



**CONFERENCE OF THE CONSTITUTIONAL JURISDICTIONS OF
AFRICA (CCJA) 5TH CONGRESS**

LUANDA, ANGOLA – 09 TO 13 JUNE 2019

**THE COURTS/CONSTITUTIONAL COUNCILS AS GUARANTEES OF THE
CONSTITUTION AND THE FUNDAMENTAL RIGHTS AND FREEDOMS**

**Mogoeng Mogoeng
President of the CCJA**

His Excellency President Lourenço, President of the Republic of Angola, The Honourable President of the Constitutional Tribunal of Angola, President Aragão, fellow Presidents and Chief Justices, Members of the Executive and Legislative Arms of the State, distinguished guests, good morning,

The theme for this Congress may be paraphrased to read:

“The Judiciary or Courts as guarantors of constitutionalism, the rule of law and fundamental human rights”

And the fulfilment of the expectations held out by this theme depends on answers to these questions:

- What fundamental rights and freedoms does your country's Constitution guarantee?
- What obligations does the Constitution assign to each Arm of the State, to breathe life into the national vision or the shared aspirations of the people?

- Are the three Arms of the State, namely, the Executive, Parliament and the Judiciary constitutionally designed to be co-equal and functionally independent?
- Are the teeth that your Judiciary has been given full, strong and appropriately sharp to bite constitutional and rule of law delinquency as deeply and as excruciatingly as is necessary?
- Does competence or meritocracy really matter in identifying those to be appointed, especially to high judicial office?
- Recently, when almost everybody in my country emphasized the need for those to be appointed to high office to be competent, one intellectual who is also a traditional doctor said but beware:
“incompetent people lie”
“competent people lie”
“and the devil is competent”

This means that the capacity to do the job alone is not enough. For it may otherwise be used for personal or sectional benefit to the detriment of all others and that leads me to the next question.

- Is there an insistence on and are there mechanisms for, the appointment to high judicial office men and women of integrity – people of solid character who uphold high ethical standards – fair-minded people whose souls are not for sale to the highest bidder?
- Is there a proper check on or vigilance against lovers of power, positions, fame, publicity or money who are easy victims or preys of corruption practitioners?
- Is there an insistence on appointing only those who would rather lose their jobs or even die than pursue corrupt personal or sectional interests at the expense of the best interests or legitimate expectations of the hungry, dejected, and dying masses?

To have African Judiciaries that are incorruptible and that can therefore guarantee constitutionalism, the observance of the rule of law, human rights and freedoms, the following are necessary:

- Fairly long but non-renewable terms of office;
- Genuine independence and an institutional disdain for undue interference with, intimidation or undermining of, the Judiciary. And a Judiciary that is courteous, humble and yet not sycophantic;
- Effective avenues for principled engagement amongst the three Arms of the State at a national, regional, continental and global level.
- The Judiciary must be understood and treated as an equal but not a JUNIOR PARTNER, or an impostor in the running of State affairs. (The fact that they were not elected into office is no justification for treating them with any less respect than their counterparts in the political arms of the State).
- Remuneration and retirement packages must be acceptable; with due regard to the economic muscle of a given nation, the status and role of the Judiciary. This would reinforce the Judiciary's capacity to resist the temptation to

be corrupt. This I say mindful of the fact that underpayment can never be an excuse for corruption.

- The capacities and resources necessary for efficiency and effectiveness must be made available to the Judiciary. These should never be withheld as a way of “putting them in their place” or forcing them to come begging for access to what is in effect the people’s resources.
- Court orders must be complied with by all.

Conclusion

When citizens are killed by crime and by those who are paid to protect them, when the right to life is easily snuffed out by hunger or disease in a continent so wealthy, when some of the rich are able to corrupt governance because they fund political parties and their electoral campaigns, when accountability is compromised and the critical mass of our people don’t benefit from the natural and mineral resources that our continent is so well endowed with, then the three Arms of the State, including the Judiciary, are failing in their duty to protect and advance constitutionalism, good governance, accountability, the rule of law and fundamental rights and freedoms.

President Abraham Lincoln defined democracy as a government of the people, and by the people and for the people. But since there is no free lunch, leaving “successful electioneering” at the mercy of rich connections, will in reality usher in a radical definitional change to democracy as a government of the rich, by the rich and for the rich. Treasury must set aside a budget for funding political parties on the criteria to be agree to, however difficult it may be to achieve this.

We, as the Judiciary of Africa, need to fully embrace our inherent mandate of contributing towards the realisation of a corruption-free, well governed, constitutionally-inclined and prosperous Africa. And only a truly independent Judiciary, uncaptured by any force, internal or external, can make the theme of this congress a practical reality.

I thank you all!