedly violate fundamental rights enshrined in the Constitution. This is a great progress in the German legal system that could rarely be found in African countries. The mechanism is then a source of inspiration, even if it may require constitutional reforms.

In contrast, it was a surprise to remark that there was no room for appeal for those who are judged by the higher Court (*Oberlandesgericht*), at first, for presumed committed international crimes. The only remaining possibility is the revision procedure which is, notwithstanding, less efficient for the accused than the appeal right. Hence, is a denial of appeal recourse not a violation of human rights that can be redressed by the German Federal Constitutional Court? At this point, the system appeared to the African side a little bit incoherent, if not contradictory.

By the end, Dr *Oliver Meinecke* opened another perspective on the European Law by the virtue of which other rooms for individual complaints could be available before the Court of the European Union. All these imbrications proved that the phenomenon of justice and the rule of law (in general) are no longer restricted within State borders, beyond which internally denied rights can now be internationally redressed. Everything depends on the credibility and the powers given to international/community institutions. In this regard, the European Court of Human Rights and the Court of the European Union could serve as an example for Africa.

4. Conclusion and Recommendations

The learnt experience and lessons in Stuttgart showed that law is part of the society and there is need to understand the perception of law by its members. How is the law perceived? The confidence of the parties as well as the cooperation with the judges and prosecutors demonstrated that the beneficiaries of justice need to have confidence and trust for the law and the judges. This was learnt during the court sessions attended. The organization and sitting arrangements in Court coupled with the professional positive attitude the judges and prosecutors displayed in cases indicates that there is need to review and better understand the role of the judiciary not from a punitive stand but rather restorative aspect. Much of what was learnt can be implemented in Burundi, the DRC and Rwanda. However, some other best practices might be only possible with availability of resources and sound financial systems. It nonetheless calls for the Africans to adopt appropriate strategies to ensure the rule of law and respect of fundamental rights in their countries.

Therefore, it is recommended:

1) to keep on with this exchange programme and to consolidate it, with hope that German lawyers could also travel to Africa on a rotation basis according to the number of involved African countries;

2) to extend the programme to more African participants, including civil society members, even if not lawyers; and to associate German advocates as well;
3) to support the funding of local group dynamics within involved African countries, which could disseminate acquired exchanged experiences on the ground, or serve as contact groups within respective African legal systems;
4) to encourage publications by a network of judicial professionals about encountered practical problems and solutions found from one legal system to another; and thus to share them by the same way.