

## **COMMUNIQUE OF THE CONFERENCE OF THE SOUTHERN AFRICAN CHIEF JUSTICES' FORUM**

1. A Conference of the Southern African Chief Justices' Forum was held in Kasane, Botswana, on 7-8 August 2009, under the theme "Sustaining the Rule of Law to promote Socio-economic Development in the Eastern and Southern African Region". The conference was attended by Chief Justices and Judges from Angola, Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe.
2. Also attending the conference was the Hon. Justice Sanji Monageng of the International Criminal Court, the President of the SADC Tribunal, Mr Justice A.G. Pillay, the Attorney General of Botswana Dr. Athaliah Molokomme, and resource persons from within the SADC region and outside. Representatives of the Venice Commission, the Open Society Initiative for Southern Africa, Konrad Adenauer Stiftung, the office of the United Nations High Commissioner for Human Rights and the International Commission of Jurists also attended the Conference.

3. The official opening of the Conference was performed by the President of Botswana, His Excellency Seretse Khama Ian Khama, who welcomed the convening of the Conference in Botswana. His Excellency expressed the hope that interaction between the region's top legal personalities would contribute to the development of the judicial systems of the region, and improve their efficiency. The President observed that socio economic development can only take place in the context of a robust, transparent, predictable and enforceable legal framework. He challenged the delegates to consider ways in which the legal fraternity and the judicial system can work together with other sectors of the economy to make a positive contribution to economic development.
  
4. The Chief Justice of Botswana, and host of the Conference, Honourable Mr. Justice Julian Nganunu, welcomed delegates to Botswana. The Chief Justice informed the delegates that meetings of the Southern African Judges Forum are meant to provide an opportunity for judges to consult, exchange views and information on the state of the Rule of Law in each member state and the region. At such meetings, Chief Justices take stock of the capacities of the courts of their judiciaries to deliver services to their communities, and

suggest improvements in this regard. Chief Justice Nganunu also used the opportunity to share some of the strategic reforms that the Botswana judiciary has introduced in its quest to improve service delivery.

5. A vote of thanks at the official opening session was delivered by the Chief Justice of Namibia, Honourable Mr. Justice Peter Shivute, who expressed gratitude to His Excellency the President for his opening speech. He noted that the opening speech had laid the foundation and would serve as an inspiration for the deliberations of the Conference. He thanked the Venice Commission, the Open Society Initiative for Southern Africa, Konrad Adenauer Stiftung, the United Nations High Commission for Human Rights and the International Commission of Jurists for their support and sponsorship. He pledged that members of the SAJF are alive to the true functions of law in their countries, which include being an instrument of social engineering, the promotion and maintenance of democracy, good governance, the rule of law and respect for human rights.

6. The Conference received presentations on subjects including:

- Constitutionality, the rule of law, socio-economic development;
- Separation of powers and judicial independence;
- Judicial accountability;
- Judicial review; and
- Judicial reforms.

7. Following rich discussions on these topics, the Conference agreed to the following resolutions:

- a) Courts in Africa should continue to refer to international and regional human rights instruments and the decisions of foreign courts in interpreting their own constitutions where appropriate. However, African judiciaries should make wider use of each other's decisions and infuse African values such as human dignity, equality and non discrimination.
- b) Development of international human rights law and comparative law by international bodies and some African courts in the Region show that the judiciary can increasingly play an important role in the protection of economic and social rights. Judicial protection of economic and social rights does not necessarily mean an infringement of separation of powers. The African Charter on Human and Peoples Rights provides a holistic

- framework within which human rights in the continent should be understood.
- c) There is a need for separation of powers and responsibilities to be constantly respected. The roles of the Judiciary, Executive and Legislature invariably overlap, but what is important is that each organ respects the responsibilities of the other as determined by the Constitution. Co-operation between the arms of the state is vital in the exercise of their constitutional obligations.
  - d) Judicial accountability is a key complement to judicial independence. Accountability must be at a personal and institutional level, and it is important that the judiciary should have the confidence of the public. Any loss of confidence in the judicial system due to perceptions of a lack of independence and impartiality is extremely damaging to the justice system.
  - e) Judicial review of administrative action is an important vehicle for the protection of human rights and the rule of law. Administrative law is an important tool in the protection of human rights, and the courts must uphold their constitutional duty to protect fundamental rights.
  - f) There is need to institute and continue judicial reform of the legal system to ensure that the judiciary delivers

services to the public in an efficient and speedy manner. This can be achieved by the increasing use of information technology, reform of rules of procedure, training, increase in the number of legally trained personnel working for the courts and the establishment of special courts. Countries shall exchange experiences in this regard by sending judicial officers to benchmark in other jurisdictions.

- g) The Executive Committee of the SACJF was mandated to consider the establishment of a Committee of Chief Justices whose mandate will be to promote and protect the independence of the judiciary. This shall be done through carrying out support missions in the region to deal with threats and potential threats to the rule of law, strengthening the judicial organ by making appropriate recommendations.

7. At the end of the Conference, the SACJF held their Annual General Meeting, at which they elected their new committee, which is constituted as follows:

Chairperson –	Honourable J.M. Nganunu, Chief Justice of Botswana;
Vice Chairperson -	Honourable Ernest Sakala, Chief Justice of Zambia; and

Committee Member - Hounarable Benjamin Odoki, Chief Justice of Uganda.

8. The AGM warmly welcomed the establishment of the World Conference on Constitutional Justice, and mandated the Executive Committee to send comments on the Draft Constitution to Forum members within a month. It also mandated its President to represent the Forum at the meeting at the Bureau of the World Conference in Venice in December 2009, which will adopt the final text of the Statute.

9. The AGM thanked Gianni Buquicchio of the Venice Commission for his consistent support in the creation and progress of the Forum as he leaves his function as Secretary General.

10. The AGM also acknowledged the role played by its outgoing Chairperson, Honourable Chief Justice Langa of the Republic of South Africa, and expressed its sincere gratitude for his unflinching commitment and exemplary service to the Forum.

11. The Official closing remarks were delivered by the Chief Justice of Malawi, Honourable L. G. Munlo. He thanked His Excellency the President Lt. General Seretse

Khama Ian Khama, Chief Justice J. M. Nganunu and all  
who contributed to the success of the conference.

Kasane

8 August 2009.