



**CLOSING REMARKS AT THE FOURTH
CONGRESS OF THE CONFERENCE OF THE
CONSTITUTIONAL JURISDICTIONS OF AFRICA
(CCJA)**

BY

CHIEF JUSTICE MOGOENG MOGOENG

**CHIEF JUSTICE OF THE REPUBLIC OF SOUTH
AFRICA**

AND

PRESIDENT OF THE CCJA

CAPE TOWN

26 APRIL 2017

The outgoing President of the Conference of Constitutional Jurisdictions of Africa, my gratitude goes to you for the role you have played in the past two years, but also for agreeing to contribute to the funds that were so desperately needed by the Judiciary of South Africa so as to make this conference the success that it has turned out to be. We are very grateful for that. Outgoing Vice Presidents and incoming Vice Presidents, Honorary President Dossou, esteemed colleagues, members of the media, Ladies and Gentlemen, good evening to you all.

It is with a deep sense of humility and immeasurable gratitude that I assume the responsibility of being the President of the Conference of Constitutional Jurisdictions of Africa. I do so not naïve about the responsibilities, the challenges that this, by extension, throws on my way, but I am confident that with the assistance of colleagues, I will be able to do what is required of the President, duly assisted by members of the Executive Bureau at this critical stage in Africa.

For some time I wondered why the Lordship Justice of England and Wales, the President of the Federal Constitutional Court of Germany, the Chief Justice of Brazil, and the Justice of the Supreme Court having all confirmed that they were going to be part of this meeting withdrew on the eleventh hour. But I think I now have the answer. They were not supposed to be part of this meeting, because the profound success that it has turned out to be, would otherwise be attributed to them. Cynics would be saying had the Americans, had the English people, had the Germans not come, this would not have happened. The immeasurable capacities of African people have the possibility to shine out, because on the eleventh hour, colleagues were approached to ready themselves for the presentations that would otherwise have been made by those who were invited many months ago and had agreed to come and make presentations. But I believe that I am not the only one who was unbelievably impressed by the quality of the presentations made by those substitutes as if they had months within which to prepare

themselves. So Africa was afforded the opportunity to demonstrably display her impressive capacities, as I said, within a very short space of time. This to me is a message that I, and I believe all other colleagues here, must go home with. If only we can be united in the vision that has long been waited for. The vision of demonstrating to all, including the doubting Thomases, or especially the doubting Thomases, that African people have what it takes to take their continent to the greatest heights that it was known, once known for.

Digressing a bit, over and over again. I keep on reflecting on the reality that Egypt was the first civilisation in the whole world. I have had occasion to write on this under the title of Restoring Africa's Lost Glory, and to anybody who is interested, I will share the article. The pyramids there, the Alexandria University, the leadership that you exported to Rome as Egypt, the technology that was involved there, but Mali as well through the Sankore university, Timbuktu's literally treasures, that are still a marvel to the whole world and the contribution of Timbuktu, as the Golden City of the Time. Zimbabwe, those ruins that back testimony to the economic hub that the world recognised at one stage. Mapungubwe in South Africa, as another economic hub and many other African countries at the time when civilisation was not known where people think civilisation began.

This meeting is by any standards, historic. It started very well and I believe it ended very well. You know when a child is about to be born, to be given birth to, especially when it is twins or triplets or quadruplets, there are challenges that at the time give you reason to believe that this might not work after all. Wrapping this particular point, when South Africa was about to agree on the way forward from apartheid into a constitutional democracy, three incidents took place that left some of us sure that the negotiations were permanently derailed. One, some right-wingers drove a big military vehicle into the venue where negotiations talks were held and people like Arthur Chaskalson, the former Chief Justice and many others, had to hide under the tables for fear of their lives. We thought it is finished. Two, there was a stage

when there was a very ugly, a very ugly exchange of words between former Presidents de Klerk and Nelson Mandela. It was so ugly, we were convinced that ah, it is over. We knew it, it was not going to happen. Finally, it was the assassination of Chris Hani, who was still killed by a white right-winger. That, we believed, had permanently sealed any prospects of South Africa ever becoming a constitutional democracy of black South Africans. We have been at war with each other for many years, at long last finding common ground so that the peace, the freedom, the prosperity and the joy we were looking forward to could become a practical reality. The rest is history. We are a constitutional democracy. Those were just the birth pangs. So I assume the Presidency of this organisation, confident that we have had a beautiful launch into the new phase of this organisation.

Now I think at this stage let me just thank people before I go any further. I want to thank members of the organising committee. Colleagues, if you could step forward because we tend to take all the glory as if we did everything. There are four colleagues, Justice Zondo, Justice Jafta, Justice Mhlantla, Justice Khampepe is not here, and the Secretary General of the Office of the Chief Justice, who afforded me the opportunity to pay attention to other things while they were making sure that this conference becomes what it is. As Justice Zondo, the Deputy Chief Justice Designate of the Republic of South Africa has just been interviewed, we are waiting for the President to appoint him. So if anything good has happened, give all the credit to them. If anything bad has happened, blame it on me; where was I? And of course all the officials who are attached to the office of the Chief Justice, if they could step forward please. Grant me the indulgence. We often forget those people who were soiling their hands, just so that it could be. Please step forward quickly, we don't have time. While they are coming, I just want to say to my brother from Sudan, the Secretary General tells us that she settled your bills, so you must have your refund back. It was part of the package that anybody who becomes sick must be paid for by the South African Judiciary. So these are the people who made it happen. They are not all here. Johan, where are you now with your officials, having organised this thing? We have a staff

complement of about 1 500 administrators under the leadership of the Secretary General. They made it happen. I am sure you have seen them more than you have seen me. So I'm here to say thank you, thank you, thank you, thank you. You are excused.

But I also just want to thank my judicial colleagues who went out of their way to meet the delegations at Cape Town International Airport. Colleagues, if you could just stand from where you are, the South African Judiciary, ah, Deputy Judge President Nhlangulela, now are you ashamed? Thank you so much. Thank you so much for respecting your colleagues enough to make yourself available to accord them the dignity that they deserve. Thank you, you may be seated. I also just want to thank the South African Police Services, here they are, you can see them, to make sure that we are all safe. The Department of International Relations and Cooperation with the necessary protocols, they made themselves available. The State Security Agency through their intelligence capabilities, to make sure that nobody is going to bomb this place, or mug us. The Department of Health to make sure that everybody who goes through a health challenge receives the help that he or she needs, and the Department of Home Affairs with the visas. We are very grateful to them. And all others that I may not have mentioned here who obviously had a very critical role to play.

Let me say this: I think it was from the 23rd to the 26th of January 2009, Presidents and members of Constitutional Courts, Constitutional Councils and courts with equivalent status were gathered in this exact same room, and together gave birth to the World Conference on Constitutional Justice. Dr Buquicchio can bear me witness, it was in this room, and something strange happened, I know the podium was there. The Chief Justice of the time, Pius Langa approached me during the tea break and said: "Mogoeng, I want you now to go and sit on my chair, because I will be chairing a session". I said but you have a Deputy. He said "I want you to occupy my chair". I went to my room, told my wife, I said I am not going back there, this man wants to put

me in trouble, to make me look like I am ambitious, I love power. My wife said oh, government paid money only for you to stay in the room instead of attending the conference? So I came back. And the Chief Justice saw me, I was with Judge President Monica Leeuw there, he said “Mogoeng, I want you to go and occupy my chair”, and I did. Not many colleagues were very happy about it, but little did I know that in this exact same room, on the 3rd and 4th of September 2011, I would spend those two days, a Saturday and a Sunday being interviewed for the position of Chief Justice.

And I could never have guessed that I would have the privilege and the honour of hosting the meeting of the Conference of Constitutional Jurisdictions of Africa in this same room. That says to me something that our minds are just too small to fathom, is being birthed in Africa today. It has got very little to do with the personalities involved, but has everything to do with the fact that for far too long Africa has been looked down upon. The time, this is the time for the Renaissance of Africa, this is the time for the restoration of the lost glory of Africa. The fact that we had from Ghana Kofi Anan, heading the United Nations as Secretary General, the fact that we have Dangote from Nigeria, being the richest man in the continent, the fact that we have Barak Obama, the descendent of the Kenyans having been the president of the most powerful country in the whole world when blacks are in the minority in the United States of America, the stories of the Oprah Winfreys, the Williams’ sisters, Tiger Woods, Nelson Mandela, Julius Nyerere, Kwame Nkrumah, ought to demonstrate to all of us without exception, that we have what it takes to influence not just the developments in this continent, but on the global stage. And the question is what will it take for those words, for that vision to be translated into a practical reality? It is not a wish game, there is work to do. And the starting point is what Kofi Annan said while he was still the Secretary General of the United Nations:

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime,

terrorism and other threats to human security to flourish. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aids and investment. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development”.

We enjoy as Judges, as courts in this continent a singular honour of playing a crucial role in the eradication of corruption. But we can only do so if we are not ourselves corrupt. It takes the uncorrupted to kill effectively with the corrupt. How effective are the mechanisms in place to root out Judges who are corrupt in our jurisdictions? Do we mollycoddle corruption where we come from? Do we eat from the same dish with the corrupt, using our legal expertise to cover up for the wrongs that they are doing? Are we afraid of the corrupt, focusing only on the small man or small woman in your endeavours to root out corruption, but when it's the high and mighty, you take cover? We need to be men and women of integrity as was debated during this conference and a solid character should characterise us. We should be predictably honest and principled. Then and only then, when the judiciaries of this continent in every country, it's known from afar that this one you cannot corrupt, even if you want to kill him, he or she is like those Judges in Ghana whose bodies were found lying dead somewhere. I believe they died because they were principled.

Let us go back to the basics. Let us not be politically correct. Let us not pretend. Let none of us pretend to be doing the right thing when we know that we are in the pockets of either the politicians in the Executive or in Parliament, or even the private sector. People in the private sector who can profile us through their newspapers, or televisions, or radio stations, or put money in our pockets, or organise free trips for us. It is time to embrace the spirit of our forebears, the readiness to die for a just cause if death is what must happen to you, just so that African people can stop suffering when their continent is so, so rich. If members of the Judiciary are not willing to be used

by those who are in the habit of exploiting their economies and the natural resources and mineral resources of our different countries, then Africa has hope. Two, let us exchange best practices, Colleagues. There are best practices everywhere. It will be a sad day if we come here with powerful speeches, but we have nothing to take home with us with a view to implementing it. My hope is the next time we meet, I will be able during our deliberations to share with you what I learned from some of the colleagues here. For instance I want to approach my brother in Ethiopia, I am told their court automation system is one of the best. I was told by somebody in the World Bank. I am told Tanzania is in the process of doing so, or has already implemented. I want to learn from my brothers. None of us should assume that they know it all. Let us not reduce our congresses to forums for intellectual gymnastics, to be listened to articulating points. What progress are you going to make with those points? What programme of action are we going to go home with individually and collectively?

We are the ultimate guardians of the Constitution wherever we operate as courts. And we have the honour of ensuring that both members of the Executive and the Legislature carry out their constitutional obligations as dutifully as the Constitution requires of them and we all know that no Constitution and no law self-actualises. I went to one country, very wealthy, beautiful Constitution, but nothing is being done in terms of that Constitution. It is just a make believe. They have the Judiciary, Constitutional Court, Supreme Court, they are well-funded, beautiful buildings, but it's just a political state – it is a PR exercise. Nothing tangible is being done for the good of the many people who are suffering. That is hypocrisy from where I sit.

Colleagues, you must consider implementing formal or informal peer review mechanisms, as the Judiciary. We must not allow for anybody to impose anything on us. We don't police each other, but it has got to be open to us to say to a colleague who is veering off the correct path, to say but this is not

right. I know in one country in East Africa, colleagues from two jurisdictions approached another and said but what you are doing is not right. I know we did it in Southern Africa, when a particular colleague was not doing the right thing, we said but what you are doing is not right. This thing of avoiding to offend, even when principles are being compromised, are being trampled on, explains why Africa is where it is right now. It is important that we are principled through and through. Not hey, I don't want to ruffle the feathers. I don't want to rock the boat. That is why we have been colonised for too long and nothing has happened, because we didn't want to ruffle the feathers of those who were colonising Africa. Let us be predictably principled as Judges. Where threats or challenges are experienced by colleagues who operate in a system that does not allow them to voice their frustrations to the political arms of the State, we have got to take it as our responsibility, as individual jurisdictions, as regional structures and as this body, to - without imposing ourselves - find a way to step in. Let us know, so that we can find a decent and an acceptable way of stepping in, because you are not able to fight for yourself and say but Excellencies, there is a problem here. With all respect, you were suggesting that maybe if you approach it this or the other way, it would be better, but also forging some kind of alliances with structures like the International Commission of Jurists, the organised attorneys and barristers or advocates' profession in our regions and in the continent, so that colleagues do not suffer the humiliation of operating in an oppressive system and there is nothing they can do about it.

When my colleagues and I had the pleasure of interacting with our colleagues at the European Court of Human Rights, one or two colleagues who serve in that court said in our country there is no judicial independence, and corruption is so rampant, we don't know what to do. What advice can you give me? Seeking advice from an African Jurisdiction. Of course, we sat down and explored possibilities that could help address the oppressive system in which they operate. When I went to the World Bank to make a presentation on what is it that judiciaries can do to incentivise foreign investors to come into Africa and invest, so that the lives of our people can be improved, some people in

African countries were connected via satellite, and some of them said we are Judges here, we are five, we have never been trained in law, all of us. We don't know how to Judge, but we are Judges. That pained me so much that I throw it to all of us as a challenge. Those jurisdictions with a number of retired Judges who are still strong and intellectually active, what is it that can be done? Even if we send Judges there to fulfil a mentorship role to our brothers and sisters? What system can a body like this come up with? Can we maybe agree that we take something out of our budget to strengthen courts that are courts in name only, but are completely incapacitated from doing what the populace expects and requires of Judges to do? It must worry us. It is an African problem and we must proactively find a way to address it.

Another issue, and I want to be quite frontal about this one, Judges must never allow themselves to be formally trained by any NGO. When you go for training, it is to a particular NGO that you go. That is irreconcilable with judicial independence. Why can't you ask jurisdictions that have got training academies or institutes to accommodate you in their training programmes? Chief Justice Shivute is here, some of his colleagues came to the South African Judicial Education Institute so that together we can share the little that is available and we have received requests from other jurisdictions. Why can't Judges organise trainings for other Judges? The quickest way for judicial independence to be compromised is for you to surrender your own systems to some entity that receives funding from some foreign country whose vision about Africa and your own country you are not aware of. Because there is no free lunch. Never. There is always something behind the back and pay-back time will come. They will remind you of what they have invested in you, and because of the affinity that you have built with them, it will be difficult to say no.

Let us avoid anything that has the potential to compromise the independence of the Judiciary. I place it on record, because one colleague, last week, said to me she was told that we are part of some arrangement where we are

trained by some entity somewhere. The South African Judiciary has got its own training institute and programmes. We refuse to be trained by anybody. We can be trained by another Judiciary, not some private entity. It is not right.

Colleagues, something that was mentioned that applies to both regional structures and this structure is this: We must be true to the statutes and protocols that govern the manner in which people are elected to office. I will not identify structures, I am articulating a principle. I have come across a situation where you would be part of a structure, and somebody comes and says here are the names of people who are going to be in the leadership. And you are a member of that structure. Now you wonder but who says so? They say “they” say so. Who are they? The Judiciary must never be made to look like there are some members within it that behind closed doors, collude with some forces elsewhere to choose leadership for them.

We must choose our own leaders as we did this morning. That is a powerful progress that we have made, because it never used to be like this. This thing of secret compilation of names, we are not a secret organisation. In South Africa in fact, in the questionnaire for judicial appointment there is a question: Are you a member of a secret organisation? We do not operate like that. There must be transparency for this reason. We are the ones who have the ultimate say when national elections are held in our respective countries as to whether they were free or fair? So, if you cannot ensure that there is freeness and fairness of elections in your own body of Judges, we are justified to assume that when there are elections in your own country, they can be manipulated by you. So please, let us desist from creating the impression that we are not people of honour, people of integrity, people of solid character. We must avoid the unbelievable love for power, for positions, for money and for fame as Judges. You will be destroyed. All we have to do is to offer you an opportunity to be famous, offer you money and you can compromise principles if you are not careful, just to become Chief Justice and receive all the perks that comes with the position.

I believe that the position of Chief Justice or a Judge belongs to the people of South Africa. But because they cannot all be Chief Justice or a Judge, they have identified some of us to assume that responsibility on their behalf. So you cannot lord it over people. You cannot begin to behave as if you own your nation. You cannot behave anyhow as if you are not there to serve the people, but as if you are there to serve yourself and personal interests, or your family. So we must check our love for power, positions, for fame and for money. Because if you fall in love with those things, you are an easy victim or an easier candidate for being used most inappropriately. And the bad thing about being used by any powerful entity or person, is that they will use you, they will lose respect for you, and then you will reach your sell-by-date, and they will dump you like a chewing gum that has lost its flavours. I have seen it happen to a number of people.

Finally, let me quote the words of Lord Macaulay that I quoted when I began. They are most profound and I think they are worth repeating as I conclude.

“I have travelled across the length and breadth of Africa, and I have not seen not one person who is a beggar, who is a thief, such wealth I have seen in this country. As I have said, that’s a reference to Africa as a country. Such high moral values. People of such calibre, that I do not think we could ever conquer this country, unless we break the very backbone of this nation which is her spiritual and cultural heritage, and therefore I propose that we replace her old and ancient education system, her culture, for if the Africans think that all that is foreign and English, and you can add any other language, is good and greater than their own, they will lose their self-esteem, their native culture, and they will become what we want them, a truly dominated nation.”

Colleagues, we must be very careful not to hero-worship our colonial masters. Because they would want you to be too obsessed of being of the Commonwealth country, being too obsessed with being a Francophone.

Being too obsessed with being Portuguese or Spanish. We are one people, one continent, if you like, one country. Let us forge unity among ourselves. We have been ignored for far too long with our permission. We have been marginalised for far too long with our permission. We have opened ourselves up to be manipulated by other people, other interests, other forces, other countries, in the furtherance of their own self-interests. I think the time has come, through the offices we occupy as the Judiciary of Africa to remember that the difference that we can make in turning the fortunes of Africa around, are incredibly huge. If the singular act of Martin Luther King Jr could give rise to the movement that he was leading, that ultimately culminated in the Presidency of Barack Obama, if Mother Theresa could do what she did for humanity, if Oprah Winfrey can reach out to many African people in the manner that she does, building schools to empower young girls in the area of leadership, ah, we are not one, we are many. Just reflect on the profound impact that men and women of integrity could make collectively.

Let us keep our self-esteem intact, let us make sure at all times that we enjoy freedom from any form of domination as African people. Whenever we have differences, let us know that they are normal. Because even in a family your children will be fighting. Even husband and wife, it is a lie to say you never have a serious misunderstanding with your wife. It is normal because you are different. So why can't we have differences, even serious ones? Some men even occupy this bedroom for the whole week, the wives, that other bedroom for the whole week, because there are serious differences. And we are no different. Whether Africa becomes a respectful, developed, true constitutional democracy with strong institutions, in politically stable environments, depends on what you and I are going to do from here. Let us go and work. Thank you very much.

You see, just as I forgot to welcome you on Monday, I forgot to close, but I drew solace from the fact that on Monday you had already been welcomed on Sunday. Colleagues, thank you very much for making this your

conference, the profound success that it was. I jokingly said to the President when we were in the holding room on Monday, I said “It looks like this has a mother’s touch.” But now after I heard comments subsequently, I’m not too sure that it is safe to say that. But it happened under your presidency, and for that we thank you. Thank you for affording us the opportunity to host, thank you for coming in your numbers. The next time we meet, let us demonstrate the deliverables. Dinner will be served, I am told, in the next room. Thank you Colleagues, thank you very much. For anything wrong, forgive us, for everything good, as I said, applaud the team and the President.

Thank you.