



3rd Congress of the World Conference on Constitutional Justice

‘Constitutional Justice and Social Integration’

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OPENING REMARKS

CHIEF JUSTICE MOGOENG MOGOENG CONSTITUTIONAL COURT OF SOUTH AFRICA

THIRD SESSION

Your Excellency, Mr Han-Chul Park, the President of the Constitutional Court of Korea, Dr Gianni Buquicchio, the President of the Venice Commission, esteemed Judicial Colleagues, the Secretariat, distinguished guests, ladies and gentlemen, I greet you.

I wish to congratulate President Park, the Judges of the Constitutional Court of Korea and the Government of Korea on a well organised 3rd Congress of the World Conference on

Constitutional Justice. I am also thankful for the hospitality that the people of Korea have extended to us.

It is indeed a great honour to Chair a session of this august body under the topic: *Constitutional Instruments enhancing / dealing with/ for social integration.*

I have in my panel, the keynote speaker, Justice Arslan from the Constitutional Court of Turkey and our Rapporteur is Justice Araujo, from the Constitutional Court of Angola.

As an introduction allow me to share my contribution to this topic from the perspective of the South African Constitutional Court. The Constitution of the Republic of South Africa is the primary instrument for social integration in view of our deeply divided nation. The Preamble to our Constitution says that South Africa belongs to all who live in it, united in diversity. Additionally the Constitution is the supreme law of the land designed to be used as an instrument to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

The Constitution is also aimed at improving the quality of life of all citizens and to free the potential of each person. Any law or conduct that is inconsistent with the Constitution must be declared invalid and set aside.

Our Constitution has a Bill of Rights which entrenches not only civil and political rights but also justiciable socio-economic rights. Amongst those socio-economic rights are the rights of access to healthcare services, food, water, sanitation, and housing. These socio economic rights are available to even foreign nationals as long as they live in South Africa. The Constitutional Court has confirmed this principle, for example, it declared legislation which excluded non citizens from social grants payable to indigent citizens to be unconstitutional.¹

In respect to access to healthcare services for persons infected with HIV and AIDS, the Constitutional Court found a government policy which limited the provision of Nevirapine, a drug that prevented mother to child transmission of the HI Virus to pilot sites

¹ Khosa and Others v Minister of Social Development and Others; Mahlaule and Others v Minister of Social Development and Other 2004(6) SA 505 (CC).

unconstitutional. Government was ordered to supply the drug to hospitals and clinics, to avail counsellors and to take reasonable measures to extend the testing and counselling facilities to all persons who needed that treatment.

Housing, especially for the poor in South Africa has been a challenge for many years. To address this challenge, the Government of South Africa embarked on a massive housing programme that runs into millions of housing units. A group of residents living in appalling conditions in an informal settlement illegally occupied land that was earmarked for low cost housing. They were evicted, their shacks bulldozed and burnt down during the eviction process. The matter came before the Constitutional Court and it held that the Constitution obliges the State to act positively within its available resources to ameliorate the plight of indigent people living in deplorable conditions. It issued a declaratory order requiring the State to devise and implement a programme that would culminate in the progressive realisation of the housing needs of the poor.²

² Government of the RSA and Others v Grootboom and Others 2001 (1) SA 46 (CC).

The Court has made several orders directing the State to build houses for the poor or resettle them or provide temporary emergency housing for poor illegal occupants who were to be evicted.³

The Bill of Rights also entrenches the right to equality and prohibits any unfair discrimination based on grounds such as race, gender, disability, ethnic or social origin, conscience, belief, religion, sexual orientation and culture.

As a measure to address the imbalances of the past, the Constitution requires the State to take measures designed to advance persons or categories of persons disadvantaged by unfair discrimination. Furthermore, as an attempt to empower the previously disadvantaged persons, section 217 of the Constitution provides for organs of State when contracting for goods and services to implement a procurement policy providing for the advancement of persons, or categories of persons, disadvantaged by apartheid unfair discrimination policies. Additional pieces of national legislation have been passed to facilitate the integration of

³ City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Others 2012 (2) SA 104 (CC).

women, the disabled people and black people into the economic life of South Africa.

In the employment sphere, employment equity and affirmative action are constitutionally sanctioned programmes employers are expected to implement to address the skewed employment patterns, particularly at managerial levels, occasioned by centuries-old discriminatory policies such as job reservation. The Constitutional Court was called upon to interpret these policies and did so in a way that facilitated the integration of the previously excluded.

Landownership is one of those matters that have led to social injustice and could lead to social strife if not handled properly. Our Constitution and national legislation provide for land restitution under certain conditions, to address the forced removals and land dispossessions of Black people under the apartheid regime.

The South African Constitutional Court has also interpreted the equality clause of our Constitution to give expression to the rights of the gay and lesbian community thus giving expression to their full social integration. Similarly the Constitutional Court has interpreted

the constitutional rights to vote to extend to South Africans on foreign soil and to some prisoners.

The Constitution also provides everyone with a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court of law. In cases where a litigant is unable to conduct litigation, another person may do so on his or her behalf. This has led to a number of non-governmental organisations approaching the Constitutional Court on behalf of other litigants seeking the enforcement of the rights of economically disadvantaged or even destitute litigants. Additionally, South Africa provides for a legal aid system that is available to indigent litigants.

I thank you