

**THE ROLE OF THE JUDICIARY IN PROMOTING
PEACE, GOOD GOVERNANCE AND SUSTAINABLE
ECONOMIC DEVELOPMENT**

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Your Excellency, President Robert Dossou, the President of the Conference of Constitutional Jurisdictions of Africa, esteemed members of the Executive Bureau, the General secretariat, honourable Colleagues, distinguished guests, ladies and gentlemen, I greet you.

Africa is a beautiful continent. And Africa is populous, comprises vast tracts of land and, is extremely rich in minerals and natural resources. It has what it takes not only to have its people bask in the glory of sustainable economic development and prosperity, but also to enjoy peace and all round stability in an environment of good governance, facilitated by an independent, efficient and effective court system. And yet reports about Africa are generally negative.

Africa is generally associated with massive corruption, social and political instability, rigged elections, dictatorships, abuse of human rights with near impunity, rampant non – observance of the rule of law, *coup de tats*, sickness and disease, high mortality rate, abject poverty, economic underdevelopment, dependency and in general, the paucity of accountability, responsiveness and good governance.¹ Yet economists say that the United Kingdom and Switzerland, which do not have the mineral and natural resources we have, with a very small population and a small piece of land, are each richer than all

¹“25 per cent of Black people and people of Hispanic origin live below poverty level”- ‘Discrimination, inequality and Poverty, A Human Rights Perspective’-January 12, 2013-www.hrw.org

African countries put together.² We must therefore play our part to reverse this unacceptable state of affairs.

To avoid dwelling on the predictable lamentations of Africa, generally based on what colonization has done to us, and how super-powers continue to employ more nuanced and sophisticated ways to prosper with our resources at our expense, we need to identify the challenges that strangle the possibility of African people enjoying the peace, the generosity of heart or humaneness characteristic of African people, and the prosperity that this great continent is pregnant with.³

² *Stealing Africa*, "It is Switzerland with no Natural Resources of any kind, they invaded all over the world with their sub-terranean policies of banking and speed money"-*Stealing_Africa*-www.topdocumentary.com and see, "Despite these abundance of natural resources, claims suggest that many western nations like the United States, Canada, France and the United Kingdom as well other emerging economic powerhouses like China, exploit African natural resources today, causing poverty in Africa": *Natural Resources in Africa*-en.wikipedia.org/Natural_resources_of_Africa

Also see, 'Why Have The Islamic Countries Failed To Develop Even With Resources Like Oil, While Countries With No Resources Like Switzerland Have Flourished'-Ryan Lackey, <http://www.forbes.com-01/08/2013>

Switzerland GDP in 2011-659.3 Billion USD

UK GDP in 2011-2.445 Trillion USD

SA GDP in 2011-408.2 Billion USD

Nigerian GDP in 2011-244 Billion USD

Egypt GDP in 2011-229 Billion USD

³ *Annan calls for end to "unconscionable" exploitation of Africa's resources*-Former UN Secretary-General urges David Cameron to use Britain's G8 chairmanship to push for change-<http://www.theguardian.com/business/2013/may>.

Also see, "Virtually all Zambia's Copper mines are owned by corporations and in the last ten years they've extracted Copper worth \$29 billion but Zambia is still ranked one of the twenty poorest countries in the world". - *Steal Africa*, *ibid*

The Judiciary is the third branch of Government, the third arm of the State.

There simply can be no State or Government without the Judiciary, in a democracy. To breathe life into the African dream that is inspired by the desire to break free from centuries of oppression and being taken advantage of, and to recapture the lost glory epitomised by the ruins Zimbabwe, the literary treasure of Timbuktu in Mali, and the pyramids of Egypt to mention but a few of the many shining examples of our pioneering role, the Judiciary in Africa must be more alive to the enormous responsibilities it bears on its shoulders, to contribute to the renaissance of Africa.

When the Judiciary enjoys both individual and institutional independence and is faithful to its constitutional mandate, then peace, good governance and sustainable economic development is achievable. It must be for this reason that we recall in the Preamble to the statute of this great organization that, the Constitutive Act of the African Union enshrines the commitment of Heads of State and Government of the Union “to promote and protect human and people’s rights, to consolidate institutions and democratic culture, to promote good governance and the rule of law”. We also record our intention to supplement the AU mechanisms to consolidate the rule of law , democracy and human rights. Finally, we recognise, again in the statute, that the achievement

of the above objectives is “closely linked to the independence and impartiality of Judges.”⁴ And it is to this end that the CCJA was primarily established.

How then can we, as the Judiciary make this African dream and the renaissance of Africa come true? Let me first acknowledge that it would be very naive and unrealistic of us to embark on the process of ensuring that Judiciaries in Africa are independent, efficient and effective, in total disregard for the cultural and historical peculiarities and realities that obtain in different African countries. Whatever we propose should therefore, take those peculiarities, the unarticulated sensitivities and realities into account.

I am one of those who believe that lasting solutions to our problems are simple but certainly not simplistic. We often fail to address problems that beset our systems and countries because we tend to look for complex and highly sophisticated solutions, when simple and practical ones, borne out of the experiences of others, are at hand and best suited to yield the much -needed results.

⁴ *The Resolution on the Respect and the Strengthening on the Independence of the Judiciary, called upon member States to “refrain from taking any action which may threaten directly or indirectly the independence and the security of Judges and Magistrates-<http://www.achr.or/session/19th>*

Why do we not witness in France, Singapore and the UK problems that have become familiar in Africa. We have oil, gas, gold, diamonds, platinum, chrome, coal etc in abundance, and breathtaking tourist attractions. The UK is the size of a game reserve in South Africa known as the Kruger National Park. South Korea is about the size of a province in South Africa known as the Kwa-Zulu Natal (where Durban is) and Singapore was very poor and insignificant in 1965, but now it is rightly counted among the big world economies although it has nothing but its people and a tiny piece of land.⁵ A closer examination of the operations of their Judiciaries, would be quite revealing.

Africa desperately needs a truly independent and efficient Judiciary in each of its countries to create peace and stability. When citizens know that there is an effective and efficient court system in their country and that arrest, prosecution, conviction and sentence for the guilty is predictable, then corruption and crime in general will go down.

⁵ *“Singapore has a highly developed trade-oriented market and the economy has been ranked as the most open in the world, least corrupt...”-en.wikipedia.org/wiki/economy_of_Singapore*

Those who may wish to take power through unconstitutional means would be deterred, from forging ahead with their unconstitutional and dangerous plans, by what an independent Judiciary in their country could do to them. I asked Colleagues in countries like Germany where people cycle freely with no apparent fear of crime even at night, what the secret was. And they said the efficiency of the judicial system and the probability, as opposed to a remote possibility, of paying for one's crime is the reason behind the peace and overall stability the people enjoy.

When the other branches of government know that courts as the guardians of the constitution will always do their job without fear, favour or prejudice they will observe and promote the rule of law.

When it is known that a challenge to the executive's failure to deliver on a constitutional obligation, could result in an executable court order against anybody from the President to a Mayor, to do their work well, of their own accord government functionaries and role players in business will observe business ethics, obey the law of the land and good governance will materialize.

Good governance stems from compliance with conventional, legislative and constitutional governance prescripts. The entrenchment of the human rights culture, the observance of the rule of law and giving priority to, among others, the realization of the legitimate aspirations of the citizenry in a lawful way, transparency, accountability, responsiveness, the creation of a truly independent and effective corruption-busting machineries, protection of press freedom and the creation of an investor – friendly climate, are some of the key ingredients of good governance. For example, the Constitutional Court of South Africa ruled that the corruption-busting body created in terms of legislation, was not sufficiently independent to deal with corruption effectively.⁶

All of the above conspire to create an investor-friendly atmosphere. When potential investors know that in Africa, you will get justice when defrauded, against any law – breaker, and when government, business partners or any entity tries to get an unjust or unlawful advantage of them, they will come in

⁶ *Glenister v President of South Africa and Others 2011 (3)SA 347 (CC), para 157 as per Ngcobo CJ*

droves to invest, given the diligent labour force, the fertile and productive land, the very rich minerals and abundant natural resources, we have to offer.⁷

In this regard, the United Nations observed a few years ago that there was a direct link between the capacity of the Judiciary to promote the rule of law and facilitate good governance on the one hand, and the willingness of multinational companies to embark upon massive and sustainable economic development, on the other.⁸ And a concern was raised about the apparent lack of capacity by African Judiciaries to facilitate an investor- friendly environment.

This conference must, in my humble view, resolve to make policies, set its own strategic priorities and develop a concomitant implementation matrix, if Africa were to have the fundamentals necessary for the realization of the African dream in place.

⁷ "While most South Africans support foreign direct investment, they view corruption as the greatest hurdle to attracting it, a survey shows". *Corruption Threatens Foreign Investment, Fin 24, February 5 2013- www.fin24.com*

⁸ "It is widely recognized that good governance is essential to sustainable development. Well-functioning legal institutions and governments bound by the rule of law are, in turn, vital to good governance. Weak legal and judicial systems-where laws are not enforced and non-compliance and corruption are the norm-*undermine respect for the rule of law, engender environmental degradation, and undermine progress towards sustainable development...Various United Nations agencies such as the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP), as well as the World Bank and other regional development banks, are directing increasing resources to reform legal and judicial institutions*". 'Rule of Law, Good Governance And Sustainable Development'-Morita, Sachiko and Zaelke, Durwood-The World Bank, *Initiatives in Legal and Judicial Reform 3*, <http://www4.worldbank.org/legal> and <http://www.inece.org>

Nationally, regionally and continentally, the Judiciary in Africa must embark on a very brutal individual Judge - and institutional introspection.

The starting point I think, is identifying key challenges that inhibit Judiciaries in Africa from executing their constitutional mandate efficiently and effectively.

Do Judicial Officers in all African countries enjoy both individual and institutional independence which would insulate them from undue influence and corruption? Do they all have real security of tenure? Are they paid fairly well? Do they have the essential tools of trade? Is there proper judicial self governance in the area of court administration with their own budget? Even if there is no self governance, in the strict sense, is the Executive or hybrid court administration system in place compatible with judicial independence? Is the court budget adequate for the execution of key functions? Is there an effective judicial education system in place? Does the Judiciary broadly enjoy the confidence of the populace? If not, why and what should be done to address those perceptions or realities, as the case may?

We must develop in-house capacity to identify challenges that undermine the efficiency and effectiveness of the Judiciary in the continent. That task should be narrowed down to our regions and our respective countries so that we can identify measures that should be employed to get courts back to their rightful place, wherever there is a need to do so.

Peer review mechanisms without self - imposition must be explored, the exchange of best practices, and finding an effective way of having interference with judicial independence exposed by our partners all require urgent attention.

When the Judiciary is under unfair attack in any country, it must be a concern of this body and regional bodies alike. We must be our brothers and sisters keepers. A link must in fact be established between this Conference and regional bodies, to raise concerns and defend our colleagues in their hour of need. I saw President Doussou at a meeting of the World Conference of Constitutional Justice in Venice last year, demonstrating remarkable concern and caring when our colleagues in Guinea – Bissau and Mali needed a shoulder

to lean on. He wanted to know what the World body had done about the situation and told us what he had done.

There is a need also to develop effective communication strategies to popularize the CCJA, its role and the challenges and role of the Judiciary in Africa.

We must find a legitimate way of influencing decisions about changes necessary to secure judicial independence in all African countries, without interfering unduly in the affairs of any sovereign State, given the sensitivities attendant thereto. The academia should speak and write articles more, the organised profession should also echo sentiments on what needs to be done, bodies like the International Commission of Jurists should add their voice and we must also work on our own vocal cords about the fundamental changes needed in the Judiciaries of African countries. We must find a way to engage with colleagues in the affected countries on how best to work together towards bringing about the necessary changes by the Judiciary.

Another avenue to explore is establishing a link between regional structures of Presidents and Ministers of our respective countries and those of the Judiciary. We should not leave it to the regional executive structures to take decisions about judicial structures and matters without meaningfully involving the relevant leadership of the Judiciary. The Judiciary must also have a say at AU level about matters that affect them. Our role should not be limited to appointments to regional and continental tribunals or courts which were established without any real engagement with the leadership of the Judiciary. We should also be involved in their creation and restructuring.

Appointment procedures and appointment authorities of the Judiciary, short and renewable terms of office, are avenues to examine closely for improvement to ensure competence and independence. Transformation of judicial institutions for their betterment is another matter that requires constant attention.

A resolution is also necessary on devising a strategy for an efficient membership recruitment drive. The Executive Bureau must be charged with

the overarching responsibility to encourage other African Jurisdictions to become members of the CCJA.

We must establish links between the Constitutional court and other mainstream courts where the Constitutional court is detached from the mainstream courts. Other courts must benefit from its exposures to networking mechanisms such as the CCJA. Alternatively we could let the President of the highest mainstream court also participate in this structure even if his or her court only enjoys observer status. Our countries and our continent can only reap the full benefits of the difference that the Constitutional Courts can make in the promotion of peace, good governance and sustainable economic development, if all other courts operate with the same independence and efficiency as the courts with constitutional jurisdictions.

The agenda of global bodies like the World Conference of Constitutional Justice must be set, only after proper consultation with CCJA. But that will depend on our cohesion as an entity, how well organised we are and how effective we are as the CCJA.

I believe that that there is peace, good governance and a generally sound economy in countries like Singapore and the UK, because the rule of law, human rights and good governance are observed as a matter of course. In those countries courts protect the right of the media to objectively and accurately inform the public, courts are largely efficient and effective, they are not beholden to the Executive, Parliament, the media, lobby groups or the rich and the powerful. Civil disputes are somewhat speedily and justly resolved and investors are apparently happy that the law and those who enforce the law will protect their legitimate business interests, if unjustly or unlawfully interfered with. There is good governance, social and political stability largely because courts force the politicians and society to act only in terms of the law. Look at the impact that judicial independence in Ghana has had on the economic growth of that country.

I am convinced that each African country with a Judiciary that operates with the ever-abiding consciousness of its constitutional responsibility to contribute to peace and stability, the observance of the rule of law, good governance and the creation of a climate that is conducive to sustainable economic development and plays its part, will help its country to achieve these noble

objectives, and realize the legitimate and constitutional aspirations of the citizens.

If we do so individually and collectively as courts in African countries, then Africa's lost glory shall be recaptured, and we shall assume our rightful place in the community of nations. We shall shed ourselves and our continent of the stigma, the disrespect, marginalization and suffering that we have had to endure for far too long.

Please don't misunderstand me. I am not saying that the Judiciary alone can turn things around in a country. But I am saying that the Judiciary that is left to do its job well without fear, favour or prejudice has the capacity to significantly change the deplorable conditions that the majority of our people have had to live with.

The work begins now. This conference owes its relevance, significance and support not just to its statute and the resolutions it passes. It also owes its credibility and admiration from the strategic priorities its sets for itself, the development of a plan to realize its deliverable objectives with serious time-

frames, where practicable, and a credible funding model that would not compromise our independence, for projects that require financial resources.

I urge you colleagues, to pass resolutions along the lines proposed, so that we can translate our wisdom and experience laden words into fruitful action. May we pay less attention to what divides us and focus on what unites us for the sake of posterity and the well-being of Africa, as our contribution to the rebirth of Africa as a democratic and economic giant in the next 50 years of the African Union.

I THANK YOU.