



AFRICAN DEVELOPMENT BANK GROUP

Address to the Pan-African Lawyers' Union Conference

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I would like to thank the Pan-African Lawyers' Union for organising this event and especially to welcome the co-operation that is emerging with the African Legal Support Facility.

However, as I seldom get the opportunity to address such a distinguished gathering of the legal fraternity, I would like to seize the occasion to reflect with you on some aspects of your profession's role in today's radically changed landscape, both in Africa and at the global level.

There is no need here to stress again the primacy of the rule of law; the bedrock for economic development; the basis for an orderly society, individual and collective behaviour, whether vis-a-vis property rights, enforcement of contracts, or maintaining law and order. This is a doctrine now well entrenched in our collective understanding of governance.

The unprecedented turmoil in the global economy over the past three years has thrown up new challenges to all; at the height of the financial meltdown the general public, now called upon to bear the social costs of private gain and folly, directed its anger – and rightly so – at most professions and institutions close to the financial markets: fund managers; safe havens; derivative traders; over-paid executives; seven-figure bonuses; the rating agencies; Wall Street bankers; regulators; accountants; analysts; not to say politicians. Even Alan Greenspan!

As for my own profession, Her Majesty the Queen of England is said to have inquired at the LSE: "Where were the economists?" There could not have been a better moment for the 'dismal profession' to eat humble pie!

We now know that in a world of asymmetric information we will have to look beyond the so-called "efficient markets" hypothesis. We now know the need to be more sceptical at the excessive deregulation and financial innovation.

Surprisingly, so far your great profession has escaped unscathed; there has been no such a cry as: "Where were all the lawyers?" And yet we know lawyers were central in advising a whole range of clients when critical decisions on transactions were being made. An objective observer may well conclude that lawyers had some responsibilities as well, even if indirect.

I am fully conscious of course that a lawyer's foremost concern and duty is, above all, to their clients – to serve them to their best endeavours. But I also know that you will agree with me that lawyers also owe a responsibility to the general public. In the course of your practice you are always concerned about clients' actions

which you *thought* may fall short of actually violating the letter of the law, but might cause harm to the society at large.

Your profession occupies a strategic locus in today's globalized economy. You have at your disposal the professional tools and techniques for ensuring a degree of stability and predictability into the system.

As one looks back at the "near death" experience of the global economy in the past two-and-a-half years, with hindsight we now know what went wrong. You have heard it all before. The key lesson to be drawn is that all professions, including yours, must maintain high professional and ethical standards as well as pay much greater attention to the welfare of society.

In a complex world like the one we live in, systemic stability depends on a set of four elements, which of late demonstrated a large deficit:

- REGULATION – meaning clear rules, upfront, known to all;
- SUPERVISION – ensuring that the rules are adhered to;
- SANCTIONS – making sure that those individuals or corporates who do not abide by the rules pay for it; and
- RESOLUTION – mechanisms to ensure that when things have gone wrong, as happened recently in the financial markets, they are resolved at minimal costs to society.

We can discuss how well or otherwise this hierarchy of functions fared before, during and after the crisis, but it is an architecture in which lawyers are called upon to play a major role at every juncture.

In the course of decision making, be it at individual, corporate, social or political level, every decision has to be weighed against a set of considerations:

- Is it legal? This is, of course, the first question, but clearly not the only one.
- Is it ethical? Certainly vulture funds (and tax avoiders) behave legally.
- Is it politically feasible, timely or realistic? You might even add...
- Is it affordable from a financial view point?

As you can imagine, these are not easy questions and there are no straightforward answers to them. It is, therefore, very reassuring that you, Africa's eminent

lawyers, are organized to help consolidate systemic stability and business confidence in Africa. We share your laudable objectives and would like to assure you of our desire for a strong partnership.

Let me now briefly touch on the African Legal Support Facility. My colleagues from the Bank will have the opportunity to share with you the Facility's framework, its functions and its importance for many of our countries at this time. The African Development Bank, which is the initiator of the ALSF, remains a supporter of the Facility.

Two years ago, we came to the conclusion that the need for such a Facility was urgent to deal with the problem of "vulture funds" – entities that seek to make profit by buying up debt on the secondary market at rock bottom prices and then litigating against the debtor for inflated sums at the expense of the country.

As of late 2007, 11 of 24 highly indebted poor countries, or HIPC's, were facing litigation from 46 different commercial creditors. And, believe it or not, these litigants have often been very successful. We understand over 20 creditors have received court judgments amounting to about one billion dollars on original claims of 427 million dollars.

In helping countries negotiate arrangements with creditors, our intentions are not judgmental. Our only objective is to ensure that the objectives of debt relief are attained. Currently, we remain the sole financier of the Facility, having donated approximately 15 million dollars upon its inception in 2008.

The ALSF is not only limited to vulture funds. We also know that many of our countries lack *adequate* specialist legal expertise or experience in negotiation of other forms of complex commercial and financial transactions, such as large contracts involving natural resources. The Facility has been approached and is assisting a few countries in such negotiations.

In some cases, for lack of good legal advice, governments have entered into very unfavourable deals. And once the full meaning and effect of the contractual provisions have sunk in, some have sought *ex post* cancelling or renegotiating of such deals. While this may be fully understandable, and, in fact, justified, this lack of predictability in contracts could undermine business confidence.

Another area of growing interest to the Facility relates to illegal capital flight. I understand the ALSF has been approached by some governments seeking assistance for the recovery of such illegal wealth stashed abroad in safe havens

and other non-compliant jurisdictions and it is something which definitely must be looked into.

The ALSF is meant to support, complement but not supplant local legal expertise. That is why a strategic cooperation with Africa's bar associations is so poignant.

I am confident that the Facility could not have found a better partner than PALU, an authentic representation of the legal profession in Africa, thereby providing access to a wide database of legal competencies.

Going forward, the ASLF is designed to be independent of the Bank. We have taken care to build a firewall between the Bank and the ASLF. We will continue to support the Facility to the fullest extent possible. Our expectation is that African countries themselves will, over time, take full ownership of the Facility.

Finally, let me once again thank the Government of Rwanda, the Pan-African Lawyers' Union and the governing organs of the ALSF for bringing us together today.

I wish you all a successful conference.

Thank you.