



PROCEEDING

INTERNATIONAL CHIEF JUSTICE FORUM

in Commemoration of the 20th Anniversary

of the Constitutional Court of the Republic of Indonesia

*“Strengthening Democracy Through Constitutional Jurisdictions:
Past, Present and Future”*

Jakarta, August 10 – 11, 2023



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TABLE OF CONTENTS

A. OPENING CEREMONY.....	7
Plenary Session of the Commemoration of the 20 th Anniversary of the Constitutional Court of the Republic of Indonesia.....	7
1. Remarks by the Chief Justice of the Constitutional Court of the Republic of Indonesia.....	9
2. Remarks by the Chief Justice of the Supreme Court of the Republic of Indonesia.....	15
3. Remarks by the President of the Republic of Indonesia (recorded).....	19
B. INTERNATIONAL CHIEF JUSTICE FORUM.....	22
Summary of Discussion.....	22
C. ANNEX I: PAPERS – THE FORUM.....	31
List of Speakers and Papers.....	32
1. Session I.....	35
2. Session II.....	73
D. ANNEX II: LIST OF PARTICIPANTS – THE FORUM.....	119
E. ANNEX III: AGENDA.....	123





OPENING CEREMONY

Plenary Session of the Commemoration of the 20th Anniversary
of the Constitutional Court of the Republic of Indonesia







**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

REMARKS OF

THE CHIEF JUSTICE OF THE CONSTITUTIONAL COURT,

ON THE 20TH ANNIVERSARY

OF THE CONSTITUTIONAL COURT

“TWO DECADES OF CIVILIZING THE CONSTITUTION”

Jakarta, August 10, 2023

Assalamu’alaikum wa rahmatullahi wa barakatuh,

Good afternoon and peace be upon us all.

- Honorable and Respected President of the Republic of Indonesia, Mr. Ir. H. Joko Widodo;
- His Excellency, the Chief Justice of the Supreme Court of Indonesia, Mr. Prof. Dr. Muhammad Syarifuddin, S.H.;
- Our respected heads of state institutions;
- Your Honor the Vice President of the Constitutional Court and the Justices;
- Leaders and Members of Commission III of the House of Representatives;
- Ministers of the Advanced Indonesia Cabinet;
- His Excellency Ambassadors of Friendly Countries;
- All partners and stakeholders of the Constitutional Court, journalists, and the audience, who witnessed this event.

Praise and gratitude must always be given to *Allah Subhanahu wa Ta'ala*, the Almighty God, because only by His grace, help and guidance, we can attend the opening ceremony “**COMMEMORATION OF THE 20TH ANNIVERSARY OF THE MAHKAMAH KONSTITUSI: TWO DECADES OF MEANING CONSTITUTIONAL CIVILIZATION**” in good health.

My honorable audience,

The constitution, as the basic law of the state, has become a common agreement and understanding for all countries in the world. The interpretation of the constitution as the basic law of the state is not only interpreted in such a way, as the rights and obligations of state institutions and citizens, but also has values that reflect the civilization of a nation. Constitutional scholars have done a lot of research on the history of the constitution, and the impact of its regulation on the life of the state.

Constitutional history has been an academic subject since the 19th century. David Maxwell Walker, in a book entitled *The Oxford Companion to Law* published by the Oxford University Press in 1980, defines constitutional history as a study that explains the origin, evolution, and historical development of the formation of a particular group or community of people. The term *constitution* itself in English, according to Anthony Leon Brundage, was introduced by Henry Hallam in his book entitled *The Constitutional History of England*, published in 1827. However, the use of this term is used overlapping with legal and political history.

From the research on the history of the constitution, scholars view that the oldest constitutional documents, which were promulgated consecutively starting with England in 1215, were counted since *Magna Charta*, the United States, in 1789, with the *Bill of Rights in* 1789, followed by Norway, the Netherlands, Belgium, New Zealand, Canada, Luxembourg, and Tonga in the 18th century. However, some argue that the *new Manden Charter* of the Mandingo Empire in Africa is one of the oldest constitutional charters in the world, which UNESCO has included as an intangible cultural heritage of mankind, as written by the historian, Mali Youssouf Tata Cisse.

Meanwhile, in other parts of the Middle East, the *Medina Charter* is also a reference to one of the oldest constitutions in the world, which was formed by the Prophet Muhammad SAW, in 622 AD. At that time, the Medina Charter was formed to mediate all important tribes and groups in Yashtrib (Medina), in a form of agreement, which is formal. Consisting of 47 articles, it includes religious freedom for tribes in Medina, maintaining peace, and cooperative relations between all groups.

The historical record of constitutional documents in the world is subject to discourse, and debate among legal and historical scholars. However, despite this debate, a constitution is understood as a consensus or agreement among members, or groups of people for a noble purpose. It is in the constitution that the reflection of civilization in a country or nation is implied, which is contained in the form of a written document, or becomes a customary practice, which can also be unwritten.

The constitution, as the basic law, must certainly be obeyed and implemented by all elements of the nation. Compliance with the constitution is a form of commitment and respect for the basic law that has been agreed upon. Ignoring the constitution will damage connections within the state, in fact, the order of state life can be damaged, and divisions arise, which can lead to the collapse of a nation's civilization. Therefore, how the constitution is adhered to and upheld is the next phase that is interesting to study.

My honorable audience,

Each country has its own way and legal system, in maintaining sovereignty norms to be upheld and obeyed by all elements of the nation. The judiciary is the final foundation for upholding constitutional norms, although state institutions in the executive branch, legislative branch, and other state institutions also have an important effective role in upholding constitutional norms. The judiciary is the final phase to resolve constitutional dispute, in guarding the constitution. Such is the fundamental function of the existence of a judicial institution, which through its decisions must be able to resolve a case, not create new cases.

My honorable audience,

The regulation of the judicial institution of the constitutional court, in constitutional documents, has been carried out since 1920 in Europe. Czechoslovakia has been recorded several months ahead of Austria to regulate the institution of the constitutional court in its constitution. However, until 1921, Czechoslovakia did not establish the institution of the constitutional court. Meanwhile, Austria became the first country in 1920 to have a judicial institution.

Among the various types of constitutional authority of the constitutional court, which apply in various countries, the task of examining laws against the basic law (*judicial review*) has become the main task (*core business*) for the constitutional court. This is based on the understanding of the principle of checks and balances, that the judicial power (constitutional court) must be a counterweight to the executive and legislative powers—the legislatures.

The validity of a law that is ‘*erga omnes*’, allows for the intersection of the constitutional rights of citizens, as guaranteed by the constitution, or the non-linearity of the norms of the law, which are produced with the norms of the constitution. Therefore, to maintain the linearity of the norms of laws with the constitution as well as keeping the constitutional rights of citizens free from violation by the enforcement of laws, the constitutional court serves as a counterweight between the branches of state power or other state institutions.

While the authority of *judicial review* is a commitment to maintain the linearity of the norms of laws, with the constitution and maintain the general constitutional rights of citizens in the constitutional court, in some countries, the core business is precisely the concrete and specific authority to person or citizens individually, namely the authority of *constitutional complaint*.

With this authority, the constitutional court in several countries (such as Austria, Germany, Turkey, Korea and various other constitutional courts), can effectively provide protection of constitutional rights to citizens, individually and concretely. The authority of constitutional complaint also becomes a legal forum for citizens as a public control against state policy. Individual constitutional rights that are violated due to state policy can be tested through this legal channel. Legal forums are important for citizens in resolving their constitutional issues. The civilization of a country is determined by the way and system that it builds to solve its national issues.

My honorable audience,

The history of the Constitution in Indonesia is not as long as that of constitutions of countries in the world, in building the civilization of the nation. Similarly, the Constitutional Court of the Republic of Indonesia was only established in 2003. However, the Indonesian Constitution has been tested and is able to provide a fairly solid state foundation in maintaining the integrity of the nation and state in various aspects. Similarly, although relatively young compared to other constitutional courts in the world, the Constitutional Court of Indonesia has contributed to and played an important role in the global arena.

The Constitutional Court of Indonesia has played an important role in being one of the initiators of the formation of several regional and international organizations that serve as forums for cooperation among constitutional jurisdictions, as well as hosting various international events for constitutional jurisdictions in the world. These activities include the establishment of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), the Conference of Constitutional Jurisdictions of the Islamic World (CCJ-I), the hosting of the 5th Congress of the World Conference on Constitutional Justice last year, the International Call for

Papers, and various other activities.

The Constitutional Court of Indonesia has also become a motor for the relationship between the Asian and African constitutional jurisdictions (AACC and CCJA) in disseminating the importance of the role of upholding the constitution, law, and democracy amid increasingly complex global challenges. In fact, in building cooperation with various courts in the world, it does not hesitate to provide technical assistance to the courts of friendly countries, regarding the management of judicial administration. The Constitutional Court of Angola openly acknowledged and thanked the Court for adapting the Court's IT in their institution. The Court's cooperation with various international institutions and constitutional jurisdictions in various countries is a mirror that reflects that the active participation of the Constitution and Constitutional Court of Indonesia in building constitutional civilization at the global level.

My honorable audience,

On this happy day, when the Constitutional Court of Indonesia has turned 20, the constitutional jurisdictions of friendly countries from the AACC and CCJA are also present. I thank you the constitutional jurisdictions of Algeria, Angola, Kazakhstan, Mongolia, Namibia, South Africa, Thailand, Turkey, Azerbaijan, and representatives from the Permanent Secretariat of the Association of Asian Constitutional Court (AACC) and the Conference of Constitutional Jurisdiction of Africa (CCJA) for attending the celebration of the 20th anniversary of the Constitutional Court of Indonesia. Hopefully, the cooperation that we have established so far can be maintained and improved in the future.

My esteemed audience,

In conclusion, on behalf of the Honorable Constitutional Court Justices and the entire family of the Constitutional Court of the Republic of Indonesia, I would like to thank you from the bottom of my heart for such objective and constructive assistance by all state institutions in the executive, legislative, and judicial branches, and all stakeholders in the Constitutional Court. I would also like to thank friends of the court, universities, and the faculties of law throughout the archipelago for the collaborative cooperation that has been very well established to this day.

Therefore, on this happy day of the 20th anniversary of the Constitutional Court, let us together all improve our commitment, synergy, and cooperation to create a stronger and more meaningful constitutional civilization for the nation and state. May our steps and efforts receive guidance from *Allah Subhanahu wa ta'ala*, the Almighty God, in realizing Indonesia as a prosperous and just country.



Before closing this event, I would like to thank Mr. President of the Republic of Indonesia and the Heads of State Institutions, Ministers, who have taken the time to attend this event in person. In particular, we would like to thank the delegations from several countries and Their Excellencies the Ambassadors of friendly countries, the Chief Registrar and Secretary-General and all staff, as well as journalists and the press for their attention.

That is all. My apologies for any shortcomings in my presentation.

Billahi taufiq wal hidayah Wassalamu'alaikum warahmatullahi wabarakaatuh.

Good morning and peace be upon us all.

Disclaimer: The speech was originally delivered in bahasa Indonesia.

**REMARKS OF
THE CHAIRMAN OF THE SUPREME COURT
ON THE 20TH ANNIVERSARY
OF THE CONSTITUTIONAL COURT
“TWO DECADES OF CIVILIZING THE CONSTITUTION”
Jakarta, August 10, 2023**

Assalamu 'alaikum warahmatullahi wabarakatuh.

Good morning, best wishes to all of us, *Om Swastiastu, Namó Buddhaya*, and Greetings of Virtue.

- Honorable President of the Republic of Indonesia
- Your Excellency Chief Justice of the Constitutional Court of the Republic of Indonesia Mr. Professor Doctor Anwar Usman SH MH along with the entire panel of justices of the Constitutional Court
- Honorable Chairman of the People's Consultative Assembly and representative
- Honorable Chairman of the House of Representatives or the representative along with the deputies
- Honorable Chairperson of Commission 3 and the members who present
- Honorable Heads of state institutions who are present this morning
- Honorable Respected Mr. Coordinating Minister for Politics, Law, Security
- Honorable Mr. Commander of the Indonesian National Armed Forces or representative
- Honorable Mr. Chief of Police of the Republic of Indonesia
- Your Excellencies Ambassadors who attend

Due to the significant number of participants, I apologize for not being able to mention each of you as Mr. Chief Justice did on his former speech. So, allow me to say,

Ladies and gentlemen,

First of all, let us give praise and thanks to *Allah Subhanahu Wata'ala*, God Almighty for His abundance of mercy and grace so that today we are all given the opportunity to attend the commemoration of the 20th Anniversary of the Constitutional Court of the Republic of Indonesia. On behalf of the Chief Justice of the Supreme Court and judicial bodies throughout Indonesia, I wish the Constitutional Court a happy 20th anniversary. I sincerely hope that at the age of two decades, the Constitutional Court will become stronger and stronger guardian of the Constitution



Honorable ladies and gentlemen,

The Constitutional Court was born on the mandate of the Reform through a combination of three elements of state power, which is as reflected in the composition of nine constitutional justices, three of which proposed by the president as the executive, three by the House of Representatives as the legislative, and three by the Supreme Court as the judiciary. As did its elder the Supreme Court, the Constitutional Court has certainly faced numerous challenges in carrying out its function as an institution of judicial power.

The dynamics of social change and the development of technology has greatly influenced the characteristics of the law that is currently developing. However, the Constitutional Court through eight generations of leadership, from under the leadership of Professor Doctor Jimly Asshidiqie, S.H., M.H. up to today under the leadership of His Excellency Professor Doctor H. Anwar Usman S.H., M.H., has proven to always be able to stand upright in maintaining the integrity of the constitutional democracy.

As fellow judicial institutions, the Supreme Court and the Constitutional Court possess an important role in the system of state law, namely guaranteeing law and justice for all citizens. Therefore, in respect to each authority that has been regulated by the law, the Supreme Court and the Constitutional Court always go hand in hand in order to realize the ideals of the founding of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. Institutional synergy and communication between the Supreme Court and the Constitutional Court have so far been very well established, especially since the leadership of the Constitutional Court is currently held by element of the Supreme Court, His Excellency Professor Doctor Haji Anwar Usman, S.H., M.H., my fellow judge in the district court. However, his career path has been significant in the Supreme Court, while I have been assigned in various districts. The destiny of *Allah* has entrusted us both to lead the Supreme Court and the Constitutional Court. Thus, the personal bond established for a long time has now become institutional intimacy between the Supreme Court and the Constitutional Court.

Along the 20 years since its establishment, the Constitutional Court has produced many progressive decisions and provided many benefits for the democracy. Moreover, the decisions of the Constitutional Court have significantly contributed on foundations on justice and equality of the people. The Court's judicial review decisions of laws against the Constitution have *erga omnes* characteristic, that means they apply to all citizens, while the norms that have been reviewed and interpreted by the Constitutional Court will become a reference for justices' decisions in the court to provide justice for the parties in dispute. Hence, within the framework of a rule of law, between what is decided by the Constitutional Court and what is decided by the judiciary is an interrelated bond based on the principle of independence of the judiciary.

Ladies and gentlemen,

Concluding this remarks, I would like to once again congratulate the Constitutional Court for its achievements and accomplishments for the last twenty years. I pray and hope that the Constitutional Court will become stronger in protecting and guarding the upholding of the Constitution in order to realize the ideals of the law and democracy.

That is all. Please accept my apology for any mistakes in my presentation.

Wabillahi taufik wal hidayah.

Wassalamu 'alaikum warahmatullahi wabarakatuh.

Disclaimer: The speech was originally delivered in bahasa Indonesia.





**TRANSCRIPT
(VIDEO TAPE)
PRESIDENT OF THE REPUBLIC OF INDONESIA
ON THE 20TH ANNIVERSARY
OF THE CONSTITUTIONAL COURT
“TWO DECADES OF CIVILIZING THE CONSTITUTION”
Jakarta, August 10, 2023**

Assalamualaikum warahmatullahi wabarakatuh.

- **His Excellencies Chief Justice and Deputy Chief Justice and all Justices of the Constitutional Court,**
- **Ladies and gentlemen and honorable invitees,**

First of all, on behalf of the government and all the people of Indonesia, I wish you a happy 20th anniversary of the Court. I convey my gratitude and appreciation to all Constitutional Justices, as well as Registrar, staffs, and all personnel of the Constitutional Court who have maintained the integrity and authority of the Constitutional Court in providing good service to justice seekers.

In accordance with its authority, the Government is ready to support the Constitutional Court to continue to innovate in realizing the modern judicial system, in providing better services to justice seekers in accordance with the constitutional mandate. Within the limit of its authority, the Government is also ready to support the Constitutional Court in its difficult task of overseeing the simultaneous national election (*Pemilu Serentak*) in 2024, guarding the implementation of democratic values, and resolving election disputes as quickly and as impetuously as possible. I once again congratulate the Constitutional Court for its 20th anniversary. Thank you for continuing to guard the Constitution and safeguard the future of Indonesia.

Thank you!

Wassalamualaikum warahmatullahi wabarakatuh.

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OPENING CEREMONY

Plenary Session of the Commemoration of the 20th Anniversary
of the Constitutional Court of the Republic of Indonesia





**MINUTES OF MEETING
INTERNATIONAL CHIEF JUSTICE FORUM
August 10, 2023
Jakarta, Indonesia**

1. The International Chief Justice Forum (“ICJF”) was held in Jakarta, on August 10, 2023. Chief justices and representatives of constitutional jurisdictions attended the forum, which was conducted in a warm, friendly, and cordial atmosphere.
2. The meeting was held in two sessions with chairpersons H.E. Enny Nurbaningsih, Justice of the Constitutional Court of the Republic of Indonesia, for the first session and H.E. Wahiduddin Adams, Justice of the Constitutional Court of the Republic of Indonesia, for the second session. The list of delegations is appended in **ANNEX A**.
3. The meeting was held in two plenary sessions: the first session on “The Evolving Role of Constitutional Jurisdiction in Upholding Democracy throughout History” and the second session on the topic of “Current Challenges and Future Direction for Strengthening Democracy through Constitutional Jurisdictions.”
4. The outcomes of the meeting are as follows:
 - a. **Session I: “The Evolving Role of Constitutional Jurisdiction in Upholding Democracy throughout History”**
 1. The session was opened by chairperson H.E. Enny Nurbaningsih, Justice of the Constitutional Court of the Republic of Indonesia. In her opening remarks, H.E. Enny Nurbaningsih welcomed the Chief Justices and delegates and highlighted the session as a platform to share discussions in conjunction with twentieth anniversary of the Constitutional Court of Indonesia. The Chairperson welcomed the six speakers to present their views.
 2. First Speaker: H.E. Omar Belhadj, President of the Constitutional Court of Algeria

The Speaker underlined Algeria’s phases on constitutional justice. The first political phase was through Algeria’s establishment of the Constitutional Council in 1989, which supported party pluralism, supremacy of the Constitution, referendum monitoring, the



elections of presidents, its legislatives and its final results. The second phase was through the establishment of the Constitutional Court in November 2020, which has granted the Constitutional Court precise jurisdiction in the field of elections.

The Speaker highlighted Algeria's constitutional justice, which has contributed to the establishment and consolidation of the principles of separation of powers. This was conducted through the ruling on the conformity of the organic laws and the rules of procedure of the two Chambers of Parliament with the Constitution. This provided an opportunity to deliver important constitutional jurisprudence for the respect of distribution of jurisdictions, hierarchy of laws, and regulating the legislative processes for the maintenance of legal security.

3. Second Speaker: H.E. Farhad Abdullayev, Chairman of the Constitutional Court of Azerbaijan

The Speaker emphasized the importance of constitutional review as an important attribute to a modern democratic state system in maintaining constitutional legality in Azerbaijan. Furthermore, the Speaker highlighted Azerbaijan's constitutional transformation within its 25 years, with its latest modification in the form of a constitutional complaint mechanism. It serves to provide verification of the applied normative legal act during the revision of a judgment that violates human rights enshrined in the Constitution.

The Speaker highlighted the mission of the Constitutional Court of Azerbaijan to ensure constitutional stability and strengthen the rule of law. Furthermore, the Constitutional Court is an effective element to a modern legal society since it aims to ensure the supremacy of constitutional principles and values.

4. Third Speaker: H.E. Elvira Azimova, Chairperson of the Constitutional Court of the Republic of Kazakhstan

The Speaker emphasized the significance of the rule of law in achieving lasting peace and security. Furthermore, the Speaker underlined the recent historic constitutional reforms of Kazakhstan in 2022, which plays a vital role in facilitating political transformation and reinforcing the social role of the state. The constitutional reforms, in effect, enhanced the capacity for human rights. In pursuing the goal of safeguarding the fundamental human rights, crucial measures have been taken. One of such actions includes broadening the scope of the subject of who may appeal, and bestowing individual citizens the privilege to directly appeal to the Constitutional Court on the constitutionality of laws and other normative legal acts that pertains to human rights.

The Speaker highlighted that these measures ensure the protection of fundamental rights, principles of fairness and justice within the legal system.

Kazakhstan's recently-reconstituted Constitutional Court (2023) ensures the supremacy of the Constitution by verifying the conformity of the law with the norm of the Constitution. In the 7 months since its reconstitution, the Constitutional Court has received about 4000 appeals from citizens in comparison to 140 cases within 27 years of the existence of the Constitutional Council. This demonstrates the increasing access of citizens to the rule of law process when faced with a violation of their rights. The Speaker concluded by emphasizing the importance in finding the optimal balance between the interests of state, society and the individual. Lastly, in the period of globalization, the Court must ensure the establishment of a rule of law that effectively addresses the modern needs of such stakeholders.

5. Fourth Speaker: H.E. Raymond Mnyamezeli Mlungisi Zondo, Chief Justice of the Constitutional Court of South Africa

The Speaker highlighted the role played by the Constitutional Court of South Africa in upholding and protecting the constitutional democracy of South Africa and the fundamentals of human rights. First, the Constitutional Court has ruled the prohibition of the right to vote for prisoners unconstitutional. In effect, this judgment has allowed more than 15,000 prisoners to vote. Second, the Constitutional Court's ruling against contempt to a former ruler on allegations of corruption demonstrates the Constitutional Court's actions in upholding the rule of law and democracy.

The Speaker further highlighted the issues faced in upholding rule of law such as the parliament's failure to conduct impeachment, looting conducted by the former ruler's supporters, and personal attacks toward Constitutional Court justices. Irrespective of the issues faced by the Constitutional Court, not upholding the rule of law would destroy democracy.

6. Fifth Speaker: H.E. Hasan Tahsin Gökcan, Vice President of the Constitutional Court of Türkiye

The Constitutional Court of Türkiye interprets the principle of the democratic state as a pluralist democracy. The adoption of the individual application to the Constitutional Court of Türkiye in 2012 has had a significant impact on how the Court interprets and applies the protection of fundamental rights and constitutional democracy. In essence, the Court found that the fundamental duty of a democratic state is to protect and promote the fundamental rights and freedoms from arbitrary interference.

The Speaker highlighted several examples on the protection of fundamental human rights. First, guaranteeing the emergence, protection, and dissemination of different opinions for the right to hold meetings and demonstration marches. Second, judgments issued by the Court on the protection of freedom of expression and assembly are crucial to the development of democracies with the exception of racism, hate speech, and incitement to terrorism. Third, judgments issued by the Court on the right to be elected and to engage in political activity. Lastly, the Court's judgment that disciplinary sanctions against members of Parliament whose statements are contrary to the administrative structure of the Republic as defined in the Constitution are unconstitutional. That said, the Speaker highlighted the Court's sensitivity to protect the freedom of expression of parliament members, since they represent the opinions, demands, and interests of the electorate.

7. Sixth Speaker: H.E. Manahan M.P. Sitompul, Justice of the Constitutional Court of Indonesia

The Speaker emphasized Indonesia's continuous efforts to assure the protection and fulfillment of human rights through the amendment to the 1945 Constitution in 1999 up until 2002. The Speaker further highlighted that human rights protection and enforcement are introduced to the 1945 Constitution as a characteristic form of a modern constitution to develop the foundation for constitutionalism.

The Speaker explained the authority of the Constitutional Court of Indonesia, which includes: handing down decisions on the judicial review of laws against the 1945 Constitution, authority disputes between state bodies, the dissolution of a political party, disputes over general election results, and alleged violation by the President or Vice President based on the People's Legislative Assembly views. In addition to such authority, the Court also plays the role to equalize democracy within the political aspect in upholding people's sovereignty and democracy. In this instance, the Court stands on the front guard to make Indonesia a democratic constitutional state and a democratic state through protecting the integrity of the Unitary State of the Republic of Indonesia.

8. During the question and answer session, H.E. Suhartoyo (Justice of the Constitutional Court of the Republic of Indonesia) inquired to the delegation of South Africa on the presidential election process in South Africa. H.E. Raymond Mnyamezeli Mlungisi Zondo (Chief Justice of the Constitutional Court of South Africa) responded that presidents are not elected directly by the general population, but through members of parliament who then nominate a member as president. After receiving enough votes,

the candidate becomes president. The general population, on the other hand, votes to elect political parties.

b. Session II: “Current Challenges and Future Direction for Strengthening Democracy through Constitutional Jurisdictions”

1. The session was opened by chairperson H.E. Wahiduddin Adams, Justice of the Constitutional Court of the Republic of Indonesia. In his opening remarks, H.E. Wahiduddin Adams welcomed and thanked the Chief Justices and delegates to the second session. The Chairperson welcomed the five speakers to present their views.
2. First Speaker: H.E. Chinbat Namjil, Chief Justice of the Constitutional Court of Mongolia

The Speaker introduced the experience of the Constitutional Court of Mongolia regarding the principle of democracy that is guaranteed in Mongolia’s Constitution. Mongolia has adopted its Constitution three times, with the most recent in 1992, which aligns with liberal democratic ideas. Since its latest adoption, Mongolia enshrined its Constitution with human rights, democratic politics, pluralism, free economy, separation of powers, independent judicial power, and constitutional review changing its previous 70 years of a socialist rule. The changes in Mongolia’s Constitution can be seen within its first article, which states the fundamental purpose of state activity is to ensure democracy, justice, freedom, equality, national unity, and respect for the law. Manifestation of democracy is embedded within social activity, political rights, and liberties such as voting, being elected, searching for information, petitioning, complaints towards government officials, associations, and protests.

The Speaker highlighted their views that the consolidation of democracy not only comes from the codification of the constitution and laws, but the designated institution such as the Constitutional Court. Mongolia’s Constitutional Court exercises supreme supervision over the implementation of the constitution, such examples include its jurisdiction over constitutional review, whether high ranking government officials such as the executive, legislative and even officials of the judiciary have violated the Constitution. The 1992 Constitution greatly contributes to the construction of a democratic legal system directly and indirectly related to the strengthening of the principles of democracy. Since the establishment of Mongolia’s Constitutional Court, it has made great achievements in declaring challenged acts unconstitutional; protecting democratic principles and human rights; and building a humane, civil and democratic society.



3. Second Speaker: H.E. Laurinda Cardoso, President of the Constitutional Court of Angola

The Speaker highlighted the institutionalization of Angola's Constitutional Court back in 2008 and emphasized two points on strengthening the mechanisms in defending fundamental rights. First, through the constitutional review of the acts practiced by the national assembly and the normative acts of the legislative power. Acts subject to constitutional review includes normative acts, treaties, conventions and international agreements, constitutional revision, and referendums. If and when these acts are scrutinized, through abstract review resulting in two options, namely, preventative in which they are vetoed, not ratified or not signed; or successive.

The Speaker further highlighted her second note that the concept of majority voting should not and cannot be invoked as a barrier to constitutional jurisdiction. Constitutional courts must be guided by a democracy capable of restricting politicized decisions through constitutional control. The Speaker emphasized that the Constitutional Court has the role of judging a legislative act of parliament that corresponds to the higher general will. One highlighted judgment which includes an unconstitutional article for the Constitutional Court and bodies with special jurisdiction to report to the president and the national assembly as it infringed the separation of powers. In the concluding statement, the Speaker reiterated that the Angolan constitutional system is characterized by its commitment towards its constitutional jurisdiction and maintaining a healthy relationship with the parliament.

4. Third Speaker: H.E. Chiranit Havanond, Justice of the Constitutional Court of the Kingdom of Thailand

The Speaker revealed four stages of the modification and development of its constitutionality review systems since its transformation from an absolute monarchy to a constitutional monarchy. In 1997, the Constitution of the Kingdom of Thailand assigned the Constitutional Court, formerly the Constitutional Council, the duty and power to protect the Constitution and democracy in addition to the authority of constitutional review and interpretation.

The Speaker highlighted the Constitutional Court's power. First, to decide whether an act constitutes an exercise of rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State. Second, to review constitutional amendments so that the legislative body cannot amend the constitution that may change the democratic regime of government with



the King as Head of State. Third, to decide whether an act of state agencies or officials have violated the people's rights and liberties. The Speaker concluded that the Constitutional Court has increasingly strengthened its role in protecting democracy and solved many issues that are unsolvable through the political sector.

5. Fourth Speaker: H.E. Peter Shivute, Chief Justice of the Supreme Court of Namibia

The Speaker highlighted the current challenges faced such as the rise of populism, the difficulties of preservation of human rights in the digital age, and threats of corruption to democratic governance. The Speaker emphasized that these issues undermine the principles of constitutionalism and erode the public's trust.

The Speaker drew our attention into the future in order to take actions in strengthening democracy through constitutional jurisdictions. One of the ways to do so is through the promotion of an independent judiciary. Second, by embracing technological advancements and adopting digital platforms to improve access to justice. Third, through enhancing capacity building for judges, lawyers and court staff in order to strengthen constitutional jurisdictions. Lastly, through international cooperation among constitutional jurisdiction that vital for the advancement of democracy worldwide.

6. Fifth Speaker: H.E. Suhartoyo, Justice of the Constitutional Court of the Republic of Indonesia

The contribution of the Constitutional Court of the Republic of Indonesia to strengthen democracy can be seen in how the court realizes its authority. First, its constitutional review of laws ensures that the legislative branch does not exceed its constitutional limits and that laws are in line with fundamental rights and democratic principles as a form of checks and balances on the powers of the executive and legislative branches of government to prevent abuse of power. Second, its decisions have often centered on protecting and upholding human rights, including freedom of speech, assembly, religion, and other civil liberties, thus helping to foster pluralism and tolerance essential for a thriving democracy. Third, through its authority to oversee disputes over presidential, legislative, and regional head elections, it helps ensure the fairness and integrity of the electoral process. Fourth, by making its decisions publicly available, it promotes transparency and accountability by allowing citizens to understand the legal reasoning behind its judgments. Fifth, by being an independent and impartial forum for resolving political disputes, it reduces the escalation of political conflicts into crises. Sixth, by setting precedents, it establishes a consistent application of the



rule of law, fosters stability and predictability in the legal system, thus contributing to Indonesia's democracy.

The Speaker detailed the challenges to democracy such as erosion of democratic institutions due to executive overreach, political polarization, and attacks on the independence of the judiciary; threats to the rule of law by governments or powerful entities; electoral fraud, voter suppression, misinformation campaigns, and inadequate election laws and regulations that threatens electoral integrity; and attempts to curtail or infringe upon human rights and individual freedoms. In order to address these challenges, the Speaker proposes strengthening judicial independence, electoral reforms, embracing technology, promoting civic education, combating disinformation, and ensuring access to justice.

7. During the first question and answer session, the delegate of Angola inquired to the forum on how both constitutional courts, both in Asia and Africa, face the challenges in constitutional power. H.E. Chiranit Havanond (Justice of the Constitutional Court of the Kingdom of Thailand) responded that international meetings can help reuniting and strengthening the constitutional courts of various countries. H.E. Peter Shivute (Chief Justice of the Supreme Court of Namibia) responded that forums like the ICJF have brought the justices together in comparing the differences, challenges, and strengths. Furthermore, H.E. Peter Shivute underlined the importance that the bond shall be strengthened if the countries involved share the same level of constitutional principles. H.E. Laurinda Cardoso (President of the Constitutional Court of Angola) also asserted that joining different countries together shall help bring cooperation. H.E. Suhartoyo (Justice of the Constitutional Court of the Republic of Indonesia) responded that meeting with different democracy systems has led us to understand the differences and take the positive cases.
8. During the second question and answer session, H.E. Raymond Mnyamezeli Mlungisi Zondo (Chief Justice of the Constitutional Court of South Africa) inquired if any justices had faced similar challenges where upholding the constitution resulted in personal attacks. In response, H.E. Laurinda Cardoso informed non-similar challenges. However, H.E. Peter Shivute responded he had faced similar reactions as South Africa.
9. The Chairperson of the second session adjourned the session and expressed his appreciation to the delegations for their active participation during the session.

Closing remarks

H.E. Anwar Usman, Chief Justice of the Constitutional Court of the Republic of Indonesia adjourned the ICJF. H.E. Anwar Usman expressed his deepest appreciation to all the participating delegates and their inputs. Furthermore, H.E. Anwar Usman highlighted that the ICJF had forged bridges that connect the delegates towards a shared mission of justice that transcends national borders. Lastly, H.E. Anwar Usman closed the ICJF with Nelson Mandela's quote, "To be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others," as a reminder to thrive and respect democratic values through collective effort in order to have a more just world.





ANNEX I

PAPERS



LIST OF SPEAKERS AND PAPERS

SESSION I

Chairperson: Justice Enny Nurbaningsih, Indonesia

No.	Country	Speaker	Title
1.	Algeria	Mr. Omar Belhadj, President	Strengthening democracy through constitutional jurisdictions: past, present and future
2.	Azerbaijan	Mr. Farhad Abdullayev, Chairman	The Evolving Role of Constitutional Jurisdictions in Upholding Democracy through History
3.	Kazakhstan	Mrs. Elvira Azimova, Chairman	(No Title)
4.	South Africa	Mr. Raymond Mnyamezeli Mlungisi Zondo, Chief Justice	(On the Spot Presentation)
5.	Türkiye	Mr. Hasan Tahsin Gökcan, Vice President	The Importance of Constitutional Justice in Sustaining Democracy and the Role of the Turkish Constitutional Court in the Case of Türkiye
6.	Indonesia	Mr. Manahan MP Sitompul, Justice	Strengthening Democracy Through Constitutional Court Interpretation in Protecting Citizens' Constitutional Rights and Human Rights

SESSION I

Chairperson: Justice Wahiduddin Adams, Indonesia

No.	Country	Speaker	Title
1.	Mongolia	Mr. Chinbat Namjil, Chief Justice	Constitutional Court (TSETS) of Mongolia is a Guarantee of the Principle of Democracy
2.	Angola	Mr. Laurinda Cardoso, President	(No Title)
3.	Thailand	Mr. Chiranit Havanond, Justice	Roles of the Constitutional Court of the Kingdom of Thailand in Protecting Democracy
4.	Namibia	Mr. Peter Shivute, Chief Justice	(No Title)
5.	Indonesia	Mr. Suhartoyo, Justice	Current Challenges and Future Directions for Strengthening Democracy through Constitutional Jurisdictions: The Perspective of the Indonesian Constitutional Court

SESSION I





ALGERIA





**People’s Democratic Republic of Algeria
Constitutional Court**

**Speech of Mr Omar Belhadj, President
of the Constitutional Court,**

Titled on:

**“The Role of the Constitutional Court in Promoting
Democratic Principles: Past, Present and Future”**

On the occasion of the international conference on:

“Strengthening democracy through constitutional jurisdictions: past, present and future”

The twentieth anniversary of the Constitutional Court of the Republic of Indonesia

Jakarta-10 August 2023

In the Name of Allah, the Most Merciful, the Most Beneficent, Prayers and peace be upon the most honorable prophets and messengers, our master Muhammad,

Your Excellency, **M. Anwar Osman**, President of the Constitutional Court of Indonesia

My colleagues, Presidents and justices of the Constitutional Courts and Councils of the Equivalent Institutions,

Ladies and Gentlemen,

It is a pleasure to be with you today to participate in the works of the International Conference of Chiefs of Courts on this occasion of the twentieth anniversary of the establishment of the Constitutional Court of the Republic of Indonesia, At the outset I would like to extend my sincere thanks and gratitude to my brother Mr. Anwar Osman, President of the Constitutional Court of the Republic of Indonesia for the generous invitation i have received to attend and participate in the work of this international conference on **“Strengthening Democracy through Constitutional Jurisdictions: Past, present and future”**, which undoubtedly reflects



the relations of friendship and cooperation that bind the two institutions of Constitutional justice in our two countries, and the concern we share and Indonesia to promote constitutional justice in the interest of building a state of right and law and devoting principles of democracy that we all aspire to.

Ladies and Gentlemen,

The Algerian Constitutional Court had organized an International symposium on December, 5th and 6th, 2022 entitled: “the right of citizens to access to constitutional justice in the light of comparative systems”, on the occasion of the first anniversary of its inauguration“, when we were honored the attendance and participation of the Constitutional Court of the Republic of Indonesia. This meeting was really an opportunity for us to meet different constitutional experiences as well to build and consolidate friendship ties with many courts and constitutional councils of different traditions, cultures and judicial constitutional models.

Ladies and gentlemen,

The constitutional justice in Algeria knew two main stages during developments and political transformations in the country, the phase of the Constitutional Council which extended from 1989 until the constitutional amendment of November 1th, 2020, the date of transition to the second phase of the establishment of the Constitutional Court.

The establishment of the Algerian Constitutional Council for the first time in accordance with the Constitution of February 23, 1989, constitutes a new political phase based on party pluralism and the principles of democratic organization in charge of two main missions, one is ensuring the supremacy of the constitution and respect through overseeing the constitutionality of laws and the conformity of the rules of procedures of the People National Assembly with the Constitution as well as monitoring the proper conduct of referendum processes ,the election of the President of the Republic and of legislative elections, and announcing the final results of these processes.

These were the main tasks that the Council has maintained according to the Constitution of November 28, 1996, with the introduction of legislation through organic laws in fields and areas defined by the Constitution, which they are subject, in addition to the Rules of procedure of each of the two Chamber of Parliament to a prior mandatory control over its conformity with the constitution, by notification of the President of the Republic . Those also are jurisdictions preserved by the constitutional amendment of March 2016 with approval for the first time in the history of constitutional justice in Algeria the mechanism of the exception of unconstitutionality and the parliamentary notification system.

Ladies and Gentlemen,

The constitutional justice in Algeria has contributed to the establishment and consolidation of the Principles of separation of powers particularly through ruling on the conformity of the organic laws and the Rules of procedure of each of the two Chamber of Parliament with the Constitution which is considered , due to the nature of the legal provisions , an opportunity to deliver a very important constitutional jurisprudence for the respect of the constitutional distribution of jurisdictions, the hierarchy of laws, the supremacy of the constitution, and regulating the legislative processes for the maintenance of legal security.

The Constitutional Council also played a significant role in protecting the people's will and respect for the rules of democratic competition and a regular transfer of power through ensuring validity of the electoral process, examining appeals in relation and announcing its final results.

Ladies and Gentlemen,

The transition from the Constitutional Council to the Constitutional Court is a result of a variety of circumstances and political experiences. The decision to establish the Constitutional Court in an integrated context of deep and comprehensive constitutional, political and institutional reforms initiated by President of the Republic, Mr. Abdelmadjid Tebboune, immediately after his election in December 2019, when was its first step the constitutional amendment which was endorsed by the Algerian people in the referendum of 1 November 2020, a new way based on rule of law and resilient and legitimate institutions and real separation of powers and balance between them, the respect for fundamental rights and freedoms and reflecting the principles of genuine democratic governance.

Constitutional justice in the context of these reforms has taken an important position, being the highest oversight institution in charge of ensuring the observance of the Constitution, and its interpretation, regulating the conduct of institutions and the work of public authorities, ruling on disputes that may arise among the constitutional powers with its wide jurisdictions in the field of oversight the constitutionality of laws and regulations and their conformity with the Constitution, what qualifies it to take a high position in the State's institutional map that are designated to play a key role on the functioning of constitutional institutions and authorities to move toward a modern State -building in which rights and freedoms are protected and institutions are preserved.

Ladies and Gentlemen,

The Constitutional Court performs for the oversight of the constitutionality of laws many and wide jurisdictions that reflect an important role in safeguarding rights and freedoms

and strengthen democratic practice, in addition to the prior mandatory control over the constitutionality of organic laws and Rules of procedure of each of the two Chamber of Parliament, the Constitutional Court rules on the conformity of treaties, laws, and regulations of laws and regulations and conformity of laws, and regulations with international treaties that were ratified by Algeria as well as the President of the Republic shall notify it obligatory on the constitutionality of orders initiated in emergency matters during a vacancy of the People's National Assembly or during the parliamentary recess. The Constitutional Court also pronounces on the decisions taken by the President of the Republic within the period of the case exceptional.

The 2020 constitutional amendments has also introduced the mechanism of the exception of unconstitutionality and expanded its scope to include regulatory provisions after it was limited to legislative provisions, when any litigant claims that legislative or regulatory provision upon which the issue of litigation before any jurisdiction relies may adversely affect his rights and freedoms granted by the Constitution.

Ladies and Gentlemen,

The 2020 constitutional amendment has also granted Constitutional Court precise and decisive jurisdictions in the field of elections to be distinguished to those of the National Independent Authority of Elections, which is in charge of preparing ,organizing, conducting and supervising electoral processes, whereas Constitutional Court reviews the appeals it receives on the provisional results of presidential and legislative elections and referendum and announces the final results of all these processes as well as it rules on appeals received against decisions of the National Independent Authority of Elections about the validity of candidates for the election of the President of the Republic and appeals against decisions on financing and monitoring electoral campaign of the National Independent Authority of Elections and declares an opinion on them.

Ladies and Gentlemen,

As an independent oversight institution and due to its constitutional position, the Constitutional Court is the only institution that may be invoked by the constitutional powers when a dispute or inter-institutional clogging occurs whatever nature. This is the case when the member of Parliament refuses to expressly waive his immunity to be the subject of litigation for any actions unrelated to their parliamentary duties. In this case, the Constitution granted that it is possible for any of the notification authorities to notify the Constitutional Court for decision on lifting immunity or not.

Ladies and Gentlemen,

There is no doubt that Constitutional Court exercises this large amount of jurisdictions whatever its differences and its importance, so which it requires two fundamental criteria to the constitutional judge namely; independence criteria and efficiency, that is why constitutional founder has been very careful to ensure its availability under the constitutional amendment of 2020 by a rich and distinguished composition.

In this context, it is clear that the constitutional Court's composition mostly meets criteria of competence, experience, election and impartiality, it is two-thirds of its members are elected, it consists of four (4) members appointed by the President of the Republic, of six professors of constitutional law elected by their counterparts in the Algerian universities, and two judges elected by their counterparts in the Court Supreme and Council of State. The Constitutional founder seeks to grant the Constitutional Court guarantees of impartiality and independence in order to put it out of the political debate without any link between its elected and appointed members with political parties, and no less than twenty (20) years of legal experience.

Ladies and Gentlemen,

In spite of the short time of the Constitutional Court, which I have the honor of serving as the first Chairman of it, however, its jurisprudence has achieved a major step particularly in the area of enhancing the practices of democracy area. In addition to dozens of decisions on the control over the Constitutionality of laws by notification and the exception of unconstitutionality, The Constitutional Court ruled on sixty appeals against Decisions of the Committee on controlling electoral campaign accounts of the National Independent Authority of Elections, which undoubtedly considered as a contribution of the Constitutional Court to ensure transparency and integrity on founding electoral processes.

Constitutional Court has also received for the first time in the history of Constitutional justice in Algeria three parliamentary notifications regarding laws voted by Parliament, which it heralds a promising future for the Constitutional Court's position in democratic practice in my country.

Finally, once again I express my deepest gratitude to Mr. Anwar Osman, President of the Constitutional Court of the Republic of Indonesia for having honored us by inviting us to attend this conference wishing you success in the service and development of constitutional justice for the best of our countries and peoples.

Thank you for listening, May peace be upon you.



AZERBAIJAN







**DR. FARHAD ABDULLAYEV – Chairman of the
Constitutional Court of the Republic of Azerbaijan
The International Chief Justice Forum (ICJF)
“Strengthening Democracy through Constitutional Jurisdictions:
Past, Present and Future”
Jakarta, 10 August 2023**

**REMARKS FOR SESSION:
“The Evolving Role of Constitutional Jurisdictions
in Upholding Democracy throughout History”**

Dear Mr. Chairman,

Dear Colleagues,

On behalf of the Constitutional Court of the Republic of Azerbaijan, I would like to congratulate Honourable Anwar Usman, Chief Justice of the Constitutional Court of the Republic of Indonesia, Justices and all the staff of the Constitutional Court of the Republic of Indonesia on the occasion of the 20th Anniversary.

For a relatively short period of its activity, the Constitutional Court of Indonesia has made an effective contribution to ensuring the supremacy of the Constitution and strengthening the rule of law.

The Constitutional Court of Indonesia plays an important role in ensuring international legal cooperation among constitutional review bodies, and in this context, I would like to highlight the successful holding of the 5th Congress of the World Conference on Constitutional Justice in October 2022 in Bali.

We highly appreciate this activity and wish our colleagues and friends from the Constitutional Court of Indonesia health and further success in their activities.



Dear Participants of Forum,

The process of formation of democratic state in the modern world is closely linked with ensuring of supremacy of the constitutional values.

In the Republic of Azerbaijan, the Constitution is the principal legal instrument on the basis of which the entire state legal system is built. The Basic Law, the norms of which consolidate the power of the people, human rights and freedoms, establishes and ensures the optimal balance of interests of the state, society and the individual. The principle of the supremacy of Constitution, constitutional legitimacy is realized through constitutional justice.

As you know, in the modern constitutional law the constitutional review is understood as a special type of law enforcement activity in the state, which consists in verification of compliance of laws and other normative legal acts with Constitution. In Azerbaijan, the constitutional review is an important attribute of a modern democratic state system, without which it is unthinkable to maintain constitutional legality, and hence the legality in general. It ensures the functioning of the Basic Law as the highest normative legal act that has immediate and direct effect.

At the same time, the activity of all state bodies and officials, which is carried out by them through the use of various legal means within the delegated competence, manifests as a guarantor of constitutional values.

It is obvious that the level of democracy in each country is largely determined by the presence and functioning of independent courts. The activity of the constitutional justice body has a direct impact on the successful development of democratic processes in society, and this mission is both legal and historical in nature.

The status of Constitutional Court, which is the only body of constitutional jurisdiction in the Republic of Azerbaijan, is enshrined in Constitution and determined by its primary role in ensuring the respect for the values of the state governed by rule of law.

Over the past 25 years, the constitutional justice in Azerbaijan has gone through a large stage of transformation, during which more and more entities in one or another form were involved in the process of implementation of constitutional justice, which in its turn became more and more in demand in public and legal relations.

The latest modifications made to the legislation in the field of the constitutional complaint mechanism provide for the verification of the constitutionality and legality of the applied

normative legal act during the revision of a judgement that violates the human rights enshrined in the Constitution.

This legislative change indicates that no matter what the transformation processes are, the main legal mission of Constitutional Court remains unchanged that is the ensuring of constitutional stability in the framework of history and strengthening the rule of law.

In many respects, through the decisions of the Constitutional Court of Azerbaijan, the Constitution has become a “living” document and the most important tool in ensuring the legal stability. Courts and other law enforcement entities increasingly argue their position on the basis of the norms enshrined in the Constitution by referring to the decisions of the Plenum of the Constitutional Court of Azerbaijan. Moreover, taking into account the universal values connected with protection of human rights and freedoms, the reference to constitutional norms is carried out in correlation with international multilateral treaties, such as the Universal Declaration of Human Rights, the European Convention on Human Rights and other international instruments.

Today we can state that the Constitutional Court is an effective element of a modern legal society and its role, regardless of the historical period, will always be determined by the level and quality of justice, which aims at ensuring the supremacy of constitutional principles and values.

In the eyes of people any court as a guarantor of justice acts a defender against possible excesses. The mission of constitutional justice within the historical period of the formation and development of legal and democratic statehood will always be associated with involvement of public conscience to observe and respect the Constitution, which, in its turn, at all stages of the country’s history will act as an indispensable legal platform for participants within all legal relations.

In conclusion, I would like to congratulate once again the Constitutional Court of the Republic of Indonesia on the occasion of its Anniversary and express hope for the continuation of our fruitful cooperation.

Thank you for attention.





KAZAKHSTAN





**Azimova Elvira Abilkhasimovna
Chairman of the Constitutional Court of
the Republic of Kazakhstan**

**SPEECH
at the 1st International Forum of Chief Judges,
«Strengthening democracy through
constitutional jurisdictions: past, present and future»**

**Session 1 «The Evolving Role of Constitutional Jurisdictions»
in maintaining democracy throughout history»**

August 10, 2023

13:55 Jakarta time

Dear participants of the International Conference,

Dear Mr. Chairman, colleagues and guests!

Greetings to all on behalf of the Constitutional Court of the Republic of Kazakhstan,

Dear Mr. Anwar Usman, let me thank you for the invitation to the conference and congratulate you on a significant date - the 20th anniversary of the Constitutional Court of the Republic of Indonesia.

I would like to start today's speech with reference to the words of the UN Secretary-General António Guterres, that the rule of law is fundamental for lasting peace and security, is the basis for conflict prevention, peacekeeping and peacebuilding, elimination of injustices and inequalities, for the protection of civilian populations in crisis and post-conflict situations. Offering a new vision of the rule of law, A. Guterres emphasized that the support of states in strengthening the institutions of the rule of law should be based on the main principle - the interests of the people at the center of the justice system.



This year the world celebrates the 75th anniversary of the Universal Declaration of Human Rights, whose motto is: «Dignity, Liberty and Justice for All». Taking into account the tasks of the constitutional courts, considering the appeals of citizens and legal entities, this motto can be safely called the main principle of the mission of constitutional control bodies.

The protection of human rights is one of the fundamental principles of a just and democratic society, in which constitutional review plays a key role in ensuring that these rights are respected. In this context, the body of constitutional control of the state can be seen as an integral element of democracy, the promotion of human rights and the rule of law.

Kazakhstan in 2022 went through a stage of significant constitutional reforms that laid the legal foundations for further modernization of society and the state, political transformation, strengthening the social role of the state and human rights potential.

In the history of independent Kazakhstan, there was already a Constitutional Court, which operated from 1992 to 1995. With the adoption in 1995 of the new Constitution of the Republic of Kazakhstan, the Constitutional Council was established, which exercised constitutional control in the country for 28 years.

Over the years of its activity, the Constitutional Council has adopted many decisions aimed at realizing the potential of the Constitution. This is evidenced by the rich practice of official interpretation, which affects the most important aspects of the political and socio-economic life of Kazakhstani society.

At the same time, many problems have accumulated in the legal development of the state that require scientific understanding and evaluation, especially in the light of new tasks associated with new modern challenges and requiring the evolution of the role of constitutional jurisdictions.

Unfortunately, the previous model of the body of constitutional control was characterized by the lack of direct access of citizens to constitutional justice. Citizens could apply to the Constitutional Council indirectly and only through the courts. This mechanism has shown low efficiency. After all, the effectiveness of constitutional control to a certain extent depends on the activity of the subjects of circulation.

In this regard, an important step in putting into action effective mechanisms to strengthen the protection of the fundamental rights of citizens was the transformation of the body of constitutional control with the expansion of the list of subjects of appeal and the empowerment of citizens with the right to apply directly to the Constitutional Court.

The restored Constitutional Court began its work on January 1, 2023. Its main task is to ensure the supremacy of the Constitution throughout the country by checking the compliance of the law with the norm of the Constitution on the example of a specific life situation. The Commissioner for Human Rights and the Prosecutor General also received the right to appeal.

The subject of the appeal is a statement on the verification of the constitutionality of laws and other regulatory legal acts. Citizens can appeal not only in connection with the incorrect application of the norm of the law by the court or in the absence of recourse to the court, but when in a particular situation the imperative norm of the law concerns human rights.

The beginning of the activities of the Constitutional Court coincided with the 75th anniversary of the Universal Declaration of Human Rights, the motto of which is: «Dignity, freedom and justice for all.» Taking into account the tasks of the constitutional courts, considering the appeals of citizens and legal entities, this motto can be safely called the main principle of the mission of the Court. The Constitutional Court has become the successor to international and regional commitments, including through the World Conference on Constitutional Justice and the Association of Asian Constitutional Courts and equivalent institutions. The legal basis for organizing the activities of the Constitutional Court of Kazakhstan is enshrined in a separate section of the Constitution (VI) and the Constitutional Law.

When considering appeals, the Constitutional Court is guided by fundamental principles, thereby ensuring the supremacy of the Constitution and the right of everyone to express their opinion; comprehensive and high-quality consideration of the problems that are raised in the appeals. In addition, the Constitutional Court decides exclusively questions of law and does not assess the actual circumstances.

Kazakhstani society has great positive expectations from the activities of the Constitutional Court. In just seven months of work from the beginning of its activity, the Constitutional Court received about 4,000 appeals from citizens. As for the consideration of specific applications, for comparison, I note that over the 27 years of the existence of the Constitutional Council, to which only subjects of power could apply, this body considered 140 cases, that is, an average of about 5 cases per year. While the judges of the Constitutional Court only for 7 months of their work have considered 23 cases and about 20 cases are at the stage of consideration of the judges. This not only demonstrates the access of a particular citizen to the process of ensuring the rule of law by the example of his specific situation, when he faced a violation of his personal



rights. In other words, de facto one citizen applies for the protection of his rights, but de jure he also protects the rights of his fellow citizens. By applying to the Constitutional Court, a citizen makes his civic contribution to strengthening the rule of law.

This activity, first of all, signals a strong desire of citizens to participate in the promotion of constitutional rights and guarantees for the protection of human rights.

At the heart of citizens' appeals, which rightly raise the problems of the constitutionality of certain provisions of laws. For example, in one of its decisions, the Constitutional Court ruled that the imperative requirements set forth in the Resolution of the Supreme Court on the return by the court of a citizen's application for the adoption (adoption) of a child in the event that the results of a molecular genetic examination are not presented in the annex to the application to the court, limit access to justice, thereby violating the right of citizens to judicial protection of their rights and freedoms (paragraph 2 of Article 13 of the Constitution).

In addition, the Court issued final decisions regarding access to public service, protection of the rights of children and their adoption (adoption), use of the image of a person in the media, criminal justice, etc.

Based on the generalization of the practice of its work, the Constitutional Court is obliged to annually send a message to the Parliament on the state of constitutional legality. This approach allows the legislator and all subjects of power involved in rule-making to take into account systemic conclusions and recommendations based on the results of constitutional proceedings.

In addition to the positive aspects, of course, it should also be noted that the Court faces certain difficulties, which, I think, are typical for many newly formed or transformed bodies of constitutional control. This is due to the flexibility and rigidity of the constitutional provisions, the inclusiveness of the constitutional process, the participation of citizens in decision-making, the need for a holistic concept of the country's political system, the system of costs and balances between the branches of government and the principle of inter-institutional cooperation.

The question of the sequence of application of reasoning about constitutional rights in different legal systems is one of the most important issues of all democratic constitutional states. Judges and legislators often face the problem of conflicting rights, which in some cases present a real constitutional or ethical dilemma.

Therefore, an equally important condition for effective constitutional control is the promotion of the ideas of constitutionalism in society. It is productive to carry out this work in partnership with the professional and scientific legal community and youth.

At the end of my speech, I would like to note our common task - to act with due regard for finding the optimal balance between the interests of the state, society and the individual. After all, the role of the bodies of constitutional control in the period of globalization is to ensure such a rule of law that will meet modern challenges and, at the same time, will not be divorced from reality.

Maintaining a focus on the human-centric state structure, using the potential of local laws to prevent violations or other negative consequences - such approaches to constitutional control are not only a guarantee of its effectiveness, but also a guarantee of sustainable development and consolidation of the efforts of citizens, civil society institutions and government bodies.

I am sure that today the distinguished participants will discuss topical issues of the evolution of constitutional justice and share progressive ideas in promoting the rule of law in the Asian region.

Thank you for attention!

Disclaimer: the original version of the paper is in Russian.





TÜRKIYE





The Importance of Constitutional Justice in Sustaining Democracy and the Role of the Turkish Constitutional Court in the Case of Türkiye

10 August 2023 Constitutional Court of the Republic of Indonesia Jakarta, Indonesia

Dear Colleagues,

I greet you all with sincerity and respect.

First of all, dear participants, I would like to express my pleasure to be here with you.

I would also like to thank Mr. Enver Osman, President of the Constitutional Court of the Republic of Indonesia, for hosting this event.

Distinguished Participants,

As far as democratic regimes are concerned, the fundamental reason for the existence of constitutions is to limit the powers of the State and to guarantee individual rights. This has been the primary function of constitutions since the end of the 18th century, when constitutional movements began.

It is well known that there is a strong relationship between political regimes and fundamental rights. Regimes in which rulers are not chosen through regular free elections and which do not ensure the effective political participation of minorities or different segments of society cannot effectively guarantee fundamental rights.

Democracies are based on the delegation of the power to govern to elected representatives. From the point of view of Rousseau's theory of popular sovereignty and the general will, the election of rulers gives the impression of a seemingly smooth and ideal system. However, as a sociological reality, the general will often does not express the whole of society. In a representative democracy, elections are a means for the political majority in society to dominate political authority.

The governance of the State by the will of the political majority is, of course, positive in terms of both political sociology and the science of governance. It is inconceivable to exclude the majority from governance. However, historical experience has shown that the unlimited rule of the majority can lead to the dictatorship over minorities and social groups with different political views. In other words, in a majoritarian democracy, constitutional safeguards relating



to fundamental rights and independent judicial review have failed to provide sufficient restraint against the will of the majority.

For this reason, it became necessary to limit the power of the majority to govern through the fundamental rights guaranteed by the Constitution. However, in the absence of constitutional review, it is impossible for constitutional safeguards to provide real protection in practice.

In the absence of judicial review of the constitutionality of laws passed by the legislature, which is composed of representatives of the majority, it cannot be said that different segments of society can live freely and have the opportunity for political participation. Therefore, the existence of constitutional justice and constitutional courts is of paramount importance for pluralist democracies. These political science insights have led to the evolution of majoritarian democracies into pluralist constitutional democracies.

In today's modern democracies, the concept of a democratic regime refers to pluralist democracies. Indeed, the judgments of the European Court of Human Rights, a judicial body of the Council of Europe with 46 member states, often state that pluralism is a *sine qua non* for democracy.

In pluralist democratic regimes, the fundamental rights of the opposition and the prospect of coming to power in the future are guaranteed. In this respect, pluralist democracies must rigorously protect the principle of equality and non-discrimination, freedom of expression and freedom of association in their rules and practices towards minorities and those with different views.

The main functions of constitutional courts are to protect and pave the way for the improvement of fundamental rights, free elections and democratic political and legal institutions, such as the party system. In this way, constitutional courts make an important contribution to the protection of the rule of law, the main pillar of a pluralist democracy, and to political pluralism. In other words, constitutional courts serve the protection and sustainability of pluralist democracy.

After this brief introduction on the contribution of constitutional justice to the sustainability of democracy, I would like to mention the contribution of the Turkish Constitutional Court to the understanding of pluralist democracy.

The Republic of Türkiye is defined in Article 2 of the Turkish Constitution as “a democratic state governed by the rule of law”. It is also defined as a “liberal democracy” in the Preamble to the Constitution.

Established in 1962, the Turkish Constitutional Court is the fourth constitutional court to be established in Europe after the Second World War. In its judgments, the Court interprets the principle of the democratic state in the Constitution as a pluralist democracy.¹ In numerous

1 See the Court's judgment, no. E.2017/162, K.2018/100, 17 October 2018, §§ 34, 116.

judgments on fundamental rights, the Court has stated that the democratic regime envisaged by the Constitution is a pluralist democracy.²

The Court also defines the concept of a democratic regime as “a regime in which the rulers are chosen by the ruled through honest, free and fair elections”.³ It also states in its judgments that “political parties are the sine qua non of democracy”.⁴

The adoption of the individual application to the Constitutional Court of Türkiye in 2012 has had a significant impact on the way the Court interprets and applies concepts related to the protection of fundamental rights and constitutional democracy. I would like to mention a few judgments in this regard.

According to the Court, the protection of fundamental rights and freedoms is an obligation of a democratic society. It is therefore the fundamental duty of a democratic state to protect and promote those rights and freedoms.

In other words, the State must refrain from arbitrary interference with the exercise of rights and freedoms and must take the measures necessary for the effective exercise of these rights and freedoms, including specific measures to protect individuals against interference by others.⁵

In a case concerning the right to hold meetings and demonstration marches, the Court stressed that this right guarantees the emergence, protection and dissemination of different opinions, which are essential for the development of pluralist democracies.⁶

Similar judgments by the Court have stated that the protection of freedom of expression and assembly is crucial to the development of democracies. According to the Court, freedom of expression must be protected, with the exception of racism, hate speech and incitement to terrorism. In this way, social and political pluralism is underpinned by the free and peaceful expression of all views. Therefore, democracy cannot exist where freedom of expression is not properly protected.⁷ 2 See Çağrı Yılmaz, no. 2017/34463, 13 February 2020, § 31. See also Bekir Coşkun [Plenary], no. 2014/12151, 4 June 2015, §§ 33-35; Mehmet Ali Aydın [Plenary], no. 2013/9343, 4 June 2015, §§ 42, 43; Tansel Çölaşan, no. 2014/6128, 7 July 2015, §§ 35-38.



3 See the Court's judgment, no. E.1970/22, K.1971/20, 18 February 1971.

4 See the Court's judgment, no. E.1997/1, K.1998/1, 16 January 1998 (Dissolution of the Welfare Party/Refah Partisi).

5 See the Court's judgment, no. E.2017/21, K.2020/77, 24 December 2020, § 45.

6 Ferhat Üstündağ, no. 2014/15428, 17 July 2018, § 40; Dilan Ögüz Canan [Plenary], no. 2014/20411, 30/11/2017, § 36.

7 See the Court's judgment, no. E.2017/162, K.2018/100, 17 October 2018, § 112.

According to the Court, in order to be compatible with the requirements of a democratic social order, an interference with fundamental rights and freedoms must meet a compelling social need and be proportionate.⁸

The role of the Constitutional Court in the improvement and development of democracy can also be seen in its judgments on the right to be elected and to engage in political activity. From the Court's point of view, these political rights are among the indispensable elements of a pluralist and participatory democracy.⁹

With regard to the right to elect and to be elected, the Court is more sensitive to the protection of the freedom of expression of members of parliament. In this respect, the Court has stated that members of parliament enjoy greater constitutional protection through the institution of parliamentary immunity, as they represent the opinions, demands and interests of the electorate in the political arena.¹⁰

The Court ruled that the provision of the Rules of Procedure of the Grand National Assembly of Türkiye, which provides for disciplinary sanctions against members of parliament whose statements are contrary to the administrative structure of the Republic as defined in the Constitution, is unconstitutional. In this judgment, the Court pointed out that in a democratic state, members of parliament in particular must be free to defend any opinion in a peaceful manner, even if it is contrary to the majority opinion.¹¹

In two important recent judgments, the Court found that the applicants, who were members of parliament, had had their right to elect and to be elected violated by their arrest and subsequent conviction, notwithstanding their parliamentary immunity.¹²



Esteemed Participants,

Although there are debates about the legitimacy of constitutionality review from the perspective of majoritarianism, the pluralistic nature of constitutional democracies is generally accepted. As a result, constitutional justice and constitutional courts have become indispensable to pluralist democracies.

The Turkish Constitutional Court also contributes to the development of Turkish democracy through its judgments and interpretations within the constitutional system, which reflect the pluralist democratic approach.

8 Tayfun Cengiz, no. 2013/8463, 18 September 2014, § 56; Tansel Çölaşan, no. 2014/6128, 7 July 2015, § 51; Dilan Ögüz Canan, §§ 33, 56; Ferhat Üstündağ, § 48.

9 See the Court's judgment, no. E.2002/38, K.2002/89, 8 October 2002; Mustafa Hamarat, no. 2015/19496, 17 January 2019, § 45.

10 See the Court's judgment, no. E.2017/162, K.2018/100, 17 October 2018, § 113.

11 See the Court's judgment, no. E.2017/162, K.2018/100, 17 October 2018, § 116.

12 See Kadri Enis Berberoğlu (2) [Plenary], no. 2018/30030, 17 September 2020; Ömer Faruk Gergerlioğlu [Plenary], no. 2019/10634, 1 July 2021.

Thank you for your attention.





INDONESIA







THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

Strengthening Democracy Through Constitutional Court Interpretation in Protecting Citizens' Constitutional Rights and Human Rights¹

Dr. Manahan MP Sitompul, S.H., M.Hum²

The Constitutional Court as the guardian of the constitution and the democracy has made fundamental changes in the constitutional system, including in the context of realizing constitutional democracy. In its 20th year, the Constitutional Court has tried to organize Indonesia's democratic system towards a constitutional democratic state. Settlement of election disputes, regional head elections and also review the constitutionality of laws are very influential authorities in changing the democratic system in Indonesia. The presence of the Constitutional Court not only enforces procedural justice, but also substantive justice which is reflected in its decisions. The constitutional rights of citizens guaranteed by the constitution have been protected in every decision taken by the Constitutional Court.

The efforts to protect and assure Human Rights in Indonesia have been made continuously and have been increasingly showing progress. The fundamental effort to protect and enforce Human Rights has been made by making Amendments to the 1945 Constitution in 1999 up to 2002. The formulation of human rights in the Indonesian constitution is very important considering that human rights as a universal value has been fully integrated in the Constitution through constitutional amendments from 1999 to 2002. The promotion and protection of human rights in this context is interpreted not only at the national level but also at the global level.

Why does the amended 1945 Constitution comprehensively introduce the provisions on

¹ The International Chief Justice Forum (ICJF) Strengthening Democracy through Constitutional Jurisdictions: Past, Present and Future, Jakarta, 10-11 August 2023.



Human Rights protection and enforcement? In general, the inclusion of Human Rights in the articles of the constitution is considered as a characteristic of a modern constitution as well as a prerequisite to the development of foundation for constitutionalism. Constitution as an instrument to reach constitutionalism must include provisions on control over political power and protection of Human Rights. On such basis, constitution should not only acknowledge Human Rights, but it also have to provide protection and guarantee for their fulfillment. Emphasis is given on this matter, because the fundamental interest of every citizen is to have their rights as a human being and a citizen enforced and fulfilled.

What is the difference between Human Rights and the constitutional rights of citizens? In my opinion, not all constitutional rights are Human Rights, although all Human Rights constitute the constitutional rights of citizens. In Indonesian context, constitutional rights are the rights provided for in the 1945 Constitution. It indicates that all citizens' rights provided for in 1945 Constitution fall into the category of constitutional rights, which must be guaranteed and protected without any exception.

In that case, how does the Constitutional Court play its role in protecting the constitutional rights of citizens? Under Article 24C paragraph (1) of the 1945 Constitution, the Indonesian Constitutional Court have 4 (four) types of authority and one constitutional obligations, namely (1). To conduct a review of laws against the 1945 Constitution; (2). To settle disputes on authority between state bodies, which authority is granted by the 1945 Constitution; (3). To decide the dissolution of a political party; and (4). To settle disputes over the result of general election, and the Constitutional Court is required to make decisions based on the opinion of the People's Legislative Assembly about the alleged violation by the President and/or Vice President under the 1945 Constitution.

Through such authority and obligation, the Indonesian Constitutional Court is principally established with the purpose of protecting the constitutional rights of citizens from the norms of laws contradictory to the constitution.

The review of a law against the Constitution conducted by the Constitutional Court may be either formally or materially performed. In formal review, if the petitioner successfully proves that the formation of a law is contradictory to the 1945 Constitution, which consequently impairs his/her constitutional rights, it means that the entire law shall be declared to be contradictory to the 1945 Constitution and shall not have binding legal force. At the same time, the material review is a review related to paragraph, article and/or certain section of a law which are deemed to be contradictory to the 1945 Constitution. If the petitioner successfully proves such matter, the aforementioned paragraph, article and/or certain section of the law shall be the paragraph,

article and/or certain section which are declared by the Constitutional Court to be contradictory to the 1945 Constitution and shall not have binding legal force.

The party which may submit a petition for review of a law against the Constitution is the party which considers that its constitutional rights is impaired by the coming into effect of a law, namely: (a) an individual Indonesian citizen, including a group sharing the same interests; (b) a customary law community unit insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic Indonesia governed by law; (c) a public or private legal entity, or; (d) a state body.

In the case of judicial review, the object of such review is the abstract and generally binding norms of the law. Therefore, despite the impaired constitutional rights of the petitioner as the grounds for petition for review, such action, however, actually represents legal interest of the entire community, namely the upholding of the constitution. In the case of judicial review, the People's Legislative Assembly and the President are not the defendants or respondents being responsible for the fault committed, but rather as the party concerned providing a description of the background and objectives of the provision of the Law petitioned. It is intended that the provision subject to review is not constructed merely based on the view of the petitioner or the Constitutional Court, but also based on legislator's view, so that there is legal assurance on whether or not it is contradictory to the constitution.

With respect to decision, it is stipulated in the 1945 Constitution that the decision of the Constitutional Court shall be final, which means that there is no further legal remedies are available. The decision of the Constitutional Court shall also be binding as from its pronouncement in the decision pronouncement hearing open for public. All parties, both state administrators and community, are required to comply with and be subject to such decision.

In addition to the authority to conduct a review of a law against the Constitution, the role of the Constitutional Court in protecting the constitutional rights of citizens is also actually performed by virtue of the authority to settle disputes over the result of general election, either presidential/vice presidential general election, legislative general election, or regional head general election. By virtue of the aforementioned authority, the Constitutional Court safeguards the democracy by protecting the right of a citizen to elect and/or to be elected in a General Election so as to be able to be granted in accordance with the principle and rule of a democratic General Election as assured under the 1945 Constitution. The Constitutional Court ensures that the right to elect and/or the right to be elected as a citizen are shielded from manipulation and any form of misappropriation which is not only contradictory to the democracy, but also detrimental to citizens. In the event that the result of general election is proven to have been obtained by manipulating the right to elect and/or the right to be elected and violating the



principle of democracy, the Constitutional Court may rescind the aforementioned result of general election.

Within the same framework for safeguarding the democracy, the Constitutional Court also plays a role in the effort to equalize democracy and nomocracy. Indeed, the emphasis between democracy and nomocracy is different, but it does not necessarily mean that it cannot be equalized. Democracy is focused on political aspect in order to uphold people's sovereignty, while nomocracy is focused on legal aspect. In the process, democracy tends to be rebellious and anarchic due to the leniency resulting from the freedom given to citizens. Moreover, the freedom is often expressed through behavior which is not only contradictory to the law and democracy, but also jeopardizes the integration of the Unitary State of the Republic of Indonesia. In this context, by virtue of its authority, the Constitutional Court as the body safeguarding the constitution and democracy equalizes the democracy and nomocracy. The Constitutional Court stands on the front guard to make Indonesia as a democratic constitutional state and democratic state under the laws, which also means taking a role in protecting the integrity of the Unitary State of the Republic of Indonesia.

As the conclusion of this presentation, I would like to emphasize that the Indonesian Constitutional Court plays a role in recovering the constitutional rights of citizens violated by the coming into effect of norms of law through the exercise of the authority to conduct a review of a law against the Constitution. Furthermore, by virtue of such authority to conduct a review of a law, the Constitutional Court is able to control the legislator, so as to be prudent in the formation of a law. It shall not violate and/or disregard the obligation to provide protection to the constitutional rights of citizens.

In addition, by virtue of the authority to settle disputes over the result of general election, the Constitutional Court plays a role in assuring and ensuring that the right to elect and/or the right to be elected as the constitutional rights of citizens are shielded from any form of manipulation and misappropriation detrimental to citizens. Likewise, the Constitutional Court plays a role in protecting the integrity of the Unitary State of the Republic of Indonesia, namely protecting the democracy so as to be established in accordance with and under the 1945 Constitution.

Hence, this is my presentation and thank you.

SESSION II





MONGOLIA





**H.E. MR.CHINBAT NAMJIL
CHIEF JUSTICE OF THE CONSTITUTIONAL
COURT OF MONGOLIA, PRESIDENT OF THE
ASSOCIATION OF ASIAN CONSTITUTIONAL
COURTS AND EQUIVALENT INSTITUTIONS**

**CONSTITUTIONAL COURT (TSETS) OF
MONGOLIA IS A GUARANTEE
OF THE PRINCIPLE OF DEMOCRACY.**

Your Excellency Chairman,

Distinguished Presidents, Chairmen, and Chief Justices of the Constitutional Courts,

Ladies and Gentlemen,

First of all, on behalf of the esteemed Constitutional Court of Mongolia, I would like to extend my sincere wishes to the host of this conference, the Constitutional Court of Indonesia, and all distinguished speakers and guests.

I am pleased to express my confidence that this conference will be as fruitful and successful as the previous one.

Today I will briefly introduce you to Mongolia's experience in the principle of democracy which the Constitution of Mongolia guarantees and how it has been protected by the Constitutional Court of Mongolia.

The Constitution is not only the supreme law of countries but also the law that guides the future direction of the counties' development.

Democratic ideology is the main idea of the most developed and developing countries and basic guarantees of human rights and freedoms are already been recognized as the main trend of development.

In Mongolia on November 26, 1924, the first State Great Hural (Parliament) unanimously adopted the first Constitution of the People's Republic of Mongolia which stated "From now,



the whole Mongolia will be People's republic with full rights, in which the whole power belongs to the people, the people exercise their supreme power through the Great Hural (Parliament) of all the people and the Government elected by the latter." Mongolia proclaimed the People's Republic of Mongolia.

In the history of Mongolia, since adopting the first Constitution in 1924, Mongolia has adopted new Constitutions 3 times in 1940, 1960, and 1992.

1924, 1940, and 1960's Constitutions have followed the guidance of socialist ideologies, whereas the 1992 Constitution aligned with liberal democratic ideas.

Above mentioned socialist Constitutions have some differences but all these socialist constitutions share such socialist features as a one-party rule, centralized government, party-centered development goals, emphasis on party programs and ideology, class consciousness, and the restriction of human rights.

Researchers noted that under 70 years' socialist constitutions have independence and unprecedented social and cultural achievements in Mongolia, but on the other hand, the development of Mongolia's economy had fallen into a deadlock including the formation of a totalitarian regime.

The Law on Amendments to the Constitution of the People's Republic of Mongolia which was adopted on May 10, 1990, has a very important role in the democratic process starting.

However, this law didn't completely repeal the Constitution of 1960, it was declared necessary conditions for the transition to democracy at the constitutional level.

Consequently, the fourth Constitution "democratic new Constitution" in Mongolian history was adopted on January 13, 1992.

For the first time, Mongolia enshrined in the constitution the ideas of human rights, democratic politics, pluralism, a free economy, separation of powers and checks and balances, local self-government, independent judicial power, and Constitutional review.

The Preamble of the Constitution proclaims that aspiring toward the supreme objective of building a humane, civil, and democratic society in the country.

Also, the second paragraph of the First Article Constitution of Mongolia stated that "The fundamental purpose of state activity is the ensurance of democracy, justice, freedom, equality, and national unity and respect of the law."

Democracy is the manifestation of individual autonomy already embedded within the concept of human rights, especially with regard to social activity, political rights, and liberties.

Specifically, rights and freedoms such as voting, being elected, searching for information, petitioning, and complaining to government officials, associations, and demonstrations can be mentioned here.

Thus, in each chapter of the Constitution, many provisions are included that embody the content of the principle. For example, Article 3 of the Constitution of Mongolia says State power is vested in the people of Mongolia. The people exercise it through direct participation in state affairs and through representative bodies of state power elected by them. Illegal seizure of state power or attempted seizure is prohibited.

Furthermore, Article 16 (9) provides for the right to take part in the government of the country directly or through representative bodies. The right to elect and to be elected to State bodies... Article 16 (10) provides that on the basis of social and personal interests and opinions, citizens have the freedom of association in political parties or other voluntary organizations. ...No one should be discriminated against and persecuted due to his or her participation in a political party or a mass organization. Article 16 (11) stipulates that men and women enjoy equal rights in political, economic, social, and cultural fields as well as in marriage. Article 16 (12) stipulates that citizens have the right to submit a petition or a complaint to State bodies and officials. The State bodies and officials are obliged to respond to the petitions or complaints of citizens in conformity with the law. Article 16 (13) provides for the right to personal liberty and safety. No one may be searched, arrested, detained, persecuted, or restricted of liberty save in accordance with procedures and on grounds determined by law. No one may be subjected to torture, inhuman, cruel, or degrading treatment. Article 16 (16) stipulates that citizens have the freedom of thought, opinion, expression, speech, press, and peaceful assembly. Procedures for organizing demonstrations and other assemblies are determined by law. This way strengthened the values of democracy.

Globally, the role of the Constitutional Court in the formation of constitutionalism is very high, and it is not only a measure of the rule of the law of state authorities and officials, but also a guarantor of the formation and development of constitutionalism.

Consolidation of democracy does not only come from the codification of the constitution and laws but also from the designated institution of constitutional oversight. The highest form of such a mechanism in domestic law is the Constitutional Court.

The Mongolian Constitutional Court was established to constrain state actions and to build up a body of constitutional law based on democratic values and human rights protection.



Article 64 of the Constitution of Mongolia provides that the Mongolian Constitutional Court exercises supreme supervision over the implementation of the constitution, making judgments on the violation of its provisions, and resolving constitutional disputes. The Constitutional Court is the guarantee for the strict observance of the Constitution. About that The law of Mongolia on the Constitutional Court provides The Tsets shall exercise its supreme supervision over the implementation of the Constitution through rendering conclusions on the disputes specified in this Article and through settling disputes specified in the second clause of this Article.

For example, the Constitutional Court of Mongolia has jurisdiction over constitutional review. It resolves disputes about the constitutionality of laws, decrees, and other decisions by the State Great Hural (Parliament), and the President, as well as decisions of the Government, international treaties signed by Mongolia, national referendums, and decisions of the central election authority on the elections has the right to annul it if it is found to be inconsistent with the Constitution after reviewing the dispute.

Also, Constitutional Court of Mongolia has jurisdiction over whether high-ranking government officials, such as the President, Speaker of the State Great Hural (Parliament), members, Prime Minister, Cabinet member, Chief Justice of the Supreme Court, and State Prosecutor General (actions, decisions) have violated the Constitution, and to make a conclusion on their dismissal or recall.

The Constitution of 1992 which is followed today, is called the “Democratic Constitution” therefore, the jurisprudence of the Mongolian Constitutional Court greatly contributes to the construction of a democratic legal system directly and indirectly related to the strengthening of the principles of democracy.

Since its establishment, the Constitutional Court has made great achievements in declaring challenged acts unconstitutional, protecting democratic principles and human rights, and building a humane, civil, and democratic society.

As soon as the decision of the Constitutional Court of Mongolia is issued, it becomes effective and binding, so it has a direct impact on the lives and politics of citizens. Many important decisions were made that show that any government organization should conduct its activities in accordance with the principles of democracy.

In this way, it should be noted that the decisions made by the Constitutional Court of Mongolia are not only of special importance in preventing violations of the Constitution but also have a real impact on the development of democracy.

Finally, to conclude, the role of Constitutional Courts is important in protecting the Constitution, democratic values and principles, and human rights.

I am pleased to note that also, the Constitutional Court of Mongolia protects the values of the democratic Constitution and has a special influence on its development.

I wish you success in your future endeavors as well as in this conference.

Thank you for your attention.





ANGOLA







**TRIBUNAL
CONSTITUCIONAL**

The International Chief Justice Forum (ICJF)

**STRENGTHENING DEMOCRACY THROUGH CONSTITUTIONAL
COURTS: PAST, PRESENT AND FUTURE**

Jakarta, 10-11 August 2023

Session 2

**Current Challenges and Future Direction for Strengthening
Democracy through Constitutional Jurisdictions**

**Laurinda Prazeres Monteiro Cardoso
President
Constitutional Court of Angola**

Your Excellencies,

First, I would like to present our gratitude to those who took part of the organization of this great event, especially the Chief Justice of the Constitutional Court of Indonesia Prof. Dr. Anwar Usman for the invitation and consideration.

Our thanks are extended to the Indonesian people in general and especially to the people of the City of Jakarta for their kind and welcoming reception in this beautiful city. It is a honour to be here.



According to the Panel Theme and following the dynamics that the event establishes, I would like to share with Your Excellencies **Brief Notes** on our experience as Constitutional Court, the Guardian of the Constitution of the Republic of Angola.

An approach about “**Current challenges and future directions for strengthening democracy through constitutional jurisdictions**”, although represents today one of the most discussed topics in the field of constitutional justice, it motivates certain different opinions that have not found unanimity yet.

In Angola, constitutional jurisdiction was institutionalised in 1992 and has since been exercised by the Supreme Court (Superior Court of Common Jurisdiction).

The Constitutional Court, as it appears today, was institutionalised in June 2008, and so this year we are celebrating our 15th anniversary, with major challenges ahead, embodied in its affirmation as guardian of the Constitution of the Republic, with emphasis on strengthening the mechanisms for the defence of Fundamental Rights.

1. First Note (Inquiry on normative acts of the Legislative Power)

It is recognized that the normative acts of the Legislative Power, which are the acts practised by the Worthy Representatives of the Angolan people, the National Assembly, are subject to scrutiny through constitutionality review, aiming the consolidation of the Democratic State and the Rule of Law.

The Angolan legal system, as in many modern legal systems, the principle of the supremacy of the Constitution is enshrined in Article 6 of our Magna Carta, which provides as follows:

1. The Constitution is the Supreme Law of the Republic of Angola.
2. The State is subordinate to the Constitution and founded on legality, and must respect and enforce the laws.
3. Laws, treaties and other acts of the State, the Local Authority and public entities in general shall only be valid if they conform to the Constitution.

The principle of the supremacy of the Constitution, which has as its consequence the idea of constitutionality, provided in Article 226 of the CRA, justifies that acts of the State, more specifically those of a normative nature, are subject to review by the Constitutional Court. For this reason, the idea that legislative acts embody the popular will and are manifestations of the popular will, i.e., in the language of Jean Jacques Rousseau, “the expression of the general will”, today must be pondered and re-comprehended, since these acts are often not true expressions of the general interest.

Going further, presenting here a theory of the stratification of the “general will”, and to say that the Constitution, also approved by Parliament, represents its highest level, the other “general wills” have to conform to the higher general will.

This premise grounds and legitimises the constitutional court as the holder of the last word on the validity of Parliament’s legislative acts.

In order to guarantee that the normative acts of the Legislative Power may be subject to scrutiny by the Constitutional Court, the Constitution of the Republic of Angola provides, in Article 227, as follows:

All acts that embody violations of constitutional principles and norms are subject to constitutionality review, namely:

- a) Normative acts;
- b) Treaties, conventions and international agreements;
- c) Constitutional revision;
- d) Referendums.

The acts in question are scrutinised through abstract constitutional review, which may be preventive or successive.

Regarding to the preventive abstract review, Article 228 of the Constitution of the Republic of Angola (CRA), as well as Article 20 of Law 3/08 of 17 June - the Constitutional Procedure Law, establish that it applies to any legal instrument that has been submitted for promulgation, an international treaty submitted for ratification or an international agreement submitted for signature.

In terms of effects, it is worth mentioning that diplomas whose preventive constitutional review has been requested to the Constitutional Court cannot be promulgated, signed or ratified. Once the unconstitutionality of any of these diplomas has been declared, they must be vetoed, not ratified or not signed, under the terms of Article 229 of the CRA and Article 25 of the Constitutional Procedure Law.

As for the successive abstract review, this is applied to any rule published in the Official Gazette, and, under the terms of articles 230 and 231, both of the CRA, and article 26 of the Constitutional Procedure Act, the following entities have the legitimacy to trigger the process before the Constitutional Court:



- a) The President of the Republic;
- b) One tenth of the Members of the National Assembly in full exercise of their functions;
- c) The Parliamentary Groups;
- d) The Attorney General of the Republic;
- e) The Ombudsman;
- f) The Angolan Bar Association.

The declaration of unconstitutionality shall have general binding force and shall take effect from the date of entry into force of the rule declared unconstitutional and shall determine the re-enacting of the rule revoked, although this scope may be more restricted when legal certainty, reasons of equity or public interest of exceptional relevance require it.

2. Second Note (Rationale and need for control instruments)

As noted above, the concept of majority voting should not and cannot be invoked as a barrier to constitutional jurisdiction. Constitutional courts must be guided by a democracy capable of restricting politicized decision through constitutionality control.

There is an permanent bond, often overlooked by purely formal conceptions of democracy, between political democracy and those constitutionally established fundamental rights which operate as content limits or restrictions on the absolute will of majorities.

Indeed, the will of the electorate can only be expressed authentically when it is freely expressed; and it can only be expressed freely if each and every one is guaranteed the exercise of fundamental freedoms in addition to the right to vote: freedom of thought, press, information, assembly and association.

Liberation rights, on the other hand, are effective when sustained by the guarantee of social, economic and cultural rights, i.e. they are rights to benefits such as social protection, work, livelihood, health, education and information..

Without the realization of these rights and the corresponding public obligations, both political rights and liberation rights, whose norms enshrine them are of a programmatic nature, are destined to remain only on paper: because there is no participation in public life without a guarantee of minimum standards of living, nor the formation of conscious wills without education and information.



Therefore the constitutional court has the role of judging if a legislative act of Parliament corresponds to what is called the higher general will.

It was upon this conception that the Angolan Constitutional Court, on August 9, 2021, in a preventive review of the Constitution Revision Law, despite having considered that it respected the material, formal and circumstantial limits of revision of the Constitution, declared, through Judgment **no. 688/2021**, unconstitutional the article that states the obligation of the Constitutional Court and other bodies with special jurisdiction (Court of Auditors) to send annual reports on its activities to the President of the Republic and the National Assembly for knowledge, as it infringed the principle of separation of powers established in the Constitution of the Republic of Angola and for considering that it placed the judiciary as a hostage to the other sovereign bodies.

On August 13 of the same year, the National Assembly **conformed** the law to the decision of the Constitutional Court purging the declared unconstitutionality and, on 16 August, it was published in the Official Gazette, I Series no. 154.

In the same sense, on October 9, 2013, the Constitutional Court, in a successive abstract review procedure requested by 22 Members of the National Assembly, declared, by Judgment **no. 319/2013**, partially unconstitutional some articles of the Organic Law approving the Rules of Procedure of the National Assembly (Articles 260, 268, 269, 270, 271) approved by Law 13/12 of 2 May.

Consequently, the National Assembly conformed the law to the decision of the Constitutional Court and amended the content of those articles declared unconstitutional.

Lately, doctrine and case law (jurisprudence), have attempting to confirm the fact defended by Italian case law, since the 1960s, the existence, in various legal systems, of manipulative Judgements or intermediate sentences.

Manipulative decisions, also called intermediary decisions, are those through which the constitutional judge not only pronounces on the conformity of the normative act with the Constitution, but also determines the criteria and the way in which that legislative act should be **conformed**.

Social evolution and the emergence of the rights of the third and fourth generations, as well as political evolution itself, demonstrate that it will not be enough for constitutional jurisdictions to perform only the function of a negative legislator as Hans Kelsen stated at the time, it is necessary that their decisions extend beyond the mere declaration of unconstitutionality.



In this same direction, the Angolan Constitutional Court, in the successive abstract review process requested by the Angolan Bar Association, on December 15, 2020, integrated, through Judgment **no. 658/2020**, as its jurisprudence the intermediate or manipulative decisions, where the Constitutional Court determined the effects of the decision, having conditioned its effectiveness to the verification of the conditions for its materialisation.

In that decision, in defence of the supreme values of the Constitution, the Constitutional Court not only declared the unconstitutionality, but determined the moulds and effects of the decision, i.e. its effectiveness.

To conclude, I would like to reiterate that the Angolan constitutional system is characterised by a committed constitutional jurisdiction with a healthy relationship with Parliament. In major decisions where the values, principles and fundamental rights enshrined in the Constitution are under consideration, the Constitutional Court has the last word and its role has not only been limited to the enforcement of rights, but also to ensuring that the construction of law takes place under the legitimate conditions of deliberative policy. As Hans Kelsen stated, *“In the absence of an organization such as the constitutional court, the legislator will have the final word on whether the conditions have been satisfied and the principle of constitutional legality will remain essentially ineffective”*.

THANK YOU!

THAILAND





**ROLES OF THE CONSTITUTIONAL COURT OF
THE KINGDOM OF THAILAND IN
PROTECTING DEMOCRACY**

**Prof. Dr. Chiranit Havanond
Justice of the Constitutional Court of Thailand**

Presidents of the Constitutional Court,

Justices of the Constitutional Court,

Distinguished Guests,

Since the Siamese Revolution in 1932 of which the form of government has been transformed from Absolute Monarchy to Constitutional Monarchy – a democratic regime of government with the King as Head of State, Thailand has modified and developed various constitutionality review systems.

At the first stage, the Constitution of the Kingdom of Siam 1932 granted the House of Representatives the absolute authority of constitutional interpretation. Later in 1946, in the Judgment No.1/2489, the Supreme Court ruled that the provisions retrospectively criminalizing the cabinet's action of allying the country with Japan and declaring war on the Allies during the World War II was unconstitutional and declared it void. There was a controversy afterwards between the legislative body and the judiciary over which body had the power of constitutionality review.

At the second stage, the Constitution of the Kingdom of Thailand 1946, therefore, granted the Parliament the absolute authority of constitutional interpretation, and established the Constitutional Council entitled to do constitutionality review.

At the third stage, the Constitution of the Kingdom of Thailand 1991 granted the Constitutional Council the sole authority of constitutional interpretation.

At the Fourth stage, the Constitution of the Kingdom of Thailand 1997 has since then established the Constitutional Court as a judicial body vested with the authority of constitutionality review. Moreover, the 1997 Constitution has assigned to the Constitutional Court the additional duty and power to protect the Constitution and democracy.

First, the Constitutional Court has the power to decide whether an act constitutes an exercise



of rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State. The Constitutional Court in the Ruling No.19/2564 (2021) ordered the respondents not to act or give speech that instigates the overthrow of the democratic regime of government with the King as Head of State.

Second, the Constitutional Court has the power to review constitutional amendments, so the legislative body cannot amend the constitution in the way that changes the democratic regime of government with the King as Head of State or the form of state. In the Ruling No.15-18/2556 (2013) and No.1/2557 (2014), the Constitutional Court ruled that the Draft Constitution amending the structure of the senate and the source of senators was unconstitutional because it amounted to an annihilation of characters and essential substances of the bicameral system of the parliament and was contrary to the Principle of Checks and Balances. Also, in the Ruling No.4/2564 (2021), the Constitutional Court ruled that the formulation of a new Constitution by drafting a Constitutional Amendment would result in the repeal of the current Constitution. If the National Assembly wished to draft a new Constitution, a referendum must be held for the people to vote on whether or not there should be a new Constitution. This case was originally debated within the legislature and subsequently sent to the Constitutional Court for judgement.

Third, the Constitutional Court has the power to decide whether an act of state agencies or state officials is a violation of people's rights and liberties recognized by the Constitution. In the Ruling No.15/2565 (2022), the Constitutional Court confirmed the duty and power of the senate in approving Judges of the Supreme Administrative Court.

In conclusion, the role of the Constitutional Court of the Kingdom of Thailand in protecting democracy has been increasingly strengthened and evident. The Court has also been able to solve many problems or disagreements that the political sector may not be able to do so. Although sometimes not all parties are contented with the ruling, the Constitutional Court has played a key role in securing democracy and ensuring that constitutional organizations would perform their duties and exercise their powers under the rule of law, in order to protect the integrity of the jurisdiction and for the nation to thrive.

Thank you.

INDONESIA





**ADDRESS BY HON. PETER S. SHIVUTE, CHIEF
JUSTICE OF THE REPUBLIC OF NAMIBIA, AT THE
INTERNATIONAL CHIEF JUSTICE FORUM,
Jakarta, Indonesia, 10 August 2023**

Your Excellency, Anwar Usman, Chief Justice of the Constitutional Court of the Republic of Indonesia

Honourable Chief Justices

Ladies and Gentlemen:

1. I am greatly honoured to have been invited to attend this International Chief Justice Forum and to address this esteemed and most crucial dialogue in the beautiful city of Jakarta, Indonesia. I am equally honoured to have been given this opportunity to contribute to the discussion where we take stock of the progress made, identify the challenges facing our respective jurisdictions and share solutions towards reaching our collective goal of upholding constitutional democracy.
2. Before I proceed, allow me to express my profound gratitude to the Constitutional Court of Indonesia, for providing this platform. By the same token, I wish to acknowledge the excellent arrangements extended to me and my delegation. As always, the warmth and hospitality of the Indonesian people is unmatched.
3. I also wish to congratulate the Constitutional Court of the Republic of Indonesia on its 20th Anniversary. It is a privilege to witness the celebration of this milestone of the Court's existence.

Your Excellencies, ladies and gentlemen

4. Our world is facing many challenges in ensuring strong and resilient democracies, and it is imperative that we contemplate the path ahead for strengthening democracy through constitutional jurisdictions. Today, I would like to share with you some insights and future directions that can pave the way for a more robust democratic framework. First and foremost, we must acknowledge the current challenges that our democracies face. One of the pressing issues is the rise of populism, which often undermines the principles of constitutionalism and the rule of law. Populist movements tend to exploit people's fears and emotions, often leading to policies that are inconsistent with established constitutional rights and protections. As Chief Justices, it is our duty to safeguard the integrity of our constitutional frameworks and counter such tendencies with a steadfast commitment to upholding the principles of justice and equality.
5. Another challenge we face is the preservation of fundamental rights in the digital age. The rapid advancements in technology have revolutionised the way we communicate and participate in democratic processes. However, they have also given rise to concerns

over privacy, data protection, and the manipulation of information. As constitutional jurisdictions, we must adapt our legal frameworks to address these issues, ensuring that citizens' rights are protected without stifling technological innovation.

6. Additionally, we cannot ignore the threats of corruption to democratic governance. Corruption erodes trust in public institutions and undermines the rule of law. It weakens the integrity of our constitutional jurisdictions and hampers the effective functioning of our democracies. As Chief Justices, we have a pivotal role to play in combating and preventing corruption, both through impartial adjudication of corruption cases and by championing transparency and accountability within our systems.
7. Now let us turn our attention to the future and the directions we can take to strengthen democracy through constitutional jurisdictions. One essential aspect is the promotion of an independent judiciary. It is imperative that we preserve judicial independence and protect judges from political or other undue pressure or interference. By ensuring an impartial judiciary, we can uphold the rule of law and guarantee that constitutional rights are safeguarded for all citizens, irrespective of their social or economic status.
8. Furthermore, we must embrace technological advancements to enhance the accessibility and efficiency of our judicial systems. By adopting digital platforms and e-filing systems, we can improve access to justice for all citizens, including marginalised communities. It is vital that our court processes incorporate modern technologies, ensuring faster and more efficient dispute resolution mechanisms while maintaining the highest standards of fairness and due process.
9. Moreover, education and capacity building are crucial to strengthening constitutional jurisdictions. We must invest in ongoing professional development programmes for judges, lawyers, and court staff to enhance their skills and knowledge of the importance of a nation's Constitution. Additionally, educating citizens on their rights, the rule of law, and the significance of constitutional democracy can empower them to actively engage in democratic processes and hold their governments accountable.
10. Let us stand together, committed to ensuring that our constitutional jurisdictions remain steadfast in their pursuit of justice, equality, and the preservation of democratic ideals. I am confident that, with our collective efforts, a brighter and more robust future awaits us all.

Thank you.

INDONESIA





Current Challenges and Future Directions for Strengthening Democracy through Constitutional Jurisdictions: The Perspective of the Indonesian Constitutional Court

Dr. Suhartoyo, S.H., M.H.

Constitutional Justice

The Constitutional Court of the Republic of Indonesia

The constitutional jurisdiction in Indonesia dramatically changed following the the Reformation Era and amendments to the 1945 Constitution. The dynamics of these changes has indeed affected how judicial institutions play a role in safeguarding democratic principles. The Indonesian Constitutional Court has played a crucial role in strengthening democracy in Indonesia. The Constitutional Court was established in 2003 and has served as the country's highest authority on constitutional matters.¹ Its primary function is to review the constitutionality of laws, regulations, and government actions to ensure they align with the principles and values enshrined in the Indonesian Constitution.

Article 24C of the 1945 Constitution states that the Constitutional Court has the authority to adjudicate at the first and final instance, the judgment of which is final, to review the constitutionality of laws, to pass judgement on any authority disputes of state institutions whose authorities are granted by the Constitution, the dissolution of a political party, and on any challenges to the results of a general election. The Constitutional Court shall also render judgment on a petition of the People's Representative Council regarding any alleged violation by the President and/or the Vice President according to the Constitution.

Theoretically, the transition from an authoritarian regime to democracy takes place over several phases. There are at least four phases that Indonesian politics have supposedly undergone, namely: pre-transition, liberalization, democratic transition, and democratic consolidation. The final stage of democracy (maturation) is predicted

¹ Moh. Mahfud MD, Separation of Powers and Independence of Constitutional Court in Indonesia”, https://www.venice.coe.int/WCCJ/Rio/Papers/INA_Mahfud_E.pdf



to take place within a more extended period.² The consolidation of democracy should be a process that unfolds at various stages – the level of representation, the level of political institutions, and the level of integrating potential veto powers. This process should be supplemented by the formation of a democratic civil society whose concrete contribution towards democratizing a country is indispensable. “Further groups of particular importance in this process include the elites that hold governmental and political powers and functions, the business elites, and those leading elites of civil society who are friendly towards democracy.”³

The contribution of the Indonesian Constitutional Court to strengthen democracy can be seen in how the court realizes its authority. *First*, judicial reviews of laws. The Indonesian Constitutional Court has the power to review and strike down laws and regulations that are deemed unconstitutional. This mechanism ensures that the legislative branch does not exceed its constitutional limits and that laws are in line with fundamental rights and democratic principles.⁴ This notion can be traced back to the idea of Balancing Power Among Branches. The court acts as a check and balance on the powers of the executive and legislative branches of government. By reviewing the constitutionality of their actions, the court helps prevent the abuse of power and promotes a system of checks and balances.

Secondly, the protection of human rights: The court's decisions have often centred on protecting and upholding human rights, including freedom of speech, assembly, religion, and other civil liberties. By safeguarding these rights, the court helps foster an environment of pluralism and tolerance essential for a thriving democracy.

Thirdly, safeguarding the Electoral Process: The Indonesian Constitutional Court oversees election-related disputes, ensuring the fairness and integrity of

² Ikrar Nusa Bhakti, “The Transition To Democracy In Indonesia: Some Outstanding Problems”, p. 200, [<http://apcss.org/Publications/Edited%20Volumes/RegionalFinal%20chapters/Chapter12Bhakti.pdf>], accessed 19/02/2018

³ Michael Hollaender, “Consolidating Indonesia’s Democracy by Educating Civil-society Leaders in Democratic Politics”, p.1, [http://www.kas.de/wf/doc/kas_8899-544-2-30.pdf?060801125002], accessed 19/02/2018.

⁴ Eddyono, Luthfi Widagdo. 2018. “The Constitutional Court and Consolidation of Democracy in Indonesia”. *Jurnal Konstitusi* 15 (1):1-26. <https://doi.org/10.31078/jk1511>.



Indonesia's electoral process. This includes resolving election disputes and overseeing the conduct of general elections, presidential elections, and regional head elections

Fourth, public accountability: The Indonesian Constitutional Court's decisions are made publicly available, promoting transparency and allowing citizens to understand the legal reasoning behind the court's judgments. This enhances public trust in the judiciary and contributes to a more accountable government. Everyone can access the Indonesian Constitutional Court's decisions through mkri.id after only a few hours of the decision hearing.

Fifth, resolving political disputes. The Indonesian Constitutional Court serves as an independent and impartial forum for resolving political disputes, reducing the likelihood of political conflicts escalating into broader crises.

Sixth, upholding the Rule of Law: The Constitutional Court's decisions are binding and set precedents for future cases, establishing a consistent application of the rule of law. This consistency fosters stability and predictability in the legal system, contributing to the overall strength of Indonesia's democracy.

However, it is important to note that the effectiveness of any institution in strengthening democracy depends on various factors, including the political will of the government and the broader societal context. In the era of *Society 5.0*, challenges in strengthening democratization may arise as follows:

1. Erosion of Democratic Institutions: In some countries, there has been a gradual erosion of democratic institutions, weakening the checks and balances that are crucial for a robust democracy. This could be due to executive overreach, political polarization, and attacks on the independence of the judiciary.⁵
2. Threats to Rule of Law: Upholding the rule of law is essential for a functioning democracy. Challenges arise when governments or powerful entities undermine the rule of law, leading to a lack of accountability and transparency.
3. Electoral Integrity: Ensuring the integrity of elections is fundamental for democracy. Challenges include electoral fraud, voter suppression, misinformation campaigns, and inadequate election laws and regulations.

⁵ Eve Warburton, "Deepening Polarization and Democratic Decline in Indonesia," *Political Polarization in South and Southeast Asia*, 2020, <http://www.jstor.org/stable/10.7864/j.ctvbd8j2p.11>.



4. Protecting Human Rights: Democracies need to ensure the protection of human rights and individual freedoms. Challenges arise when there are attempts to curtail or infringe upon these rights, especially for minority groups.

In order to realize the role of constitutional jurisdiction in strengthening democracy, here are some future steps that could be taken:

1. Strengthening Judicial Independence: Ensuring the independence of the judiciary is crucial for maintaining checks and balances in a democracy. Establishing robust mechanisms to protect judges from political interference is essential. Endeavours for fostering the independence of Constitutional Justices of course start as early as the selection process for recruitment by providing the broadest opportunity for public participation to the greatest possible extent. In order to maintain the independence of Constitutional Justices, the Indonesian Constitutional Court has also formulated the Constitutional Justice Code of Ethics. The Code of Ethics has been made with reference to the principles set out in *The Bangalore Principles of Judicial Conduct*, namely the principles of *independence, impartiality, integrity, propriety, equality, competence and diligence, as well as implementation*. By adhering to the Code of Ethics, Constitutional Justices are able to remain unaffected by any influence or intervention by any party in performing their duties, including public opinion or mass media.
2. Electoral Reforms: Implementing electoral reforms to enhance transparency, fairness, and inclusivity can strengthen the democratic process. This may include improving voter registration, campaign finance regulations, and redistricting. The five fundamental principles of democratic elections⁶ which were adopted by the Venice Commission should also be implemented in Indonesia. Those principles are universal, equal, free, secret, and direct.
3. Embracing Technology: Utilizing technology to enhance citizen participation and engagement in the democratic process can lead to more informed decision-making and increased accountability. The Indonesian Constitutional Court has

⁶ “Electoral Systems: Strengthening Democracy in the 21st Century,” 2009, https://www.coe.int/t/dgap/forum-democracy/Activities/Forum_sessions/2009/Working_documents/Proceedings_EN.pdf.



experience in utilizing technology in the judicial system to substantively provide justice for all (*Justitia bellen*) across the archipelago of Indonesia.

4. Promoting Civic Education: Educating citizens about their rights, responsibilities, and the importance of active participation in democracy can lead to a more informed and engaged citizenry.
5. Combating Disinformation: Developing strategies to combat the spread of misinformation and disinformation can help safeguard the integrity of the democratic process.
6. Ensuring Access to Justice: Making the justice system accessible to all citizens, regardless of their socioeconomic status, is crucial to upholding the rule of law and protecting individual rights. Access to justice should also be implemented in the development of digital infrastructure that can support the strengthening of democracy through judicial processes.

In conclusion, we have seen that the Indonesian Constitutional Court had played a significant role in upholding democratic principles by realizing its authority. However, the direction taken in the future should be implemented synergically with related stake holders and the government to promote the roles of constitutional jurisdiction in safeguarding democratic principles.





MOROCCO







THE EVOLVING ROLE OF CONSTITUTIONAL
JURISDICTIONS IN UPHOLDING DEMOCRACY
THROUGHOUT HISTORY
(THE MOROCCAN EXPERIENCE)

PR. SAID IHRAI

PRESIDENT OF THE CONSTITUTIONAL COURT

THE 1ST INTERNATIONAL CHIEF JUSTICE FORUM (ICJF)
STRENGTHENING DEMOCRACY THROUGH
CONSTITUTIONAL JURISDICTIONS: PAST, PRESENT AND
FUTURE

09-11 AUGUST 2023
JAKARTA-INDONESIA

Session 2

*The evolving role of Constitutional Jurisdictions in upholding
democracy throughout history.*



Your Excellency, Prof. Dr. Anwar Usman, Chief Justice of Constitutional Court of Indonesia, President of the World Conference on Constitutional Justice,

Dear Chairperson,

Dear Panelists, ladies and gentlemen,

As the Chair of the Constitutional Court of Morocco, I am particularly delighted to take part, through this written contribution, in this outstanding forum dedicated to the role of Constitutional Jurisdictions in strengthening democracy, which brings together Chief justices from around the world, and held on the occasion of the 20th Anniversary of the Constitutional Court of the Republic of Indonesia.

My Esteemed colleague, His Excellency Anwar USMAN has kindly suggested that I contribute to this session, which will present, from a historical perspective, some leading national experiences in Upholding Democracy throughout the action of Constitutional Jurisdictions with which we share the principles and values of the rule of law, democratic constitutionalism, and separation of powers, that are, indeed, enshrined in our fundamental charter, the Constitution of 2011 in force.

I initially planned to take part in person in this forum, and to deliver a speech in front of this distinguished audience but due to agenda constraints that occurred at the last minute, I have decided to maintain the participation of the Constitutional Court by this written contribution.

First of all, allow me to recall some main historical features of our constitutional jurisdiction. The Constitutional Court of Morocco that is established by Art. 129 of our Constitution, marks a third phase in the institutional evolution of constitutional justice in Morocco.

A first phase saw the establishment of the 'Constitutional Chamber of the Supreme Court' by the Constitution of 1962, and subsequently maintained both by the Constitutions of 1970 and 1972.

The second phase began with the establishment of the 'Constitutional Council' by the Constitution of 1992, Art. 76 (Morocco), and subsequently kept under the Constitution of 1996

In the transition towards the third and current phase, under Art. 177 of the Constitution of 2011, the Constitutional Council continued to exercise its powers on a transitional basis until the installation of the current Constitutional Court since April 4th 2017.

Over six decades, the successive constitutional jurisdictions have bequeathed a heritage of 821 decisions rendered by the Constitutional Chamber of the Supreme Court and 1043 by the Constitutional Council.

Since its establishment on 4 April 2017, the Constitutional Court has issued 215 decisions aiming at upholding democracy by ensuring, through their motivations and rulings, the supremacy of the Constitution; the consolidation of fundamental rights protection; the regulation of the action of constitutional powers; and the fostering the freeness, fairness, and transparency of elections of the Members of Parliament.

With this in mind, I propose to shed some light on the historical evolution of Constitutional justice in Morocco (I) before providing an overview of its main jurisprudential trends (II) from the perspective defined by the organizers.

I: Historical evolution of Constitutional justice in Morocco

Considering the time available for the session, this presentation does not claim to give an overall account of the historical evolution of Constitutional justice in Morocco, Conversely, I propose to focus on some significant milestones of this historical process.

For this purpose, It is important to note that the evolution of constitutional justice in Morocco has been marked by an incremental logic, whose most significant trend is the continuous extension of



powers attributed to a series of successive constitutional justice organs.

Belonging to the “concentrated model” of review, the evolution of Moroccan constitutional justice is marked by two major trends:

- The first consisted in the transition from a specialized constitutional jurisdiction, organically integrated into the Supreme Court (*the Constitutional Chamber of the Supreme Court*), to a specific constitutional jurisdiction (*the Constitutional Council and the Constitutional Court*), separated from judicial courts.

- The second evolutionary trend saw the progressive extension of a priori review powers vested in successive constitutional justice organs and the emergence of a posteriori constitutionality control starting with the Constitution currently in force.

The Constitutional Chamber (1963-1994) was entitled to exert some powers typically attributed to constitutional jurisdictions in concentrated models. The Chamber ensured the mandatory a priori review of organic laws and of internal regulations of Parliament. Moreover, it ruled on the modification by decree of provisions taken in legislative form and it settled any disagreement between the Parliament and Government (legislative admissibility). It also decided on the regularity of the election of Members of Parliament as well as on the regularity of referendum operations.

The constituent of 1992 instituted a Constitutional Council and, therefore, marked a decisive step forward by establishing an organically differentiated constitutional jurisdiction. This choice was re-endorsed by the Constitution of 1996. The Constitutional Council was entitled to exert all the competences previously vested in the Constitutional Chamber, In addition to a new competence which was attributed to the Constitutional Council, the optional a priori review of laws, upon referral.

The progressive, but continuous extension of the powers of the constitutional jurisdiction was strongly linked to the evolving democratic trajectory and to the successive institutional reforms undertaken at the instigation of His Majesty The KING Mohammed VI, since His accession to the throne in 1999.

In 2004, a transitional justice mechanism, namely, 'the Commission of Equity and Reconciliation' was established by a Royal Decree. The 1st volume of the Commission's final report, released on 16 December 2005, contains a specific Chapter dedicated to recommendations, which proposed to strengthen the control of the constitutionality of laws and independent decrees issued by the executive power and to include, within the Constitution, the right of a person involved in judicial proceedings to raise an exception of unconstitutionality before the seized court.

In 2011, a constitutional revision process was initiated. Specifically, on 10 March 2011, The King appointed a Consultative Commission for the Revision of the Constitution. In His framing speech on 9 March 2011, the King announced that relevant recommendations of the Equity and Reconciliation Commission should be constitutionalized and the powers of the Constitutional Council strengthened.

As settled in the agenda of the constitutional revision, the objective of strengthening constitutional justice received a positive feedback from political, social, and civil actors. Among 215 memorandums and individual contributions addressed to the Consultative Commission for the Revision of the Constitution, more than a half of them presented propositions concerning the establishment of ex post control mechanisms, ex officio referral or the review of the constitutionality of international commitments. In this context, the configuration of the current Constitutional Court has emerged out of a convergence of both institutional and societal agendas and as an outcome of a democratic process culminating by the adoption of the Constitution in force by referendum in 1st July 2011.



The result of this process, is the current Constitutional Court, established in April 4th 2017, which is entitled to exercise, not only all the powers conferred to constitutional review bodies before 2011, but also new powers, two of which, assigned to the Court, are particularly worthy of note:

- Aware of the challenges of articulation between domestic and international legal orders, which are closely related to the protection of fundamental rights and freedoms, the constituent of 2011 conferred a new jurisdiction to the Court concerning the optional *a priori* review of the constitutionality of international commitments.

- The exception of unconstitutionality, established under Art. 133 of the Constitution, represents a new mechanism in the domestic system of jurisdictional human rights protection. This consecration also marks the establishment of a *posteriori* review at the level of the Constitutional Court, thus consolidating its concentrated vocation. The Organic Law that will allow the full operationalization of this mechanism is currently being drafted.

II: The role of Constitutional jurisprudence in upholding democracy

From a historical perspective, the role of successive Constitutional jurisdictions can be approached from two angles: As concentrated constitutional jurisdictions, the constitutional protection of human rights, as of the principle of the "Separation of Powers" is ensured through both *a priori* and *a posteriori* reviews (1). The settlement of electoral disputes is aimed at protecting the free, equal, and fair enjoyment of political rights within the context of parliamentary elections (2).

1. Constitutional protection of Human rights, and the Consecration of the Separation of Powers

The constitutional jurisprudence on human rights protection has evolved progressively under the respective mandates of the Constitutional Chamber of the Supreme Court, the Constitutional Council, and the current Constitutional Court.

As examples, the former Constitutional Chamber established the principle of criminal legality, preserving, thus, the competence of the legislative power on that matter. Freedom of vote was recognized in one of the first rulings of the Constitutional Chamber.

Under the mandate of the Constitutional Council, human rights jurisprudence was developed within the context of a priori control of organic laws and laws. As an example, a decision recognized the categorical electoral rights of Moroccans residing abroad. The Council also strengthened the constitutional guarantees resulting from the right to a fair trial, as equality between the defence and the prosecution and the right to an effective remedy in electoral disputes.

The Constitutional Council also defined the constitutional principle of gender parity as an objective of constitutional value, and consecrated the principle of functional independence of human rights protection bodies.

Under its current mandate, the Court has consolidated certain principles established by former Constitutional bodies, such as the presumption of innocence and the equal opportunities between candidates in the context of electoral disputes

The Constitutional Court has recognized, under Article 5 of the Constitution, a series of linguistic and cultural rights arising from the consecration of the official nature of the Amazigh language. These rights consist, in particular, in the use, without discrimination, of the Amazigh language to communicate in all forms, for all functions, and through all media. It is also incumbent on the State to guarantee its



teaching and learning following the principle of equality of citizens in the enjoyment of cultural rights.

The Court has to deal with certain aspects related to the design of the national system of human rights protection, both at the procedural and substantive levels. Within this framework, the specific mandate of the Authority for Parity and the Fight against all Forms of Discrimination (Anti-discrimination Body), in complementarity with the global mandate of the National Council for Human Rights (National Human Rights Institution)

Confirming the progressive nature of affirmative action mechanisms, the Court affirmed, in three recent decisions that gender parity measures include non-elective mandates and not only electoral ones. Within the same line, the Court consecrated the non-regressive nature of gender parity legal measures, reinterpreting in this way Articles 19 and 30 of the Constitution.

The Court has given a universal scope to the positive obligation incumbent on the State, public establishments, and local authorities to facilitate equal access for citizens to the conditions enabling them to enjoy the right to social protection.

Concerning the consolidation of the Separation of Powers, the Court's interpretative approach, seeks constantly to preserve the autonomy and independence of the constituted powers, in conformity with the principles of the separation, balance, and collaboration of powers, which are part of the foundations of the constitutional system of the Kingdom of Morocco.

By way of example the Court consolidates Constitutional Council's precedent rulings of which is confirmed that judges and prosecutors are members of a sole judicial body, and, accordingly, encompassed by the inherent independence of judicial power. This principle prevents the possibility to chair the Public Prosecutor's Office by an official who does not belong to the judiciary.

As global interpretive attitude the Court adopts a maximalist interpretation of the constitutional norms concerning fundamental rights and freedoms, in order to ensure, to the maximum, the useful legal effects of the constitutionally guaranteed rights and freedoms

Concerning the regulation of public authorities' actions, the Court adopts the principle of maximizing their autonomy and independence.

2. Protection of the Freeness, Fairness, and Transparency of Parliamentary elections

The established jurisprudence of the Court aims to guarantee the freeness, fairness, and transparency of the ballot.

Concerning electoral communication, the Court adopts a line that tends to preserve the constitutional freedom of expression while ensuring effective compliance with the legislative and regulatory framework of the electoral campaign.

In settling electoral disputes by the Court, the fairness of the vote is often examined in light of two parameters: the difference in votes obtained and the determining influence of the irregularity generating the lack of fairness. However, the Constitutional Court proceeds to the annulment of the election of the contested candidate, without taking into account the criterion of the influence on the results, in the case of serious electoral offenses, such as the use of administrative resources during electoral campaign or the attempt to obtain the vote of voters by illegal, coercive or unfair ways.

These are just a few highlights of the key contribution of constitutional justice in upholding democracy in the Kingdom of Morocco. I hope that the elements I have shared you would benefit the comparative effort from a historical perspective. The Constitutional Court remains at the participants' disposal to provide additional elements.

Le Président de la Cour
Constitutionnelle

Said IHRAI



ANNEX II

LIST OF PARTICIPANTS





REPUBLIC OF INDONESIA		
Constitutional Court		
	Mr. Anwar Usman	Chief Justice
	Mr. Saldi Isra	Deputy Chief Justice
	Mr. Arief Hidayat	Constitutional Justice
	Mr. Manahan M. P. Sitompul	Constitutional Justice
	Mr. Wahiduddin Adams	Constitutional Justice
	Mr. Suhartoyo	Constitutional Justice
	Ms. Enny Nurbaningsih	Constitutional Justice
	Mr. Daniel Yusmic Pancastaki Foekh	Constitutional Justice
	Mr. M. Guntur Hamzah	Constitutional Justice
ALGERIA		
Constitutional Court		
	Mr. Omar Belhadj	President
	Mr. Bahri Saadallah	Member of the Court
	Mr. Lahcene Kaid	Ambassador
	Mr. Benbara Abderrezaq	Secretary of Foreign Affairs
	Mr. Smaili Adnane	Attache
	Mr. Tas Abderrazak	Attache
ANGOLA		
Constitutional Court		
	Ms. Laurinda Cardoso	President
	Mr. Cláudio Mota	Exchange and International Relations Director
	Mr. António Pedro	Deputy Director of the President's Office
	Mr. Abilio Montenegro	Chief of Ceremonial and Protocol
	Mrs. Narcisa Miguel	First Secretary of the Embassy of Angola
	Mrs. Marta André	Third Secretary of the Embassy of Angola
AZERBAIJAN		
Constitutional Court		
	Mr. Farhad Abdullayev	Chief Justice
	Mrs. Humay Afandiyeva	Judge
KAZAKHSTAN		
Constitutional Court		
	Mrs. Elvira Azimova	Chairman
MONGOLIA		
Constitutional Court		
	Mr. Chinbat Namjil	Chief Justice
	Mr. Buyandelger Batsuh	Justice



	Mrs. Solongo Batsaikhan	Head of Protocol and Foreign Relations
NAMIBIA		
Supreme Court		
	Mr. Peter Shivute	Chief Justice
	Mr. Benhardt Kukuri	Executive Director
SOUTH AFRICA		
Constitutional Court		
	Mr. Raymond Mnyamezeli Mlungisi Zondo	Chief Justice
	Mr. Allister Lance Slingers	Director of Executive Support Services
	Mrs. Riana Leyds	Deputy Director of Executive Support Services
THAILAND		
Constitutional Court		
	Mr. Chiranit Havanond	Justice
	Mr. Udom Rathamarit	Justice
	Mr. Kongkieat Suraka	Constitutional Court Academic Officer
TÜRKIYE		
Constitutional Court		
	Mr. Hasan Tahsin Gökcan	Vice President
OTHERS		
	Mr. Moussa Laraba	Permanent Secretary General of the Conference of the Constitutional Jurisdiction of Africa
	Mr. Jongmun Park	Secretary General of the Constitutional Court of the Republic of Korea

ANNEX III

AGENDA





AGENDA

International Chief Justice Forum (ICJF)

Strengthening Democracy through Constitutional Jurisdictions:

Past, Present and Future

Jakarta, August 10 – 11, 2023

Wednesday, 9 August 2023

AM/PM **Arrival of the ICJF participants at Soekarno-Hatta International Airports and transfer to Pullman Central Park**

19.00 Dinner at hotel

Thursday, 10 August 2023

09.00 – 10.00 Preparation for Opening Ceremony

10.00 – 11.30 **Opening Ceremony & Celebration of the 20th Anniversary of MKRI**

by President of the Republic of Indonesia

at the Constitutional Court Building

12.00 – 13.30 Lunch Break

Opening by MC

13.30 – 15.00 **Session 1**

The Evolving Role of Constitutional Jurisdictions in Upholding Democracy throughout History

13.30 Opening Chairman: Prof. Enny Nurbaningsih

13.35 – 13.45 Speaker 1: Algeria

13.45 – 13.55 Speaker 2: Azerbaijan

13.55 – 14.05 Speaker 3: Kazakstan

14.05 – 14.15 Speaker 4: South Africa

14.15 – 14.25 Speaker 5: Turkiye

14.25 – 14.35 Speaker 6: Indonesia (Dr. Manahan MP Sitompul)

14.35 – 15.00 Q&A Session and Conclusion

15.00 – 15.30 *Coffee Break and Souvenirs Exchange*



15.30 – 17.05	Session 2
	Current Challenges and Future Direction for Strengthening Democracy through Constitutional Jurisdictions
15.30	Opening by Chairman: Dr. Wahiduddin Adams
15.35 – 15.45	Speaker 1: Mongolia
15.45 – 15.55	Speaker 2: Angola
15.55 – 16.05	Speaker 3: Thailand
16.05 – 16.15	Speaker 4: Namibia
16.15 – 16.25	Speaker 5: Indonesia (Dr. Suhartoyo)
16.25 – 17.00	Q&A Session and Conclusion
17.00 – 17.30	CLOSING CEREMONY OF THE ICJF
	<ul style="list-style-type: none"> • Closing remarks from the Chief Justice of the Constitutional Court of the Republic of Indonesia as the host of the ICJF • Group Photo
19.30	Dinner Reception
	<ul style="list-style-type: none"> • Video of Participants' Testimony • Token of Appreciation
	<u>Friday, 11 August 2023</u>
09.30 – 15.00	CULTURAL PROGRAM
	<ul style="list-style-type: none"> • Taman Mini Indonesia Indah • Sarinah
19.00	Dinner
	<u>Saturday, 12 August 2023</u>
AM/PM	Departure of participants





