

OPENING ADDRESS AT THE 2013 BOTSWANA ANNUAL JUDICIARY CONFERENCE
BY ANDERS PEDERSEN, UNITED NATIONS RESIDENT COORDINATOR

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Leave no one behind - Judicial reform in the 21st century

Director of Ceremony, Mrs. J.A. Dube-Akande

Chairperson, Honourable Justice Ketlogetswe

Your Lordship, Honourable Chief Justice M.Dibotelo

Your Honour, the Attorney General, Dr. Athalia Molokomme

Your Lordships and Ladyships Judges of the High Court and Court of Appeal Justices

Judge President of the Industrial Court

Your Lordships Judges of the Industrial Court

Permanent Secretary to the President

Permanent Secretaries here present

Your Excellencies, Members of the Diplomatic Corps and International Organisations

Registrar and Master of the High Court and his Deputies

Chairperson of the Law Society of Botswana

Attorneys at Law

President and Members of the Customary Courts of Appeal

Distinguished Ladies and Gentlemen

Good Morning!

1. It is that time of the year when minds in the justice sector meet to reflect on the way forward in the delivery of justice in Botswana. As a lawyer myself, I am delighted to be a part of these deliberations. Allow me at the onset to express my deep appreciation for having, once again, been invited to this Conference. I feel greatly honoured.

The conference is set to discuss Judicial Reform. This is a topic which, given my own background in law, I find particularly interesting. I have entitled my speech '*Leave no one behind - Judicial reform in the 21st century*'. This is a somewhat cryptic title, but I hope to be able to throw some light on it in the course of my intervention. What I will do is to share some thoughts on the links between law and judicial reform in general and the process of development, and relate them to recent global developments and the work of the United Nations in this field.

2. At a conceptual level, the human development approach championed by the UN views development as a whole, encompassing aspects of economic growth, environmental sustainability, and social and political progress. These are all seen to complement each other, and to be mutually reinforcing. Amartya Sen, the eminent development theorist, winner of the Nobel Prize for Economics and one of the founding fathers of the human development approach, once appropriately characterized the links between legal and judicial development and other kinds of development (economic, social, cultural, etc.) as "a thickly interwoven textile".
3. Legal and judicial development is part and parcel of this fuller view on development. The former constitute the framework within which citizens can exercise their rights, entitlements and obligations in the context of development processes. When looked at through such a prism, it is hardly surprising that one of the 'growth industries' within the field of development is precisely that which aims to deepen the international community's understanding of the role of law in development processes.
4. A major boost to this global interest in the links between law and development resulted from the work of a high level panel, the Commission on the Legal Empowerment of the Poor hosted by UNDP¹, and which carried out an intensive consultation and research project over a period of 3 years. In its 2008 report entitled '*Making the Law Work for Everyone*' it noted that up to 4 billion people worldwide were excluded from the protection of the law. This in turn was seen as a major constraint on their ability to move out of poverty.

¹ Amongst its members were Madeleine Albright, the former US Secretary of State, Ernesto Zedillo, former President of Mexico, Mary Robinson, former President of Ireland and Benjamin Mkapa, former President of Tanzania.

5. This report in turn informed a UN General Assembly Resolution on the Legal empowerment of the poor and the eradication of poverty in December 2009 (63/142) in which the GA recognized that *“access to justice and the realization of rights related, inter alia, to property, labour and business are mutually reinforcing and essential determinants of the effective eradication of poverty”*.

In the report of the Secretary-General to the General Assembly, pursuant to that Resolution, the SG noted that:

“In many developing countries, laws, institutions and policies governing economic and social interactions do not afford equal opportunity and protection to a large segment of the population who are mostly poor, minorities, women and other disadvantaged groups. Instead of fostering inclusive and equitable growth, some laws and institutions tend to impose barriers and biases against the poor. Even where there are laws that protect and uphold the rights of the poor, they are often too ambiguous, cumbersome and costly for them to access.”

Further on he stated that: *“People excluded in this manner not only lack the protection and rights afforded by the Law, but any resources they may have can neither be properly protected nor leveraged owing to the cumulative effects of exclusion and discrimination. Obstacles to obtaining justice undoubtedly reinforce poverty and exclusion. Poverty can thus be seen as both the cause and consequence of exclusion from the rule of law.*

6. For those working in Botswana’s justice sector, such considerations are of course not novel. As noted by the former Chief Justice Julian Nganunu:

“As is understandable, reforms in the Botswana judiciary started a long time ago, generally in response to complaints, and were largely piecemeal, and thus unable, in my view, and in hindsight, to have the impact that they should have had if they were part of a package. The impetus for these reforms though has always been the deep belief in Botswana, which the judiciary shares, that for the general public and the common person, their dividend must be in the form of enhanced service delivery, whether in terms of basic infrastructural services like health clinics, good roads and communication, water and electricity; and from the judiciary, the availability of prompt court services so that the litigant can vindicate his right, say in respect of land allocation, protection of his livestock, etc.”

7. Judicial reform, as you may all appreciate, may take different forms and of varied magnitude. It carries different meanings in different context and environments. But what is clear is that it is intended to introduce efficiency, effectiveness and accountability in the judicial system of a given country for improved access to and delivery of justice. Recent examples include, showing the scope of possible and necessary

reforms, the introduction of the Judicial Case Management System and establishment of the legal aid in Botswana to which UNDP and other partners have contributed. Also, in 2009 the Government of Botswana, which is a state party to the Convention on the Rights of the Child, passed a milestone piece of legislation, namely the Children's Act, in its quest to realise the rights of the child in the country. All these three actions have contributed to significant improvements in access to justice.

8. This conference in Palapye is taking place at a time when the international community is engaged in the task of developing a successor framework to the MDGs, a new global compact for the 21st century. A High Level Panel, co-chaired by the Presidents of Liberia, Indonesia and the Prime-Minister of the United Kingdom, and which was tasked by the UN Secretary-General with the development of such a framework, has recently completed and submitted its report to the SG.
9. A number of aspects of this HLP report speak to the topic in hand at this conference. The clarion call of the report is that of a new agenda aimed at eradicating extreme poverty at a global level, which for the first time in human history is achievable, within the context of sustainable development, whilst ensuring that no one is left behind. This last aspect necessarily requires sound institutions which are responsive to the needs of people in general, and most particularly the poor, the marginalized and excluded. Foremost amongst such 'enablers' and 'guarantors' of social progress are a country's legal and judicial systems. And it must be highlighted that the authors of the report stressed that this is a "universal agenda", for all countries, north, south, east and west.
10. The emphasis on the need to tackle the causes of poverty, exclusion and inequality in this new international agenda is rooted in notions of basic social justice. The poor and excluded need legal and judicial systems that are accessible so that their rights are enforceable and to make the law work for them. Put simply, legal and judiciary reforms can constitute the foundation which ensures the necessary protection for the poor and those suffering from other forms of social exclusion that enables them to realize their full potential as citizens.
11. As a result of this approach adopted by the members of the HLP, and to quote from their report, this new global agenda must, inter alia:

"...establish and enforce clear rules, without discrimination, so that women can inherit and own property...communities can control local environmental resources, and farmers and slum-dwellers have secure property rights..." It goes on to state that:

"Good institutions are, in fact, the essential building blocks of a prosperous and sustainable future. The rule of law, freedom of speech and the media, open political choice and active citizen participation, access

to justice, non-discriminatory and accountable governments and public institutions help drive development and have their own intrinsic value. They are both means and an end in themselves.” (p.9)

Interestingly, and once again reflecting the centrality of legal and judicial systems in the development process, the High Level Panel report put forward a number of specific recommendations aimed at ensuring that ‘no one is left behind’.

Ladies and Gentlemen,

12. Promoting the rule of law at the national and international levels is at the heart of the United Nations’ mission. The principle that everyone – from the individual to the State itself – is accountable to laws that are publicly promulgated, equally enforced and independently adjudicated is a fundamental concept which drives much of the United Nations.

"For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."²

13. In furtherance of the above, the United Nations works to support a rule of law framework at the national level: a Constitution or its equivalent, as the highest law of the land; clear and consistent legal framework, and implementation thereof; strong institutions of justice, governance, security and human rights that are well structured, financed, trained and equipped; transitional justice processes and mechanisms; and a public and civil society that contributes to strengthening the rule of law and holding public officials and institutions accountable. These are the norms, policies, institutions and processes that form the core of a society in which individuals feel safe and secure, where disputes are settled peacefully and effective redress is available for harm suffered, and where all who violate the law, including the State itself, are held to account.

Over 40 UN entities are engaged in rule of law issues and the Organization is conducting rule of law operations and programming in over 110 countries in all regions of the globe, with the largest presence in Africa.

14. The rule of law is continuously enhanced through various judicial reforms, amongst others. But judiciary reform is not an end in itself. Rather, it can be an enabler of other

²Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies

reforms including political and economic reforms, amongst others. Judiciary reform should be looked at as contributing to and as part of a larger legal reform in a country.

15. It is widely recognized that the impact of judicial reforms in Botswana have had far reaching impact with positive transformational development results. These have been captured and expressed in the various governance related indices in which Botswana has performed so well.
16. A major development in this regard was the adoption in June this year by the United Nations Human Rights Council of the 2nd Universal Periodic Review (UPR) report on Botswana. A total of 175 recommendations were tabled. At the end, not less than 111 recommendations were accepted. I wish to commend Botswana for its actions and commitments to vigorously follow up on the recommendations of the UPR including the establishment of the NHRI and in developing its HR national plan of action.
17. I referenced earlier both the domestic and the evolving normative international frameworks, and in particular the various ways in which legal theorists and practitioners have become seized of the need in the 21st century to expand access of the poor and marginalised to justice, to strengthen respect for due process rights, and to improve on the quality of the services provided to disadvantaged groups. Against this backdrop, this conference provides a unique opportunity to discuss the nature and scope of judicial reform that might be desirable in Botswana going forward, the ways in which the current judicial reform processes can be scaled up and their sustainability secured, as well as how judicial reform can contribute to democratic governance and sustainable human development in Botswana whilst ensuring that “no one is left behind.”

Ladies and Gentlemen, Director of Ceremony,

18. With these few remarks, I declare the conference opened and wish you successful deliberations. Thank you for your attention!