



REFLECTIONS ON PROGRESS AND DIRECTION: CCJA BUREAU
MEETING

Sandton, Johannesburg, South Africa – 30 January 2019

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President of the CCJA

Your Excellencies, Heads of Constitutional Courts and Councils, and delegates. I take this opportunity to welcome you all to the city of gold, Johannesburg, South Africa. On behalf of the Judiciary, and the people of South Africa I thank you all for honouring the invitation to attend this critical meeting of the Bureau of the Conference of Constitutional Jurisdictions of Africa.

The CCJA is a very powerful and strategic platform from which a clean and unentangled vision or strategy for the preservation and promotion of the best interests of the African people can and must be worked out. Judges are by design a collective of truly independent intellectuals and thought-leaders who are highly qualified and were taught by experience and the exchange of best practices. They know best, what regulatory framework and implementation matrix it would take to inculcate the culture or spirit of good governance, the

value of meritocracy so as to enable our constitutional democracies to realise the collective aspirations of our people.

We therefore, as the CCJA, need to be on high alert about the dangers that always loom large in the horizon, of being ensnared with or allured by gifts, and networking possibilities extended to us by those who wield raw political power and those who really control and benefit from the wealth of our continent. We must also vigilantly guard against the love for manipulative praises, publicity and fame. For, at the heart of our calling is the obligation to administer justice to all alike, in terms of the Constitution and the law, and without fear, favour or prejudice. That is the rare and humbling privilege we enjoy, as members of the third and unelected Arm of the State, to effectively function as the conscience and moral compass of our respective nations as well as final arbiters of issues relating to justice and equity.

And the capacity to live up to this exceptionally high calling of adjudicating the most complex of challenges or disputes, often national destiny-defining, can only be truly refined at your base and improved upon at the level of the CCJA. Whether we jostle for, and unfairly seek to occupy positions of authority in our jurisdiction or in the CCJA or wait to be recognized for what we can offer, will determine the profundity or insignificance of our contribution to the critical needs of our people and continent. Remember, although all other continents also have their differences, they have found a way of uniting about and against us. It is about time that we too allow ourselves to be united by the plight of the African people, and characteristic of African generosity, to also allow ourselves to be united by the plight of the human race as a whole.

Only when integrity, ethics, fairness and trustworthiness define who we really are, can the African people ever have a reason to hope for a better tomorrow – free of prejudice, marginalisation, and poverty in the sea of wealth facilitated by greed, free of injustice and all-round corruption and poor governance. We come to our institutions, positions and networks as either the truly professional and ethical people we are expected to be, or as compromised constitutional office-bearers who have sold their souls to the highest bidders, and disguised practitioners of injustice that we have allowed ourselves to be shaped into being.

As the CCJA we have come a long way. It has by all standards been a challenging and truly rocky but richly rewarding journey. But our collective sense of purpose and our sharp focus on what matters the most and what is best for our continent has allowed us to iron out our differences with impressive maturity and wisdom. And here we are now, 45 members strong. We have become global trend-setters. At the time when the WCCJ had not even considered what to do in the event of their members facing serious challenges that threaten judicial independence and security, the CCJA had already traversed that territory in the most admirable way. And that is why at its latest Executive Bureau meeting in Venice, Italy the WCCJ decided to follow our example albeit in a somewhat restrained way.

As you will hear from the Secretary General's report, I had a very sobering meeting with the Chief Justice of the Federal Republic of Nigeria, His Excellency Walter Onnoghen, in Turkey late last year. I had previously made two attempts to visit Nigeria and meet with him which did not materialise for reasons I need not go into. He was part of the meeting at which the CCJA was formed. Based on what transpired there, he informed me that he formed the view that non-

Francophone jurisdictions were by design supposed to play second fiddle to Francophone jurisdictions. He said he left the meeting with a distinct impression that the CCJA is meant to be virtually “owned” by Francophone jurisdictions. He communicated that to his government and the then Chief Justice of Nigeria. For that reason he advised the Nigerian Judiciary not to join the CCJA. I also got a clear sense from some jurisdictions, including Ghana, that they share these reservations. I went out of my way to explain to him that although I initially had similar misgivings, the CCJA has since developed into a formidable force, an inclusive and highly focused and progressive association that Nigeria would do well to join.

As a way forward, I propose that we take to heart, criticisms levelled against us and use them as the basis for a thorough self-introspection. Do we perhaps, without meaning to, create the unintended impression that some are first class members and others second class members of the CCJA? I believe, that to make progress we must stare that reality in the face and take such corrective measures as are necessary rather than being defensive or overly self-righteous.

Rotational leadership must become a practical reality. Opportunities to host CCJA conferences and Bureau meetings must be deliberately spread in a way that seeks to give all groups or regions a genuine and unmistakable sense of belonging.

As Judges, we ride only on our moral authority, our integrity and unchoreographed public confidence. Peace and stability in our nations would stem from and be secured by the knowledge that we Judges will never corrupt justice. When the public know that nobody is guaranteed success however rich, powerful, connected or popular, and that impartiality, justice and true

independence reigns, then they will trust us, accept and comply with our decisions however painful or devastating to them. And that incorruptibility of the Judiciary is what Africa needs now more than ever before.

We must strengthen the CCJA and continue to build it into an even more powerful and influential force to be reckoned with that it has the potential to be. None of us must thus be allowed to turn it into a vehicle for the attainment or advancement of personal or sectional agendas. You don't need to be a President of the CCJA to be powerful, respected and influential. Undeniable impact and real difference-making is not a function of manipulation, dishonesty and unfairness, particularly within judicial circles. It comes only with diligence, vision, wisdom and fidelity to the high ethical standards that Judges are expected to uphold.

We must all embrace the reality that functional leadership is often more impactful and appreciated than positional leadership. We therefore must always support rather seek to undermine any of our own who happens to occupy a key leadership position at any given time. Leaders of Constitutional Courts or Councils must demonstrably take meetings of the Bureau and the CCJA seriously, rather than almost always sending delegates. Happily, this is the general trend.

We need to keep on recruiting more and more African jurisdictions into the CCJA. There is power, credibility and greater impact that flows from numerical strength. Our membership recruitment-drive must thus be ongoing until all African jurisdictions are members in good standing of the CCJA.

Additionally, we need to reflect on what, if any, we are to say or do in circumstances where a non-CCJA member jurisdiction like Nigeria is going through a difficult period. Is it in our place to say or do anything without being notified or asked to by the affected jurisdiction? Are we to pretend that we are not aware of what is happening? How are we to get the true picture? When would getting involved amount to meddling in the internal affairs of a sovereign nation? I implore us to reflect on this issue that touches on the complexities around when, if at all, and how, to demonstrate brotherly or sisterly solidarity, even as it relates to non-members.

And that leads me to the next point. We need to find a courteous and yet effective way of clearing our operational space of all undesirables. This mainly takes the form of constitutionally and legally impermissible interference by all others including the rich and powerful, at national and international level, but we must also secure a demonstrably genuine equality of the Arms of the State in our respective nations.

We also need to work towards normalising our relations with our counterparts who are at the helm of the political Arms of the State wherever and whenever there is a need to do so. I once attended a meeting with a Head of State together with the Head of the Judiciary in that nation. It did not take long to realise beyond doubt, just how extremely unequal the balance of forces were in that nation, at the instance of that President. My colleague was completely fear-stricken. Even how the Head of State spoke to him made it abundantly clear that he was in all likelihood the kind to be told how to decide cases, and that he had no possibility to say no.

Where the peculiarities in a particular jurisdiction are such that judicial independence exists only on paper, a way must be found to at least inform the leadership of the CCJA about this. And a smart, tactical and decidedly effective mechanism for intervention must be developed and put into practice. All this is intended to ensure that the Arms of the State are in reality co-equal and functionally independent. The Head of State will of course have to be respected as such but without the possibility of him or her imposing his or her will on the other Arms of the State, particularly the Judiciary.

Of equal importance is the long overdue necessity to escalate our engagement with the Heads of States and Heads of Government to a regional, continental and global level. The expression “nothing about us, without us” must be practicalised. I will spare you the details by simply referring you to my report on my visit to the AU Headquarters early last year. Suffice it to say, that all judicial structures at a regional, continental and global level must be established and appointments of Judges to them must all happen with the full or at least make meaningful participation of the Judiciary at each level. It is irreconcilable with the fundamentals that ought to undergird a clear desire to achieve uncompromised justice to leave judicial structures and appointments to the exclusive regulation or control of the political arms of the State at each level.

Furthermore we ought to find a way to use the CCJA resources to assist, within reason, member jurisdictions that are acutely under-resourced. How this can be accomplished is a matter I propose we make time to reflect on and work out. This would help to reinforce the judicial capacity to administer real justice to the litigants in these jurisdictions.

I also propose that whenever the Secretariat attends meetings on our behalf, it must be obligatory for them to report on the essence of what transpired at the meeting they attended – what it was about. We must be very deliberate and intentional in and about everything we do. The presence of the Secretariat at conferences and meeting of other continental or linguistics associations must be about much more than a mere demonstration of support. They have to say to this forum what it is we have learnt and how those lessons could benefit the CCJA and by extension the broader African Judiciary or the WCCJ, as the case may be. It follows, that going forward the Secretariat must be keenly alive to issues that could enrich the discussions and programmes of the CCJA.

And I also think that the time has come for us to explore possibilities of developing an effective platform for sharing our experiences and the lessons drawn from our engagements with a diverse group of colleagues around the world. This would go a long way towards strengthening judiciaries in our respective countries and in our continent. Not all countries have a single Judiciary with one Judicial Head. In some there is.

Once again, I thank this structure of the CCJA and the broader membership of the association for the commitment to the noble cause of contributing to the renaissance of Africa and the realisation of her glorious destiny, and all the support through my Presidency that I will gladly relinquish in June 2019.

Thank you very much!

Merci Beaucoup!

Muito obrigado

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