

Statement by Mr. Martim Faria e Maya, UNDP Country Director

at the

2016 Judiciary Conference, Avani Hotel, Livingstone

15 November 2016

CHECK AGAINST DELIVERY

Hon Given Lubinda MP, Minister of Justice

My Lady Justice Irene Mambilima, Chief Justice of the Republic of Zambia

My Lord Justice Mervin Mwanamwambwa, Deputy Chief Justice of the Republic of Zambia

My Lords, Retired Chief Justice

My Ladies and Lords Judges of the Supreme Court and Constitutional Courts, Court of Appeals and the High Court,

Honorable Magistrates

Ladies and Gentlemen

- I am delighted and humbled by this opportunity to address a distinguished gathering of eminent persons associated with the Judiciary in Zambia. On behalf of UNDP and indeed on my own behalf, I would like express gratitude for the honor conferred on UNDP for being selected as a strategic partner of the Judiciary in Zambia. Similarly, I would like to take the opportunity to thank the Government of Sweden who have partnered with UNDP in supporting initiatives such as this one under the auspices of our Governance Programme. Lastly, I would like to extend a warm welcome to visiting experts from abroad who have come to share their experiences on Mediation and Alternative Dispute Resolution (ADR) mechanisms.

- This year’s event is particularly auspicious for three important reasons. **First**, it comes almost a year after the country adopted new constitution which brought about sweeping changes to the Judiciary. The Constitutional Court, the Court of Appeal, and Local Government Elections Tribunals were introduced. As is often the case with the adoption of new Constitution, it is natural that its provisions, institutions and application will be put to the test. This year’s elections, for instance, has given rise to a record number of election related petitions. In the process, experiences have been gathered that should be shared and considered within the Judiciary. **Second**, it comes at a time when the Judiciary is in the process of finalizing its strategic plan; and **third**, it comes almost a year after the introduction of Fast Track Courts on Gender Based.
- Hon Minister, I would like to start my discussion by sharing an experience I had at a press interaction event during the commemoration of the 2016 UN Day. The UN Country Team had a working breakfast to sensitize the press around the Sustainable Development Goals (SDGs) associated with environment. A journalist took a particular interest on SDGs pertaining to clean environment asked for the UN’s position on a number of court cases in Europe and in Zambia involving a particular mining company with respect to alleged contamination of soils and the Kafue River, and compensation that would be appropriate. While not in a position to comment on merits of the case, the question served to highlight the importance of SDG 16, on peace, justice and strong institutions, as an enabler of all other development goals.
- One message is that justice needs to be easily accessible to promote social justice and the other is that the Judiciary needs to evolve and remain current with new developments and trends for it to remain relevant and for it to meet public expectations. I therefore take the liberty to broaden the horizons and take a political science dimension to the delivery of Justice.
- It is in this vein that my presentation attempts to discuss the contribution of a strong justice system toward meeting the aspiration of the people of Zambia of being an inclusive, peaceful and prosperous nation. This requires a Judiciary system to continuously reform and adapt itself to meet the needs of an evolving society and its evolving value system. Social justice and public accountability remain elusive if the Judiciary is unable to keep up with changing tides. Inequalities would continue and the SDG slogan of “LEAVING NO ONE BEHIND” would be impossible to meet. My

discussion is founded on Part II of the Constitution of Zambia, National Values, Principles and Economic Policy, Articles 8 (c), (d) and (e); Article 118 provides for the Judiciary and the principles that guide the Judiciary in its work.

- Hon Minister, John Rawls in his book defines social justice defines Social Justice as assuring the protection of equal access to liberties, rights, and opportunities, as well as taking care of the least advantaged members of society. Thus, whether something is just or unjust depends on whether it promotes or hinders equality of access to civil liberties, human rights, opportunities for healthy and fulfilling lives, as well as whether it allocates a fair share of benefits to the least advantaged members of society. In other words, justice is intrinsically at the core of development!

Social Justice and Human Rights Nexus

- Human rights are akin to social justice as well. "A just world order is perhaps best seen as a society of peoples, each people maintaining a well-ordered and decent political, not necessarily but fully respecting basic human rights." Human rights are expansive and include rights in the following areas: Universal Declaration of Human Rights and other International Human Rights conventions and protocols.
- The successful implementation of SDGs and greater public access to Human Rights and other international commitments is dependent on transparent, viable and accountable institutions. Sessions such as this are a practical means to enable the Judiciary share knowledge. Part II of the constitution of Zambia provides for National Values, Principles and Economic Policy and Article 173 provides for Guiding Values and principles of the Public Service. This necessitates the judicial processes to transform and take such values in the course of adjudication and other processes.

Values in Adjudication and Legislation

- Joshua B. Shiffrin in his article A practical Jurisprudence of Values: Rewriting Lechmere Inc vs NLB, published in the Harvard Civil Rights-Liberties Law Review vol 41 advocates for making values the focus of legal discussion and adjudication rather than taking it to the periphery. This would make the law responsive to society's ideals, towards a just society and political accountability.

- Shiffrin concludes that if all decisions addressed the value choices that they represent and if judges and legislators understood the Laws as shaping our social life instead of merely regulating it, then law would be taught differently. He further notes that terms such as equality would have a different meaning and perhaps legal precedents would take a different place. The Zambian Judiciary has the potential to contribute to the enrichment of the legal practice through this approach.
- On the issue of rights, allow me also a brief to reference the Bill of Rights that was the subject of a popular referendum earlier this year. While we all know that the proposed Bill did not meet the established threshold for its approval (a majority of the estimated eligible voters), it is clear that a majority of Zambians who expressed an opinion about the Bill of Rights voted overwhelmingly in its favor. These results suggest that there is an appetite for the expansion of constitutionally guaranteed rights. It is worth noting that in other jurisdictions, the effect of high thresholds in such matters has been considered a measure to protect those rights already enshrined, applicable only when proposals to curb such rights are being considered.

Legal Reforms

- To conclude, reform processes are an imperative. They do not always result in drastic changes. Often times they can be as subtle as adjustments to existing processes. The introduction of mediation and alternative dispute resolution in itself is a reform process in the civil courts. Other reforms could include measures to adhere to a court calendar to avoid unnecessarily protracted trials. Yet, they hold the potential of vastly transforming the Judiciary and allowing it to be an effective enabler of development. For instance, could arbitration and mediation have addressed the grievances of those impacted by alleged contamination of soils and water sources in the Copperbelt?
- I would like to conclude by once again thanking the Chief Justice and the Judiciary in general for according me the opportunity to address the eminent gathering. Also, I would like to reaffirm UNDP's commitment to continued partnership in the years to come.
- Thank you