



OPENING CONGRATULATORY REMARKS

BY CHIEF JUSTICE MOGOENG

Programme Director,

President Lee of the Constitutional Court of the Republic of Korea,

Presidents, Chairpersons and Chief Justices of other Constitutional Courts
and Equivalent Institutions,

Fellow Judges,

His Excellency Ambassador Dennis and the Deputy Ambassador Van
Rensburg of the Republic of South Africa,

Distinguished Guests,

Ladies and Gentlemen.

Good Morning

I count it a great honour and privilege not only to have been invited to attend this historic Inaugural Congress, but also to make opening congratulatory remarks, for a job well done. Congratulations are due to the President of the host court President Lee of the Constitutional Court of the Republic of Korea, and the leaders of member courts of the Association of Asian Constitutional Courts and Equivalent Institutions.

I make these remarks not only on behalf of my country South Africa, whose Judiciary I am privileged to lead, but also on behalf of the African continent notwithstanding the fact that I did not solicit the mandate to express our collective appreciation for the humbling and challenging achievement you have recorded through the establishment of the Association of Asian Constitutional Courts and Equivalent Institutions.

In the world we live in, Questions of law, the manner in which it is administered and the means by which it is enforced have taken on a distinctly international dimension. To this end, regional, continental and international institutions and associations such as the one we are here today to inaugurate, are indispensable.

This is particularly so when regard is had to the stated aims and purposes of the AACC. Like the Southern African Chief Justices Forum, which operates as a platform for the mutual cooperation and interaction of Chief Justices and other members of the Judiciary in the Southern and Eastern African regions, the AACC seeks to promote the development of democracy, rule of law and fundamental rights. That the AACC exists not only to improve relations between the various Constitutional Courts in the region, but to promote basic rights and universally accepted legal principles, must be commended.

The Judiciary and judicial institutions need to be united in every country. The absence of a regulatory framework for the facilitation of a structured interaction and co-operation amongst courts in a particular country , ought not to pose an obstacle to the sharing of experiences and best practices , and fostering closer ties amongst courts on home soil, resulting in regular meetings and even joint dialogue facilitating and democracy entrenching programmes.

This brings me to the pace – setting role of the Association of Asian Constitutional Courts and Equivalent Institutions. The Judiciary, particularly the Constitutional Courts or Equivalent Institutions or Tribunals have a very important role to play in the nurturing and preservation of constitutional democracy in any country. We must remember that some countries were under a military leadership or some kind of dictatorship before they became a democracy. Our experiences therefore differ significantly at times.

This is what brings the significance and critical role of this Association into sharp focus. Our varying degrees of experimentation with democracy, highlight the need to learn from each other in a more structured way. The government of every democracy comprises three branches. The Executive, the Legislature and the Judiciary. The other two political arms of the state are generally better organised at a regional , continental and global level. Sadly the same cannot always be said of the Judiciary. As a result you will find problems of a judicial nature arising in a particular and there would be no guiding or warning voice from the Judiciary in neighbouring jurisdictions in relation to the problem that has arisen.

This Association is therefore to be congratulated for its visionary agenda that creates a platform for Constitutional courts and Equivalent Institutions of this great continent, to deliberate on matters of mutual interest and together seek and find solutions to them. Judicial Independence is always under threat. Traditionally , the Executive arm of the State was known for wanting to have the Judiciary , particularly at the highest level at its beck and call. Now it appears that there are far too many forces out there, seeking directly or indirectly , to have an overbearing influence on how Judicial Officers are appointed and how

cases are to be decided. The world needs a Judiciary that is truly independent of the Executive and Legislative arms of the State as well as from the rich and powerful, special interest groups and the media. The Judiciary must always execute its constitutional mandate without any fear, favour or prejudice. It must not be beholden to anybody. To do otherwise would be a treacherous betrayal of the aspirations of the nations, particularly the poor and vulnerable. This may also chase away potential investors

Forums like this Association fulfil the role of a Brother or Sister's keeper. When the amber light of any danger zone that the Judiciary might be approaching or that might be approaching the Judiciary, begins to flash, fellow members of a body like this, ought to be able to ask, what is going on? or caution - watch out!. In other words, without seeking to police our colleagues, the proximity brought about by a forum like this affords us the leeway to caution and to enquire, as the situation dictates.

It has been seven years since initial talks were held to discuss the need to create this Association. Since these initial talks, it is apparent to anyone, that a great deal of time and effort has gone into its conception, formation and now, finally, its inauguration. For all this work, everyone involved must be congratulated on this achievement.

According to the website of the AACC, as of January 2012, the AACC has already managed to garner the support of 10 constitutional adjudicative institutions. This is most impressive for such a new body. As one final, though undoubtedly unnecessary, remark let me take this opportunity to encourage everyone present today to continue in their efforts to promote the objectives of the AACC and to expand its membership to include as many countries in the region as possible. A body such as this should seek

to be as inclusive and widespread as possible, as it is only with full membership, that its admirable aims and goals can truly be achieved.

I look forward to what I am certain will be fruitful discussions at this Inaugural Congress.

KAMS HAMNIDA