

AFRICAN UNION

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ESTABLISHMENT OF AN INTERNATIONAL CONSTITUTIONAL COURT
(Item proposed by the Republic of Tunisia)

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1. The Government of the Republic of Tunisia is tabling before the Assembly of the Union a proposal on the establishment of an International Constitutional Court in the hope that Members States will approve it and support it together with Tunisia at the United Nations.
2. One of the objectives of the United Nations as enshrined in Article 1 of its Charter is the respect of human rights and fundamental freedoms. Indeed, the United Nations has continuously been concerned with this issue and has developed in half a century of existence, a huge pile of protective texts committing all States which have adhered to the principles and objectives of the world body. Mindful of the implementation of these texts, the United Nations has put in place an international institutional architecture including the United Nations Human Rights Council, the Human Rights Committee and Regional Human Rights Courts and Commissions.
3. However, these bodies do not have the full authority to sanction states that fail to make good on their commitments in terms of respect of democratic principles, Human Rights and the Rule of Law. The situation has created a democratic lacuna which the current proposal being tabled by Tunisia before the Assembly of the Union seeks to address through the establishment of an International Court as an international control authority endowed with powers to evaluate the constitutional situation in Member States.
4. The establishment of the International Constitutional Court is in line with the extension of the action already taken by the United Nations as well as Regional Organizations, including the African Union and Non-Governmental Organizations.
5. This Court will indeed constitute a decisive leap forward. It will focus on the key elements of democratic vitality of society. Once established, it will be the international judicial structure authorized to receive appeals and pronounce itself on serious violations of the principles of International Law relating to Democracy and the Rule of law.
6. The Court would have a dual function. The first would entail evaluating political situations referred to it either by Governments, International Organizations, Non-Governmental Organizations or even by political parties, national associations or professional organizations. The Court could then make a declaration of conformity or otherwise.
7. As regards contentious issues, the Court could be seized by various players legitimately concerned by a specific situation. After a mediation phase, the Court could then pass a judgment that would be binding on states.
8. The proposed Court will have an innovative and pioneering role in that it will be the first tool of its kind to be put at the disposal of the international community for a collective, effective, visible and tangible action for genuine consecration of the principles of democracy, respect of Human Rights and the Rule of law at the International level.

9. Africa is familiar with democracy and democratic practices. The African Union is one of the continental organizations that has put in place a system for the prevention and fight against unconstitutional changes. Moreover, and apart from enshrining the principles of democracy and good governance in its Constitutive Act, the African Union has been endowed with a number of major legal instruments, prominent among which is the African Charter on Democracy, Elections and Governance. This instrument is designed to strengthen and establish democratic practices in Member States of the African Union.

10. At the legal level, the Tunisian proposal is consistent with the basic texts and legal instruments of the African Union relating to alternation of political power. These include the Constitutive Act of the African Union, the Protocol establishing the Peace and Security Council of the African Union (PSC), the African Charter on Democracy, Elections and Governance and the African Charter on Human and Peoples' Rights.

11. Furthermore, once approved, the Tunisian proposal will strengthen the work of the African Union in the area of consolidation of the bases of democracy and the Rule of law.

12. The Government of the Republic of Tunisia solicits the support of AU Member States to its proposal for the establishment of an International Constitutional Court as outlined above. Tunisia hopes that this proposal will be supported by Member States and endorsed by a formal decision of the policy organs of the Union at the 20th AU Assembly of the Union in January 2013.

13. Tunisia also hopes that the political organs of the Union will adopt a decision calling on the African Union Commission on International Law to examine this proposal and prepare a document encompassing the various aspects of the proposed Court (objectives, referral modalities, choice of Judges, etc...) and submit a report to the 22nd Assembly in January 2014.

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