

## Mondli Makhanya Remarks to Workshop on Strengthening the Rule of Law in Malawi

March 13, 2013

It is a great privilege to be here in Malawi at this pivotal point in this country's history. One can really feel that Malawi is at a critical point in its history. You took a decision in 1994 that you wanted to be a Constitutional Democracy. You have navigated a path in those 20 years since 1994 towards being that Constitutional Democracy. It hasn't been an easy path, and there have been hurdles along the way, but here you are almost 20 years later, and you are still a Democracy. What one senses is that there is a strong feeling of wanting to start anew, having learned a lot of lessons in those 20 years. There is a feeling among Malawians that you want to move forward and entrench this Democracy and build a society firmly built on the ROL. This morning we heard the President state very emphatically in a very, very powerful speech, that Malawi can never backward retreat. That phrase really stuck with me throughout the day, she gave her commitment and the commitment of her government and the commitment of all Malawians that there is no backward retreat.

I come from a country further south which also became a Democracy in 1994 after a very, very terrible past. We too have been navigating our way through this thing called Democracy. We have been trying to build a society based on the rule of law, and this has not been an easy one. But there are some learnings that we can share with Malawians, and some learnings Malawians can share with South Africans. But some of those which speak to some strengths and some weaknesses of the journey that we have been on in South Africa.

I will start with some of the positives we as South Africans can today say that we have achieved and because of this we can never retreat backwards. Because of these things South Africa will always be a Constitutional Democracy, will always be a society based on the rule of law.

- Governments and societies are made up of human beings. Human beings all start off believing in the same things, and somewhere along the way, people do lose track, people do get tempted, people do get absorbed and subsumed by power lust. In South Africa that has happened. The great Constitution that we established in 1994 and the great vision and all the basic foundations, you do find that some of the people in the party that liberated South Africa are starting to question the basis of such vehicles such as Constitutional Democracy, and they want to fiddle with some aspects of it. But we have found that society is very resilient. The citizens are the ones who actually are the great defenders of that Democracy. One of the reasons for that is that the based that we built, we built very strong institutions. It is quite admirable that those institutions had the buy-in of the greater population of South Africa. The population that actually defends those institutions – not only by speaking out when those institutions are under attack or get undermined, or when the government tries to hijack them – they defend them also by using them. They know that these are their institutions, and the more you use them, the more they know those institutions cannot be taken away from them. Those institutions become an addiction because they are part and parcel of the society. They become part of the DNA of the society. Those institutions are feared by the powers that be and they are listened to by the powers that be because the people have ownership of those institutions.
- The other thing that South Africa has achieved is the evolution of a very noisy society. South Africans are very noisy about the issues that affect them on radio, on TV, in pubs, in restaurants, everywhere you go. South Africans speak out, they use the freedoms that they have. Many societies on our continent have democratic societies, open societies, but they do not make use of the freedoms that

they have. It is very important that the noisy element of society is something you develop and build on.

- The other strength that we have in South Africa is a civil society that is a very, very powerful civil society that exercises the rights which are given to the citizens in the Constitution and the laws. They give flesh to those rights. Some of my colleagues from the WJP met some of those organizations earlier this week. I related a story earlier on, that story, some of you may remember the big story from 2012. The South African Department of Education failed to deliver textbooks to one of the provinces in the country. This went on and on for months and months, and halfway through the year, students still didn't have textbooks. It took organizations of civil society, an NGO that specializes in public interest litigation (named "Section 27" after a section of the Constitution) to force the government – took them to court – and forced them to deliver those textbooks. The government had to roll out very rapidly a program for getting those textbooks to the schools and also extra tuition to make sure that those children catch up. The basis on which this organization took the government to court was that every child has a right to an education. By doing that, Section 27 basically gave life to that right, the government must know that this right was there. It's not just a right that was in the Constitution, that was a nice thing to have. And what that did, the whole population across the country actually got to know that "we can exercise these rights and the courts are there to enforce these rights." Throughout the country people are now calling up this organization and saying "we haven't received our textbooks." They are calling up newspapers and other media outlets and saying "we also don't have textbooks." At the beginning of this year, within days of not receiving their textbooks, people were exercising their rights, calling up organizations and the media. It was a big thing, and it was quite a moment in the evolution of the country, that actually people were saying these rights are real and they are tangible. As South Africans, we cannot ever go back from this moment, it was a critical turning point in the country's history. So that's the other thing that can be built on, a strong civil society.
- Very importantly – most importantly, because I'm biased – is the role of my tribe, a strong media. I have seen a strong media in Malawi, I think that is one of the things that again you build on. In our [breakaway] group we were speaking about access to information. You can have laws, the best intentions, but until you as citizens force the government to part with information, governments like hiding information because information is power. Some of it is just simple information that enables the public to exercise rights, force the government to do what they want it to do. The media is probably the most important part of that, but the media is only as good as the citizens who interact with it. That is one of the things that Malawians can build on.
- One of the weak or missing links in the South African democratic chain is Parliament. That is because a lot of MPs feel that they owe everything to the party, rather than the people who put them there. They are often very unwilling to challenge those who run the Party, they are unwilling to challenge the President and the Ministers. At the other end, they are unwilling to go out there to the streets of the villages and be that link between the various arms of government and the people on the ground. That reduces the accountability of the state, and it reduces the ability of the population to be informed and to participate in the democratic processes. I am not wildly familiar with Malawian situation on the ground, but I think that all of us – whether in South Africa or in other parts of the world – should demand a lot more of our MPs and make sure that they work for the positions they are in, and for the monies they earn and the status they enjoy in society. We hold them accountable as much as they should be holding other arms of government accountable.

At the beginning I spoke about the point that this is a pivotal moment in Malawi's history. We have all traveled from different parts of Malawi and elsewhere to be here and given of our time and our mind and our energy to the cause of this day, and particularly in those very important sessions that we had.

We all came up with those recommendations. It would be very easy for us to treat what is on that [flipchart] board, what we have synthesized here, as just a simple wish list. There is a great danger of that. We have all been to many seminars and conferences where brilliant ideas have come up and everyone goes home and goes on with their lives. It would be a great pity if this became of this session that we are engaged in today and tomorrow, because I think what was presented here actually has the potential for building a really great Malawi based on the Rule of Law. That society based on the rule of law would be able to deliver an education system and a medical system and economic benefits and all other things that good societies have. I would really urge and encourage that we make meat and out of that meat make a meal out of what we have been engaged in here today.

The organizations that brought us here today – Citizens for Justice and the World Justice Project – are partners with all of you in making the process better. We are a resource which I encourage and urge all of you to use us and abuse us at will. The colleagues with whom I traveled into Malawi are at all times available and willing to be of assistance. We cannot and will not lead the process, it should never be our process, and it would be condescending for us ever to think that. It is a Malawian process that Malawians should own. But the tools that we have at our disposal – and one of those tools [the WJP Rule of Law Index] is what was presented this morning – there is a vast trove of information available there. Use it and interact with it and interact with it through the two gentlemen [Dr. Alejandro Ponce and Juan Carlos Botero] who presented it this morning. It is information that is available to you.

To round off, for us it has been a great privilege to be here with you, to work with you over the past two days and again tomorrow. It is the beginning of a long journey. Among the proposals are things that may take years to effect. Some of those may run into political difficulties, but as the President said this morning, it is a journey and if we begin the journey we will eventually reach some destination. And we are getting closer and closer to the end of that journey. One day there may be a much more perfect Malawi that scores much higher on the Index.