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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**4th MEETING OF THE SOUTHERN AFRICAN
JUDGES COMMISSION
ON THE FINANCIAL AND ADMINISTRATIVE
AUTONOMY OF THE COURTS AND THE
DELICATE BALANCE BETWEEN HUMAN
RIGHTS AND NATIONAL SECURITY**

Maputo 10-11 August 2006

SYNOPSIS

Upon invitation by the Supreme Court of Mozambique and supported by the Venice Commission and the Government of Ireland, the Southern African Judges Commission held its 4th meeting in Maputo, Mozambique on 10-11 August 2006. Chief Justices and their representatives from Angola, Botswana, Kenya, Lesotho, Malawi, Mauritius, Namibia, the Seychelles, South Africa, Swaziland, Tanzania and Uganda participated in the meeting, which was opened by the President of Mozambique, Mr. Guebuza.

The meeting dealt with two major topics: 'the financial and administrative autonomy of the courts' and 'the delicate balance between human rights and national security'. On behalf of the Venice Commission Mr. Hamilton, Director of Public Prosecutions of Ireland, contributed to the second topic from a European viewpoint.

The discussions on financial and administrative autonomy of the courts focused on the need 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.

While there are cases when national security requires the limitation of human rights, in seeking a balance between national security and human rights, the judge will find that the latter carry such a weight that in most cases the balance will clearly swing towards their side.

The distinction between party interests and the higher interests of the country is a key element of constitutionalism. "National security" cannot be an argument to pursue the political objectives of the government. National security can only be that of the State, it cannot be the "security" of the ruling party.

The SAJC also adopted its 'Guidelines on Addressing Issues of Concern among Member States of the Southern African Judges Commission', which are to enable the SAJC to assist courts under undue pressure from other state powers.

Documentation on the meeting is available at the web site of the Venice Commission for the Southern African Judges Commission www.codices.coe.int/SAJC.