

SUGGESTIONS TO THE ANNUAL GENERAL MEETING OF THE SOUTHERN AFRICAN CHIEF JUSTICES FORUM (SACJF)

1. Introduction

At the Meeting of the Management Committee of the SAJCF held in Johannesburg, South Africa on the 8th May, 2010, I was requested to prepare suggestions for consideration by the Annual General Meeting on constitutional amendments that may be necessary to make the SACJF more effective. The decision was preceded by a discussion of the difficulties the Forum faced with regards to its operations and the departure of the Co-ordinator.

This document is also informed by the discussions I have had with the former Co-ordinator, Mr. Mafukidze regarding his experiences with the Forum.

2. MANAGEMENT COMMITTEE AND EMPLOYEES OF THE FORUM

The Constitution provides that the Management Committee is the 'principal executive organ of the Forum' and that it shall be entitled to appoint employees it considers necessary including the Co-ordinator of the Forum.¹ However, what happened in practice was that the two

¹ Article 6.1 and 6.2 of the Constitution of the Southern African Chief Justices Forum (Formerly Southern African Chief Justices Commission) as amended, which I shall refer to as the "Constitution". This Article should be read together with Article 9.3.1.4 which gives the Management Committee to 'appoint and remove

previous Co-ordinators of the Forum were in fact not employed by the Forum. They were employed by the Constitutional Court Trust (the Trust). Their salaries were paid from donor funding. With the donor funding drying up in early 2010, the Trust decided to retrench the Co-ordinator, with the result that the Forum lost its only employee who ran its secretariat. I may add that the Co-ordinator of the Forum had also been asked to take up duties as Director of the Southern African Legal Information Institute (SAFLII) under the Trust.

While no constitutional amendment may be necessary with respect to this, I would recommend that in future, all employment of Forum staff, their remuneration and office costs are managed and decided on by the Forum itself. The Forum through its Management Committee should employ staff directly and take decisions regarding their employment issues. The Forum should raise its own funding to meet the costs of employment, among other costs.

3. DOMICILE OF THE FORUM

The Constitution provides that the Forum shall be 'domiciled, and its headquarters located, in the Republic of South Africa unless determined otherwise by a majority of the members of the Forum.'² With the departure of the Co-ordinator, it was decided at the Management Committee that the secretariat be moved to the office of the Acting

employees of the Forum, and to determine their duties, salaries, remuneration as well as those of the officers elected by the Forum.'

² Article 3

Chairperson of the Forum, Chief Justice Sakala in Zambia on a temporary basis.

I would suggest that until the Forum has developed to such an extent that it can maintain a strong and well resourced office, it is unworkable for the secretariat to be based in Johannesburg while the chairperson is in another jurisdiction. I propose that the secretariat moves to the office of the Chief Justice who is chair of the organisation at that time. This will enable the Chairperson to have direct control over its activities and also help in reducing the cost of having an office in another country.

The proposed constitutional amendment to Article 3 would read as follows: 'The secretariat of the Forum shall operate from the office of the Chairperson of the Forum unless determined otherwise by a majority of the members of the Forum.'

4. ELECTIONS OF THE MANAGEMENT COMMITTEE

In terms of the Constitution, the election of the Management Committee has to take place on an annual basis.³ The members of the Management Committee retire each year and are eligible for re-election.⁴ I have been informed that at the Lesotho Meeting in 2007, the AGM resolved that then Management Committee continue in office for two years. This does not seem to be provided for in the Constitution.

³ Article 8.1 as read with 8.1.1

⁴ Article 9.2.2.

Only the first Management Committee elected by the members at the first general meeting of the Forum held after adoption of the Constitution were to hold office for (2) two years.⁵ Considering that the Management Committee is only able to meet once a year at most to discuss the business of the Forum, the period of one year term seems to be too short. I would therefore propose that the Constitution be amended to extend the terms of the Management Committee to two year terms. In the interest of ensuring participation by all the members in the management of Forum affairs, I would propose that the members be elected for a maximum of two 2-year terms of office.

I would therefore propose the following amendment to the Constitution (Article 8.1 and 8.1.1.): 'The Forum shall hold an annual general meeting of its members once in every calendar year, in order to determine general policy and direction of the Forum and transact the following business:

8.1.1. to elect members to fill in any vacancies that may have arisen in the Management Committee'.

5. COMPOSITION OF THE MANAGEMENT COMMITTEE

The Constitution provides that the Management Committee shall consist of three office bearers, who are from different member countries;

⁵ Article .9.2.1

(a) Chairperson (b) deputy chairperson; and (c) immediate past chairperson⁶

This provision causes some difficulty especially in the case where the immediate past chairperson has left the organisation and he or she no longer holds the office of Chief Justice. This is what happened with regards to Justices Langa and Nganunu. I would therefore propose that the third member of the Management Committee be described as a 'Committee Member' and, that the Constitution be amended accordingly.

6. CO-OPTION OF SUCCESSOR TO FORMER MEMBER OF THE MANAGEMENT COMMITTEE

The unfortunate ill-health retirement of Justice Nganunu as Chief Justice of Botswana on 1 February 2010 meant that he also ceased to be the Chairperson and member of the Forum.⁷ Members of the Management Committee are elected as individuals and not by country. This means that his successor, Chief Justice Dibotelo, could not automatically become the Chairperson and neither could he become a member of the Management Committee. In this case, the Management

⁶ Article 9.1.1

⁷ Article 5.4

Committee at its meeting of the 8th May co-opted the new Chief Justice of Botswana as a member of the Management Committee.⁸

I would suggest that the Constitution be amended to provide that should a member of the Management Committee cease to hold office of Chief Justice, the successor (acting or substantive) becomes a member of the Management Committee for the balance of the term. The new member would become a 'Committee Member' rather than a holder of a substantive position because they would be new in the organisation.

7. TAX AND INVESTMENT MATTERS OF THE FORUM

The tax matters of the Forum will need to be looked at. At present, due to the headquarters being based in South Africa, compliance with the South African tax authorities was necessary.⁹

Similarly, the reference to South African legislation in the Constitution in relation to investment of funds of the Forum may need reconsideration.

8. OFFICE AND RESPONSIBILITIES OF THE CO-ORDINATOR

While the Co-ordinator is the key officer of the Forum, the Co-ordinator's duties and responsibilities are not spelt out in the Constitution. It is important that these duties be set out. In fact, I would suggest that the office of the co-ordinator be changed to the office of the

⁸ Article 9.1.2.

⁹ See Article 9.3.4; Article 12.1; Article 15.2.2.

Director or Secretary General of the Forum. This change should be considered at the point when the Forum has been able to establish a stable secretariat that has the resources to support and expand the activities of the Forum. Such an office is important in making the Forum more effective and to give it a bigger profile and purpose in the regional activities of the Forum.

In addition, there is need to consider the appointment of a bookkeeper and auditors to look after the financial affairs of the Forum.

9. SUBSCRIPTIONS

The Constitution empowers the Forum to 'charge levies to members of the Forum from time to time for purposes which are necessary for or ancillary to the Forum's objects, provided that such a levy is approved by a resolution of a majority of the members of the Forum at a general meeting, either on a uniform or differential basis, and subject to such exemptions as may be approved.'¹⁰

The financial position of the Forum in my view warrants that this clause to amended to read that Forum members shall pay annual levies to the Forum. A decision was taken in two previous AGMs to levy subscriptions, but the implementation was delayed. It is important that the levy is set and agreed and paid annually as the primary source of funding for the Forum. The levy would go towards meeting the

¹⁰ Article 12.10

expenses of the secretariat and of making the Forum a functional organisation.

10. COSTS OF MEETINGS , TRAVEL AND ACCOMODATION

The Constitution provides that '[W]henever practicable and possible, members shall endeavour to acquire funding for the attendance of meetings of the Forum from their respective governments...'¹¹

Travel and accommodation are our biggest cost at conferences. In the last four years, the secretariat has raised money for conferences and about 90% of the funding has gone to accommodation and travel. Considering the importance of the Forum and the way other arms of our governments handle travel and accommodation expenses for regional conferences and activities of regional bodies, I suggest that this be revisited.

The Forum should only be required to refund for expenses that are incurred by a member when that member has been requested by the Forum to undertake a mission or activity that is approved by the Forum. Such cases may involve fact-finding missions to troubled countries or where a member has been asked to represent the Forum.

CONCLUSION

¹¹ Article 12.8

It is worth stating that the suggestions above will be affected by whatever decisions are made on the structural and strategic direction of the Forum.

Mr. Justice S S Ngcobo

Chief Justice of South Africa,

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