

**Southern African Chief Justices Forum  
Kasane, Botswana, 6-9 August 2009**

**Welcome address by Mr Gianni Buquicchio  
Director, Secretary of the Venice Commission**

Honourable Chief Justices  
Honourable Justices,  
Dear participants,

I am glad to be in Botswana and happy to meet again friends at the Southern African Chief Justices Forum. For those who have joined more recently, I would like to recall that since many years, your Forum is a privileged partner of the Venice Commission. Over the years we have not only participated and co-organised the regular meetings of the Chief Justices but we have also actively promoted the creation of your Forum as a permanent body, since the first meeting in Zanzibar. The Venice Commission is ready to pursue this co-operation and we are happy to be able to do so with the help of the Government of Ireland, which allows us to also support our meeting today.

I would like to touch upon three issues, the fruitful co-operation between the Southern African Chief Justices Forum and the Venice Commission, the establishment of a World Conference on Constitutional Justice and of course the most relevant topic of our today's Conference.

**Co-operation agreement / CODICES**

Our co-operation agreement, signed in Maseru in March 2007, *inter alia* provides that your courts can present their case-law in the CODICES database of the Venice Commission. For this purpose, you have appointed liaison officers, which are to send us summaries of the cases and the full judgements and we are pleased that we have received a number of highly interesting decisions, which we published on our CODICES database and web-site. For some countries, these contributions have however dried up over the years and I would kindly ask you to call upon your respective liaison officer to resume sending cases and summaries. Some of your liaison officers may have left the Court or assumed other duties within it. Consequently, it may be necessary to appoint successors. The CODICES site allows you to present your important case-law not only to the other courts in the Forum but

also world-wide because many courts in Africa, Europe, Asia and the Americas actively participate in this joint endeavour. Later, my colleague Schnutz Dürr here will consult with you on the name of your respective liaison officers.

### **World Conference on Constitutional Justice**

Many of you were present this January at the World Conference on Constitutional Justice in Cape Town on the influence of constitutional justice on society and the development of a global human rights jurisprudence and you have actively contributed to the success of this first global event. Some 10 regional groups and 93 Courts and Councils met at this occasion. The choice of the venue was an important sign of recognition of the work achieved in South Africa and in the Southern African region in general. Those present will remember that this Conference adopted a final declaration in which it called for the establishment of the World Conference as a permanent body. Since then, the Bureau established by the declaration, which is composed of representatives of the regional groups, met in Mérida, Mexico last April, and discussed a draft statute for the World Conference. We were honoured by the presence of Chief Justice Langa at this meeting, representing the Southern African Chief Justices Forum. The Bureau produced the draft statute which you have received and which is submitted to your Annual General Meeting for comment and hopefully approval of principle. Your comments will be submitted to another meeting of the Bureau in Venice on 12 December, which is to adopt a final text, which in turn will be open for approval by the regional groups – including the Southern African Chief Justices Forum and its individual member courts. During this year, a number of other regional groups already met and will meet to discuss the draft Statute. Already in April, in Mérida itself, the Ibero-American Courts approved the draft Statute in principle and mandated their Secretariat to contribute to the approval of the final version. In June, in Tallinn, Estonia, the Joint Council on Constitutional Justice, composed of constitutional courts and equivalent bodies in member and observer states of the Venice Commission, approved the draft in principle and gave a similar mandate to its Co-presidency. Also in June, the Association of French speaking Constitutional Courts, met in Cotonou, Benin, and welcomed the creation of the World Conference. They decided that their Bureau, which will meet in October, should make comments and send a representative to the Venice meeting in December.

Let me briefly set out a few of the main elements of this draft Statute:

While providing for individual membership of the courts, the World Conference rests upon the regional and linguistic groups, which it unites. In addition to those groups already mentioned, others are the Asian Constitutional Courts, Commonwealth Courts, Young Democracy Courts – in the former Soviet Union -, Portuguese speaking Courts, European Constitutional Courts and Arab Constitutional Courts and Councils;

The objectives of the World Conference are the promotion constitutional justice – understood as constitutional review including human rights case-law – as a key element for democracy, the protection of human rights and the rule of law. This formula is wide enough to embrace also courts, which cannot formally invalidate legislation. The World Conference promotes the exchange of experiences and case-law within the groups, between them and with individual courts and supports the independence of its members.

At least every three years, the Conference will organise congresses like the one in Cape Town. The next Congress will take place in Rio de Janeiro, Brazil, in 2011. The World Conference will have its case-law database and web-forum as a means to enable regular exchanges between the members between the congresses. The Venice Commission will provide its existing CODICES database with already some 7000 cases and the well-established Venice Forum. Upon their request, the Conference will also be able to offer its good offices to its members. It was in fact your Southern African Chief Justice's successful mission to Swaziland, which inspired us to include such a competence also for the World Conference.

The Membership in the World Conference will be open both to individual constitutional and supreme courts exercising constitutional jurisdiction and the regional or linguistic groups uniting them like your Forum.

The Conference is to have three organs. The General Assembly is composed of the individual courts and meets at the occasion of the congresses. Inter alia, it is competent to admit regional or linguistic groups other than the founding groups and individual courts, which are not members of a group. The regional and linguistic groups are represented in the Bureau of the Conference. The Presidency of the Bureau, which represents the World Conference in external contacts, rotates annually between the groups. The Bureau, meeting annually, inter alia decides on the topic and venue of the next Congress, and - upon their request - offers its good offices to the members of the Conference. It is foreseen

that the Venice Commission ensures the Secretariat of the Conference. A topic intensely discussed within the regional groups which met so far was finances. While the financial contributions are welcome, the draft Statute does not contain any obligation to contribute to the budget. The World Conference will attempt to obtain funds also from international donors. Given the linguistic diversity of the members the congresses and meetings of the General Assembly shall be interpreted in the Arabic, English, French, Portuguese, Russian and Spanish languages. The Bureau and the Secretariat will however work in English and French only.

In order to enter into force acceptance of the Statue by at least three regional or linguistic groups or 30 individual courts is required. We hope that this will happen early next year after a final version of the draft statute will have been approved by the Bureau meeting in December this year.

Here in Kasane, you are called upon to discuss this draft Statute and I look forward to your remarks and suggestions. We would be pleased if you approve the text and mandate your presidency to adopt a final text in Venice in December.

### **Topic of the Conference**

You have chosen a highly topical theme for your Conference. The discussion on the relationship between the rule of law, separation of powers and judicial independence with socio economic development should allow us to get some important insights on how these issues influence each other.

There is of course one view, that development comes first and only then democratic values should be pursued. An important country, China, follows this ideology. It is true that such a system can lead to – even impressive – economic growth. However, we have seen that not only some ethnic minorities –Tibetans or Uighurs – sometimes even violently reject the lack of rights. Even in central China, regularly unrest has to be forcibly suppressed because citizens have no access to an independent judiciary and cannot express their grievances in any useful way. In times of economic crisis the absence of democratic means of expression of criticism becomes even more a liability.

On the other hand, admittedly an independent judiciary, freedom of expression and separation of powers do not automatically lead to economic development. They are, however, an important basis for a society, which will not only benefit a few but will allow the people at large to take advantage of economic growth. The protection of human rights and especially freedom of expression by independent courts, can reveal corruption and abuse by some to the detriment of the people at large. Thus, transparency protected by an independent judiciary is a precondition for lasting and also sustainable economic development.

I am grateful to our host, Chief Justice Nganunu, that we can discuss these topics here in Botswana, a country which has much achieved in this field and is widely respected for its accomplishments.

I do look forward to our discussions. In Europe, we often have similar problems and we are keen to learn on how you cope with the difficulties facing you. The current global economic crisis will certainly not have facilitated your important task. In Europe, we see how badly courts are affected by this problem and I wonder how you are able to cope.

Thank you very much for your attention.