



**KEYNOTE ADDRESS OF HON. LADY JUSTICE IMANI
DAUD ABOUD, PRESIDENT OF THE AFRICAN
COURT ON HUMAN AND PEOPLES' RIGHTS ON THE
OCCASSION OF THE COMMEMORATION OF THE 63RD
ANNIVERSARY OF THE CONSTITUTIONAL COURT OF
TÜRKİYE**

Imani Daud ABOUD*

Your Lordship Kadir ÖZKAYA, President of the
Constitutional Court of Türkiye

Honourable Chief Justices, Honourable Presidents, and
Honourable Judges

Distinguished Guests and Dignitaries

All protocol observed

I express my profound personal gratitude, and that of the
entire African Court on Human and Peoples' Rights, for the
distinct honour of being part of this momentous occasion – the
commemoration of the 63rd Anniversary of the Constitutional
Court of Türkiye. I bring to you warm greetings from Arusha,
Tanzania, the vibrant human rights and justice capital of
Africa, where the seat of the African Court is located.

The theme for this year's symposium, "*The Future of
Constitutional Justice in the 21st Century*," resonates deeply with
the ongoing work and high-level discussions within the African
Court and across the global landscape of constitutionalism. It
is a theme that invites both reflection and foresight, urging us

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to examine where we have come from, where we are now, and where we must go in the realm of constitutionalism.

Honourable President, distinguished colleagues, esteemed guests,

At its core, a constitution serves as the foundational blueprint and the bedrock of any modern democratic state articulating its fundamental principles, delineating the structures and processes of government, and enshrining the fundamental rights and freedoms of its citizens. While the specific content and character of constitutions exhibit considerable variation across nations—reflecting distinct histories, political philosophies, and legal traditions—they universally perform three essential roles:

- They establish the foundational structure of government—its arms, institutions, and processes.
- They enshrine the fundamental rights and freedoms of citizens.
- They serve as the ultimate legal compass, guiding all actions and laws within the jurisdiction.

Constitutions constitute the normative pillar of any legal system providing a set of fundamental legal-political rules possessing binding authority over all within the state, including ordinary law-making institutions. They offer a framework that defines the institutional fulcrum of governmental institutions. A constitution of a state also articulates core political principles, and guarantees the rights of citizens. More importantly, it provides the foundation for widespread public legitimacy and acceptance by standing as the ultimate rulebook, the *lex fundamentalis*, against which the legality and legitimacy of all other laws and governmental actions are measured.

As the supreme law of the land, the constitution establishes

essential checks and balances among the distinct arms of government – meticulously outlining the establishment, functions, powers, and inherent attributes of the executive, legislative, and judicial branches. This carefully calibrated separation of powers is designed to ensure that all institutions of governance discharge their responsibilities with strict adherence to the law and with due regard for the overarching principle of justice. When any branch or institution of the state deviates from constitutional precepts, an aggrieved party can seek recourse through the courts, invoking the principles of constitutional justice.

Constitutional justice, therefore, embodies the application and enforcement of constitutional principles and rights by courts, with constitutional courts often playing a central role, to guarantee the consistency of laws and governmental actions with the supreme law. It is fundamentally about safeguarding the integrity of the constitution as the ultimate legal authority and ensuring the robust prevalence of the rule of law.

Indeed, constitutional justice can be meaningfully equated with the broader concepts of the rule of law and constitutionalism, where the “supremacy of law” is not merely a theoretical concept but a living reality, and where every citizen and every organ of the state, including the very lawmakers themselves, are held accountable to that law. It represents a cornerstone of good governance, a principle under which all persons, institutions, and entities, both public and private, including the State itself, are answerable to the constitution as the supreme legal instrument.

On the African continent, particularly in the wake of the democratic transitions of the 1990s, the establishment of independent constitutional courts, operating alongside but distinctly from supreme courts, became a significant trend. In some jurisdictions, the constitutional court stands at par with or even above the supreme court in matters of constitutional

interpretation. Conversely, in other nations, the functions of a constitutional court may be vested in a specialized division or panel within the high court, specifically tasked with addressing constitutional issues.

Regardless of their structural placement within the judicial system, constitutional courts are instrumental in resolving disputes between different branches of government or between individuals and the state when such disputes involve constitutional questions. These courts wield the significant power to review the constitutionality of laws and governmental actions, and critically, to enforce constitutional rights and principles by invalidating laws or government actions found to be in violation of the constitution.

In countries such as Cameroon and Benin, for instance, the Constitutional Council plays a vital role in strengthening democracy by meticulously considering all disputes relating to elections, including the often-contentious challenges to election results. Furthermore, many constitutional courts across the globe serve as crucial bulwarks in protecting individual rights against potential state overreach.

However, for constitutional courts to effectively discharge their critical role in ensuring constitutional justice, several key prerequisites must be in place.

Foremost among these is *independence* from the other branches of government, safeguarding their impartiality and freedom from undue influence.

Secondly, *specialization*, or a dedicated focus on constitutional matters, is essential to allow judges and staff to develop deep expertise in this intricate area of law.

Finally, the *binding nature* of their decisions on all other government authorities and courts is paramount to ensure the practical effect and authority of their pronouncements.

Excellencies,

Globally, more than half of the world's nations have established fully-fledged constitutional courts or some analogous structural mechanism. These institutions have proven to be critical in ensuring that constitutional justice is accessible and effectively administered when and where it is most needed.

Over the past six decades, the Constitutional Court of Türkiye has navigated a complex tapestry of legal and societal challenges, demonstrating a remarkable capacity to adapt to the evolving needs of a changing world while remaining steadfast in its unwavering commitment to the principles of justice. This significant 63rd anniversary is not merely a commemoration of the enduring strength and resilience of Türkiye's constitutional framework; it also provides a valuable opportunity to reflect critically on the evolving role and future trajectory of constitutional justice in the 21st century. The existence of a strong Constitutional Court is indeed a profound milestone for the people of Türkiye, offering a vital safeguard for the fundamental rights and duties enshrined in their Constitution, and ensuring the continued protection of their constitutional rights for generations to come.

Honourable President, distinguished colleagues, esteemed guests,

The 21st century has ushered in an era of unprecedented challenges to the very fabric of constitutional justice. The forces of globalization, the relentless march of technological advancement, the existential threat of climate change, and the shifting sands of geopolitical landscapes, coupled with the alarming trend of diminishing civic space and the erosion of democratic principles – even within seemingly established democratic societies – have profoundly transformed the way we understand and apply the fundamental tenets of

constitutionalism. In this era of rapid and often disruptive change, constitutional courts around the world are increasingly called upon to grapple with novel and complex questions that demand innovative and thoughtful responses:

- How do we effectively protect individual rights in an increasingly digital age?
- Where the boundaries of privacy are constantly being redefined and the contours of freedom of expression are under persistent threat from both state and non-state actors?
- How do we ensure that fundamental constitutional principles are upheld and vigorously defended in the face of rising populism and the concerning resurgence of authoritarian tendencies in various parts of the world?
- How do we address the multifaceted global challenges of climate change, large-scale migration, and pervasive inequality through the often-overlooked yet crucial lens of constitutional justice, ensuring that responses are both effective and rights-respecting?

These pressing questions demand not only innovative legal thinking and a strong commitment to universal human rights but also a profound willingness to adapt our approaches and interpretations to the evolving realities of our time. Constitutional courts must be agile, forward-thinking, and deeply attuned to the societal context in which they operate.

Honourable Judge President, distinguished colleagues, esteemed guests,

Allow me now to share with you a few illustrative examples of how the African Union and the African Court have actively contributed to safeguarding constitutional justice in the 21st century. Operating under the overarching framework of regional integration, the African Union has enshrined

firm commitments to safeguarding fundamental rights, freedoms, and the core values of constitutionalism within key instruments such as the African Charter on Human and Peoples' Rights and the African Charter on Democracy, Elections and Governance. Africa's human rights charter is rightly considered a significant historical international instrument due to its unique and progressive features. The Charter speaks comprehensively to fundamental rights and freedoms, embracing both universal principles and distinctly African perspectives. Notably, it recognizes all generations of human rights as interdependent and indivisible, uniquely provides for the rights of peoples and groups, and establishes the crucial principle of the centrality of the community, encompassing the family and broader society. Africa's human rights Charter can be legitimately viewed as a regional text of significant constitutional value, evidenced by its widespread national recognition, with almost all African constitutions acknowledging the Charter either in their preambles or through express inclusion in their substantive provisions.

Further underscoring the inherent interconnectedness between human rights and the various components of constitutionalism, the African Union adopted another instrument that can arguably be considered a regional constitution, at least from a normative standpoint. This instrument is the African Charter on Human and Peoples' Rights, which explicitly includes pledges by Member States of the African Union to uphold fundamental principles such as the rule of law, democracy, the independence of the judiciary, and good governance.

Honourable Judge President, distinguished colleagues, esteemed guests,

The African Court stands as a continental judicial body established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights. This Protocol was

adopted in June 1998 and entered into force in January 2004, marking a significant step in strengthening the human rights architecture of the continent. The African Court's fundamental mandate to safeguard fundamental rights and freedoms, as well as the core values of constitutionalism, is firmly rooted in Article 3(g) and (h) of the Constitutive Act of the African Union. Furthermore, Aspiration No. 3 of Agenda 2063, the African Union's comprehensive and coordinated regional integration plan for Africa, similarly constitutes a firm undertaking to uphold these same vital principles.

The African Court works in close collaboration with other regional bodies and mechanisms to ensure that member states remain accountable to the fundamental principles of justice, good governance, and the robust protection of human rights. In doing so, the Court actively demonstrates its unwavering commitment to upholding the essential pillars of democracy, judicial independence, human dignity, the rule of law, and other integral components of constitutionalism. Over the past eighteen years, the African Court has adjudicated a wide range of cases involving critical issues and rights, including the right to a fair trial, the right to political participation (such as the right to participate in elections and the proper functioning of electoral bodies), the right to freedom of association, and the right to freedom of expression. The Court's evolving case law also encompasses significant matters pertaining to the right to life in connection with the mandatory imposition of the death penalty, the right to nationality, as well as crucial aspects of women's rights, namely inheritance and the harmful practice of child marriage.

Through its jurisprudence, the African Court has consistently endeavoured to embrace an interpretation of legal norms that is progressive, purposive, and liberal, while remaining deeply contextualized and mindful of the legitimate margin of appreciation afforded to states in their

unique circumstances. This approach allows the Court to adapt universal principles to the specific realities of the African continent while upholding the highest standards of human rights protection.

Honourable Judge President, distinguished colleagues, esteemed guests,

Before I conclude my remarks, allow me once again to express my sincere appreciation and profound gratitude to the organizers of this distinguished symposium for the kind invitation extended to me, in my capacity as President of the African Court on Human and Peoples' Rights. It is an honour to be part of this important commemoration.

Let us, as custodians of justice and interpreters of constitutional principles, rededicate ourselves to the noble cause of serving our societies with unwavering commitment, ensuring equal justice for all. Let us take all necessary steps to provide speedy and affordable justice, thereby striving to make the central theme of this symposium – the future of constitutional justice in the 21st century – a tangible and enduring reality for all our peoples.

Finally, I extend my warmest congratulations to the Constitutional Court of Türkiye on the significant occasion of its 63rd Anniversary. Your enduring commitment to constitutionalism serves as an inspiration to us all.

Thank you for your kind attention.