

GOVERNANCE , IMPUNITY AND ACCOUNTABILITY IN A POPULIST ERA
Being a Keynote Address delivered by Ms. Betty Kaari Murungi at the 2019
House of Justice Summit, at Epitome Events Centre Barnawa
Kaduna,Nigeria- West Africa.

**The Chairman of the Summit, DIG Godwin Chijioke Nwobodo,
My Lords, Judges serving and retired
Our Host, House of Justice - Board, staff and volunteers
Distinguished speakers, panellists and guests,
*All protocols observed -***

Thank you, Gloria and Chidi - and House of Justice for inviting me to this important Summit, and the honour to make the keynote remarks. Thank you for the very warm welcome by all the staff and volunteers yesterday. I am especially grateful to 7 year old Kayla who met me in Rigassa on my arrival from Abuja. I'm glad to be in Nigeria and in Kaduna, a state I am visiting for the first time.

The Africa Group on Justice and Accountability, of which I am a member, supports efforts to strengthen justice and accountability measures in Africa. AGJA specifically on accountability for international crimes and ending impunity for human rights violations. We work to support and strengthen National criminal justice institutions to better deliver on their mandates.

But of- course questions of Justice, Governance, Accountability and Impunity run deeper and are more complex than the narrow confines of Criminal Justice. The excellent panellists highlighted some of these major issues this morning: national values & ethos, anti- democratic practices, corruption etc. demonstrating that one can draw a straight line from bad governance- to - a lack of accountability - and, inevitably a culture of impunity. We are living in a world of disorder–civil wars and secessionist movements. Anti- immigration and xenophobic sentiments have risen exponentially. The nation state has been weakening , lacking

demonstrable ability to effectively control territory , or exercise monopoly of violence.

It is my argument that the decline and decay of the nation state and the international system has contributed a great deal to the embedding of impunity. What we thought was the liberal triumph seems to have generated new problems: **Nationally**, Liberalism yielded stronger rights regimes , plural politics, empowered citizens, free media, diffused state power and constitutional opportunities. But the correlate is that it [liberalism], has weakened the state; unleashed seemingly ungovernable identity and grievance politics; and strengthened procedural rather than substantive democracy. Witness the solidarity of nationalities across borders expressed by importation of voters and so on. **Internationally** -liberalism has yielded a fortified type of multilateralism and multiculturalism - witness the panoply of international organisations such as the IoM, WTO and the ICC and permitted free flow of labour. BUT in this era of populism, we are witnessing a rising disbelief in and disregard of this system; anti-immigrant laws and sentiments; decline in cooperation in the international security, rejection of ICC jurisdiction; failing multilateral organisations(WTO); emergence of isolationist and insular tendencies; In other words, the retreat from and backlash against globalism in its economic, political and cultural forms is evident : From **America First** , to **Brexit**, to **Xenophobic attacks** in South Africa. What we see at national level is an expression of this failure.

Questions : Has liberalism become a victim of its success? Has Liberalism unleashed forces that it is inherently incapable of managing ? Is it arguable that the rise of impunity and the accountability deficit in governance is a failure of liberalism ? I still believe in liberal ideas of choice, freedom, liberty and rights. However, a time has come when we must inquire into the efficacy of this system and how to upgrade it to deal with the crisis that coincided with its rise.

The debate on impunity is taking place almost in every country. Not just here in Nigeria. Democratic deficits are deepening and

impunity and justice gaps widening everywhere. Are governments failing because they are not interested in making governments work, or because they have rejected the liberal model and want to hark back to a system that is more familiar? [Reference morning discussion about the retreat to authoritarianism in Nigeria - anti social media law, shrinking civic space, hate speech law etc] What forces are impacting on leaders and society to generate the outcomes that we see everywhere today? Why is the world sliding back into the Hobbesian state of nature where life was short, nasty and brutish?

Let me turn now to the Judiciary- the one institution that is central to any discussion on governance, accountability and impunity and on which we spent a good amount of time this morning.

Speaking of contemporary Judiciaries , Radhika Coomaraswamy , a former UN Official speaking said:

“Standing between individual citizens and the wielders of power, the Judiciary has become the ultimate, and yet unwilling, arbiter in the arena of democratic politics. This sudden thrust onto the centre stage has made judging a difficult and complex exercise.... The Court often finds that it has moral responsibility without the necessary safeguards of institutional integrity.

Closer to home; Julius Nyerere said

“ unless Judges perform their work properly, none of the objectives of a democratic society can be met”

The Judiciary is really the **last frontier** between the people and the state, it is the last frontier between democratic order and authoritarianism; the last frontier between peaceful transitions and armed conflict. If judiciaries fail, the conditions for nasty consequences are created. Governments transform into bandits, vandalising and vulgarising institutions and become “A law unto themselves”. Tyranny is assured in this circumstance.

What some scholars call “The judicialization of politics has meant that many social and political actors have begun to formulate their demands in legal and judicial terms;

- Judiciary has oversight of the exercise of state power. The power of judicial review of administrative action and the exercise of constitutional power
- Power to interpret constitutional provisions - an **inherently political activity**
- judicial activism vs judicial restraint [reference judiciary panel Sam Amadi's discussion of Judicial activism of the 1980's- 1990's]
- Presidential election petitions - political contestation this has wrought in diminishing the independence of teen judiciary through interference in nomination , appointment and separation procedures

It is not in the interest of the executive branch to have an independent judiciary and preserving this independence will require change at deeper level. A change of system. A rethink. A reboot - not just of individuals but ethos, values, systems of governance at national and international level as I have argued earlier.

Judges and judicial officers also need to be accountable. Our constitutions variously provide for accountability mechanisms - Judicial service commissions that vet, hire discipline and fire judges, judicial councils or anti- corruption bodies

Moving forward ...

BUT we need safeguards against abuse of accountability mechanisms - especially against political interference that results in actual interference with judicial function in deciding cases or questions of law, removing judges irregularly or in excluding certain people from sitting on the bench.

- Lethargic CSO
- Corrupt and uninterested bar

The role of Civil Society Organisations even in this era of reduced space for organising is critically important. It is organisations such as bar associations and human rights organisations [including national Human rights Bodies] that must act to prevent accountability mechanisms from further abuse for improper purposes/ total dissemination.

In closing I'd like to briefly address the use of Technology and new media including social media, in electoral in eroding democratic governance, including by diminishing accountability and the authority and independence of the judiciary.

We had a spirited discussion this morning on freedom of expression and media and the role of social media as an important space- for activism and dialogue . This must be resisted vigorously and any attempts to limit freedom of expression / association by legislation or practice must be challenged in the courts. In an age of populism however, social media is a double edged sword. Discuss with examples:

- Manipulation of data by technology companies of election results
- Use of social media to influence elections - Cambridge Analytica; to humiliate and ‘cancel’ social justice activists, judicial officers and those that seek accountability ;
- Echo chamber effect that is social media

*Ms. Betty Kaari Murungi is a lawyer from Kenya and a member of the Africa Group on Justice and Accountability.

She has served in various national and international capacities such as:

- Board Member, United Nations Commission of Inquiry on the 2018 Protest in the Occupied Palestinian Territory.
- Africa representative on the Board of Directors of the Trust Fund for Victims at the International Criminal Court.
- Vice Chairperson and Commissioner of the Kenya Truth, Justice and Reconciliation Commission.
- Board Member, Kenya Human Rights Commission