**ADDRESS BY THE HONOURABLE CHIEF JUSTICE**

**M. DIBOTELO AT THE OFFICIAL OPENING OF**

**THE LEGAL YEAR ON TUESDAY 6TH FEBRUARY 2018**

Your Honour the Vice President Mr Mokgweetsi Masisi

The Hon. Speaker of the National Assembly Mrs Keitumetse Gladys Kokorwe

The Hon. Judge President of the Court of Appeal, Mr Justice Ian Kirby

Hon. Justices of Appeal

Your Ladyships and Lordships, Judges of the High Court and your spouses

Hon. Ministers

Hon. Judge President of the Industrial Court Mr Justice Tebogo Maruping and Hon. Judge of the Industrial Court Mr. Baruti

Hon. Attorney General

Hon. Assistant Ministers

Permanent Secretary to the President

Your Excellencies of the Diplomatic Corps and International Organisations

Hon. Members of Parliament

Chairman of Ntlo-Ya-Dikgosi and Members of Ntlo-Ya-Dikgosi

Registrar and Master, your Deputies and Assistants

Your Worships of the Magisterial Bench

Chairman of the Law Society of Botswana Mr Kgalalelo Monthe

Members of the Bar

President and Members of the Customary Courts of Appeal

Commander of the Botswana Defence Force

Commissioner of Police

Commissioner of Prisons

Your Worship the Mayor of Gaborone

The Reverend K. Kgerethwa and Bishop F. Nabuasah

Distinguished Guests

Ladies and Gentlemen

1. **IN MEMORIAM – SIR KETUMILE MASIRE : SECOND PRESIDENT OF BOTSWANA** 
   1. On 22nd June 2017 our Country was plunged into deep mourning following the passing away of our second President Sir Ketumile Masire, one of the founding fathers of our nation and African Statesman.
   2. He was, as most of you will attest, our esteemed regular dignitary at our Legal Year Opening Ceremonies including the past one.
   3. We trust that our history will grant him his proper place and accord him his deserved stature as one of the founders and leaders of our nation.
   4. During the same year we lost Mr. Justice John Foxcroft, a member of the Court of Appeal and Mr. Justice Patrick Tebbutt, who was President of the Court of Appeal for eight (8) years. Both gave long service to Botswana, of which we remain forever grateful.
   5. Recently, we lost the Member of Parliament for Mochudi East, Honourable Mr Isaac Davids under very tragic circumstances.
   6. I now invite you to stand and observe a moment of silence in their memory and honour.
2. **INTRODUCTION:**

2.1 The Official Opening of the Legal Year marks the commencement of litigation reminiscent of the Old Testament custom recorded in Deuteronomy 25 verse 1 thus: *“When people have a dispute, they take it to Court and the Judges will decide the case, acquitting the innocent and condemning the guilty”.* The Legal Year Opening Ceremony is thus a departure from the well-established norm and long standing tradition of the Judiciary speaking through its judgments as it is a unique occasion for the Head of the Judiciary to address the nation on the Organisation’s actions, achievements, challenges and other salient matters which are incidental and related thereto.

Of note is that the Judiciary does not rest as it is active and in motion throughout the year, even during Court Vacations, in keeping with our flagship initiative of Judicial Case Management.

2.2 2017 had its turbulence for the Judiciary with court

challenges on the tenure for the Justices of Appeal, the question of the procedure on the appointment of Judges of the High Court, litigation involving the Chief Justice, Judicial Service Commission and some individual High Court Judges. I am pleased to report that all these matters were resolved during the course of 2017, and we look forward to a stable and productive 2018.

2.3 As we mark the commencement of the 2018 Legal Year, I congratulate Hon. Justice Lakhvinder Singh Walia on his full time appointment to the Court of Appeal as another citizen Justice, Hon Justice Dr. Zein Kebonang on his appointment as a substantive Judge of the High Court in place of Professor Solo, Hon. Justice Omphemetse Motumise on his appointment as a Judge of the High Court in place of Hon. Justice Newman, Advocate Abraham Keetshabe and Mr. Stephen Tiroyakgosi on their appointments as Attorney General and Director of Public Prosecutions respectively. We wish them all the best in their new roles. We also congratulate Hon Justice Dingake on his appointment to the Supreme Court of Papua New Guinea and wish him well.

I also welcome the previously suspended Judges their Lordships Letsididi and Busang and her Ladyship Garekwe.

In the same vein, I thank the then acting Judges Mrs. Dube, Miss. Tshweneyagae and Mr. Lebotse for their invaluable service to the Judiciary and to the Nation at large.

1. **TRIBUTE TO HIS EXCELLENCY THE PRESIDENT:**

*Your Honour, Your Ladyships, Lordships, Ladies and Gentlemen*

3.1 This Legal Year Opening Ceremony is unique and significant in two ways:

3.1.1 Firstly, on 31st March 2018, in accordance with the Constitution, His Excellency the President will be passing the torch for the leadership of our country to His Deputy, His Honour the Vice President Mr. Mokgweetsi Masisi. We in the Judiciary applaud The President and his predecessors for setting a good example of abiding by the Country’s Constitution limiting the Presidency to two terms. The array of Statesmen we have had and continue to have as a Country, show a story of succession which speaks well of our Country. It is a narrative that must get bolder and bolder even in the Continent as generations hand over to succeeding ones. We seem to take it for granted in this Country, yet elsewhere in our Continent we have leaders who look for excuses to manipulate the law to extend their stay in power.

3.1.2 It was on the morning of Tuesday 1st of April 2008 that His Excellency was inaugurated as the Fourth President of the Republic of Botswana. I wish to pay tribute to His Excellency as he will soon be retiring after years of exemplary service to our Nation in the Army, Cabinet as Vice President and President. The achievements and legacy he bequeathed us are well documented and indeed he outlined them in his last State of the Nation Address in November 2017. He took over the Country during the World Economic Recession. He stirred the Country through the debilitating effects of that storm and the key fundamentals, by analysts, show that the economy is strong and robust.

3.1.3 He has been an inspirational leader to the Nation and Society in Botswana in many areas. I will highlight only a couple of areas. He was the first to establish the President’s Day Commemorations in 2008 and to this day the competitions remain a key programme in promoting our diverse cultural heritage through various programmes, arts and crafts to a level where the producers/artists, especially the youth are able to earn income from their works. This also dovetails with his promotion and passion for conservation and tourism making our Country a premier tourist location which has contributed immensely to the diversification of our economy. We also applaud him for reviving the spirit of sporting among citizens particularly the youth and the support in sport development.

3.1.4 The President’s Housing initiative for the needy and poor amongst us not only gave them decency but came as “*water does to a thirsty traveller*”. He can boast an admirable record in the discernible improvement in the overall quality of life of our people and upliftment out of poverty and vulnerability through poverty eradication programmes.

3.1.5 The hall mark of His Presidency has been a tangible demonstration of leadership in action in that he selflessly, truly and genuinely pursued to serve Batswana with the aim of accelerating their advancement towards achieving a better quality of life. He traversed the length and breadth of this Country engaging all citizens and residents to find out exactly what is going on, a clear commitment to selflessly serving the people.

**3.2 VALEDICTION**

*Your Honour, Your Ladyships and Lordships, Ladies and Gentlemen.*

*3.2.1*The other significance of this year’s Ceremony is that on 13th October 2017, I turned 70 years, the retirement age of High Court Judges including the Chief Justice as enshrined in Section 97 (1) of the Constitution. In terms of the proviso to Section 97(1) of the Constitution, His Excellency acting on the recommendation of the Judicial Service Commission extended my tenure of office up to and including 30th April 2018 for the purpose of completing proceedings that commenced before I reached the retirement age.

3.2.2 On 30th April 2018, some two (2) months from now, I shall also be passing the button of leadership of the Judiciary into the hands of my successor who the President appoints at his pleasure in terms of Section 96 (1) of the Constitution. I am confident that with the support of the other arms of Government and key Stakeholders my successor will continue to build on the foundation laid by my predecessors. It may be worth sharing that upon my approaching the retirement age and the subsequent extension of tenure, I have been mindful and constrained from making any decisions of a major policy departure that would compromise the incoming Chief Justice.

3.2.3 It is by providence that I am retiring after having worked for 13 years as a Judge and 7 years as Chief Justice, apart from my other life as a Civil Servant and Practising Attorney. I believe I have played my part in national service. I have been most humbled and privileged to have worked closely with His Excellency the President, Hon. Ministers and Senior Government officials. It has not always been smooth sailing, as in any Organisation and work environment, there will be turbulences and storms which ought to be calmed.

3.2.4 I am thankful for the support, co-operation and genuine advice of all Judicial Officers and Senior Administrative personnel which I felt was motivated by a genuine interest of the Judiciary and of the Country.

3.2.5 This is my last Legal Year Opening Address and as will become apparent, its Theme, “**Reflections on the Efficacy of the Reforms (2008 - 2017) and the Future Outlook”** hinges on the achievements and challenges during my tenure as a Judge and Chief Justice. The achievements realised are our collective successes whilst I own up to the shortcomings.

**4.0 REVIEW OF THE 2017 LEGAL YEAR**

*Your Honour, Your Ladyships, Lordships, Ladies and Gentlemen.*

Our 2017 calendar had a plethora of events and programmes geared towards strengthening and enhancing our internal processes with a view to improving service delivery. This is borne out of the realization that our Judiciary plays a pivotal role in nurturing our Constitutional democracy thereby making our Country an example of a working democracy in Africa and indeed the World. Please let me highlight some of the salient engagements:

4.1 **TOUR BY LESOTHO DELEGATION**

A visiting delegation from the Kingdom of Lesotho’s Criminal Justice Sector benchmarked on our CRMS and JCM including touring the High Court Registries in Gaborone on 16 February 2017.

4.2 **JUDICIAL CONFERENCE:**

The Judiciary held its annual Judicial Conference on the

27th and 28 July 2017 in Palapye under the Theme *“Judicial Reforms (2007-2017): Achievements and Challenges*”. The Conference afforded the delegates who included our Key Stakeholders the opportunity to introspect and interrogate the challenges associated with our Reforms and to proffer corresponding practical solutions and strategies as we move into the future. Some of the resolutions worth sharing relate to reinforcing the resourcing of the Judiciary, the tweaking of our Reforms to usher in E-Filing, Court Annexed Mediation and continuous development and training, funds permitting.

4.3 **EXCELLENCE AWARDS CEREMONY:**

As an Organisation, we recognise that the most important resource and key driver in the successful implementation of our reforms and excellence in service delivery is the human capital. Consequently, rewarding employees for good performance is a good initiative which motivates them to do even better in future. It is with the above backdrop that we held our maiden successful Rewards and Recognition Ceremony in Gaborone on 22nd September 2017 spearheaded by a Committee chaired by Hon. Justice Tau, under the Theme *“Rewarding Service Excellence in the Judiciary”.* A total of 62 Officers were recognised and awarded for their exceptional performance in the Financial Year 2016/17.

4.4 **DEVELOPMENT OF THE ADMINISTRATION OF JUSTICE (AOJ) STRATEGIC PLAN 2017 – 2023**

In August 2017, a Consultant and Technical Working Committee chaired by Hon. Justice Leburu and deputised by Hon. Justice Moesi was appointed to provide professional and technical input into the Development of the AOJ Strategic Plan for the period 2017 - 2023. Our 2010 – 2016 Strategic Plan under the Vision “*Access to Justice for all by 2016”* has run its course.

I am pleased to report that the Committee availed to me on 29 November 2017 the Final Strategic Plan Document whose Vision is “*Achieving A World Class Judiciary”.* In coining our Vision we realized that we are in competition with the World and that Global Benchmarking is key. The new Strategic Planwhich is aligned to Vision 2036 will in due course be cascaded to Divisions/Stations for implementation.

4.5 **REAL TIME REPORTING**

A Pilot Team on Real Time Reporting visited the Judiciary of the Republic of Zambia from 17 - 21 September 2017. The local Trainer was part of the delegation. I am happy to report that after careful study and benchmarking visits, training on Real Time Reporting commenced at our Headquarters here in Gaborone on 3rd October 2017. Twenty (20) officers are being trained for a duration of twenty-four (24) months. Pilot Real Time Reporting commenced on the 1st of December 2017 in Hon. Justice Dambe’s Court in Gaborone after acquiring equipment to the tune of P1 000 000.00 and will be rolled out to the other courts at Headquarters and High Court Divisions in due course and ultimately to the Magistrate Courts.

Real Time Reporting makes Court proceedings available within hours of the conclusion of court hearings. This will permanently rid our Courts of backlog in the transcription of proceedings, thereby expediting the hearing of appeals.

4.6 **CONFERENCES/WORKSHOPS**

From 15 to 18 October 2017, I attended the Southern African Chief Justices Forum Annual Conference and General Meeting in Swakopmund, Namibia. I was accompanied by the Regional Magistrate North Mr. Mathaka. From 3 to 9 September 2017 Hon. Justices Motswagole and Nthomiwa attended a “*Human Rights – Law and Practice*; *An Introductory Course for Judges in*

*Africa”* workshop in Cape Town, South Africa, sponsored by the Judicial Institute for Africa, as part of continuous development and training.

4.7 **SELIBE PHIKWE MAGISTRATES COURT**

We experienced the misfortune of an electrical fault on 23 October 2017 resulting in the Maintenance Registry Wing being engulfed by fire at this Court. Almost all the Maintenance case files were burnt. Relying mostly on CRMS electronic files, we commenced the reconstruction of the files on 13 November 2017, following my visit to Selibe Phikwe on 7 November 2017 accompanied by the Registrar and Master and other Senior Officials. The exercise also involved updating the records of payments using the Government Accounting and Budgeting System (GABS). I am pleased to report that the exercise is done whilst the refurbishment of the burnt Wing is due to be completed by 28th February 2018. I thank Honourable Minister Kgathi in particular for the promptness and assistance rendered.

**5. PROJECTS:**

*Your Honour, Your Ladyships and Lordships, Distinguished Guests, Ladies and Gentlemen.*

5.1 Prior to and during my tenure of office, the Government and the Judiciary established a sizeable number of Courts in the Countryside. It is my fervent hope that this will be expanded. One here is looking at the unfreezing of the construction of the Magistrates Courts in places like Ghanzi and Serowe as well as the acceleration of maintenance and refurbishment of Court infrastructure and Judges’ houses in Lobatse and Francistown which are in a dilapidated state including the provision of befitting official vehicles for Judges. I am not oblivious of the ongoing refurbishments at Selebi Phikwe, Maun, Kasane and Mahalapye Magistrates Courts.

5.2 In the same breath, I am pleased to report about the completion of the extension to Broadhurst Magistrates Court and its occupation on 18 December 2017 including a gymnasium all at a total cost of P75 628 898.21, the completion of the construction of Kanye Magistrates Court and staff houses at a total cost of P64 085 902.27, the completion of gymnasium at Francistown and Lobatse Divisions of the High Court at a total cost of P760 000. 00 and await the delivery of the gym equipment in April 2018 and the alteration and works at Plot 1144 Area L Francistown at a cost of P1 363 765,76 to accommodate the Small Claims, Traffic and Family (Maintenance) Courts scheduled for completion in early March 2018 thereby decongesting the Francistown Magistrates Court operating from Ntshe House.

5.3 I take this opportunity to once more applaud the Government for such a weighty investment in the Judiciary and the wellness of its staff.

**6. ACCESS TO JUSTICE:**

*Your Honour, Your Ladyships, Your Lordships, Distinguished Guests, Ladies and Gentlemen,*

*6.1* Emboldened by our then Vision of “**Access to Justice for All by 2016**”, we have been able to provide Judicial services in rural areas, thus reducing the expense and travelling time to go to major Towns and Villages to source services from the Judiciary. This initiative has also curtailed travelling distances to claim child maintenance and or to give evidence of a local event in a Village far from the scene of the event.

6.2 We have established Magistrates Courts in Hukuntsi,

Gumare, Kang, Shakawe, Nata and Bobonong which is no longer a visiting Station. We are grateful to the Government for the resources which made it possible for us to operate from these areas. Public access in terms of physical structures, simplification of the Rules and Legal Aid are matters that the Judiciary is concerned about.

**7. CRIME AND BAIL**

*Your Honour, Your Ladyships, Lordships, Ladies and Gentlemen.*

7.1 In 2017, the Botswana Police Service upped the ante by pouncing unannounced on crime scenes following surveillance and intelligence gathering and parading suspects in the public glare on national Television. Using this strategy, Police have arrested many suspects and recovered many unaccounted for goods ranging from huge amounts of money, household property and drugs courtesy of the sniffer dog “*Boots*”.

7.2 As a matter of fact a new phenomenon of drug abuse

particularly *motokwane,* especially amongst the youth, has emerged which not only requires better resourcement of the Police Service but the active intervention of the parents and the community to stop the scourge. This is in consonance with the adage “*no amount of law enforcement can solve a problem that goes back to the family*”.

7.3 Added to this are the road accidents which are linked predominately to careless driving, over speeding which is turning our roads into racing tracks, unlicensed driving and driving under the influence of alcohol or drugs. Police visibility on our roads has proven to be a deterrent for overzealous motorists.

7.4 We in the Judiciary, like the rest of the nation, commend the Police for the job they are doing and join the appeal for the better resourcement and the establishment of Specialised Units in the critical areas which impact on investigations.

7.5 I wish to assure the nation that the Courts will continue

to impose deterrent and exemplary sentences upon those convicted of the aforesaid and other offences.

7.6 We, however, note an emerging disturbing perception that whereas the Police arrest suspects the Courts are quick and busy frustrating their noble endeavours by releasing the said suspects on bail. This narrative if not properly handled has the effect of setting the public against the Judiciary.

7.6.1 For example, during the course of last week, the Police paraded on the National Television one accused person by the names **KEODIRETSE TLHOFAETSI** alleged to have committed the offence of murder whilst on bail for allegedly having committed another offence of murder. Our records show that on 15th November 2016 this accused person was denied bail by the Village Magistrate Court and remanded in custody with his case being set for next mention on 29th November 2016. Our records further show that when this accused person appeared before the Magistrate on 29th November 2016, the Police Officer who represented the Prosecution did not oppose bail. Instead, he went on to propose conditions under which the accused person was to be released and the court duly released the accused person on the conditions as proposed by the Prosecution.

7.6.2 It is worth noting that even though this offence was allegedly committed in 2016, as I speak, the accused person has not been committed for trial by the High Court

7.6.3 I have in the past, as I do now, taken advantage of forums such as this and Stakeholders Conferences to articulate the correct legal position and the situation as it obtains grounded by empirical data.

7.7 Please allow me to quote myself on what I said at the 2013 Legal Year Ceremony “… *the public outcry on its perception on how the Judiciary has and is handling the issue of bail in this Country is unnerving. I want to assure the nation that their concerns have not fallen on deaf ears ….. There seems to be a blame game amongst Stakeholders in the Judicial and Legal System on the issue of bail in particular with regard to the granting of bail to those who have committed certain types of offences and repeat offenders … Whilst admitting that it is the Court as the arbiter which is vested with the power to decide whether one is released on bail or not, the Court does not act in isolation, neither does it rely on any other facts other than those presented before it to make a determination and the providers of this information are none other than the Police as investigators and the Prosecution”.*

*7.8* Statistics from the Magistrates Courts for the period November 2016 to October 2017 show that 4207 bail applications were registered of which 731, (17)%, were opposed resulting in 3476 or 83% being released on bail unopposed. Of the total number of 3476 released on bail unopposed, 163 re-offended and were arraigned for similar or other offences. The total number of applicants refused bail and have been in custody for a period in excess of 3 months is 278. Of this figure 87 have been in custody for a period in excess of 6 months whilst 17 have been in custody for a period in excess of 12 months pending conclusion of investigations.

7.9 It must be emphasized that the denial of bail must not be

used as a mechanism for imprisoning people under the guise or pretext that investigations are ongoing as something tangible has to be produced before the Court.

7.10 Further, Judges of the High Court have resolved that a person denied bail at the Magistrates Court must approach the High Court by way of appeal, save in other exceptional circumstances as there were many instances of queue jumping.

7.11 Judges and Magistrates whom you see here live in Society and discharge their duties without fear or favour but not oblivious of the context and take all relevant factors into consideration in arriving at their decisions.

**8. REFORMS, BACKLOG AND PERFORMANCE OF THE COURTS**

*Your Honour, Your Ladyships, Lordships, Ladies and Gentlemen;*

8.1 The introduction of CRMS and JCM was in recognition of the fact that a 21st Century Judiciary must rely on Information Technology as the tool to increase productivity and improve performance and that the progress and fate of a case be under the superintendence of a Judicial Officer. Rules were amended designed to expedite the progress of cases aiming at substantial justice rather than procedure.

8.2 When the late former Chief Justice, Nganunu declared towards the end of 2007 that the “*die is cast*” and that we had crossed the Rubicon, he assigned to me the mammoth task of nurturing JCM as the Steering Committee Chairperson to ensure that both internal and external Stakeholders were on board, forever changing our Judicial and legal landscape.

8.3 During my tenure as the Chairperson of the JCM Steering Committee from 2007, and as Chief Justice from 2010, I took it upon myself that Stations adhere to the set standards to ensure that the electronic file is a true replica of the manual file with the ultimate objective of introducing E-Filing and accessing correct and accurate information at the click of a button.

8.4 Besides the gauging of Stations, we have ensured that Court Teams chaired by the managing Judicial Officers are in existence and effective and that CRMS is part and parcel of the Organisation’s work ethic.

8.5 During my visits to stations I also conducted one on one sessions with the respective Court Teams after noting that clubbing performers and non-performers together was not achieving the intended results. This exercise has paid dividends and the incoming Chief Justice will find this a firm foundation to spring from.

8.6 JCM from inception in 2008 to present has steadily and gradually expedited service delivery resulting in quick and increased case disposal particularly at the High Court. The success of the reform is rooted in its being accepted and embraced by the Stakeholders and the public at large as its fruits are discernible.

8.7 As we benchmarked on JCM in the United States of America we were cautioned that as our systems improve and become more efficient being propelled by the reforms, problems will arise from time to time and that these have to be resolved cognisant of our environment and uniqueness. I want to thank and commend the Americans that to their credit, they never prescribed to us as to how we should apply JCM. They only taught us the principles of JCM and left it to us to apply and adjust those principles to our own environment and circumstances.

8.8 We note that not all is smooth sailing as criminal justice is sometimes slow to arrive mainly due to the large volume of such cases at various stages of investigation at the Magistrates Court and many interlocutory applications in respect of corruption cases. Upon the arrest of a person, Police are obliged to bring that person to Court within a specified period whereupon the case is registered whilst investigations are ongoing.

8.9 We acknowledge that what matters to the public and litigants is the aggregate time the case has taken from the moment of arrest to completion through either acquittal or sentencing. However, in assessing the period the case has taken to finality, one should also deal with the period taken during investigations to the time it is registered at Court, the continuing investigations and is ultimately ripe for prosecution. Until the investigations are complete and the case is ripe for prosecution, the case cannot be counted as backlog.

8.10 In terms of the timeframes we have set, backlog kicks in from the time a case is ripe for prosecution. The case is not that of the Court until the investigations are complete. Put differently, Courts are not responsible for investigating but for adjudicating over cases.

8.11 It is for this reason that I have routinely been calling upon Stakeholders in my addresses at forums such as this, including Stakeholders Conferences, that they need not be timid or hesitant to take responsibilities for what they do.

8.12 Instead, time has come for our Stakeholders to formulate and adopt timeframes for the accomplishment of particular activities within the cycle of a case in order to enhance their accountability to the public.

8.13 For our part, as I have previously stated on many occasions, we defined backlog by setting for ourselves the following time frames beyond which cases will be regarded as backlog. The turnaround times have been made public by posting the same on our website and in prominent places at our court facilities.

8.14 In the High Court, Civil Causes must be completed within 24 months; Criminal Trials within 18 months; Criminal and Civil Appeals within 12 months; Matrimonial Causes and Miscellaneous Applications within 12 months and Constitutional Applications within 6 months.

8.14.1 In the Magistrates’ Courts, Criminal Trials must

be completed within 18 months and Civil Trials within 14 months.

In instances where the accused person pleads guilty, the case must be concluded within one month, default judgments within 3 months, maintenance cases within 8 months where paternity is disputed and where paternity is not disputed within 4-5 months.

8.15 The timeframes for the disposal of various case types in both the Magistrates Courts and High Court are generally being adhered to. These disposal rates by the standards of well-functioning Judiciaries in democratic countries are very impressive.

8.16 Please allow me to commend all the Judicial Officers,

Stakeholders and Staff for such a stellar performance.

8.17 The other reforms we introduced to facilitate the quick disposal of cases include the setting up of **Special Stock Theft Courts in Molepolole, Mochudi, Jwaneng, Palapye, Letlhakane, Selebi Phikwe and Francistown as well as the Special Mobile Traffic Courts in Gaborone, Kanye, Palapye, Francistown and Maun**, the Special Maintenance Courts and the Court dedicated to dealing with Corruption cases in response to public concerns about particular offences.

8.18 Corruption is one of the major impediments to development and good governance as it undermines democracy and the rule of law. The most common form of corruption is bribery and the other hotspots are in the Land sector, Construction, Procurement, Supplies, Public Transport, and the acquisition of driving licences.

8.19 The setting up in 2013 of a Court dedicated to corruption cases presided over by a roving Judge is meant to expedite such cases after observing that interlocutory applications of a Constitutional nature moved at the Magistrates Courts stalled the progress of the cases.

8.20 I appeal to the nation to rise, unite with the Criminal Justice Agencies and nip corruption in the bud through collective efforts as it affects everyone, especially the vulnerable and the poor who are exposed to its brunt.

8.21 We appreciate the support extended by the Government to the Judiciary in the provision of vehicles and caravans for Special Stock Theft Courts as well as buses for the Special Traffic Courts; more of these facilities are needed. This Country has already gone far in building for itself an enviable Judiciary which works and is a reference point.

8.22 I am happy to report that during my tenure those in authority, even though on rare and isolated occasions did not agree with our judgments/decisions, nonetheless respected the principle and practice of the independence of the Judiciary and Rule of law by obeying Court Orders and affirming the primacy of the Courts as the final arbiters of disputes in Society.

8.23 The future outlook for the Judiciary is the introduction of Court Annexed Mediation and E-Filing with CRMS and JCM as their root and trunk. These form a plinth for the incoming Chief Justice to further develop the Judiciary. Court Annexed Mediation, for instance, will catapult JCM in the further reduction of backlogs, expediting the rate of disposal of cases and reduction in costs and other related expenses associated with formal litigation. E-filing will take CRMS to the next level of electronic filing of pleadings by attorneys and management of cases.

8.24 As part of strengthening the Judiciary’s capacity to deal with a growing volume of pending cases vis-à-vis our establishment on the High Court Bench, Government approved our request for the appointment of four (4) more Judges at our three (3) Divisions of the High Court. The Judicial Service Commission will deal with the process of filling the positions in due course.

**9. RESOURCING THE JUDICIARY**

*Your Honour, Your Ladyships and Lordships, Ladies and Gentlemen;*

9.1 The basic premise for us in the Judiciary has been an appreciation that Government resources are never enough even at the best of times and always strived to get more out of the fewer resources. Our experience is that Government has to provide sustainable funding for the Judiciary and its programmes, as donor funding besides the donor fatigue, usually has strings attached which if you do not agree with, results in its subsequent withdrawal, thereby frustrating the progression of planned or envisaged projects and programmes.

9.2 The issue of the resourcing of the Judiciary is a challenge as we move into the future which my successor has to grab by the horns. It is critical that a Legislative framework is put in place to ensure that the Judiciary is adequately resourced and that it draws its funding from the Consolidated Fund as this bolsters the Judiciary’s financial autonomy thereby further enhancing the Judiciary’s independence.

9.3 The Judiciary has been fortunate in that The President has always demonstrated keen interest and sensitivity in addressing its financial requirements. Most of us who are gathered here this morning will vividly recall that at the 2013 Legal Year Ceremony we made a request for seven (7) all-terrain vehicles to tow the caravans for our Special Stock Thefts Courts with the intention that the Courts hear and complete stock theft cases within the shortest period possible and within areas in close proximity to their Villages when exhibits are still intact. His Excellency, with promptness on delivery made a pledge through the Attorney General on the same occasion and indeed 3 Toyota Prados and 4 Toyota Hiluxes were delivered.

9.4 His Excellency’s astute leadership also came to the fore when he intervened in the case for the upgrading of Magistrates and their security as well as the provision of 12 posts of Magistrates dedicated to the Special Traffic Courts.

9.5 All is not lost as there is hope following the Stakeholders Conference convened by the Ministry of Defence, Justice and Security on 31October 2016 and 1 November 2016 following the structured resolutions of the 2015 Judicial Conference at Mahalapye officiated by The President.

9.6 The Stakeholders Conference recognised that the budget allocation to the Judiciary was inadequate which in turn hampered the Judiciary’s financial and institutional independence.

9.6.1 The Conference resolved that the Government should amend the necessary Legislative frame work to ensure that a specified percentage of the national budget was allocated to the Judiciary.

9.6.2 The Conference resolved that the Key Stakeholders to the Judiciary must be adequately resourced to enhance effective justice delivery.

9.6.3 On the issue of human resources, the stakeholders Conference resolved that there should be an increase in manpower in the entire justice system, including *inter alia*, the urgent recognition of the Court of Appeal as a separate Court with its own staff and the speeding of the takeover of the Prosecutorial Service from the Police and Directorate on Corruption and Economic Crime by the Directorate of Public Prosecutions.

9.7 All these matters are before our Hon. Minister. We look

forward to the Government’s acceptance of the modest request that a specified percentage of the national budget be allocated to the Judiciary as the independence and functions of the Judiciary are affected when it is not well funded.

***10. DEPUTY SHERIFFS***

*Director of Ceremonies,*

10.1I commend the Registrar and Master, who is the Sheriff, for spearheading a robust raft of reforms programme governing Deputy Sheriffs.

10.2 The establishment of a separate unit headed by an Assistant Registrar to exclusively address Deputy Sheriffs’ related issues, the implementation of a Service Contract, the increase in the Security Bond, the operation of a Trust Account and the issuance of Identity Cards have been pivotal in shading off the brusque and over bearing image often associated with Deputy Sheriffs.

10.3 I urge members of the public to only engage the services of Deputy Sheriffs with valid Identity Cards so as not to fall foul to unscrupulous persons masquerading as Deputy Sheriffs.

**11. LAW SOCIETY OF BOTSWANA**

*Distinguished Guests,*

11.1I reiterate the Judiciary’s continued commitment to work with and support the Law Society, a key Stakeholder in driving the reforms we have put in place including identifying and finding solutions emanating from such reforms.

11.2 In the same breath, I urge the Law Society to deal with and resolve the backlog of the many complaints by members of the public against its members which are before the Society and to apply the principles of Judicial Case Management to fast track the resolution of such complaints as this has a bearing on public confidence in our Institutions and Systems.

11.3 You will recall that at Last Year’s Ceremony I asked the

Society for their input to our proposals on the review of the Tariff of Fees and *Pro Deo* fees for Attorneys. I note that the Society made their proposals which I will now leave for the consideration of the incoming Chief Justice to usher in a Revised Fee Structure after further engaging the Society and the other Stakeholders.

***12. LOCALISATION:***

*Director of Ceremonies,*

12.1The localisation of our Judiciary took momentum in the 1990s when Government appointed citizen Chief Justices. We do of course, appreciate the pivotal role our expatriate Judicial Officers played in our times of great need prior to and after independence.

12.2 As I speak today, our Magistracy and High Court Benches are now fully localised and more Batswana are being appointed to the Court of Appeal. The turbulence which once used to characterise the Magistracy has been calmed as some of the critical issues pertaining to their conditions of service and progression have been addressed. We have also come to realise that those officers who join the Magistracy as Trainees tend to bring stability to the Magistracy as they have made it their career of choice.

**13. JUDGES’ PENSION ACT, CAP. 04:07**

Y*our Honour,*

13.1 We have not always had a Judges’ Pension as we now do. Entitlement to gratuity for local Judges was fraught with controversy.

13.2 As a Judge at Lobatse I instituted litigation which resulted in a settlement agreement with the Government dated 29th January 2004, which was a midwife to the Judges’ Pension Act. The Settlement Agreement enjoined the Government, inter alia, to enact and implement a separate pension scheme for Judges within two years.

13.3 It is my humble submission that I played a modest role in the bequeathment of a Pension Scheme, which His Excellency as Vice President then with the intervention of the 3rd President Rre Mogae, placed Members of the Parliament on stringent terms to enact culminating in the passage of the Bill.

13.4 The Act came into effect on 12 October 2007. The Act caters for the surviving spouse in the event of death of the Judge and the Judge’s dependent children under 21 years of age.

**14. LAW REPORTING UNIT**:

*Director of Ceremonies*,

14.1 It is worth sharing the strides made by the Law Reporting Function which was formally transferred to the Administration of Justice from the Attorney General’s Chambers in 2014.

14.2 The transfer necessitated the recruitment of experienced staff to undertake law reporting duties in the Unit. The Unit has five (5) Law Reporters at various levels and efforts are at an advanced stage to recruit the Head of the Unit, the Editor, at F2 level.

14.3 The Law Reporting Committee chaired by Hon. Justice Lesetedi with eleven members, with Hon. Justices Radijeng, Mathiba and Marumo, amongst others, assesses the judgments from the Court of Appeal, High Court and Industrial Court for reportability and provides policy direction and strategic leadership to the Unit.

14.4 The 2014 Volume One Law Report is available and proofreading on Volume 2 is underway and a multipronged approach is being implemented to deal with the backlog.

**15. CONCLUSION:**

*Your Honour, Your Ladyships, Lordships, Distinguished Guests, Ladies and Gentlemen,*

15.1 It dawned on us a decade ago that as a Judiciary we could not use traditional methods and systems to combat modern problems. The Judiciary is thus obliged to

continue embracing technology to make itself more efficient and satisfy its customers. In today’s highly competitive world, the Judiciary cannot afford to rest on its laurels and be complacent and inert to change, “*for it is not the strongest of the species that survives, nor the most intelligent that survive, it is the one that is most responsive to change’’.*

15.2 I thank you, Your Honour and all who are here for this Ceremony. I thank our spiritual leaders for their prayers and for blessing all of us.

15.3 I express our appreciation to the Commissioner of Police for the vigilance and support of his officers in providing security and maintaining order.

15.4 I wish to specially thank the BDF and its Commander for their support this morning and for looking so smart, splendid and adding pomp and flair to the occasion.

15.5 I must also thank the Organising Committee together with all the other Government Departments for making this Ceremony such a successful event.

15.6 Lastly, but not the least, I thank my wife, my children relatives and friends for the support and understanding during my tenure on the Bench. Judgeship, in particular Chief Justiceship, is such a challenging lonely job, demanding probity, with tremendous pressure. I equally extend the same appreciation for and on behalf of my fellow Judges to their spouses who are in attendance.

15.7 I look forward to enjoying the fruits of the lonely litigation I instituted in 2004 which is now the Judges’ Pension Act.

15.8 Finally, I wish you all a productive and prosperous new

year. I thank you immensely for your kind attention.

**P U L A! P U L A! P U L A!**