



## SOUTHERN AFRICAN CHIEF JUSTICES FORUM

2006: General Meeting (Maputo, 10-11 August 2006) Opening  
Speech by Mr. Buquicchio

Honourable Chief Justices and Justices,

Ladies and Gentlemen,

It is a great pleasure for me to be able to meet you here in Maputo. On behalf of the Venice Commission as a co-organiser, please let me express our gratitude to Chief Justice Mangaze for inviting the Southern African Judges Commission to hold its meeting here in Maputo. I would like to congratulate you for the excellent organisation of this event.

During our meeting we have the chance to discuss on two highly topical themes: the financial and administrative autonomy of the courts as well as the delicate balance between human rights and national security. The choice of the topics reflects issues which confront the courts in the region but also in Europe.

The financial and administrative autonomy of the courts is necessary to guarantee the smooth functioning of the administration of justice. The courts themselves know best their needs and can effectively allocate resources where they need them most. However, giving autonomy to the courts must not result in neglecting the government's responsibility for them. The funding of the courts is a task for the entire state and the country's budget must provide sufficient funds for the judiciary.

Financial and administrative autonomy also should not lead to an overburdening of the judges with administrative red tape. Clearly, the prime

task of the judges is to decide the cases before them. Clogging them down by administrative paperwork will not serve the goal of providing justice to the people. Here, a fair balance should be sought which provides the courts with their necessary autonomy but at the same time leaves them the necessary time and resources for judging.

Seeking a balance is a technique all judges are familiar with. Our second topic too requires such a balance - a balance between national security and human rights. Human rights are the cornerstone of any democratic constitution. Their protection is the noble task of the courts and the judges who control the implementation of these rights. Human rights carry such a weight that in most cases the balance will clearly swing towards their side.

There may however be cases when national security requires the limitation of human rights and most of them can indeed be limited. In such cases, a number of safeguards is required. Such limitations must be foreseen by law and should thus be foreseeable, they must clearly be in the general interest and - very importantly - they must be exercised only in a way which is proportional to the public goal pursued.

Clearly, “national security” cannot be an argument to pursue the political objectives of the government. National security can only be that of the state as such it cannot be the “security” of the ruling party. This paramount distinction between party interests and the higher interests of the country is a key element of constitutionalism, which we pursue.

I am glad that Mr. Hamilton, the Irish Member of the Venice Commission, has agreed to come to Maputo and to address this topic from an Irish and European perspective.

In March of this year, we had the pleasure to host a successful visit of the Chief Justices of the Southern African Judges Commission first to Venice where you met and discussed with the Venice Commission and then to Strasbourg where you held a most interesting exchange of views with the European Court of Human Rights. During that exchange the famous borderline problem of the “ticking bomb torture” was discussed: is it allowed to torture a person if it is known that he or she knows where a ticking bomb has been hidden but refuses to tell where the bomb can be

found and defused? The discussion concluded that happily enough such cases are in practice extremely rare. Chief Justice Barak was cited stating that a democracy often must fight with one hand tied to the back but still it will win due to its higher moral legitimacy.

Honourable Chief Justices and Justices,

During your meeting in Strasbourg you also adopted important texts which will further strengthen the Southern African Judges Commission in its pursuit of the democratic goals - the protection of human rights and the rule of law. I am confident that these texts will allow you to exercise your noble activity even more effectively.

Please let me conclude that I hope that our meeting here in Maputo will allow for a fruitful discussion of the topics on the agenda and will provide occasion to strengthen the links between the SAJC and the Venice Commission.

I would like to wish to all of us a fruitful meeting.

Thank you Mr. Chief Justice