



Strasbourg, 28 August 2003

Restricted
CDL-JU (2003) 28
English only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

Conference on

**“SUSTAINING THE INDEPENDENCE OF THE JUDICIARY -
CO-OPERATION OF THE JUDICIARY OF THE REGION”**

**Zanzibar, Tanzania
21-22 July 2003**

co-organised with the Court of Appeal of Tanzania

in consultation with the Constitutional Court of South Africa

S Y N O P S I S

Within its project to strengthen the co-operation between constitutional and supreme courts in Southern Africa, the Venice Commission organised with the Court of Appeal of Tanzania and in consultation with the Constitutional Court of South Africa funded by the Norwegian government, a conference on “Sustaining the Independence of the Judiciary - Co-operation of the Judiciary in the Region” in Zanzibar on 21-22 July 2003.

The highest courts of 11 countries - i.e. Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe - were represented by 7 Chief Justices and 4 other senior judges. The Chief Justice of Zanzibar and Deputy Chief Justice of South Africa also actively participated in the Conference.

One of the main topics of the conference was **the independence of the judiciary in the region**. The situation in the region strongly varied from judiciaries being in distress to those functioning normally with some minor problems. In the course of a *tour de table* the participants shared their concerns such as strong pressure from the executive, incomplete financial autonomy, confrontations with legislature, insufficient independence of civil servants, weak infrastructure, inadequate budget, corruption, low salaries for courts' staff, and sometimes a hostile attitude of media towards judiciary. On the other hand, current positive developments were adequate salaries for judges and courts' staff, only isolated cases of corruption, good relations with media and NGOs, growing respect for rule of law in general and for the judiciary in particular.

The second main issue discussed by the participants was **co-operation between the judiciary in the region in general and the establishment of a forum of judges in particular**. The necessity to create a forum was expressed for some time now, notably at earlier meetings in South Africa (1999, 2001) and Zambia (2000). Lack of financial means had so far prevented the establishment of such a forum. At the same time, no funds, from international donors, could be made available without a formal structure/organisation. However, earlier this year, the Open Society Institute (Soros Foundation) had provided some limited funds to the Trust of the Constitutional Court of South Africa in order to establish a small secretariat of such a forum.

This conference made a significant progress towards establishing a forum of judges in the region and as a result the participants agreed on the following points:

Legal nature: common law association.

Title: Southern African Judges Commission (SAJC);

Aims:

- promoting contacts between courts in the Southern African region in the field of the rule of law, democracy and the independence of judiciary;
- disseminating the case law of the highest courts of the region through publication and a website;
- promoting co-operation and assistance to the Courts in the region in connection with judicial training;
- organising colloquia in the fields of common interest to strengthen links between courts;
- maintaining contacts with other institutions with similar competences in Africa and elsewhere;
- addressing the issues of administration of justice in the countries of the region

Membership: English and Portuguese speaking common law countries of the Southern African region, i.e. Angola, Botswana, Lesotho, Kenya, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

Presidency: rotating; the first President would serve for 2 years, the following ones – for 1 year.

Executive Board would include a previous, present and future Presidents. They would take up the governing of the Commission between yearly Conferences of Chief Justices.

Secretariat – permanent, one person, a legal professional, based at the Constitutional Court of South Africa until further decision.

Given the difficult situation of the judiciary in Swaziland, a fact-finding mission will be organised this year to Swaziland; the group representing the Commission will consist of the Chief Justices of Lesotho, Tanzania and Uganda. The delegation should try to meet with the King.

Further meetings: the official inauguration of the Commission has planned in South Africa at the end of October 2003. The next meeting of the Southern African judges – yearly Conference of Chief Justices - co-organised by the Venice Commission, will be held at the end of June 2004 in Mauritius. The participants also agreed to discuss the future Commission in the framework of other meetings of the judiciary, organised by other institutions: in August, December 2003 and March 2004.

The participants also expressed their views **on the dissemination of the case-law**. The majority of the courts faced delays in the publishing of their decisions. Several solutions were discussed by the participants. Firstly, the inclusion of the case-law into the Venice Commission database of constitutional case-law CODICES: the database has a global reach and already comprises about 4500 full decisions, 3800 summaries of decisions of 65 courts. An additional solution could be a creation of a specific website on the judicial developments in the region. Finally, courts could benefit from an e-mail forum, which could be set up and managed by the Venice Commission Secretariat, where the courts would, in confidentiality, exchange ideas and solutions to problems related to judicial practice.

Finally, the participants stated that there was a clear **need for training of judges** in order to raise ethical, professional standards of the judiciary and thus to raise the public confidence in the judiciary.