

Opening Remarks at the Occasion of the Welcome Dinner By Daniel M. Thulare

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Meeting of the African Group of The International Association of Judges

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Safeguarding the Independence and Conditions of Service of Judicial Officers

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His Excellency President Cyril Ramaphosa, I am honoured to implore you to accept warm greetings, gratitude and well-wishes from the Judicial Officers Association of South Africa, the Africa Regional Group and the International Association of Judges. Good evening Mr President.

Salutations to guests of honour starting with the President of the IAJ and the Secretary, Presidents of Regional Groups and their delegations, introduction of Chief Justices, Judges Presidents, delegates from member states and delegates from non-member states, Dr Somadoda Fikeni and end with the NEC of JOASA. We appreciate the presence of our partners and sponsors, especially Vanja Karth and her team from the Democratic Governance and Rights Unit of the University of Cape Town.

Africa has to rise at our instance and deliberate action. Africa's cause has to triumph in our lifetime. Those of us with the capacity to remain still and silent are able to hear Africa calling us. We know that our motherland knows us by name. Yes, Africa is calling us by name and the instruction is loud and clear. Africa is saying:

“Build a legacy. Construct the science, structures, research, methodology, systems, skills and attitudes of my judiciaries with unshakeable determination and clarity of expression. Confirm your part in the struggle of my children for justice. Be ready to sacrifice and unleash your talents to defeat the regimental culture of command and obey both from within institutionally, and external from business and politics.”

Today, Africa's aspiration of transforming herself into a democratic and economically prosperous society cannot be achieved without strong and efficient judiciaries. The judiciary is not a naturally stable and scientifically stagnant institution. Its stability and development needs daily nurturing and insightful thinking. The judiciary is a necessary instrument to serve a social economy and is politically an ideological construct. As a consequence it has what one would call Judicial Economics and Judicial Politics. This brings about the sociology of Judiciaries.

The sociology of a Judiciary is the study of how individuals, public and private institutions as well as judicial officers' experiences affect the Judiciary, its processes, its outcomes and its development. The Sociology of Judiciaries, Judicial Economics and Judicial Politics are courses of Judicial Science. By the whim and paradox of their office, judicial officers are full time students of Judicial Science. Members of Associations of Judiciaries in Africa know this and are active students, some judicial officers do not know this yet, whilst some know but still bunk classes.

Associations of judiciaries provide for judicial officers a forum for studies and debates in the study of judicial science and its development. We have a duty to research and examine how the sociology of the judiciary, judicial economics and judicial politics affect judicial functions, processes and developments within our countries. We should analyse how the structure of relations amongst judges, social formations and political players advance the judiciary as an institution serving the public good. These reasons provide the basis, the need and the means for the existence and participation of associations of judiciaries in the life of every nation on the continent.

Associations monitor, research, investigate, lobby and report on matters affecting the judicial systems, political economics and the social engineering of judicial officers. We do not aspire for power but want to be the fountains from which those in power drink to quench their thirst, and thereby influence the nature of national and international judiciaries. We identify the blind-spots and vulnerabilities, smooth the rough sides and edges, whet the blunt sides and restrain the limitations of judicial officers for them to be able to connect with ideas, voices and the relevant role-players.

In South Africa, the Judicial Officers Association of South Africa (JOASA) articulates its views on policy and the implementation of programmes which are likely to have the broadest impact for the Judiciary and its future. For instance, we have recently engaged the Magistrates Commission of the Republic on the Institutional Model for the Judiciary of the Republic. Ancillary to that we are asking questions as to why our leaders deem magistrates as judicial officers but not part of the Judiciary. Magistrates are in Chapter 8 of the Constitution of the Republic, which deals with the Judicial Authority of the Republic, the courts and the Administration of justice. Institutionally, that is where the Judiciary belongs, from the Chief Justice to a Magistrate in a district court.

JOASA has made it clear that we will never accept a Judicial Council for the Judiciary, which excludes magistrates in its governance structures. JOASA is also restless about the South African Judicial Education Institute being led by an Executive official who is not a Judicial Officer. The official represents SAJEI in the Appointments Committee and participates in the recruitment processes of the Magistrates Commission to appoint Judicial Educators. We are concerned that Judicial Education, including decisions over who becomes a Judicial Educator at SAJEI's operational level, is Executive-led.

It is our view as JOASA that an administrative and executive officer has a mandate which is different from that of a Judicial Officer. It is natural that in such a situation where one person advances two different constitutional roles, tension may arise and our fear is that Administrative targets may get preference over the quality of Judicial Education and Training. It is our view that a Judicial Leader is necessary at SAJEI to spearhead the preparation, performance and learning interaction by those involved as Judicial Educators to enhance the quality of output of Judicial Educators. A person holding appointment as a Judicial Officer should be the intellectual anchor which is necessary to transform SAJEI into a nerve centre of rich intellectual exchange, robust and functional jurisprudence, interface with contemporaries and the overall development of SAJEI into a hub of excellence.

These observations may speak to the social structure of our Judiciary, but also demonstrates the relationship between the Sociology of the Judiciary, Judicial Economics and Judicial Politics. Politics in its simplest description seeks to identify who does whose what to whom, when, where, how and

why. These observations are central to the pursuit of representation of the interests of Judges, their professional training and Judicial Independence.

As Africa's Associations of judiciaries, we should be clear that appointment to a judicial office does not suddenly imbue one with the monopoly of wisdom on what is good for the judiciary, the country, the continent or the world. The honour bestowed on one to serve should humble one to acknowledge the possibility that one's views may be wrong within a festival of competing ideas. Africa's Judicial Politics should assert participatory democracy.

It is the cogency of one's argument, and not one's office, that should triumph. Our leaders should avail themselves to the tried and tested African wisdom and heritage of inviting even the humblest of burrow-dwellers to a community meeting. In that way the reconstruction, development, research outcomes and conclusions are opened to all, which enhances the legitimacy of the resolutions arrived at. Nothing about us without us is worth our respect. Peace trumps intelligence in every discussion.

We recognize and acknowledge, as the associations within the International Association of Judges generally and in the Africa Regional Group in particular, that the laws of each country and its institutions are the products of each country's own history, and not solely products of logic. The laws reflect a fusion of a country's history and logic. It is for that reason that we encourage each other to first learn, inductively understand and engage before pronouncing on the other. We also appreciate the limited resources of our countries and their impact on the efficiency of our courts and our judicial systems.

Against this background of understanding and appreciation, there are lines to be drawn in order to advance the quality of justice, protect the internal accountability of our judges and the external accountability of our judiciaries. Our judicial officers deserve the best care and resources under the circumstances, our leaders in the judiciary deserve our support and our compatriots deserve our explanations especially for shortcomings and failures in our judicial systems. Silence is not an option when the integrity of our judicial officers is undermined, the efficiency of our court processes is under threat or the rule of law is advancing to shaky grounds.

As Associations of Judiciaries, we have a reason to exist and we have a cause to advance. JOASA is proud to be a member of the International Association of Judges. We are humbled and privileged to host the thought-leaders of the Judiciaries in Africa, the Africa Regional Group. As the Africa Regional Group of the International Association of Judges, we meet today to have dinner together as we amass energy sufficient to start day 1 of our conference. The topic and theme of the Conference is:

“Safeguarding the independence and conditions of service of judicial officers”.

The sub-topics are:

1. Ensuring security of tenure- constitutional and legislative protection and the de facto practice.
2. Conditions of service including working conditions and related issues.
3. Selection and appointment - constitutional and legislative protection and de facto practice.

The theme is one of the branches of the complex structure of Judicial Science. Sub-topic 1 sounds to me like a course in Judicial Economics, whilst sub-topic 2 sounds like a course in Sociology of the Judiciary and sub-topic 3 sounds like a course in Judicial Politics. We thank the Africa Regional Group for their confidence in JOASA to host the meeting of the International Association of Judges. Let the classes begin.

I now call upon the Judge President of the Western Cape Division of the High Court of South Africa, John Mandlakayise Hlophe, to present a welcoming address.