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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

in co-operation with  
**THE SOUTHERN AFRICAN JUDGES COMMISSION (SAJC)**

**CONFERENCE**

**On “Constitutionalism: the Key to Democracy, Human  
Rights and the Rule of Law”**

**Maseru, Lesotho  
31 March-1 April 2007**

**SYNOPSIS**

The Southern African Judges Commission (SAJC) organised, in co-operation with the Venice Commission, a conference on “Constitutionalism: the key to democracy, human rights and the rule of law” followed by its annual general meeting (31 March – 1 April 2007, Maseru, Lesotho).

During the opening ceremony of the conference, His Majesty King Letsie III of Lesotho was present as were representatives of all the Lesothian authorities. The opening keynote speech was made by the Prime Minister of Lesotho, Mr Pakalitha Bethuel Mosisili. The participants included Chief Justices from Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Uganda, Zambia, two members of the SAJC staff and a delegation from the Venice Commission.

The key objective of these gatherings is for judges of Southern and Eastern Africa to share the experience of their respective jurisdictions. During the conference, the importance of the separation of powers was underlined, stressing that: the judiciary adjudicates legal disputes, safeguards rights and interprets the laws; the rulings of the judiciary must be obeyed; the executive has the constitutional duty to ensure that justice is not delayed because “justice delayed is justice denied” and that the speedy dispensation of justice is a joint responsibility of both the executive and the judiciary.

The issue of the guarantee for independence of the appointment of chief justices was also discussed, pointing out that some constitutions, such as the one from Tanzania, are silent on this subject. Lesotho is currently working on an amendment to its law that will ensure that the appointment of the chief justice is made by recommendation of the legislative committee to the prime minister. In Uganda, where this is not yet an issue, there is a move towards controlling the power of politicians to have the only say in this – and to move the decision closer to the people thereby aiming to have a political input, a professional selection as well as parliament’s input. In Namibia, the president can refuse (with grounds) the appointment of a chief justice from a list recommended by the legislative commission and ask for new names. The participants agreed that a transparent and credible appointment procedure of a chief justice is crucial for the independence of the judiciary.

Ms Flanagan, the Irish member of the Venice Commission, reported on the experience in her country of enforcement of the constitution and human rights, notably about tribunals of inquiry. The latter are presided over by judges, although not acting as judges in the exercise of their function in the tribunal. There are currently seven such tribunals in Ireland. Examples include the one set up in 1991 – the „Beef tribunal“ (inconclusive result), another in 1996 to deal with the hepatitis C contaminated blood scandal (reported within 5 months), two others were set up in 1997, one of which dealt with the improper contributions to politicians for planning permission and the last one in 2004 for the shooting dead of an armed person who had suffered a breakdown. These tribunals are constantly judicially reviewed and are found to be lacking and this despite the fact that rules have been introduced to ensure a fair procedure in such tribunals. With respect to costs in Ireland, they follow the event and are at the discretion of the court. In order to cover this, proper legal aid is necessary and Ireland was found to be wanting.

Similar structures to the tribunals in Ireland exist in other countries, for instance Mauritius has a similar structure known as commissions of inquiry, where unfortunately there are many judicial reviews due to allegations of fraud where evidence was not properly collected etc. Kenya and Uganda also have such commissions of inquiry dealing mostly with issues of corruption – and they are subject to review by the High Court. The participants agreed that public pressure on such structures can be very productive and that such tribunals or commissions must enjoy independence and their outcome must be made public in order to obtain the public’s trust.

The participants also discussed the Hague Convention on the Civil Aspects of International Child Abduction, to which - from the SAJC countries - only Mauritius, South Africa and Zimbabwe have acceded. In Lesotho, this issue is dealt with by the Child Protection Act of 1980 which, due to its shortcomings by covering only juvenile delinquents rather than the abduction and trafficking of children, is being revised by a bill that addresses these issues. The African Charter on the Rights and Welfare of the Child was also discussed, which most SAJC countries have ratified, except for Namibia, Swaziland, Tanzania and Zambia, which are signatories and Botswana, which has neither signed nor ratified it. The participants agreed to encourage SAJC countries to ratify the Hague Convention and the Charter.

During the SAJC's annual general meeting, the chief justices discussed the recent situation concerning a judges' "strike" in Uganda and the threat to the independence of the judiciary following the arrest of suspects inside the High Court after having been released on bail. The SAJC re-emphasised that it has a responsibility and must engage support of other countries in this serious and grave event.

The SAJC also discussed the possibility of creating its website and the Southern African Legal Information Institute (SAFLII) indicated that it could help set it up. SAFLII made a brief presentation explaining its work and its goal of collecting and making available all case-law of superior courts in Southern and Eastern Africa.

The SAJC's current name was also discussed, saying that it would be more appropriate to name the commission: "Southern African Chief Justices Commission" as this name would more accurately reflect the composition of the Commission. The SAJC also elected a new management committee composed of Chief Justices Langa (South Africa), Odoki (Uganda) and Sakala (Zambia).

