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**ESTABLISHMENT OF AN AFRICAN SPACE FOR
CONSTITUTIONAL JUSTICE**

(Item proposed by the People's Democratic Republic of Algeria)

2010
MAKE PEACE HAPPEN

**ESTABLISHMENT OF AN AFRICAN SPACE FOR
CONSTITUTIONAL JUSTICE**

(Item proposed by the People's Democratic Republic of Algeria)

1. The end of the 20th century was, unquestionably, marked by the generalization of constitutional justice in the world.

2. In this regard, African countries like the countries of the other continents, progressively provided themselves, each one in accordance with the rhythm of its specific political history, with a judicial mechanism for control of the constitutionality of laws inspired, in variable degrees, by the Kelsenian model or the American model of constitutional justice.

3. The adoption of this control mechanism, the ultimate goal of which was to strengthen the rule of law, deepen pluralist democracy and guarantee protection of human rights, paved the way for Africa to go along with this global trend.

4. However, whereas African States did not remain on the sidelines of this constitutional justice movement, in response to the upheavals that the world has been experiencing since the end of the 80s , establishing institutions or jurisdictions with responsibility to ensure respect for the Constitution in the domestic judicial setting and, in certain cases, to ensure the proper conduct of major national political consultations (legislative and presidential elections as well as referenda), Africa has not kept pace with the rhythm of this development by creating, like the other regions of the world, a collective space for consultation, experience exchange and cooperation in the sphere of consultational control, which Algeria officially advocated in 1997.

5. By way of update, several regional and/or linguistic spaces have come into being since the end of the 90s, namely:

- The Union of Arab Courts and Councils (UACCC) created at the initiative of Algeria and Egypt in 1997;
- The Association of Constitutional Courts using the French Language (ACCPUF);
- The Conference of Constitutional Control Organs of Countries of Young Democracy (CCCOCYD);

- Asian Constitutional Courts;
- Commonwealth Courts;
- The Conference of European Constitutional Courts (CECC);
- The Ibero-American Conference on Constitutional Justice;
- The Southern African Judges Commission (SAJC);
- Group of Portuguese Speaking Constitutional Courts.

6. As a high point of this natural development, at the initiative of the European Commission for Democracy through Law, better known as “Venice Commission” and following the meetings held in Seoul, Vilnius and Algiers which prepared the First World Conference on Constitutional Justice in Cape Town in January 2009, a global space for Constitutional Courts and Councils was expected to be created in January 2011 in Rio de Janeiro.

7. The Final Declaration of the Cape Town Conference highlighted “the paramount importance of the respect of human rights in all parts of the world” and commits to “fostering and developing the basic values enshrined in the Constitutions” through enhancement of information and experience exchange between Constitutional Courts and Councils on regional and global basis.

8. It is important to emphasise that the Constitutional Courts and Councils in the three countries that were organizers of the aforementioned preparatory meetings (South Korea, Lithuania and Algeria) with the important addition of the Constitutional Court of South Africa, were invited to join the presidents of the regional and linguistic groups to constitute the Bureau tasked to elaborate the statutes of this Conference.

The Bureau which held its last meeting in Venice is expected to hold a final meeting before the end of next June.

9. Today, the promotion and development of constitutional culture having become a prerequisite for the rule of law and emerging democracy, it is high time that Africa organized itself in a continental space to mark its commitment to the universal values and principles of the rule of law, democracy and human rights, and to keep pace with this global trend.

10. Such initiative will be perfectly in line with the letter and spirit of the constitutive texts of the African Union, the building of which was accompanied by the establishment of spaces that allow for Member States' collective action to express themselves. On this score, the Constitutive Act of the African Union, in its Preamble, underscores the will of the Heads of State and Government of the Union to promote and protect human and people's rights, consolidate democratic institutions and culture and to ensure good governance and the rule of law.

11. To give legal expression to this collective initiative, Member States have adopted several instruments and decided to progressively establish organs and mechanisms for protection and management of the various elements relevant to the promotion of the objectives of unity which they have set for themselves.

12. Whereas constitutional justice in Africa has scaled over the domestic threshold and has deployed itself at the level of regional and linguistic spaces, it has nevertheless remained at the periphery of this collective initiative at the African continental level and has not benefited from any promotional endeavour; and yet, most African countries have institutions that are both credible and reliable in this particular domain (Constitutional Courts/Councils/Chambers).

13. However, African national Constitutions do in no small measure share the universal principles of democracy, human rights protection and the rule of law, just as the legal instruments of the African Union perfectly allow for the implementation of a collective initiative to bring together under one umbrella African justice and constitutional control mechanisms.

14. To mention but the most recent of such instruments, the African Charter on Democracy, Elections and Governance, which among other things reaffirms "our collective will to work relentlessly to deepen and consolidate democracy and the rule of law", also appropriately underscores in its Preamble that Member States shall be guided by "our common mission to strengthen and consolidate institutions for good governance, continental unity and solidarity".

15. Consequently, and ahead of the upcoming global forum, it would be highly desirable that African Constitutional Courts and Councils that exercise similar constitutional control in all its dimensions, participate in the forum not in dispersed ranks, as is currently the case, but rather as a homogenous continental organization.

16. For this reason, Africa should, mindful of its cultural and linguistic diversity and also of its legal systems, endow itself with a common space for cooperation,

consultation and experience sharing in the domain of constitutional justice well ahead of the scheduled date of the Rio Global Forum, and by so doing play fully the role devolving on it and project a strength commensurate with its dimension. Africa which has demonstrated its negotiation capacities at international for a whenever it presents itself as a closely knit group with common positions, can equally bring its contribution to bear at the international level in the arena of constitutional justice.

17. To this end, a constituent meeting, preceded by a meeting of experts of African Constitutional Courts and Councils could be convened in any African capital on a date to be determined.

“We are determined to deal once and for all with the scourge of conflicts and violence on our continent, acknowledging our shortcomings and errors, committing our resources and our best people, and missing no opportunity to push forward the agenda of conflict prevention, peacemaking, peacekeeping and post-conflict reconstruction. We, as leaders, simply cannot bequeath the burden of conflicts to the next generation of Africans.” (Paragraph 9 of the Tripoli Declaration of 31 August 2009).

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