

**ADDRESS BY THE HON CHIEF JUSTICE
TERENCE TSATSILAKGOSI RANNOwane ON
THE OCCASION OF THE OFFICIAL OPENING
OF THE LEGAL YEAR ON TUESDAY 4TH
FEBRUARY 2020**

Directors of Ceremonies

Your Excellency the President of Republic of Botswana Dr Mokgweetsi Eric Keabetswe Masisi and the First Lady Mrs Neo Masisi,

Your Honour the Vice President of the Republic of Botswana Mr Slumber Tsogwane,

My dear Wife- Dr Malebogo Pearl Mosau-Rannowane,

The Honourable Speaker of the National Assembly- Mr Phandu Skelemani,

Your Excellency Former President of the Republic of Botswana- Mr Festus Mogae and wife -Mrs Barbra Mogae,

Honourable Minister for Defence, Justice and security Mr Kagiso Mmusi,

The Honourable President of the Court of Appeal, Mr Justice Ian Stuart Kirby,

The Former Chief Justice- Honourable Justice Maruping Dibotelo,

Honourable Justices of Appeal and your spouses,

Honourable Judge President of the Industrial Court- Mr Justice Tebogo Maruping,

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

Honourable Judges of the Industrial Court,

Retired Honourable Judges of the High Court,
Honourable Ministers,

The Attorney General, Advocate Abraham keetshabe,

The Leader of Opposition, Honourable Dumelang Saleshando,

Honourable Members of Parliament,

Chairman of Ntlo ya Dikgosi, Kgosi Puso Gaborone and Members of Ntlo-Ya-Digosi,

Acting Permanent Secretary to the President, Mr Elias Magosi,

Your Excellencies, of the Diplomatic Corps and International Organisations,

The Spiritual Leaders- Bishop Metlhayotlhe Beleme and Reverend Keleneilwe Kgerethwa,

Your Worship the Mayor of Gaborone- Mr Thata Maphongo,

Commander of the Botswana Defence Force- LT. General Placid Segokgo,

Commissioner of Police- Mr Keabetswe Makgope,

Commissioner of Prisons- Mr Silas Motlalekgosi,

Permanent Secretary for Ministry of Defence, Justice and Security- Ms Matshidiso Bokole,

Registrar and Master, your Deputies and Assistants,

All Permanent Secretaries,

District Commissioner, Mrs Grace Seitshiro,

Phase 2 Honourable Councillor- Resego Thamage,

Your Worships of the Magisterial Bench,

Chairman of the Law Society of Botswana - Mr
Diba Diba,

Members of the Bar,

President and Members of the Customary Court
of Appeal,

Captains of the Industry,

Senior Government Officials,

Members of the Media,

Distinguished Guests,

Ladies and Gentlemen.

I greet you all! Pula!

IN MEMORIAM

On the 9th of August 2019 we lost Deputy
Registrar of the Court of Appeal Mrs. Lilian
Koketso Mohwasa, after a long illness and within
a short space of time, on the 8th of November
2019 we lost Her Worship Magistrate Grade II

Ms Mogi Paya and her daughter in a road traffic accident. On 25th of December 2019 we also lost the former Speaker of the National Assembly, Cabinet Minister and Educationist of repute Mr Ray Molomo, after a long illness.

We convey our sympathy, condolences and love to the bereaved families and ask them to take comfort in knowing that their loss is truly our nations loss as well.

I request that we stand and observe a moment of silence in remembrance of the departed.

(MOMENT OF SILENCE)

Thank you very much. We may take our seats.

1. INTRODUCTION

Before I proceed with my speech, I think it is proper that I congratulate His Excellency the President for his victory during the General Elections held in this country in October last

year. I also wish to extend my congratulations to Honorable Members of the 12th Parliament as well as councillors for their success at the polls. It would be remiss of me if I were to omit to equally congratulate the IEC, its Chair, judge Abednego Tafa, and its Secretary Mrs. Keireng Zuze for the efficient and professional manner in which they conducted the General Elections for 2019 that were hailed as free, fair and credible by a large number of International, continental, regional and local observers. May I also register immense appreciation to Botswana across the length and breadth of this beautiful country for the peaceful, patient and mature conduct which they displayed before, during and after the elections. The country's tradition of holding elections in a democratic, orderly, calm and peaceful atmosphere which is envied the world over, was upheld.

1.1 As we enter into a new decade, it is that time of the year, to be precise the first Tuesday of the month of February, when the Head of the Judiciary in marking the official commencement of the High Court business, and also accounts to the Nation on the general hygiene of the Justice and Legal System. The normal Court sittings of the High Court will start soon after the official opening of the Legal Year.

1.2 This address constitutes a condensed synopsis of the year under review, highlighting milestones and challenges which militate against justice delivery and corresponding interventions and the future trajectory in our unflinching quest to usher in “**a World Class Judiciary by 2036**”, which is our vision.

1.3 I earnestly welcome you to this auspicious occasion and wish to express our profound gratitude at your unwavering and faithful reassuring presence, year in and year out to in order to witness and support this critical and immensely important day in our Judicial calendar.

2. 2020 LEGAL YEAR THEME

Your Excellency, Your Ladyships, Lordships, Distinguished Guests, Ladies and Gentlemen

2.1 The 2020 legal year theme is: **“The Judge as an agent (catalyst) for democracy”**. This is informed by the reality that the primary role of the

Judiciary is dispute resolution through fair and impartial interpretation and application of the laws of the country. It is thus, the judiciary which plays both the stabilizing and enabling influence before, during and after the elections wherein citizens choose their leaders through adult universal suffrage.

2.2 Our Republic is a constitutional multiparty democracy based on separation of powers and renowned and famed for its adherence to democracy and the observance of the rule of law, free and fair elections at regular intervals and an independent and impartial judiciary.

2.3 The separation of powers between the executive, the legislature and the judiciary provides a system of positive and healthy mutual checks and balances exercised by these three arms of Government upon one another.

2.4 In the matrix of a constitutional democracy, Judicial Officers, as agents for democracy, wield immense power and influence in Society. The power exercised by the judiciary is derived from the people and for their benefit as public confidence is the pedestal for a functioning democracy and the observance of the rule of law. In the exercise of this function, judges are expected to do so fairly and impartially. In his scholarly work **CONSTITUTIONALISM IN EMERGENT STATES**,(p15), B.O. Nwabueze states that: “ *The unique virtue of separate*

*procedure of the courts is that, being unaffected by the self-interest and consequent bias of the legislature or the executive in upholding their action, it can be expected to apply to the interpretation of the constitution or a statute an impartiality of mind which inhibits any inclination to vary the law to suit the whims or personal interest of either the judge or a party to the dispute, thus, ensuring **that stability and predictability of the rules** which is the core of constitutionalism. Whilst admittedly judges may not be entirely devoid of self interest in the subject matter of a legislative act, for no human procedure is ever completely neutral, yet this impartiality serves at once as a safeguard against a possible danger of arbitrariness on the part of the judges in the discharge of their interpretative*

function, and is reinforced by the doctrine of precedent and the tradition of judicial self-restraint. Furthermore, the process by which the courts exercise their functions, affording, as it does, ample opportunity for full arguments by the parties or their lawyers on the possible interpretation of the law in the context of the facts before the courts, ensures that the court's decision would reflect the reasonable or accepted view of the meaning of the law.”

2.4.1 In the execution of their duties, Judges need not only be fair but must be perceived to be so by ordinary members of the public. Loss of public confidence in the integrity and the impartiality of the judiciary is a recipe for anarchy and lawlessness. Nwabueze (supra) at (p147) elucidates this point in the following observation: “*For it is*

not enough that the judiciary, as the guardian of the constitution and of the people's rights, should be impartial; it is equally important that it should be seen to be so. Whatever the quality of its decisions in point of law, it can command no respect or acceptability if the public has no confidence in it...And when things have come to such a pass that people with genuine grievance against government are no longer willing to have recourse to the courts for redress, then that is the end of the constitutional government, and the stage is set for anarchy."

2.5 Though they may be different and diverse in terms of outlook, orientation, beliefs and persuasions, judicial officers have a common denominator in that as servants of the law and employees of

the people they serve, in a democracy they account to the public through simple, well-reasoned and researched, lucid, easy to read and understand rulings, orders and judgments which are delivered timeously, for Justice delayed is justice denied. Reasons for judgments, besides demystifying court operations enable Litigants and members of the Public to appreciate the rationale for the decisions and to make an informed assessment of whether to appeal or not. Judicial Officers' decisions ought not only to be correct in law but must reflect the norms and values that the society holds dear and strive to achieve outcomes that are consistent with, and promote social justice.

2.6 As catalysts for change, judges can and should play an active role in protecting

the fundamental human rights of all persons and thereby promote our values and our way of life as a nation, well known for its adherence to constitutional democracy and the rule of law.

3. REVIEW OF THE 2019 LEGAL YEAR

Your Excellency, Your Ladyships, Lordships, Distinguished Guests, Ladies and Gentlemen,

We had a typically heavy and packed schedule, the proverbial roller coaster, and this appears to be the norm with the passage of each year.

It is not reasonably possible, unless we detain you for the whole day, to share all that transpired, save to take a bird's eye view on

what we consider to be pithy and weighty matters.

3.1 GENERAL ELECTIONS AND OATH OF OFFICE FOR THE 5TH PRESIDENT OF THE REPUBLIC OF BOTSWANA

3.1.1 The year 2019 was an eventful year for our country and the judiciary was propelled to the forefront of the unfolding political process as a catalyst and stabilizing force to ensure that democracy was allowed to manifest itself without hindrance. The general elections for the Presidential, Parliamentary and Local Government held on the 23rd of October 2019 is the main highlight owing to their material significance in the country governance and democratic calendar. This was probably the most hotly contested and the most

acrimonious elections compared to the previous ones. The voter registration process precipitated an unusually high number of election objections throughout the country, which was quite unprecedented. There were a whopping 1471 election objection cases registered with magistrates' courts across the length and breadth of the country. The majority of these were given expedited hearing and completed at the magistrate courts while a few found their way to the High Court. These had to be concluded timeously to ensure that our democratic processes of electing a new government proceeded seamlessly.

3.1.2 In November 2019, 23 election petitions were filed with the courts by some unsuccessful candidates in the parliamentary and local elections.

Because of the massive public interest in, and the national importance of these cases, I invoked my powers under section 6 of the High Court Act to set up four specially constituted panels, three in Gaborone and one in Francistown each comprising three High Court Judges to preside over them. I must hasten to point out that access to the courts to impugn or challenge an election result is a statutory right guaranteed by section 116 of the Electoral Act.

3.1.3 Three of the panels have concluded the cases and pronounced their verdicts whilst one panel is busy with the remaining petitions. I commend all magistrates, all the judges and the entire support staff for dropping everything they were doing and adopting a punishing schedule to expedite the

hearing of these cases. In so doing, you have all performed your patriotic duty to the Blue, Black and White Nation to defend, protect and enforce our democracy. I am proud to note that every challenge from the magistrate court and all the way to the Court of Appeal have been accorded expedited hearing. The JP of the COA Mr. Justice Ian Kirby had assembled a Bench comprising five justices of that Court to hear the expedited appeals of the election petitions. The appeals were duly heard on the 29th January 2020 and were dismissed with cost.

3.1.4 Whilst the unsuccessful petitioners might remain aggrieved, there can be no doubt that the judiciary in Botswana has carried out its mandate of upholding the rule of law without fear or favor or ill will. In so doing the judiciary ensured

that peace and tranquility prevailed and that the democratic process of ushering in new leaders was facilitated.

3.1.5 One important lesson that this nation must appreciate from decisions of the courts, starting with the election objections at the magistrate's courts, the petitions at the High Court to the appeals at the COA, is this: The voter and not the courts is the sole arbiter of who goes to Parliament and who goes to council. As the saying goes: "***Vox Populi, Vox Dei ; The voice of the People is the Voice of God*** " *The People have spoken and their voice should be respected.*

3.1.6 Still on this subject, I wish to assure all litigants that although the election petitions were given priority, their cases have not been forgotten and will be

attended to and resolved in due course. In any case the bulk of the litigation around the petitions took place during what was supposed to be a court vacation when judges were expected to be working in their chambers instead of the court room.

3.1.7 In terms of Section 38(1) of the Constitution of Botswana, in my capacity as Chief Justice, I acted as the Returning Officer for purposes of the elections to the Office of the President, and by virtue of Section 32(3)(d) of the same Constitution, I declared Dr Mokgweetsi Eric Keabetswe Masisi, the elected President, after he garnered not less than half of the total number of persons elected as Members of the National Assembly.

3.1.8 The involvement of my office in the transition process culminated with the Presidential inauguration ceremony, wherein at a special court sitting held at the UB sports complex on the 1st November 2019, His Excellency the President was, in terms of Section 37 of the Constitution, sworn in as the 5th President of The Republic of Botswana. I was both honored and humbled to play a role in this important constitutional transition marking a critical period in the political and democratic calendar of this Republic.

3.2 ESTABLISHMENT OF ADDITIONAL HIGH COURT DIVISION AT MAUN

3.2.1 Pursuant to the commitment made at the 2019 legal year ceremony pertaining

to the opening of an additional Division of the High Court at Maun, I am pleased to report about the establishment of that Division with its requisite personnel.

3.2.2 The Division commenced registration and operations on the 4th of December 2019 at its temporary premises being the Maun Magistrates' Court.

3.2.3 In terms of Section 95(4) of the Constitution of Botswana as read with Order 77 Rule 5 of the Rules of the High Court, Court 4 at Maun Magistrates' Court, was designated a seat of the High Court with effect from the 4th of December 2019.

3.2.4 The expectation is that Members of the public, particularly those residing in Maun and its surrounding areas, will

find it expedient to use this Division instead of travelling long distances to say Francistown, Gaborone or Lobatse to access High Court facilities and services.

3.2.5 The Division is for now being serviced by visiting Judges, with Judge President Justice Moroka of the Francistown Division already leading the first sittings of the Court.

You may wish to take notice that as at the 31st of December 2019, the Maun Division registered **10** cases; consisting of **2** civil appeal, **4** criminal trials, **1** civil case, **2** divorce cases and **1** urgent application, of which **9** cases are pending with **1** part heard matter.

3.2.6 It is our fervent hope that the Government in its National

Development Plan Projects will prioritize and facilitate the construction of a purpose built Court at the new home for this Division, being Plot 126, Boseja Ward, adjacent to Maun Supplies Depot. Pre - contract processes for the procurement of temporary offices are anticipated to be complete by end of February 2020.

3.2.7 Besides enhancing access to Justice, the establishment of this Division will expedite service delivery since the time and cost devoted to travelling long distances to other Divisions will be translated and dedicated to case adjudication and backlog reduction.

3.2.8 Another key intangible outcome of this development is that the local community will be afforded an

opportunity to attend court and to appreciate how cases are tried and determined and may also act as a deterrence to prospective offenders.

3.3 CONFERENCES/WORKSHOPS/SEMINARS

3.3.1 During the year under review we attended and participated in numerous Conferences and Workshops aimed at capacitating not only the participants but the entire Organization and ultimately to the Nation.

3.3.2 It is critical that as a Judiciary we maintain and measure ourselves against values and best practices in the world. It is also necessary if we are to achieve **world class status by 2036** to grow the type of judiciary staffed by

judicial officers with critical awareness of emerging Global issues that pose a threat to International Peace, security and national economies and the role of the courts in combating these challenges in collaboration with other judiciaries the world over. As the Head of Judiciary and in fulfillment of our Regional and Global obligations, I participated in and attended external engagements accompanied by either a fellow Judge, Registrar or a Magistrate to places such as Tel Aviv, Israel from the 24th to the 29th of March 2019 to attend an international conference on money laundering and Financing of terrorism. I also attended the Annual World Bank **Law, Development and Human Rights** week in Washington D.C from the 2nd to the 9th of November 2019. Conferences and Workshops are

platforms for capacitating Judges, Registrars, Magistrates and other Court personnel for them to fully understand their roles, to keep pace and be abreast with global developments and or contemporary legal challenges.

3.3.3 The Judiciary held its annual Judicial Conference cum colloquium from the 30th to 31st of July 2019 in Gaborone. The Conference was held under the theme “*Botswana Legal Framework on Anti-Money Laundering and Counter Terrorist Financing*” and was facilitated by Stakeholders and Experts in the field.

3.3.4 The Conference served as a forum to apprise the delegates on the strategies for the lifting of the grey listing in compliance with International best

practice in terms of Anti Money Laundering and Combating the Financing of Terrorism programs.

3.3.5 In addition, our Judiciary hosted a SADC Judicial Round Table Special Conference on the topical issue of Transnational Wildlife Organized Crime and its debilitating effects and alarming increase as well and its interface with drugs and human trafficking. The Conference was held in Gaborone from the 1st to the 2nd of August 2019.

3.3.6 We are also honored as a Judiciary to be the Pilot Site for the Global Judicial Integrity Network for the implementation of the Doha Declaration on boosting integrity in conjunction with the United Nations Office on Drugs and Crime (UNODC). In addition,

UNODC sponsored the Third Judicial Colloquium on human trafficking attended by Judges and Magistrates from the 9th to 11th of July 2019 in Kasane. Facilitators with the requisite technical expertise were in attendance to equip the Judicial Officers and increase their level of awareness on legal issues in this area of the law.

3.3.7 Riding on this Programme, and in compliance with the Bangalore Principle on Judicial Conduct, we held a Workshop in Gaborone from the 21st to the 22nd of November 2019 on Judicial Conduct and Ethics for Justices of Appeal and Judges of the High Court, facilitated by an External Trainer and sponsored by UNDP.

3.3.8 The same Workshop also had occasion to critique the resolutions to the Draft Judicial Service Regulations, which are receiving due attention.

3.3.9 I wish at this juncture to record, for the noting of the Country's representative in attendance, our gratitude and thanks to the Chief Justice of South Africa Hon Justice Mogoeng Mogoeng for generously and kindly acceding to our request for their Training Institute, The South African Judicial Education Institute (SAJEI) to partner and co-operate with our judiciary in our training requirements. In this regard, an Induction Seminar for newly appointed Judges facilitated by SAJEI was held in Gaborone from the 23rd to 26th of April 2019, sensitizing them on their work ethos; covering judgment

writing, lessening delays during trial, code of conduct and ethics as well as the latest trends and developments in the Legal and Justice System. SAJEI also had occasion to induct our Magistrates Grades 1, 2 and 3 from the 3rd to the 8th of August 2019 in Gaborone. Recently from the 15th to the 17th of January 2020 some of our Judges attended a Judges Seminar on Judicial Wellness, Social Media, Artificial Intelligence, to mention but a few, in Limpopo, South Africa facilitated by SAJEI.

- (a) During the same month of January 2020, from the 20th to the 31st, in Pretoria, South Africa, SAJEI further facilitated the capacitation of some Registrars in their judicial work of default judgments and taxations

(b) As an Organisation dedicated to continuous training and learning, which underpins the transformation of the Judiciary, we intend going forward to embark on an ambitious Training Program to cover all the cadres including support staff.

(c) On this score, the Administration of Justice is vigorously pursuing the relevant Structures on the establishment of its Training Institute in Lobatse. An informed update will be shared in the next address.

3.3.10 Furthermore, I am happy to announce that we shall be hosting the Tenth Biennial Meeting of Commonwealth Judicial Educators from the 22nd to the 25th of October 2020 in Gaborone. The meeting brings together over 100

Judges and leaders of Judicial Education from Commonwealth Jurisdictions to exchange information on human, material resources and to share experience on matters of mutual concern.

The hosting of this event is a sequel to Hon Justice Mogomotsi and Chief Magistrate Mmesi interaction with the Secretary of the Commonwealth Judicial Education Institute whilst attending a Training Course in Canada in June 2019.

We are confident that this event will contribute to Government's efforts of positioning Botswana as a host of International Conferences with the likelihood of enticing more hosting opportunities and the attendant

economic spin offs to the local community.

3.3.11. Let me thank the Judicial training committee Chaired by Judge Motswagole that is responsible for identifying suitable training opportunities for all judicial officers for a job well done.

3.4 PROVISION OF JUDGES' VEHICLES

3.4.1 In our previous legal year addresses we lamented much about the sorry and deplorable state of the judges vehicles. I must record the Judiciary's profound appreciation to Government for facilitating at immense cost to the nation, the safety and comfort of Judges with the provision of vehicles

befitting the Office of Judgeship in June/July 2019.

3.4.2 The provision of vehicles makes it possible for Judges to focus on their core business of case adjudication whilst their other prerquisites and issues of concern continue to receive consideration.

3.5 UPDATED RULES OF THE HIGH COURT AND MAGISTRATES' COURT

3.5.1 I am proud to report that the Combined Rules Advisory Committee chaired by Judge President Justice Letsididi presented the Final Draft on the proposed amendments to the Rules of the High Court and Magistrates' Court.

3.5.2 The draft has been shared with key stakeholders and their thoughts and inputs are receiving earnest consideration before the Rules are made and published in terms of Section 28 of the High Court Act, Cap 04:02.

3.5.3 I salute the Committee for the comprehensive and well thought out Draft Document.

3.5.4 The Draft amended Rules give prominence to the need for expediting delivery of judgments with time limits being proposed for both delivery of judgments in the normal course, and shorter duration for judgments in summary and urgent applications and the revised Tariff of fees of Attorneys including *pro deo* and attorney/client.

.

3.5.5 The incorporation of Court Annexed Mediation in the Draft Rules is designed to break the stubborn case backlog and accelerate case disposal thereby boosting the country's ease of doing business and creating an enabling environment for foreign direct investment and employment creation.

3.6 EXCELLENCE AWARDS CEREMONY

3.6.1 On the 24th of May 2019, as the AOJ family, we celebrated our third annual Excellence Awards in Gaborone themed “*Rewarding Service Excellence in Pursuit of a World Class Judiciary*” whereat 130 individuals, 45 Teams and Stations were bestowed with prizes for their outstanding service for the Financial Year 2018/2019.

3.6.2 The bestowing of the awards is a vindication of the worth of our staff as the heartbeat of the Organization and to motivate them as part of the Public Service, to transform the work environment and develop creative solutions to work challenges.

3.7 PROJECT IMPLEMENTATION

3.7.1 During the past legal year the Administration of Justice focused mainly on the renovation and rehabilitation of its existing facilities across the Country, including the enhancement of court security to prevent facilities vandalism. The maintenance of Judges' houses and Court buildings at the High Court Divisions in Lobatse, Gaborone and Francistown as well as Lobatse, Mochudi and Mahalapye Magistrates

Courts has been undertaken and is ongoing.

3.7.2 In an endeavor to enhance the security for Magistrates, boundary walls fitted with electric fence and motorized gates will be erected around their residential houses at Bobonong, Kasane, Letlhakane and Hukuntsi.

3.7.3 The challenge we face in project implementation, which our Ministry is seized of, relates to delays in pre-contract processes exacerbated by inadequate technical capacity in areas such as Electrical and Structural Engineers in our Ministerial Technical Unit, resulting in delays in scoping of projects.

3.8 LAW REPORTING UNIT

- 3.8.1 The publication of an up to date quality series of the Botswana Law Reports is the core duty of the Law Reporting Unit. The importance of having an up to date quality series of the Botswana Law Reports is anchored on the *stare decisis* principle.
- 3.8.2 The most recent series of the Botswana Law Reports to be published is Volume 1 of 2017. We expect Volume 2 of 2017 to be published by end of this month whilst the Consolidated Index (1965 – 2015) is expected to be published by June 2020.
- 3.8.3 The Law Reporting Unit is guided by a standing committee of senior judges and practitioners headed by justice of Appeal Hon. I B K Lesetedi who vet all judgments for inclusion in the Law Reports I thank them for their sterling service.

3.9 TRUSTS

3.9.1 Pursuant to the promulgation of the Trust Property Control Act No. 11 of 2018, in compliance with Botswana's International obligations in Anti-Money Laundering and countering the Financing of Terrorism, the Master has been registering new Trusts and validating existing ones.

Three Masters namely Mesdames Moatswi, Gaobatwe and Rampha were sent as part of the Botswana Delegation to Paris, France from the 25th to 28th of June 2019 to receive the Peer Review Report on Botswana's progress in complying with its International obligations. Although Botswana received an overall rating of Partial Compliance, I am assured by the Master that the Division is working tirelessly with our Partners to ensure that

Botswana moves to the Compliant position to forestall serious ramifications on the economic wellbeing of the Country.

3.9.2 Some of the challenges pertain to the public's appreciation of the new legislation and the Anti-Money Laundering and the Financing of Terrorism issues which must be monitored in terms of the Financial Intelligence Act. Money laundering is in essence a fiscal offence.

3.9.3 In an effort to shed more light on the new legislation, as amended, the Registrar and Master, Mr. Michael Motlhabi, engaged the public in May 2019 in the Masaasele Radio Programme. There will be more of such out-reach Programmes in the near future to assist the public in understanding the law on the registration

and maintenance of Trusts, Liquidations, Deceased Estates and the Sheriff's office.

3.9.4 The public awareness campaign has resulted in an influx of applications from the public, thus creating a need for more skilled personnel to support the Master. The Organization has therefore seen it prudent to employ the services of Private Attorneys, on an *ad hoc* basis, to expedite the registration process.

4. PERFORMANCE OF THE COURTS

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

4.1.1 Whereas Judicial Case Management places the Judicial Officer at the apex,

as the key determinant and controller in the management of cases, the disposal of cases is not the sole charge and responsibility of the Court. It is a shared assignment dependent on input and contribution from various stakeholders across the value chain in both the civil and the criminal justice sector.

4.1.2 Going forward, deliberate and structured monitoring and evaluation mechanisms to address and close inefficiencies, gaps and inadequacies in the chain including adherence to generic standards and turnaround times will be duly applied.

4.1.3 In order to improve the overall case disposal rates by the courts, there is a need, particularly in criminal cases, to

sharpen the skills of the investigating officers to improve their ability to speed up and complete their investigations before registering cases with the courts. This will obviate the bringing of weak prosecution cases to court which, more often than not, frustrates public expectation that justice would be served when suspects or offenders are released on account of inconclusive evidence or the cases are withdrawn.

- 4.1.4 In this context, my strongly held view is that, unless there are exceptional and pressing reasons, cases should only be registered with the courts when investigations are complete and the Prosecution is ready to call witnesses and start the trial. Registering cases and taking ages to complete the investigative process is hurting the

image of our justice system and that of the country as a whole.

4.1.4.1 CASE STATISTICS.

(i) I am pleased to share with the Nation the statistics for the Apex Court for the period of January to December 2019. A total of **258** civil appeals were registered of which **66** were completed, with **192** cases pending whilst **68** criminal appeals were registered of which **29** were completed, with **39** cases pending. In virtually all the pending cases, it is the transcribing and preparation of the records from the courts of first instance which presents the main challenge.

(ii) The Court of Appeal has a compliment of 9 Justices comprising of 6 Resident Justices and 3 Non Resident Justices.

(iii) The Court has 8 sessions (4) full sessions and 4 application sessions in a year for all Justices with a continuous Roll of expedited appeals and urgent applications for Resident Justices.

4.1.5 During the period under review; January to December 2019, the High Court Divisions of Lobatse, Gaborone and Francistown with a compliment of 28 Judges and 15 Registrars registered a total of **8 553** civil cases and **1 431** criminal case. **9 605** civil cases were completed, with **7 738** civil cases pending, including the brought forward cases and **1 368** criminal cases were completed with **1 742** criminal cases

pending, including the brought forward cases.

4.1.6 The Magistrates' Court, the coalface of the Judiciary on the other hand, with a compliment of eighty (80) Magistrates registered a total of **8 627** criminal cases and **20 249** civil cases, in the process completing **8 983** criminal cases with **5 714** criminal cases pending, including the brought forward cases and also completed **21 119** civil cases, with **7 598** civil cases pending, including the brought forward cases.

4.1.7.1 I congratulate Judicial Officers at all levels and their support staff for their stellar performance, as the statistics shared, demonstrate that invariably more cases were completed than those received, against a background of other cases which were brought on urgency.

4.1.7 We are pursuing multidimensional approaches and inbuilt strategies and interventions, as already highlighted, to appropriately and comprehensively address the aforementioned pending cases to avoid backlog.

4.1.8 The introduction of reforms such as Court Annexed Mediation and the establishment of the Commercial Courts will ultimately ensure that the existing backlog of cases is significantly reduced.

4.1.9 Speaking of the Magistracy and honing of the skills for this Cadre, we have resuscitated after a hiatus, the Masters' Degree Programme, with Regional Magistrate – South Mr. Masilo Mathaka and Chief Magistrate –

Palapye Ms. Rebecca Motsamai pursuing this program for one year in Cape Town, South Africa.

4.1.10 It will be remiss of me not to briefly allude to the vexed issue of transcription of court proceedings and its impact on backlog accumulation.

The training and deployment of the first batch of twenty (20) Court Reporters on Real Time Court Reporting has taken longer than planned, thus, negatively impacting on the prompt and timeous generation of court proceedings needed for processing of appeals. Having said so however, there is light at the end of the tunnel since the reporters are expected to graduate in March this year i.e. almost a month from today.

5. ENHANCING ACCESS TO JUSTICE

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

The judiciary's vision and mission drives the desire to continue taking courts closer to the people. We thus remain grateful to Government for its commitment in enhancing physical access to justice. However, more needs to be done.

5.1 **Kweneng** District for instance, with a vast land area and a huge growing population, has only one Magistrate station situated in Molepolole. Batswana living in villages such as Motokwe, Dutlwe and Tshwaane have to travel around 250 km to access judicial services at Molepolole

magistrates court. This amounts to a negation of our quest to facilitate access to justice by all Batswana in terms of distance travelled to the nearest court facility. We shall be consulting and engaging our Stakeholders on the urgent need to establish a Satellite station at **Letlhakeng** or **Takatokwane** to service for the residents of the entire **Kweneng West**.

5.2 The same intervention applies to **Mogoditshane**, one of the biggest modern villages in our Country, on the precincts of the capital city, Gaborone. Residents of this sprawling village have to approach either **Molepolole, Gaborone Village, Extension II or Broadhust** magistrates Courts for their court requirements. This inevitably results in these courts being

overcrowded and overwhelmed in the registration and adjudication of cases. We shall be engaging with urgency our Stakeholders on the establishment of a court in **Mogoditshane** to decongest the aforesaid courts and expedite service delivery.

5.3 Like my predecessor former Chief Justice Mr. Maruping Dibotelo, I plead with Government to reprioritise the construction of purpose built courts in **Ghanzi, Francistown, and Kasane** to ease the woes being experienced by court users and the staff operating on the leased premises and temporary structures which are no longer in good condition. We also have acute shortage of accommodation for Magistrates and support staff and it's our hope that the provision of any court facility would

include housing for judicial officers and court staff.

6. SPECIAL COURTS

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

6.1 The establishment of Special Courts is a growing trend across countless jurisdictions worldwide. These courts are viewed as cheaper and more efficient, leading to quicker decisions thus, improving the turn round times for conclusion of cases.

6.1.1 The Special Courts we have assembled in our jurisdiction are dedicated to cases of Stock Theft, Traffic, Maintenance and Corruption.

6.2 COMMERCIAL CASES

- (a) On 28th of November 2019 we convened a meeting with our stakeholders to brainstorm the establishment of commercial courts. A steering committee comprising members from the AOJ, the Government, Business Botswana and the LSB was formed. The committee was tasked with formulation of proposals to be presented to the Chief Justice so that legislative and administrative processes can be set in motion to ensure that the proposed reforms are implemented as soon as possible. During the meeting, consideration was given to what a typical commercial case was and it was generally agreed that a '*Commercial Court Case*' is ordinarily a case that has as its

foundation on a broadly commercial transaction or commercial relationship.

- (b) A Practice Direction for the guidance of Legal Practitioners and all concerned shall be issued delineating broadly the qualification criterion of a commercial court case and the operations of the Court. We anticipate the Commercial Court to be operational from July 2020.
- (c) Related to commercial cases is the issue of Tender Disputes Cases, which ought to be treated as urgent. In fact, it is in the public interest that important Tenders for the benefit of the community or disadvantaged sections of the population be concluded as soon as possible as their delays can cause incalculable harm not only in terms of cost overruns but prolong the suffering of the community.

A practice direction to treat all government tender related cases as urgent applications shall be issued soon.

- (d) I wish to mention that the comprehensive reforms that are envisaged for the judiciary are being implemented through committees chaired by judges whose primary role is court work. The previous year was very busy one for the judiciary as a whole and this has negatively impacted on the pace of implementation of our road map. We are now considering the engagement of a dedicated change management consultant with the requisite technical expertise to help oversee these reforms particularly the Court Annexed Mediation, Commercial Courts and E-filing programs. We are convinced that the engagement of an expert would speed up the transformation process.

6.3 CORRUPTION CASES

- (i) In an endeavor to aid Government's efforts in fighting corruption and to expedite the disposal of corruption cases, the earlier Practice Direction which confined the resolution of such cases at the High Court only, was amended to ensure that cases of petty or minor corruption were done at the magistrate's courts. Only cases involving grand or industrial scale corruption, or those that are in the National or Public interest would be handled by the High Court special corruption courts at the High Court Divisions in Francistown and Gaborone.

- (ii) As people we know that corruption retards development, frustrates the ease

and cost of doing business and robs the nation of revenue.

As the former United States of America Vice President Joe Biden once remarked **“fighting corruption is not just good governance, it is self-defense, it is patriotism”**.

- (iii) In order to rid our society of the corruption cancer, we must increase accountability and transparency, including strengthening the Institutions that help in the anti graft crusade from a national perspective. But law on its own is not enough and can never be enough to regulate human behavior or conduct. Public education on this subject needs to be intensified so that people will shun corruption and be ready to report it.

7. SOCIAL MEDIA AND THE JUDICIARY.

1. Following the 2019 elections, we have had to deal with a new phenomenon hitherto unknown in this jurisdiction. Some judges of the High Court and the COA have been subjected to abusive and disparaging accusations in both their personal and professional capacity by some unknown people in social media. The judiciary as a whole has not been spared. Let me assure the Nation that if that was meant to intimidate us, it shall never work because we take our oath of office to do justice without fear of favor very seriously. To that end we shall continue to administer justice without fear or favor even if the skies fall on us.

Having said so however, I should point out that whilst it is acknowledged that freedom of speech and /or expression is protected by the Constitution, it is also common cause that

unfounded attack on, and spreading fake news about Judges and the judiciary on social media, has a potential to erode public confidence in the judiciary and this will undermine its effectiveness in its primary role of maintaining public peace and harmony through fair and impartial dispute resolution. In his recent article in Mmegi newspaper entitled: *Theorizing about judgeship* former judge of this court Professor Key Dingake and now with the Supreme court of PNG observed that: “Another issue pertains to social media and falsehoods that it often spread that tend to undermine the impartiality of a judge or judges. The phenomenon of fake news, if allowed free reign, may undermine the confidence the public has in the judiciary. All of us should be careful not to promote untruths in social media, as doing so may be injurious to the independence and impartiality of the judges.”¹

¹ Dated 17th January 2020, volume 37 p23.

We hope that going forward, the cowards who engage in this despicable conduct would come out in the open to voice their grievances if any, through the right channels.

8. INCIDENTS OF MOB JUSTICE.

In my 2019 address, I cautioned the nation on the issue of mob justice. It appears the situation is getting worse, as since the beginning of this year alone incidents of mob justice have been reported or witnessed in Mogoditshane, Paje, Serowe, Francistown and Palapye. These resulted in one loss of life and serious injuries in others. I plead with the nation not to take the law into their hands but rather arrest the suspects and hand them over to the police so that they would be subjected to the due process of the law.

9. CONCLUSION

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

9.1 It is our ambition to build a Judiciary which is accessible, understands its role in transforming society, is responsive to the needs of Batswana and plays a positive and meaningful role in Government's drive to usher in a knowledge based high income economy.

9.1.1 The blue print for the Judiciary dares us to dream big as **“the tragedy of life doesn't lie in not reaching your goal. The tragedy lies in having no goal to reach. It is not a calamity to die with dreams unfulfilled, but it is a calamity not to dream”**.

9.1.2 The year 2020 is a pivotal year upon which the advancement and establishment of most of our plans in this decade are founded. This leap year is ushering us into a new decade and presents an opportunity for us to reinvigorate the Judiciary by leveraging technology to enhance efficiency and effectiveness. We also intend to fully take advantage of the impending constitutional review to advance our restructuring programs.

9.2 And on that note, I believe I have said enough.

9.3 It remains for me now to thank you, your Excellency, the First Lady, all our Distinguished and Esteemed Dignitaries, Senior Government

Officials, Ladies and Gentlemen for your attendance.

9.4 I must make special mention and thank the BDF for the splendor and colorful parade they mounted, the Organizing Committee, all the other Stakeholders, the Media for their live broadcasting, streaming and publishing articles, who in the words of former Supreme Court Justice Brennan “.... **the Media and the Courts are locked in mutual if sometimes uncomfortable embrace**” and all those behind the scenes for their immense contribution to the success of today’s occasion.

9.5 Finally, I wish Attorneys and Litigants a successful litigation year and extend to you all and the entire nation wishes of

wellness, plenty and peace in the year
2020.

9.6 Thank you

PULA!

PULA!

PULA!