



Conference of Constitutional Jurisdictions of Africa - CJCA

“Newsletter of CJCA”

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CJCA Activities

Algeria: Visit of the President of the Constitutional Court of Angola to the Constitutional Court of Algeria



The President of the Constitutional Court, Mr Omar Belhadj reaffirmed, on December 1st in Algiers, Algeria's commitment to continue to fully support the Conference of Constitutional Jurisdictions of Africa (CCJA) and qualified this body as an achievement for constitutional justice and the judiciary in Africa.

Mr Belhadj, who received his Angolan counterpart and President of the CCJA, Ms Laurinda Cardoso, who is on a working visit to Algeria, underlined Algeria's

commitment to "continue to fully support" the Conference of Constitutional Jurisdictions of Africa (CCJA)". He said, "Algeria will always remain faithful to its commitment to consolidate this African institution". He recalled that Algeria hosted the permanent seat of this body and was at the origin of its establishment in keeping with its principle to federate African constitutional jurisdictions in the best interests of our countries, and highlighted "the role of these institutions in the development of the African constitutional justice system". The meeting was attended by Constitutional Court Member Leïla Aslaoui, CCJA Permanent Secretary-General Moussa Laraba, and the Constitutional Court Chief of Staff.

Algeria: Ms Cardoso Pays a Working Visit to the CCJA Seat

Ms Laurinda Cardoso, President of the Constitutional Court of Angola and current President of the CCJA, paid a working visit to the seat of the CCJA in Algiers on December 1st, 2021. The visit aimed to ensure that the Algerian

Government provided all necessary means and fulfilled all conditions to ensure proper functioning of the General Secretariat of the CCJA.



The CCJA President chaired a working session attended by the Secretary-General, the Permanent Secretary-General, and the Treasurer, and addressed several issues on the activity of the CCJA.

India: Online Participation in the 22nd International Conference of Chief Justices of the World



The CCJA took part in the 22nd International Conference of Chief Justices of the World (ICCJW) held online, from New Delhi, on November 19-22, 2020. The theme of this 22nd Conference, organized by the "City Montessori School", Lucknow, was "Global Governance: For a Sustainable World Order".

The CCJA was represented by its Permanent Secretary-General, Mr Moussa Laraba (Algeria).

CJCA Activities

Mozambique: 3rd CCJA International Symposium

The 3rd International Symposium of the Conference of Constitutional Jurisdictions of Africa (CCJA), organized in partnership with the **Constitutional Council of Mozambique**, on the theme “**Electoral Process: Transparency, Inclusion and Integrity**”, held in Maputo, Mozambique, on October 14-15, 2021, brought together the Presidents of Constitutional Supreme Courts and Councils of **Algeria, Angola, Cameroon, Eswatini, Ethiopia, Mali, Zambia, Zimbabwe, and the Representative of the African Union**, as well as Members of the other



jurisdictions from **Benin, Burundi, Comoros, Côte d'Ivoire, Madagascar, Mauritania, Morocco, Rwanda, Senegal, South Sudan, Togo, and the President of the Venice Commission**, who participated **online**.

The Symposium was enhanced by the presence of the President of the Republic of Mozambique, who delivered a statement at the opening session.

“Ms. Lucia Ribeiro, President of the Constitutional Council of Mozambique”

The addresses will be published in a special issue of the “*Revista Concelho Constitucional da Mocambique*” (Mozambique Constitutional Council Review), an issue dedicated to this event, to be published shortly.

News on Courts and Councils

Algeria: The Members of the New Constitutional Court are Known

The President of the Republic, Abdelmadjid Tebboune, signed on November 17, presidential decrees on the composition of the new Constitutional Court, pursuant to Art. 91-7, 186, and 188 of the Constitution:

1. Members appointed by the President of the Republic:

- Mr Omar Belhadj, President
- Ms Leïla Aslaoui, Member
- Mr Bahri Saadallah, Member
- Mr Mesbah Menas, Member

2. Members elected by the Judiciary:

- Mr Djilali Miloudi, Member (Supreme Court)
- Mr Amal Eddine Boulenouar, Member (Council of State)



“The new members of the Court, with the President of the Republic”

3. Members elected from among professors of constitutional law at the national level:

- Mme Fatiha Benabbou, Membre
- Mr Abdelouaheb Khrif, Membre
- Mr Abbas Ammar, Membre
- Mr Abdelhafidh Oussoukine, Membre
- Mr Omar Boudiaf, Membre
- Mr Mohamed Boufertat, Membre.

It should be noted that the 2019 Constitution provides for the replacement of the Constitutional Council by a Constitutional Court.

News on Courts and Councils

Mauritius: First Woman Chief Justice of Mauritius

Mauritian President Prithviraj Roopun appointed Ms Rehana Bibi Chief Justice. This is the first time a woman is appointed to this position in Mauritius.



"Ms Rehana Bibi Chief Justice of Mauritius"

Mauritius is the fourth best country in terms of gender equality in sub-Saharan Africa behind South Africa, Rwanda, and Namibia according to AfDB figures. Bibi Rehana Mungly-Gulbul received primary education at the Phoenix Government School and secondary education at Queen Elizabeth College. She then enrolled in a London college to study law. With her diploma in hand, she entered the Middle Temple to further studies.

Back in Mauritius, she joined the prosecution authority in 1984. After a few years, she was appointed a judge. Then, she rose through the ranks to the position of Vice-President of the Intermediate Court. Later, she was appointed Deputy Master Registrar of the Supreme Court, then Master and Registrar, and subsequently Supreme Court Judge.

Most recently, she was appointed Senior Puisne Judge. After a lot of perseverance, she has now been appointed Chief Judge.

Sudan: Appointment of a New Chief Judge and End of the Mandate of the President of the Constitutional Court

The new Sudanese Sovereignty Council headed by Army Commander Al-Burhan decided to maintain Mr Maulana Abdeen Muhammad as head of the Judiciary.

Besides, the Council agreed to terminate the appointment of the President of the Constitutional Court, Wahbi Muhammad Mukhtar, whose mandate ended this November.



Guinea Bissau: Election of the President of the Supreme Court of Justice



"José Pedro Sambu, President of the Supreme Court of Justice of Guinea Bissau"

Judge-Councillor José Pedro Sambu was elected on Friday, December 10, new President of the Supreme Court of Justice of Guinea Bissau, replacing Mamadú Saido Baldé, who passed away last August, following Covid-19-related complications.

Out of an electoral body composed of 12 Judges, 8 voted for Mr Sambu, the other two running candidates did not obtain any votes, and four other judges did not participate in the ballot.

The new President graduated from Bissau Law School. He was elected President of the National Electoral Commission (CNE) of Guinea-Bissau in February 2021.

The Supreme Court of Justice of Guinea Bissau is a founding member of the CCJA, since 2011.

News on Courts and Councils

Mauritania: appointment of four new members of the Constitutional Council

The presidency of the Mauritanian republic published on December 14 a decree appointing four new members of the constitutional council. It is: **Ms. Hawa Tandia, and Gentlemen: Ikebrou ould Mohamed Sedik, Ghali Mahmoud Abeïd and Bilal Dick**



As a reminder, "the Constitutional Council has nine (9) members, whose mandate lasts nine (9) years and is not renewable. The Constitutional Council is renewed by thirds (1/3) every three years. Four members are appointed by the President of the Republic, three by the President of the National Assembly and two by the President of the Senate. The members of the Constitutional Council must be at least thirty-five (35) years old. ... "

« **Bathia Mamadou Diallo, President of the constitutional Council of Mauritania** »

Constitutional developments

Guinea: Dissolution of the Constitutional Court

Like the other institutions of the Republic, the Constitutional Court was dissolved when the CNRD (National Committee for the Rally for Development) seized power on September 5, 2021. This institution was one of the most decried by the opposition, which accuses it of having served as an instrument for Alpha Condé, the overthrown president who allegedly amended the Constitution to run for a controversial third term.

The Constitutional Court rejected all appeals by presidential candidates last year and proclaimed the outgoing president the winner.

Unlike the Court of Auditors, this institution, which was headed by Mohamed Lamine Bangoura, was not restored to good repute to continue its activities. Its powers were altogether entrusted to the Supreme Court. In this regard, Transitional President Colonel Mamadi Doumbouya was sworn in last October 1st by the Supreme Court.



Gambia: Draft New Constitution in Sight

President Adama Barrow, who was re-elected on December 5 as President of Gambia, pledged to introduce a limit on presidential terms by constitutional reform before his five-year term ends.



Acceding to the requests of his country's international partners, Adama Barrow, assured that he would work to ensure that the president is elected by absolute majority, even if this required a second round. He had been elected president on a relative majority.

The current Constitution, dating from 1997, does not set any limit on the number of terms. Gambia's partners consider it essential to make a reform that limits the powers of the president and consolidates Gambia's democracy.

In September 2020, Parliament rejected a draft new constitution limiting the number of terms to two. The supporters of Adama Barrow had objected to the retroactive nature of such limitation, which would have prevented him from running for a third term.

President Barrow did not say whether he considered that the adoption of a new Constitution would reset the term counter to zero as far as he was concerned.

Constitutional developments

Sierra Leone: Amendment of the Constitution to Allow Binationals to Be Eligible for Parliament

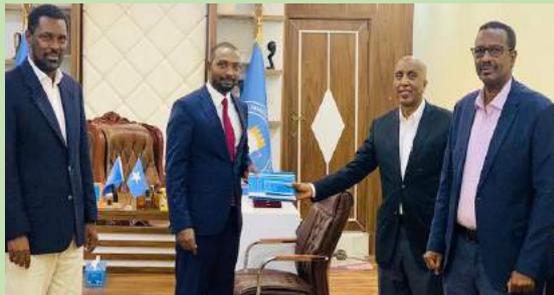
President Julius Maada Bio has announced his intention to amend the Constitution to allow Sierra Leoneans with dual citizenship to stand for parliamentary elections.



Mr Maada Bio said he had asked the Minister of Justice to submit a proposal for constitutional amendment to "allow citizens with dual nationality to be eligible for parliament". The move comes after years of legal uncertainty in Sierra Leone over the right of binational citizens to stand for election. Political parties do not accept that citizens with dual nationality may stand for legislative membership.

In September, the Supreme Court allowed binational Sierra Leoneans to run in the general election following legal proceedings instituted by an opposition MP. No date has been set so far for tabling the constitutional amendment to Parliament.

Somalia: Somalia's Chief Justice Receives Copies of a Study on Federal Member State Constitutions Compatibility



"Bashe Yusuf Ahmed, Chief Justice of Somalia"

On February 4, 2021, the project coordinator and senior legal advisor of the Max Planck Foundation met with H.E. Bashe Yusuf Ahmed, the Chief Justice of the Supreme Court of Somalia, and presented him with copies of the State Constitutions Compatibility Study. The purpose of this study is to compare the five Constitutions of the Federal Member States in Somalia and assess their degree of compatibility with the 2012 Provisional Federal Constitution.

As part of the project "Capacity-building and Legal Advice on Political Decentralization and Federalism in Somalia", funded by the German Federal Ministry of Foreign Affairs, the Foundation carried out a comprehensive study to assess the compatibility of the Constitutions of the five Federal Member States with the Provisional Federal Constitution.

The study, which aims to facilitate the creation of a coherent constitutional legal framework, identified a number of issues ranging from differences in terminology to regulatory contradictions that must be resolved in order to harmonize State constitutions with the Federal Provisional Constitution.

The Supreme Court of Somalia is expected to play a significant role in the interpretation and, where appropriate, the harmonization of the constitutions of the Federal Member States with the Provisional Federal Constitution. Therefore, the Chief Justice greatly appreciated the publication of the study and congratulated the Foundation for its efforts to disseminate the texts establishing the constitutional and regulatory frameworks of the Federal Republic of Somalia.

The study of compatibility of State constitutions and its findings will be shared with other stakeholders in the Somali justice system in the coming weeks.

Somalia officially comprises six (6) regional States, which are divided into eighteen (18) regions.

As a reminder, the Supreme Court of Somalia has been a Member of the CCJA since 2017.



Case Law of the Courts and Councils

Benin: Child Surname: Women Now Have a Say

In its decision Dcc 21-269 of Thursday, October 21, 2021, the Constitutional Court of Benin considered



admissible the request made by Ms Eucharist Kotounou. Ms Eucharist Kotounou requested the seven wise men to declare Art. 6 and 12 of the law on the Personal and Family Code in Benin unconstitutional. Article 6 of this code provides that a legitimate child bears the surname of his father [...].

For this high jurisdiction, this article is not consistent with Art. 26 (paragraphs 1 and 2) of the Constitution, and Art. 3 and 18 (paragraph 1) of the African Charter on Human and People's Rights (ACHPR). According to this court, the rules it lays down do not confer equal power on a woman placed in the same conditions and situations as a man and do not preserve the fundamental right of a child to equal recognition of his/her parents' descent, whereas no constitutional principle, nor objective of constitutional value, let alone constitutional imperative, justifies the admission of such a breach of equality in such situations.

Art. 12 stipulates that: a married woman keeps her maiden surname to which she adds the surname of her husband; the same applies to a widow until she marries again; and a divorced woman may continue to bear the surname of her husband with his consent or with the authorization of a judge. On the basis of Art. 26 (paragraphs 1 and 2) of the Constitution, which provides for equality between men and women in and before the law, the Court considers that no circumstance, principle, or objective with constitutional value, even less so constitutional imperative, justifies breaching the principle of equality enshrined in Art. 12 of the Personal and Family Code. The Court concluded that this provision was contrary to the Constitution and to the African Charter on Human and Peoples' Rights.

Botswana: The Supreme Court Upholds on Appeal its Decision to Decriminalize Homosexuality

Botswana's justice system has upheld on appeal its decision to decriminalize homosexuality and rejected an appeal filed by the conservative government of this landlocked southern African country.

In 2016, a court in Botswana's capital Gaborone ordered that laws punishing same-sex relationships be amended, calling them "relics of the (British) Victorian era" that "oppress a minority".

Dismissing the appeal, the five judges unanimously ruled that the criminalization of same-sex relationships was a violation of the constitutional rights of LGBTQ+ people to dignity, liberty, privacy and equality.

But the government appealed against this decision last October, considering that this "political issue" should be decided by Parliament not the courts.

Homosexual citizens in Botswana have long lived in "constant fear of being discovered or arrested", Judge Ian

Kirby said after reading his judgement. "It has sometimes led to depression, suicidal behavior, alcoholism or drug addiction", he lamented.

Prior to this ruling, same-sex relationships were punishable by up to seven years in prison. Botswana is one of the few African countries that have decriminalized homosexuality. The others are Lesotho, Mozambique, Angola, and the Seychelles. South Africa is the only African country that allows gay marriage, which was legalized in 2006.



Case Law of the Courts and Councils

Algeria: The Constitutional Court Rules on the Constitutionality of Article 24 of the Law on the Profession of Lawyer

The Constitutional Court issued a decision declaring Article 24 of the law regulating the profession of lawyer constitutional.



The Algerian Constitutional Court ruled in favor of retaining the article providing that "In the exercise of his/her profession, the lawyer enjoys absolute protection of the confidential nature of relations between him/her and his/her clients; ensuring the confidentiality of his/her files and correspondence; and the right to accept or refuse a client. A lawyer may not be prosecuted for facts, declarations and writings arising from the debate or the pleadings in court".

It should be noted that the exception of unconstitutionality was submitted to the Supreme Court, which referred it to the (former) Constitutional Council, where the Bar was made a party to defend the profession.

According to Art. 195 (paragraph 1) of the Constitution, the exception of unconstitutionality may be invoked at the Constitutional Court on referral from the Supreme Court or the Council of State, when one of the parties to the trial argues before a judicial authority that the legislative or regulatory decision on which the outcome of the dispute depends violates its rights and freedoms guaranteed by the Constitution.

This is the first decision rendered by the Algerian Constitutional Court since its inception on November 23, 2021.

Uganda: Access to Information is a Constitutional Right

Ugandan MPs have asserted that access to information is a constitutional right for every Ugandan. In this regard, they consider that the provision of the Constitution relating to this subject has been violated as a result of the prolonged ban on the use of Internet and poor network coverage.

MPs are concerned that, as the Covid-19 pandemic caused people around the world to work and study from home, many parts of Uganda are not covered by the Internet, radio broadcasts and telephone networks.

MPs raised these concerns as a reaction to a statement by the Minister of Information on the quality of communication services.

The deputies queried the minister about the continued ban on Facebook, which is the main engine used by young people to obtain information.

They complained about data and airtime charges, saying telecom companies were cheating users without fear of being sued.



Ghana: The Supreme Court is Requested to Clarify the Immunity and Privileges of the Members of Parliament

Two Ghanaians, both lawyers, filed a suit with the Supreme Court, seeking the interpretation of Article 117 of the 1992 Constitution.



The plaintiffs are requesting the Court, inter alia, to declare that the Speaker, the Members of Parliament, and the Clerk of Parliament "are not covered by immunity from arrest, restriction or warrantless detention when they are going to, attending or returning from the proceedings of Parliament".

This request comes after a lawmaker failed to honor court appearances as part of an investigation into certain illegal acts that occurred when he led his constituents during a

protest. The Member of Parliament argued that he was immune from arrest because he was going to Parliament immediately after the demonstration on October 25th.

Case Law of the Courts and Councils

DR Congo: The Const Court is Incompetent to Judge an ex- Prime Minister

The Constitutional Court of the Democratic Republic of Congo declared that it had no jurisdiction to try Matata Ponyon, the former Congolese prime minister who is being prosecuted in an embezzlement case.

"The attachment of privilege ceases when an office holder quits his/her office. Mr. Ponyo must be prosecuted before the lawful judge", declared the President of the Congolese Constitutional Court. Now, the accused is no longer on duty. He had been Prime Minister from 2012 to 2016.



"D. KALUBA DIBWA, President of the CC of DR Congo"

In response, the defence lawyers observed that the Constitutional Court demonstrated the existence of a legal vacuum regarding the prosecution of a former prime minister. According to them, "the law is silent on the case of the prosecution of a former head of government for acts committed in the exercise of his duties".

Namibia: Supreme Court Confirms its Cases Must be Kept Open and Accessible to the Public and the Media

Court files must be kept open and accessible to the public and the media, the Supreme Court said in a ruling on November 28. The judgement states that the proceedings were confidential, and it kept the entire case file inaccessible to the public on the court's electronic registration system, which is contrary to the Constitution according to which the proceedings of the High Court must take place in open court.

Furthermore, when the parties to a case want to keep the content of a settlement agreement confidential, they should not seek the authority of the court to do so through a Court Decision. Instead, they could consider removing the case from the court's jurisdiction and enter into a confidential settlement agreement, which then could not be enforced as a court decision.

Chief Justice Peter Shivute approved this judgement.

The judgement was given in a review case that the President of the High Court Judge referred to the Chief Justice after a journalist asked why should a file on the Court's E-Justice system be classified as 'confidential' and could not be viewed by the media or the public.

In this case, three detainees sued the Namibian prison authorities for assaults allegedly perpetrated by correctional officers.

The Constitution provides in its Art. 12 that legal proceedings must take place in public, but the press or the public may be excluded from a trial or part of a trial "for reasons of morality, public order, or national security, as needed a democratic society".



"Peter Shivute, Chief Justice of Namibia"

Gabon: Const Court cancels new government measures relating to Covid 19

It is by decision n ° 043 / CC of December 24, 2021 that the Constitutional Court officially responded to the request lodged by two citizens relating to the declaration of unconstitutionality of decree n ° 559 / PM of November 25, 2021. A decision motivated according to the decision of the high court, by the non-respect of the law n ° 003/2020 of May 11, 2020.



"Mrs. M.M. Mboruntsuo, President of the CC of Gabon"

Indeed, the provisions of article 5 provides that "The National Assembly and the Senate are informed without delay of the measures taken by the government to face the health disaster", or according to the Court the decree n ° 0559 / PM setting the entry into force of the new government measures came into force without the government regularly informing Parliament.

"The procedural rules being of public order, their failure to observe ipso facto entails the annulment of the normative act concerned, in this case the decree n ° 0559 / PM", indicates the decision of the Constitutional Court.

Future activities

Senegal: Participation of the CCJA in 9th ACCF Congress

The CCJA will take part in the 9th Congress of the Association of Francophone Constitutional Courts (ACCF) to be held in Dakar, Senegal, from January 25 to 28, 2022, on the theme: "**The constitutional judge and human rights**".



The CCJA delegation will be led by its President, **Ms. Laurinda Cardoso**, who is also President of the Constitutional Tribunal of Angola. It should be noted that the CCJA and the ACCF signed a cooperation agreement, which covers, among other things, the sharing of legal studies relating to the review of constitutionality, and the joint

organization of scientific events.

The ACCF and the CCJA also agreed to consult on regional and international debates relating to constitutional justice.

Angola: 14th Session of the CCJA Executive Bureau

In keeping with the CCJA Statute, the 14th Session of the CCJA Executive Bureau will be held in Luanda, Angola, on February 10, 2022. The session will be devoted, among other things, to the consideration and adoption of the Activity Report, the closure of the 2021 Financial Year and the adoption of the provisional budget for 2022.

The representative of the Constitutional Court of Morocco will make a presentation on the preparations for the 6th Congress of the CCJA, which will take place on September 12-14, 2022, in Rabat.

The Constitutional Court of Angola has chaired the CCJA since June 2019.



"Ms. Laurinda Cardoso, President of the CCJA"

Morocco: The 6th CCJA Congress Will be Held in Rabat in September 2022

In anticipation of the improvement of the international health situation, the 6th Congress will take place in Rabat on September 12 to 14, 2022.



The provisional theme will be "**Constitutional Courts and International Law**". Nevertheless, this choice is not final and the Constitutional Court of Morocco may change it if the participants feel they need to deal with a different topic. The invitations, the draft program, the questionnaire, and the registration form will be sent to participants shortly.

Scientifics activities

CONSTITUTIONAL LAW AND ORDINANCES IN FRENCH-SPEAKING BLACK AFRICAN STATES

L'Harmattan
Édition - Librairie - Diffusion

VIENT DE PARAÎTRE

DROIT CONSTITUTIONNEL ET ORDONNANCES DANS LES ÉTATS D'AFRIQUE NOIRE FRANCOPHONE
Pr Saidou Nourou TALL

Cet ouvrage que le Pr Tall livre à la communauté scientifique a une valeur inestimable car il contribue grandement à sortir les ordonnances de l'oubli à travers l'analyse de la vie politique de vingt (20) États africains dont les textes constitutionnels, notamment en leurs dispositions transitoires, les chartes de transition, les actes provisoires d'organisation des pouvoirs publics sont passés au crible, dans leur contenu, dans leurs révisions et dans leur mise en application parfois chaotique.

Prix 10 000 FCFA

Saidou Nourou TALL est Professeur Titulaire de Chaire, Agrégé de Droit Public et de Sciences Politiques (UCAD), Ancien Auditeur à l'Académie de Droit International de La Haye et à l'Institut International des Droits de l'Homme de Strasbourg. Il enseigne à la Faculté des Sciences Juridiques et Politiques et assure des missions dans plusieurs universités en Côte d'Ivoire, au Bénin, au Burkina Faso, en Guinée-Conakry, au Mali, au Niger et au Togo. Il est actuellement membre du Conseil constitutionnel du Sénégal.

senegal.harmattan.fr

By PR SAIDOU NOUROU TALL

This work that Professor TALL presents to the scientific community is of inestimable value. It greatly contributes to bringing ordinances out of oblivion, through the analysis of the political life of twenty (20)

African states. It scrutinizes constitutional texts, in particular, transitional provisions, transitional charters, provisional acts of organization of the public powers, through their content, revisions and, sometimes, chaotic implementation.

Saidou Nourou TALL is a Full Professor, Associate Professor of public law and political science (UCAD).

Former auditor at the Academy of International Law in The Hague and at the International Institute of Human Rights in Strasbourg.

He teaches at the Faculty of Legal and Political Sciences and performs tasks in several universities in Côte d'Ivoire, Benin, Burkina Faso, Guinea-Conakry, Mali, Niger and Togo.

He is currently a member of the Constitutional Council of Senegal.

NB /: The "CJCA Newsletter" is your publication, do not hesitate to send us your remarks and your proposals as well as any information relating to the activity of your Court and that you would like to share with the other.

The E-Mail address is: contact@cjca-conf.org

