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Keynote speech by Chief Justice Chaskalson

Comments made at the launch of *The Search for a National Consensus*.

Entebbe 5 February 2005

It is a particular honour for me to have been asked to be the keynote speaker today at the launch of Chief Justice Odoki's scholarly account of the making of Uganda's constitution. The book we launch, "The Search for a National Consensus" is a moving account of the events leading up to the adoption of Uganda's Constitution of 1995. No one is better able than Chief Justice Odoki to tell this story. He is a most distinguished jurist whose reputation extends throughout and far beyond the borders of his country. He chaired the Constitutional Commission that was intimately involved in the drafting of the Constitution. He is a Ugandan and he knows the trials and tribulations to which the people of his country have been exposed, first under colonialism, and later under despotic regimes. He knows his country well, the feelings of his people, the suffering they have experienced and their aspirations for the future. And this is the story he tells in *The Search for a National Consensus*.

A little less than 60 years ago representatives of governments of countries from around the world met in San Francisco to establish the United Nations. They adopted the Charter of the organisation in which they

expressed their determination to reaffirm “faith in human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Some three years later the United Nations adopted the Universal Declaration of Human Rights, proclaiming that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”

This was the beginning of a process that has gained strength over the years. Although there have been set backs and betrayals in different parts of the world of the commitments made to promote respect for the observance of fundamental human rights and freedoms, including genocides, brutal wars and gross abuses of human rights, substantial progress has been made over the past fifty years towards the acceptance internationally of two principles stated in the preamble to the Universal Declaration of Human rights. First, that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. And secondly, that “a common understanding of these rights and freedoms is of the greatest importance for the full realization of the pledge” made by member states to promote universal respect for and observance of human rights and fundamental freedoms. I will come back to these two principles during the course of this address. They are foundational to constitutionalism and comity between nations on which the aspiration of freedom, justice and peace within the world, depends.

The period since the end of the second world war, has been the era of constitutionalism, as more and more nations have committed themselves to the principles of democracy, to the separation of powers between different arms of government, to constitutional guarantees of fundamental rights and freedoms, and to the rule of law. Looking back we can see that a driving force for this has been the suffering of people who have been subjects of unjust regimes and, having shaken off oppression, have been determined to ensure that this does not happen again. We saw this after the second world war in the Constitutions of Germany, Italy and Japan, we saw it after the collapse of fascism in Spain and Portugal, we saw it after the collapse of authoritarian regimes in South America, we saw it after the

collapse of communism in Eastern Europe and we have seen it in our own continent recently in Namibia, South Africa, Malawi and of course, Uganda.

A Constitution is a framework for government. It defines the institutions of the state, the power vested in them, the way in which such power must be exercised, its limits and the rules that must be observed by those in whom power is vested. But when we talk of constitutionalism we mean more than this. Constitutionalism recognizes that sovereignty resides in the people of a country and that power must be exercised in their interests and ultimately subject to their control. There are different ways of achieving this, but the essence of constitutionalism is described lucidly by Professor Louis Henkin, one of the great constitutional scholars of our time, as government according to a constitution,

Which declares the sovereignty of the people and derives its authority from the will of the people. It prescribes a blueprint for representative government responsible and accountable to the people through universal suffrage at periodical elections. Government authority is to be exercised only in accordance with law established pursuant to constitutional processes and consistent with constitutional prescriptions and limitations. Government is for the people but is limited by a bill of individual rights constitutionalism implies also that the constitution cannot be suspended, circumvented or disregarded by political organs of government, and that it can be amended only by procedures appropriate to change of constitutional character and that give effect to the will of the people acting in a constitutional mode.[1]

A necessary consequence of this is

that public authority can legitimately exercised only in accordance with the constitution. There can be no extra-constitutional government, no exercise of public authority by any person or institution not designated pursuant to the constitution. There can be no continuation in office beyond the term for which officials were elected or appointed.[2]

Although this is the essence of constitutionalism, the detailed structures and provisions necessary to give effect to these principles will differ from country to country. You do not buy constitutions off the shelf on the basis that one size fits all. Constitutions freely adopted are shaped by history, by the struggles out of which the constitution was born, and by the nation's aspirations for its future. It has often been said that a constitution is the soul of the nation. The late Justice Mahomed, with characteristic eloquence, said in one of his judgments in the South African Constitutional Court, that,

All constitutions seek to articulate, with differing degrees of intensity and detail, the shared aspirations of the nation; the values which bind its people, and which discipline its government and its national institutions; the basic premises upon which judicial, legislative and executive power is to be wielded; the constitutional limits and the conditions upon which that power is to be exercised; the national ethos which define and regulates that exercise; and the moral and ethical direction which the nation has identified for its future.[3]

This was the task that confronted the Ugandan Constitutional Commission when it was appointed by President Museveni in February 1989. History had not been kind to Uganda. Like all colonial countries its boundaries were artificial, lines drawn on the map of Africa by colonial powers, which brought together in one country, people from different backgrounds, ethnicities, religions, and languages. This, together with colonial depredations and the uneven development and shortage of resources associated with this, led to internal conflict. This is described sensitively and compellingly by Chief Justice Odoki.

What was probably the worst period was from 1971 until 1979, when General Amin was at the head of a military dictatorship. Chief Justice Odoki refers to this as a period "characterised by state terrorism, ethnic killing, extermination of political opponents, religious persecution, racial discrimination, and allocation of resources to his henchmen." General Amin was driven from power in 1979, and was succeeded by President Milton Obote, who came to power through a disputed election. In turn, his regime was overthrown by a military junta which shortly afterwards, in

1986, was deposed by the National Resistance Army led by President Museveni. There was then a rebellion in the North East of the country by a group which came to be known as the Lord's Resistance Army which is still active in that region. In the North West there was another insurgency conducted by a rebel group called the Allied Democratic Forces (ADF) which established bases in the DRC from which it conducted raids into Uganda. These rebellions were not only the cause of instability in Uganda but also a source of considerable tension between Uganda and its neighbours in the North East and the North West.

Sadly, internal and external conflicts such as these, fueled often by opportunistic interventions from outside by those in search of wealth and access to resources, have been widespread in Africa. It has been a curse that has dogged our continent for the past fifty years; a curse that has impoverished and destabilised many countries, and has led to massive suffering of children and innocent people caught up in the conflicts that have taken place. We see that still in countries not far from where we are today. But there is a difference. The people of most African countries, and their leaders, want change. They want an end to war and poverty; they want to live in peace with themselves and their neighbours; they want growth and development. This is the mission of the African Union and the goal of Nepad. Constitutionalism is one of the building blocks for the achievement of these aspirations.

It was, however, at an earlier time against the background of the ongoing conflict to which I have referred that President Museveni's National Resistance Movement came to power, and later appointed the Constitutional Commission chaired by Justice Odoki to make preparations for the drafting of a democratic Constitution for Uganda. The Search for a National Consensus meticulously tracks the subsequent course of events leading up to the adoption of the Ugandan constitution in 1995.

Reading this account I could not help but recall what was happening in South Africa, at that time. Between 1990 and 1996 we too were engaged in a similar exercise, first in drafting an interim constitution to provide the framework for the transition from apartheid to democracy, and then in drafting a final constitution to entrench the democracy and human rights

on which our future would be built. In some respects the process we followed was similar to the process in Uganda; in other respects it was different. In some respects the outcome and constitutional structure was similar to that in Uganda; in other respects it was different. But in both of our countries there was one thing that we shared -- a determination to build our future on constitutionalism and to do so in the light of our own histories and the needs of our own countries. And in the process to be as inclusive as reasonably possible so that different voices could be heard and different interests be taken into account in formulating the constitutions that were ultimately adopted.

Chief Justice Odoki writes that,

The challenge that faced Ugandans was to forget and forgive the past, to learn from their past mistakes, to embrace democratic values of tolerance of diverse views, to cultivate the spirit of give and take and compromise, and the acceptance of majority views while respecting the views of the minority, and to agree to make a fresh start.

I might take issue with "forgive and forget" for it seems to me to be important when we build for the future that we acknowledge and come to terms with our past. We cannot and should not forget our past; we can, however, come to terms with it, and in reading the Search for a National Consensus it seems to me that this is what permeated the work of Chief Justice Odoki's Constitutional Commission. There was no attempt to forget or hide the past. It was acknowledged, and is described by Chief Justice Odoki thus:

Uganda had, in a way, come to represent the worst forms of aberrations associated with internal conflicts. It had more than its share of natural and man-made disasters. Many of the elements – tyranny, violation of human rights, genocide, state terrorism, civil war – that contribute to its specificity were also endemic in many societies and incipient in most others. The issues involved in such internal conflicts were primarily questions of political power. They manifested themselves in ethnicity, minority or secessionist claims

or demands for autonomy or issues of ethnicity mixed with questions of religion.[4]

He identifies issues that had to be confronted. Ideological conflicts, initially having their roots in the cold war, nationalism, and later in attempts to come to terms with market economies; ethnic conflicts in various institutions including political parties and the army; religious conflicts which gave rise to competing political parties; cultural conflicts between monarchical and non-monarchical societies; economic conflicts arising out of uneven and unbalanced development which could be traced back to colonial times, and to policies of post colonial governments; and disputes over land, land policies and the allocation of resources. And possibly as a consequence of this, a suspicion of others, and of their motives. In describing these tensions Chief Justice Odoki emphasizes that they were not of recent origin. He refers to the Munster report, which made proposals for the Independence constitution of 1962, which included this comment:

No one who examined Uganda's political and social life could fail to be disturbed by one prominent characteristic: The unwillingness to compromise.[5]

The hard task of the Constitutional Commission, which had to be carried out against this background, was to promote compromise. In doing so it was mandated by the statute under which it was established "to create public awareness about constitutional issues and to seek the views of the general public by holding public meetings and debates, seminars, workshops and any other form of collecting public views". [6] In effect the work of the Commission had three main components: education, consensus building and drafting.

It embarked on a nationwide education programme to inform people of the issues at stake, and to promote public debate on constitutional issues. It did so through seminars, workshops, and public discussion organized by itself, and by encouraging different interest groups in civil society to do so too. It was, as Chief Justice Odoki says, "a mammoth task". He says,

We first organized internal seminars for the Commissioners so that we could familiarize ourselves with the tasks and issues at hand and form a common attitude and objective. These were followed by district seminars held in all 34 districts of Uganda at the time to brief local civic and opinion leaders about the process and the constitutional issues to be addressed. After the district seminars we organized institutional seminars in schools, colleges and institutions of higher learning. At the same time we conducted seminars for special interest groups like workers, women, professionals and security agencies.

Seminars were conducted in each of the 800 sub-counties of Uganda and the participants were asked to take the discussions further and to prepare written memoranda expressing their views on the issue that were important to them. These memoranda were then submitted to the Commission and provided materials from which the committee could pursue its goal of searching for consensus.

This was not as easy as it may sound. Almost two and a half years of the Commission's work was devoted to this part of the process. There were major logistical problems relating to transport, accommodation, security and funding, and a great deal of hard work, involving not only long hours but also not inconsiderable skills in diplomacy.

The next stage was to distil the information to see where there was broad consensus and where there were material differences, and then to address the differences in an attempt to find consensus. Consensus, according to Chief Justice Odoki,

is ... the African method of settling disputes by listening to everyone and taking into account all views. It is a painstaking exercise, which is most rewarding in the end because it produces no losers since all are winners, and promotes legitimacy and acceptable decisions. Consensus instills the qualities of patience, tolerance and compromise.

Bearing in mind the inability in the past to secure compromises over political issues, the process was inevitably going to be a protracted one.

A striving for consensus does not mean that all must agree on the outcome. Rather, it implies a search for a way of reconciling divergent views and solutions, which if not unanimous, at least have enough support to enable the drafting process to move forward towards an outcome that is legitimate and acceptable. In South Africa we called this "sufficient consensus", and as I understand the Ugandan process, this was the goal that the Commission set for itself, and was the way it functioned --- hence the title of the book.

It appears that there was much on which there was a broad consensus. For instance, that there should be a democratic system of government, an independent judiciary, respect for constitutionalism and the rule of law, free and fair elections, decentralization of powers, the proper use and control of public finance and development, accountability of leaders, and control and discipline of the armed forces.[7] These are important framework issues which provided a solid base on which to develop the Constitution. There were, however, a number of intractable issues to which Chief Justice Odoki, draws attention which had to be confronted. These included the national language, the system of land tenure, the issue of capital punishment, citizenship requirements, the precise nature of the political system, the form of government, the role of the army in national politics, and the role of traditional leaders. In passing I would mention that though some were peculiar to Uganda's own history, many of the same controversial issues were the subject of protracted debate in the South African constitutional negotiations.

Chief Justice Odoki says that the resolution of these controversial issues was one of the most challenging tasks that the Commission experienced. He describes the debates, the attempt to find solutions and says that ultimately the recommendations made by the Commission "acknowledge the absence of consensus and the need to give time for such consensus to evolve".[8] The Commission sought to achieve this by proposing transitional measures and making other recommendations that left room for further debate at a national level.

The Commission translated its recommendations into the form of a draft constitution and recommended that a Constituent Assembly, freely elected

under the supervision of an independent body, be established to consider its recommendations and to adopt a new constitution. This recommendation was accepted by government and legislation was passed to make provision for a Constituent Assembly to be established. Elections were held for this purpose and a Constituent Assembly was constituted. The Assembly agreed that it would seek consensus but where this could not be achieved the disputed issue would be put to a vote, requiring a two-thirds majority to be adopted. If the prescribed majority could not be obtained, provision was made for the disputed issue to be resolved by a national referendum. . The process was thorough and the Constituent Assembly spent some sixteen months over its deliberations. As matters turned out, there was no need for referenda. Although there were some differences, the Constituent Assembly agreed with most of the recommendations of the Constitutional Commission, and did so without having to resort to a referendum on any issue

In some respects the provisions of the Constitution are open-ended and peculiar to Uganda and its history. For instance, it provides that the People of Uganda shall have the right to choose any democratic and representative political system, other than a one party state. It mentions two specific types of political systems, one, in which there will be no participation by political parties and the other in which political parties will be involved.

Although the right to form and belong to political parties is guaranteed in the Constitution,[9] and provision is made for the possibility of a multiparty political system, in which parties must adhere to principles of internal democracy in the conduct of their affairs, and account for the sources and use of their funds and assets, the Constitution recognizes that the initial political system would be one in which political parties would not participate. This is known as the Movement system, which is defined in the Constitution as being broad based, inclusive and non-partisan, in which individuals stand for election on the basis of merit rather than membership of a political party.

The Constitution made specific provision for the continuation of this system, which was the political system in place when the constitution was

adopted, and prescribed transitional provisions requiring the first parliamentary and presidential elections to be held according to this system.[10] Political parties were thus not entitled to participate in the first elections or to support the candidacy of any candidate. The Constitution provides, however, that the political system can be changed by a referendum called pursuant to a resolution supported by at least fifty percent of the members of Parliament, or other more possibly more stringent measures, involving District Councils or voters' petitions.

An unusual feature of Uganda's Constitution is the formulation and setting out in some detail of national objectives and directive principles of state policy. These objectives and principles are to guide all organs and agencies of state, and are declared to be relevant to the implementation of policies, as well as to the interpretation of the Constitution and other laws.

Although other national constitutions, such as those of Ireland, India and Namibia, have made use of the technique of recording directive principles of state policy, none are as comprehensive as those contained in the Ugandan Constitution. They are dealt with in twenty nine Articles, with numerous subparagraphs, covering an expansive field, starting by identifying certain democratic principles of government and ending with the listing of certain duties of citizens. As the jurisprudence of the Indian Courts has shown, these principles, whilst guiding organs and agencies of state, are likely also to be of particular importance to courts in deciding cases concerning the interpretation of the Constitution and other laws.

I must come back now to where I started, to constitutionalism. The Ugandan Constitution states specifically that the people are sovereign, and that all power and authority of the government and its organs is derived from the people.[11] It contains an extensive, enforceable bill of rights. These rights are declared to be inherent in people and not the gift of government.[12] It declares the Constitution to be the supreme law binding on all persons and all authorities.[13] As a necessary corollary of this, the Constitution also provides that all power of the government and its organs derives from the Constitution,[14] that the judicial power is vested in the courts,[15] that courts are independent,[16] not subject to the control or direction of any person or authority,[17] and that they must exercise their

powers in accordance with the law.[18] It provides a blueprint for representative and accountable government, through universal suffrage and periodic elections.[19] Although the temporary exclusion of political parties from the democratic process may raise issues relevant to constitutionalism, the Uganda Constitution is a bold attempt to move away from an authoritarian past and to embrace constitutionalism and democracy.

The 1995 Constitution of Uganda satisfies most of the essential requirements of constitutionalism, and in particular, the requirement that there be an independent judiciary and respect for the rule of law. These are two of the pillars on which respect for human rights and fundamental freedoms can be established in domestic law – they are means of giving effect to the goals proclaimed in the United Nation Charter and in the Universal Declaration of Human Rights, that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

The existence of a culture of constitutionalism and respect for human rights leads to an awareness on the part of ordinary people of the rights that they have, and of their obligation to respect the rights of others. Judicial officers have a crucial role to play in the process of developing this culture. It is appropriate, therefore, that the launch of The Search for a National Consensus should coincide with a meeting of the *Southern African Judges’ Commission* that is to be held in Uganda. This Association represents the judiciaries of Angola, Botswana, Kenya, Lesotho, Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

The objects of the Commission include the promotion of the rule of law, democracy and the independence of the courts, and also the promotion of contact and co-operation among the courts of the region. The Commission works closely the *European Commission for Democracy Through Law* (known as the Venice commission) an organ of the Council of Europe, established as a consultative body on issues of constitutionalism and democratization. This international discourse around constitutionalism

gives effect to one of the commitments made in the Universal Declaration of Human Rights to develop "a common understanding of" the fundamental rights and freedoms in the Declaration, which is said to be "of the greatest importance for the full realization of the pledge" made by member states to promote universal respect for and observance of these rights and freedoms.

The history of colonialism and the failure by many post-colonial governments to put down the roots of democracy and respect for human rights has been the cause of much suffering in Africa. I referred earlier to the goals of the African Union and Nepad, and the determination of African countries to chart a new course based on democracy and the rule of law. The goals of the Southern African Judges Commission are consistent with this purpose.

One of the principles of constitutionalism is the separation of powers. This is regarded as essential to prevent power accumulating in one centre. Experience shows that where there is absolute power, corruption and abuses of power are more likely to occur, than where there are different centres of power, and are checks and balances on the way power is exercised. The Ugandan Constitution meets this requirement by making provision for open and transparent government, and for the separation of powers between the legislature, the executive and the judiciary.

It is not the function of the judiciary to govern the country; on the other hand the legislature and the executive are obliged to respect democracy and the provisions of the Constitution from which they derive their power, and it is the duty of the Courts to ensure that this is done. In a famous passage in his judgment in *Olmstead v The United States*,^[20] Justice Brandeis said:

Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.

Looking back on the history of our continent, and seeing at different times and places the lack of concern for human rights evinced by apartheid, military dictatorships, and corrupt regimes, I appreciate that leaders determined to exercise power without any concern for human rights and the rule of law, are unlikely to be deterred by judges who say that they are acting unlawfully. They are more likely to get rid of them, and to find other more compliant judges to take their place. But that said, the importance of judges asserting their independence, and insisting that the rule of law and fundamental human rights be respected, should not be underestimated. They provide not only a bulwark against the erosion of fundamental rights, but also a force for the promotion of a culture of respect for such rights.

Like all who exercise public power, judges are bound by the Constitutions of their countries. In our day to day work we are required to give effect to the provisions and values of these Constitutions. In so doing we help to establish and maintain a culture of respect for human rights.

Courts must uphold the law without fear, favour, or prejudice. If they defer to government when they ought not to do so, they fail to fulfil their constitutional duty. If they substitute their opinions for that of government where they are not entitled to do so, they undermine their legitimacy. A balance must therefore be struck, between the different roles of the legislature, the executive and the judiciary, with each paying particular attention to the inter-relationship between them mandated by the Constitution, and the deference that each owes to the other. How this is done is of particular importance to the standing of the courts, their efficacy, and the respect that their judgments command. It is crucial to constitutionalism.

The open ended Constitution of Uganda contemplated that changes would be made, and Uganda is presently engaged in a process of constitutional review. In *The Search for a National Consensus*, Chief Justice Odoki says,

Constitutionalism is a culture, a tradition which takes time to be firmly established. It has to be lived, nursed and developed. It is through constitutionalism that Ugandans will realize their vision to build a new socio-economic and political order based on the

principles of unity, peace, equality, democracy, freedom, social justice and progress.[21]

He goes on to say,

The people of Uganda recognize that democracy is a journey and not a destination. Ugandans cannot achieve in 30 years or so, the same level of democracy and constitutionalism, which has taken the Americans 300 years to achieve. But Ugandans have made a firm commitment to embark on the journey to democracy and constitutionalism. This journey is not an irreversible process. Significant achievements have been made and Uganda may perhaps be beyond the faltering first steps. Nevertheless, challenges remain in the way, namely: weaning the political process from military influence and violence; ensuring peacefully and orderly and predictable political succession; eradicating corruption from political processes; and building viable and democratic institutions.[22]

The Southern African Judges Commission is glad to be meeting in Uganda at this time. We understand the difficulties to which Chief Justice Odoki refers about coming to terms with the past and in building viable democratic institutions. We face similar difficulties in our own countries. Constitutionalism is a process. Talking about that process in South Africa about two years ago, I said,

The impact of constitutionalism on law and government in South Africa is a huge canvas, many parts of which remain to be filled. Indeed, in the past nine years, we have only begun to sketch the outlines of the new legal order and an enormous amount of detailed work remains to be done. The work is never ending, for law is not static. It evolves as responses are demanded to the changing needs of society and to the different issues that constantly arise in the complex world in which we live. The outlines are, however, sufficient to enable us to identify the contours of the picture that is likely to emerge. It is of a constitutional state in which the values of the Constitution permeate all aspects of our law.

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Our Constitution offers a vision of the future. A society in which there will be social justice and respect for human rights, a society in which the basic needs of all our people will be met, in which we will live together in harmony, showing respect and concern for one another. Because of our history there are structural impediments to the achievement of these goals. Millions of people are still without houses, education and jobs, and there can be little dignity in living under such conditions. Dignity, equality and freedom will only be achieved when the socioeconomic conditions are transformed to make this possible. This will take time. In the meantime government^[23] must give effect to its obligations under the Constitution to show respect and concern for those whose basic needs have to be met. The courts must give meaning to and apply the bill of rights and other provisions of the Constitution in the context of our history, the conditions prevailing in our society, and the transformative goals of the Constitution.^[24] The manner in which the government and the courts give effect to their constitutional obligations, and in particular the way in which government action is taken and the law is applied and developed to promote the values of the Constitution have important implications for the process of transformation.

Uganda has committed itself to constitutionalism and has demonstrated that commitment by adopting a Constitution that gives effect to the rule of law, entrenches human rights and freedoms and guarantees the independence of the judiciary. Uganda is now engaged in the process of constitutional review contemplated at the time the Constitution was adopted. The successful completion of this process in a manner consistent with constitutionalism is important, not only for Uganda, but for our continent. It will give substance to the objects of the African Union and will encourage support for Nepad. It will demonstrate Africa's commitment to constitutionalism and democracy.

For constitutionalism to take root the people of the country must be committed to its values. By treating each other with dignity, by insisting that those exercising public power do so in accordance with the Constitution, by asserting their rights and respecting the rights of others,

they strengthen the roots of constitutionalism and make it part of their culture. Organs of civil society, such as Kituo Cha Katiba have a vital role to play in this process.

The Chief Justices of the Southern African Judges Commission are glad to be with you today, and join with you in congratulating Chief Justice Odoki on the immense contribution he has made and continues to make to Uganda and to constitutionalism in Africa.

A Chaskalson

February 2005

[1] Louis Henkin, Constitutions and the Elements of Constitutionalism, Occasional Paper series November 1993 (Reprinted 2002) pages 1-2

[2] id at page 2

[3] S V Makwanyane 1995 (6) BCLR 665 (CC), para 262

[4] At page 199

[5] At page 206

[6] At page 47

[7] At page 231

[8] At page 225

[9] Article 69

[10] At page 317-319

[11] Article 1

[12] Chapter 4

[13] Article 2 (1)

[14] Article 1 (3)

[15] Article 126 (1)

[16] Article 128 (1)

[17] id

[18] Article 126 (1)

[19] Chapters 6 and 7

[20] (1928)277 US 438

[21] At page 373

[22] Atpage372

[23] I use government here to refer to the legislatures and executives at all levels of government.