

Volume 1 | Issue 2 | December 2020



JUSTICE

RoundUp

Administration of Justice Newsletter



**DIVORCE AMID
COVID-19**

*The Judiciary Sector
Consultative Meeting On
Gender Based Violence*

Editor's Note



EDITOR: Loeto Morapedi

The Justice RoundUp Editorial team is pleased to bring you a sequel to the maiden edition which was published in October 2020.

You will note with particular interest from the previous edition as well as from the current edition, that we have featured content which is laden with

matters that relate to the Covid-19 Pandemic. This is so because, the globe has not yet emerged from the face of adversity. The pandemic continues to ravage Botswana and the world at large. This newsletter therefore, aims to sensitise the readership about the scale of the pandemic and the adverse effects it has in the economy as well as the response measures that the Administration of Justice continues to put in place in order to combat the spread of the virus.

This edition features articles which include: Formulation of response to Covid-19 outbreak in the Gaborone Division of the High Court, The State of The Nation Address by His Excellency the President of Botswana Dr Mokgweetsi Eric Keabetswe Masisi has committed to strengthening the Justice System. The Judiciary Sector Consultative meeting on Gender Based Violence (GBV); which is one of the topical issues which have aroused a lot of attention from the members of the society in recent times.

In conclusion, we wish to convey our gratitude to the readership for the feedback we received for the previous issue; we humbly request that you continue to send constructive feedback as we strive to do better. Bill Gates once said "We all need people who will give us feedback. That is how we improve".

Please remember to adhere to the Covid-19 Protocols. It is no longer 'sharing is caring' BUT "sharing is covid".



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AoJ Mandate

The Administration of Justice (AoJ) performs a critical role in providing administrative support to the Judiciary, and to ensuring that the independence is maintained and sustained. In terms of the bigger context of socio-economic development, the Judiciary acts as a foundation upon which other economic pillars of the nation function. It provides stability for development and maintains a legal co-existence of the different players in the economy.

The major role of the Judiciary is to interpret the law and to resolve disputes. The Judiciary must also ensure that the other arms of government act according to the constitution through a review process of their decisions. Its pivotal role in the governance of the country is defined in the constitution as the adjudication of both civil and criminal cases involving citizens and the state.

Vision

“Achieving a World Class Judiciary”

Mission

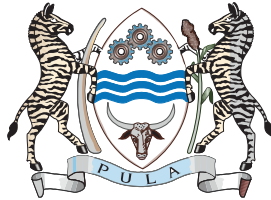
“To uphold human rights, democracy and rule of law in accordance with the constitution of Botswana”

Values

Transparency
Ethical
Service Excellence
Inclusivity
Independent
Innovation
Botho

CJ's Desk

TELEPHONE: 3718045
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REFERENCE: RM 1/6/1 X



REPUPLIC OF BOTSWANA

ADMINISTRATION OF JUSTICE

PRACTICE DIRECTIVE NO. 9 OF 2020

Chief Justices' Chambers
The High Court of Botswana
Private Bag 00220
Gaborone
BOTSWANA

TO: Hon. Justice of Appeal
Hon. Judges of the High Court
All Registrars
All Magistrates
Senior Manager
All Staff Members
All Attorneys
All Members of the Public

REF: RM 1/6/1 X

FROM:


Terence T. Rannowane
CHIEF JUSTICE

9th November 2020

DIRECTIONS ON GENDER BASED VIOLENCE AND RELATED CASES
(PROTECTION OF WOMEN, CHILDREN AND OTHER VULNERABLE GROUPS).

1. This Practice Directive is issued in terms of Regulation 30B of the Emergency Powers (Covid-19) Amendment No.2 Regulations, 2020 and must be read in conjunction with the following:
 - 1.1 Section 5 of the Matrimonial Causes Act (Cap 29:06);
 - 1.2 The Domestic Violence Act (Cap 28:05);
 - 1.3 The Children's Act (Cap 28:04).
2. It has been observed that cases of Gender Based Violence (GBV) (*encompassing intimate partner violence in the form of physical/sexual assault, sexual abuse of minor children and embecciles*), has increased at an alarming rate since the start of the covid 19 pandemic and the resultant extreme social distancing measure put in place to deal with the grave situation posed by this virus.
3. In order to address this disturbing situation the following response measures are hereby instituted:
 - 3.1 Special Courts dedicated to GBV cases are hereby set up in all Chief Magistrate Stations;
 - 3.2 All GBV cases shall be treated as urgent applications and be given expedited management, set down and disposal. Such cases shall be prioritised and removed from the normal track of other cases upon registration.
4. The Practice Directive takes effect from 1st December 2020.
5. Grateful that you observe the foregoing instructions.

CC: Hon. President of the Court of Appeal
Hon. Judge President of the Industrial Court
Attorney General
Director of Public Prosecutions
Commissioner of Police
Commissioner of Prisons and Rehabilitation
Chairman, Law society of Botswana
Business Botswana

CR's Desk

THE IMPACT OF COVID-19 ON DEBT MANAGEMENT AND HOW STAKEHOLDERS CAN MITIGATE THE SITUATION



The Chief Registrar of the High Court Mr Michael Mothabi

INTRODUCTION

The global Covid-19 Pandemic has placed an unprecedented stress on the ability of individuals and corporate business alike to service their debts and obligations, including the regular payment of wages, salaries, rentals, mortgages, loans, credit cards and so forth.

Locally as elsewhere regionally and across the globe, the covid-19 pandemic, with its associated extraordinary no economic activity to limited or low economic activity, triggered defaults in debt servicing. This resulted in some businesses downsizing, foreclosures and even judicial management and liquidations.

It is still early and premature from statistics at our disposal to decipher and assess the impact caused by Covid-19 on debt servicing management.

This *dies* (time bound orders arising from the Rules of Court), was suspended during the hard lock-down, with only cases deemed urgent being registered. The impact of the aforesaid, is that most of the cases registered during the Covid-19 period are still under case management. However, what is certain is an avalanche in terms of debt

arrears; increased litigation to recover what is due and owing, and the dire need for stakeholders to emerge with strategies on debt management and payment options and plans.

Of necessity this discussion will have to be approached from two perspectives namely; the impact on individuals and mitigatory measures and the impact on corporate business and mitigatory measures.

1. Impact on individuals and mitigatory measures

The Covid-19 pandemic culminating in the local hard lock-down of April to May 2020 affected virtually all workers in terms of income guarantee, save those in the Public Service, parastatals, and such similar institutions and organisations.

Government introduced some flexibility through rescue, aid and relief packages, moratoriums and debt re-negotiations, without necessarily extinguishing the debt servicing obligations.

However, failure to meet debt servicing obligations attract judgments and consequently their enforcement, and as a mitigation factor Deputy Sheriffs will be encouraged not to remove goods on attachment as storage is also at a cost.

2. Impact on corporate business and mitigatory measures

i) As a consequence of the Covid-19 lockdown, many companies have suffered severe financial difficulties. This has created a situation where companies find themselves in financial distress in that they are unable to meet their current obligations to their creditors on an ongoing basis. However, if given time and afforded a breathing space, they may have the opportunity of trading out of their cashflow difficulties and be restored as successful enterprises. Many companies have been faced with circumstances beyond their control and, it goes without saying, that their failure will have a significantly detrimental effect on Botswana's economy.

ii)	<p>There are mechanisms contained in the Botswana Companies Act, which could be utilised to affect a short-to-medium-term restructuring of a company's business affairs in order to provide it with an opportunity of trading out of its difficulties and getting back on its feet. However, in respect of any such proposal, the support of the majority of a company's creditors will be necessary if the business of the company is to be rescued. Generally, creditors may be receptive to business rescue proposals if it means that they will be paid in the future either in full or significantly more than if a compulsory liquidation were to ensue.</p>	<p>a certain proportion of their claims against the company, the advantage would be that they would be certain of receiving payment and they would be able to continue a commercial relationship with the company. Creditors would have to be persuaded that they would receive a better return than they would otherwise on a liquidation scenario.</p>
iii)	<p>There are broadly speaking, two mechanisms which may be employed under the Companies Act. These are:</p> <ul style="list-style-type: none"> • A compromise proposal in terms of Part XV of the Companies Act. Such a proposal can be made by the directors of a company and voted on at a meeting of creditors. If accepted by the requisite majority of creditors, it will be binding on the company and all its creditors. • Judicial management under Part XXVI of the Companies Act. The Court may appoint a judicial manager if it can be shown that if the company is placed under judicial management, it will be able to meet its obligations and become a successful enterprise. 	<p>The precise structure of the arrangement between the company and its creditors would have to be negotiated between the directors of the company and its creditors. Creditors will doubtless look to their own commercial interests and in most cases a compromise proposal in terms of Part XV of the Companies Act will be preferable to liquidation. It will thus be essential for the board of directors of a company to engage with its creditors with a view to achieving an appropriate structure.</p>
	<p>A compromise proposal is a less-complicated procedure but requires the consent of 75% of the creditors present and voting at a meeting. The intervention of the Court is not necessary and can be achieved relatively inexpensively. The appointment of a judicial manager is a more formal mechanism, requires an application to Court and can be costly since the judicial manager takes over the running of the company and its business and must be paid.</p>	<p>For present purposes, the following parties may make a compromise proposal in terms of the Companies Act:</p> <ul style="list-style-type: none"> • The board of directors of the company; • A liquidator of the company; • A creditor or shareholder of the company, with the leave of the High Court.
iv)	<p>As far as a compromise proposal is concerned, typically this would entail two possible alternatives:</p> <ul style="list-style-type: none"> • Firstly, an agreement by creditors to postpone their claim against the company allowing it time to get back on its feet. This will effectively place a moratorium on claims against the company affording the company the necessary breathing space to either rearrange its affairs or giving it time to trade out of its difficulties and to generate the necessary cashflow to pay its creditors. • Secondly, creditors may agree to compromise their claims against the company by accepting something less than the face value of the amounts owed by the company. Creditors would be paid a certain number of Thebe in the Pula. Although the creditors would be writing off 	<p>It should be noted that each class of creditors will have to separately agree. These classes of creditors are usually secured creditors, preferent creditors and unsecured creditors.</p> <p>To implement the compromise proposal, a statement must be prepared giving each class of creditors notice of the meeting and setting out the terms of the proposed compromise and the reasons for it and why it is considered to be reasonably in the interests of the company and its creditors and to have business efficacy. This notice must be registered with the Registrar of Companies.</p> <p>Meetings of creditors are then convened in terms of section 234 of the Companies Act and if the resolution containing the compromise proposal is agreed to by a majority of creditors in number representing 75% of the value of creditors, or class of creditors, voting in person or by proxy it will be adopted. The compromise proposal will then be binding on the company and all creditors.</p> <p>It should be noted that the Court is given the power to give directions that any legal proceedings against the company be stayed or that a creditor refrain from enforcing payment of a debt owing to the company. The Court also has the power to order that a compromise proposal will continue in effect if the company is placed in liquidation.</p> <p>In summary, the compromise proposal provisions in the Companies Act provide a</p>

speedy and relatively simple method of giving legal sanction to an agreement between the company and its creditors either by way of a straight moratorium on the payment of the company's debts or a compromise by way of a reduction of the creditors' claims against the company. The obvious purpose behind these provisions in the Companies Act is to enable a form of business rescue to be achieved.

x) As far as judicial management is concerned, any member or creditor may make application to the High Court for the appointment of a judicial manager. In terms of section 471(1) of the Companies Act, an applicant to the Court is required to show that if the company is placed under judicial management, it will be enabled to meet its obligations or that such an appointment is just and equitable. The considerations which the Court will take into account in deciding whether or not to grant a judicial management order include the following:

- Whether the company will have a reasonable chance of recovery under judicial management;
- The time that it will take for the company to pay its debts and meet its obligations under judicial management;
- The rights and interests of the shareholders and creditors must be taken into account.

Since the application for the appointment of a judicial manager must be made to Court and since the judicial manager must be paid for his services in administering the affairs of the company, this is a more cumbersome and expensive route than the compromise proposal route.

CONCLUSION

In respect to individuals, Deputy Sheriffs can be encouraged not to remove property upon attachment, as a measure to reduce costs.

There is no moratorium on enforcement of Court Orders, and as such due legal process is observed.

We do not have credit specific legislation in Botswana, however Section 43(2) of the Banking Act 13 of 95 provides for sharing of information for the purposes of assessing the creditworthiness of a customer, but as there is no "blacklisting" legislation specific we may have to use it sparingly.

Whereas in the case of companies, the focus should be on Compromise as against liquidation, this facility will save jobs. The only limitation of Compromise is that it depends entirely upon creditors, and you have to satisfy them that they would receive a better return than they would otherwise on a liquidation scenario.

DIVORCE AMID COVID-19



1. INTRODUCTION

The marriage institution and its sanctity is the fabric and heart of a family. The functionality and stability of a marriage impacts on the family and the nation. Social ills which bedevil the nation usually can be traced to the stratification and breakdown of marriage institution.

2. DIVORCE

The matrimonial Causes Act, Cap 29:06 deals with divorce and ancillaries such as custody, maintenance, division of matrimonial property and so forth.

Section 14 of the matrimonial causes Act, Cap 29:06 spells out the sole ground for an action for divorce is that "**the marriage has broken down irretrievably**;

Section 15 (i) of the Matrimonial Causes Act, Cap 29:06, requires a Plaintiff to prove one or more of the listed four factors in proof that the marriage has broken down irretrievably;

a) *That the defendant has committed adultery and the Plaintiff finds it intolerable to live with the Defendant;*

- b) *That the Defendant has behaved in such a way that the Plaintiff cannot reasonably be expected to live with the Defendant;*
- c) *That the Defendant has deserted the Plaintiff for a continuous period of a least two years immediately preceding the commencement of the action;*
- d) *That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the commencement of the action and the Defendant consents to a decree being granted".*

It is worth noting in explaining factors in paragraphs (c) and (d) above, that the Plaintiff can seek leave to divorce before the lapse of two years upon presentation of compelling and exceptional circumstances.

3. ROLE OF THE COURT

As you may be aware, divorce cases are only handled at the High Court and when we are referring to the Court we are talking about the Hon. Judge seized of the matter.

The duty of the Court in a divorce matter, as is also the procedure in all other cases; is to enquire, so far as it reasonably can, into the facts alleged by the Plaintiff and into any facts alleged by the Defendant.

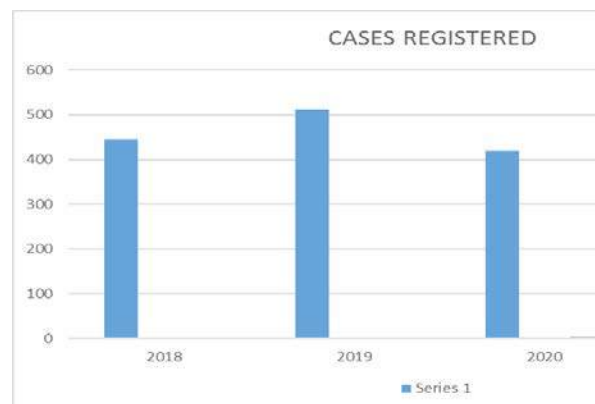
If the Court is satisfied on the evidence as to the existence of any of the factors alluded to above that the marriage has broken down irretrievably, it shall grant a **rule nisi** for divorce.

Courts arrive at their decision on the irretrievable breakdown of the marriage based on the facts and evidence adduced. For instance, if the Plaintiff alleges adultery on the part of the Defendant and that adultery is proved and Plaintiff finds it intolerable to live with the Defendant, the Court will not venture into why the Defendant committed adultery. The latter which is a behavioural pattern is an abstract concept not within the purview of the Court. Social scientists specialising in behavioural pattern, may be engaged to conduct a study and engage in opinion polls to decipher the generic causes of divorce.

Courts deal with cases facts by facts, and case by case. The allegations in the pleadings are tested during the trial, and if they do not pass the test of whether the marriage has irretrievably broken down, the divorce would not be granted. In other words the fact that a case has been registered as a divorce case, does not necessarily mean that the divorce will be granted.

4. STATISTICS

It has been observed by the hon. Chief Justice in the past Legal Year Opening ceremonial addresses dating back to 2013, that our divorce statistics are relatively high for our small population. It is of interest to note that there has been a sharp decline this year. The chart hereunder demonstrates that:



The numbers are as follows per year;

2018	= 445 cases
2019	= 512 cases
2020	= 420 cases
TOTAL	= 1377 cases

The cases registered in 2018 is 445, 2019 there were 512 cases and in 2020 there was a sharp decline to 420 cases. There was an increase of 15% in 2019 and a decline of 19% in 2020. The probable causes for the decline are as explained below:

The decline in numbers in particular for this year is motivated by a number of factors.

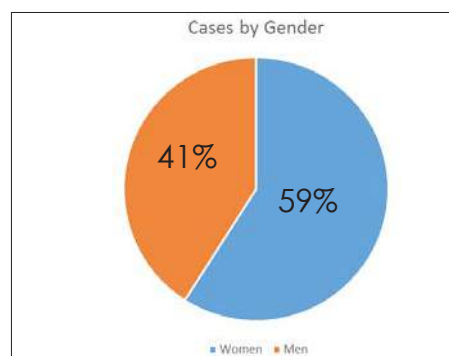
- a) The State of Emergency on account of the Covid 19 pandemic brought into force Regulations which empowered the Hon. Chief Justice to come up with Directives to give directions on the running of the Courts Practice Directive No. 1 of 2020 permitted registration and hearing only of extremely urgent cases. It meant Divorces could not be heard during the affected period.
- b) Law firms were closed and consultations limited to extremely urgent matters only.
- c) There were restrictions in travel, the would be litigants could not go to their Attorneys for consultation.

5. COMMON FACTORS FOR DIVORCE

Various factors are advanced in proof that the marriage has irretrievably broken down. The common ones in the following order are: emotional abuse, lack of communication, failure to support the children, physical abuse and denial of conjugal rights. The table below will show the most prevalence factors for divorce:

FACTS PROVING GROUND	2018	2019	2020
Verbal and emotional abuse(UNREASONABLE BEHAVIOUR)	85	119	94
Lack of communication/consultation(UNREASONABLE BEHAVIOUR)	82	108	66
Physical abuse(UNREASONABLE BEHAVIOUR)	62	98	58
Infidelity/ Extra marital affairs(ADULTERY)	47	58	57
Denial of conjugal rights(UNREASONABLE BEHAVIOUR)	70	87	51
Living apart for more than two years	63	91	48
Failure to support children (UNREASONABLE BEHAVIOUR)	69	99	58
Desertion	29	36	12

Our investigation has also shown that it is mostly women who institute divorces.



Women account to 59%(808) of the cases registered while men initiated 41%(569) of the total of 1377 cases of the cases under comparison. But as of 2020 we see a similar scenario with women accounting to 57%(240) of the cases with men registering the remaining 43%(180 cases). The number of cases in 2020 is 420.

THE PRESIDENT'S COMMITMENT TO STRENGTHEN THE JUSTICE SYSTEM

By Dimakatso Tshekedi

The State of the Nation Address (SONA) is a constitutional obligation and yearly tradition, wherein the chief executive reports on the health of the country, and unveils the Government's agenda for the coming year. Thus, on the 9th of November 2020, His Excellency the President of Botswana, Dr Mokgweetsi Eric Keabetswe Masisi delivered the State of the Nation Address where amongst other things he made a commitment to strengthen and reform the Justice System because this will be critical in enhancing access to Justice and the rule of law.

His Excellency went on to state that amongst other issues that need critical attention is the issue of Gender Based Violence (GBV), adding that it is disturbing to see how GBV continue to ravage the country at large. With the escalating number of cases which continue to bedevil our society as a result of GBV, he made a commitment to ensure that efforts will be put in place to assist in curbing these heinous acts.

His Excellency posited that the prevalence of GBV, especially violence against women and children who are the most vulnerable to this crime, is of serious concern for all of us.

He stated that one of his Government's priorities is for the Sexual Offenders Bill to be drafted and hoped that it would be tabled during the current sitting of Parliament. He noted that the Bill would establish a Sex Offenders' Registry to record and publicize names and particulars of all persons convicted of sexual offences. He highlighted that the Bill would empower the Justice system and ensure that the rule of law and human rights are upheld.

His Excellency expressed his delight in announcing that, the Botswana Police Services (BPS) has taken swift action and introduced a Toll-Free number for reports on gender-based violence. He intimated that the BPS would also establish a Gender and Child Protection Unit by April 2021.

He emphasized that with the support from the Justice system, the perpetrators who commits such heinous acts will face the

full wrath of the law. He stated that Government is currently implementing measures which are aimed at strengthening the response towards GBV throughout the entire Justice system. He further pointed out that in this regard, the Legal Practitioners Act was in the process of being amended to make the legal profession more responsive to the needs of the members of the public.

He stated that the Legal Practitioners Bill of 2020 was tabled in the previous sitting of Parliament, highlighting that a review of the Bill, amongst the list of amendments it intended to introduce was the contingency fees agreements in order to protect Botswana from suddenly being saddled with huge bills they had not anticipated as has happened in many instances.

He went on to state that the Bill was intended to strengthen the Law Society by defining its powers and objectives and to clarify issues of supervision with regard to Anti-money laundering by appointing the Law Society's Executive Secretary as the responsible person.

His Excellency also highlighted that pursuant to statutory instrument no.117 of 2020 published on 18 September 2020, the jurisdiction of the Small Claims Court which has hitherto, been limited to P10 000, was increased to P30 000.

He explained that the Increase in the monetary threshold would take effect from 18 September 2020 and that the Small Claims Court will be rolled out to Palapye, Jwaneng and Maun, in addition to those in Gaborone and Francistown.

In his closing remarks he urged members of the public to be at liberty to register their cases at these new sites with effect from Friday 20th November 2020.

GUILDINES FOR THE AUTHORISATION / REGISTRATION OF TRUSTEES AND TRUSTS

GUIDELINES

TRUST PROPERTY CONTROL ACT NO.11 OF 2018 (AS AMENDED)

1. INTRODUCTION

1.1. Prior to June 2019, the law of Trusts was governed by the common law. The enactment of the Trust Property Control Act No. 11 of 2018 which came into force on the 29th of June 2018, effectively made it mandatory for any person appointed to be a trustee of a trust in any form of property or assets, to be authorised by the Master of the High Court to act as a Trustee. The Act was amended by Act No.10 of 2019, which came into force on the 4th of September 2019.

1.2. Although the Act is the principal legislation governing trusts, the regulation of trusts must be seen in the context of increased local and international regulations, statutes and rules that have been put in place; to counter money laundering and financing of terrorism that directly impact the manner in which trusts are regulated and administered. In Botswana, the Financial Intelligence Act (as amended) places the spotlight on trusts. It is against this background that one gets a full appreciation of the how the law of trusts, particularly as it relates to trustees, has evolved from being a creature of the common law to become more regulated.

1.3. There has been a perceived lack of clarity in regard to the requirements that need to be fulfilled in order to obtain the necessary authority from the Master's office to act as a Trustee. The purpose of these guidelines endeavour to provide some level of understanding of the requirements for compliance and standard purposes. The guidelines are not to restate or deal in detail with the law governing trusts.

2. PARTIES TO A TRUST – IN GENERAL

2.1. The Founder (also referred to as “the Settler”) – a person who forms a trust in order to transfer ownership of assets / fund.

2.2. The Trustees – those who administer, manage and control the trust assets for the beneficiaries, and can include the Founder or Settler who act as trustees.

2.3. The Beneficiaries – those who benefit from the assets / funds.

2.4. Both Founder and or trustees can be bodies corporate.

3. THE FOUNDER

3.1. The Founder can be a trustee and or beneficiary but cannot be the only trustee.

3.2. The Founder must donate a sum of money and or property to the Trust upon its creation, which amount must be stipulated in the Trust Deed.

4. THE TRUSTEES

4.1. By virtue of Sections 7 and 26 of the Act, a person can only act as a trustee with the authority of the Master of the High Court.

4.2. The nature of a trustee:

4.2.1. A natural or juristic person can be a trustee;

4.2.2. At least one independent trustee should be appointed where the trustees are beneficiaries and related to one another;

4.2.3. A trustee can be a beneficiary of the trust but a sole trustee cannot be the sole beneficiary;

4.2.4. There are no restrictions as to the number of trustees. However, the Trust Instrument should stipulate the number of Trustees;

4.3. The following need to be submitted when applying for the Master's authority:

4.3.1. A certified copy of the trust instrument;

4.3.2. Payment of the Master's fees;

4.3.3. Security to the satisfaction of the Master (in the form provided as per paragraphs 4.3.4.4 or 4.3.4.5 below), unless such security is expressly waived in the trust deed, by court order or by the Master.

4.3.4. The various forms to be duly completed and submitted (where applicable):

4.3.4.1. Form TU001 – Trusts Registration & Amendment Form (Inter-Vivos Trusts);

4.3.4.2. Form TU002 – Undertaking by Auditor / Accountant (Inter-Vivos Trust);

4.3.4.3. Form TU003 – Beneficiaries declaration;

4.3.4.4. Form TU004 – Undertaking or bond of security (this is only applicable where the security has not been waived);

4.3.4.5. Form TU005 – Suretyship by Insurance company/ bank/ financial institutions (this is an alternative form of security to Form TU003, only applicable where the security has not been waived);

4.3.4.6. Form TU006 – Sworn Affidavit by Independent Trustee (to be completed by any of the “independent” trustees). With family trusts (i.e. where the trustees and beneficiaries are related), an independent trustee who is not related to the other trustees or beneficiaries, is required;

4.3.4.7. Form TU007 - Acceptance of Trusteeship by Trustee – Inter-Vivos Trusts (to be completed by all Trustees);

4.3.4.8. Certified copy of Identity Card (Oman) or passport for each Trustees’;

4.3.4.9. Certified copy of Identity Card (Oman) or passport for each beneficiaries’;

4.3.4.10. Proof of payment of the donation by the founder;

4.3.4.11. A bank account (the trust's bank account);

4.3.5. Where the trustee is a company, the following is also required:

4.3.5.1. Certificate of Incorporation or registration;

4.3.5.2. Resolution of the Board of Directors authorising the company to be a Trustee and appointing some to act on its behalf;

4.3.5.3. Copies of the Identity Card / passports of the person[s] nominated to represent the company as trustee[s];

4.3.5.4. Copies of shareholders Identity card / Passports, including those of any beneficial owners as defined in the Act;

4.3.5.5. List of the Company's Directors and shareholders.

4.4. In the event a trustee is replaced, the new trustee shall complete and submit the Forms from TU004 to TU008 in order to be given authority by the Master of the High Court and also a copy of the letter confirming registration of the trust together with such supporting documents as may be necessary as set out from paragraphs 4.3.4.8 to 4.3.3.3 above from the Master's office.

4.5. In the event a party applies to be registered and to be given letters of authority to be a trustee, he or

she shall file a letter seeking an advice on whether or not they are exempted from paying security in terms of the trust document and to indicate the relevant provision in the trust deed that provides for such exemption. In the event security is not exempted in the trust instrument then the party applying to be a trustee without the provision of security shall write to the Master's office to motivate why if at all they should be exempted from paying security and why the request of a waiver in terms of Section 7(4) (a).

4.6. Any person outside Botswana who is appointed a trustee to administer or dispose of trust property in Botswana, shall register as a trustee in accordance with the provisions of the Act. The Act makes no provision for the registration of foreign trusts in Botswana.

5. THE BENEFICIARIES

5.1. Any person (including unborn) can be a beneficiary; (or a class of beneficiaries). In terms of the Financial Action Task Force 40 (FATF) recommendations, it is internationally accepted that the beneficiaries be easily determinable. Therefore, it is not necessary to provide specific particulars where a class of persons are beneficiaries.

5.2. Where the beneficiary or beneficiaries are easily identifiable information will be provided as required in terms of Section 7 (2) (c) under the Trust Property Control Act as read with 7 (3) (a) under the Trust Property Control (Amendment) Act. Where the beneficiaries are a class or classes of persons who are not easily identifiable then the information required in terms of Section 7 (2) (c) Trust Property Control Act as read with 7 (3) (b) Trust Property Control (Amendment) Act is that of the controllers of the trust.

5.3. There are no limits to the number of beneficiaries;

5.4. Any persons including juristic persons can be beneficiaries (e.g. duly registered trusts, companies, associations etc.).

6. TRUST INSTRUMENT

6.1. This document is the trust's constitutional document which defines the framework in which the trust operates, including its powers and limitations.

6.1.1. In the event the trust instrument is a notarial deed for the creation of a new trust, the person applying for the registration of the notarial deed of trust may submit the notarial deed of trust to the Master for pre-approval before submitting it to the Registrar of Deeds for registration.

6.1.2. In the event that a party submits the notarial deed of trust for pre- approval, the notarial deed will be fully executed by all parties including the notary public.

6.2. The notarial deed of trust will be submitted to the Master of the High Court after registration at the Deeds Registry together with all the documents necessary for the registration of the trust, the trustees and issuance of letters of authority.

6.3. The main things to be specified in the trust instrument shall include:

6.3.1. Identifying the founder/ settler and the trustees

6.3.1.1. Stating the amount and or property donated by the founder to establish the trust;

6.3.2. The aims and objectives of the Trust;

6.3.3. The names of beneficiaries or a clear description of a class of beneficiaries;

6.3.4. The rights and obligations of trustees, including their powers, remuneration and requirements for meetings;

6.3.5. Rules and restrictions regarding use and distribution of assets;

6.3.6. The duration and procedure on termination of the Trust;

6.3.7. Procedure to be followed if the Trust needs to be amended.

AoJ takes services to the People

By Dimakatso Tshekedi

The Administration of Justice (AoJ) in its endeavor to uphold the Rule of Law and Human Rights in consonance with the Constitution of the Republic of Botswana, held a presentation at the Southern Sub Council on the 10th November 2020.

The presentation was relayed to the Southern Sub Council social and community development committee at Tomela old chamber in Kanye under the theme: Court Procedures in Criminal cases. The guest speaker was Ms Nomsa Moatswi - Deputy Registrar- Legal.

In her introductory remarks, she noted that the invitation was a welcome gesture particularly because the theme resonates with one of the AoJ's key objectives of ensuring that access to justice for all is attained.

She stated that these engagements are critical given the fact that such stakeholders would later convene kgotla meetings to update their respective members and in the final analysis this assists the AoJ to fulfill one of its core values being inclusivity.

She explained that there is one Magistrate Court in Kanye adding that the Criminal matters registered before the Magistrate court usually include: robbery, rape, defilement, incest, threat to kill and all forms of assault.

She echoed the following sentiments: "I wish to emphasize here that the procedure relating to hearing of these cases at the Magistrate's Court is the same, it does not matter what the offence is. Secondly, the turnaround time for criminal matters at the Magistrate's Court is 18 months."

She intimated that criminal matters are reported either at the Botswana Police Service (BPS) or the Directorate of Corruption and Economic Crime and that the (BPS) usually commences investigations by recording statements from prospective witnesses and gathering all the necessary evidence.

She added that, once a criminal matter is registered, a case number is subsequently allocated to a Magistrate who would preside over the matter. The process would be followed by the arraignment of the accused person where a charge sheet would be read to the accused person during the first appearance in court and he or she would be required to enter a plea of guilty or not guilty.

She went on to state that the accused may be granted bail and that in that event, he or she would be required to appear before court for mention between 30 and 90 days and that in the event that the accused person is not granted bail, he or she may be remanded in custody and be required to appear before court every 14 days for mention.

She alluded to the fact that owing to various reasons, investigators can take long to complete investigations, adding that once investigations are completed, trial dates may be set and that before trial commences the accused person has to be served with all witness statements and any other relevant documents so as to ensure that a fair trial is conducted.

She emphasized the importance of the accused person being accorded the right to legal representation and trial being conducted in a language that the accused person comprehends and is most fluent or comfortable. This is underpinned by the principles of a fair trial enshrined in the supreme law of the land, the Constitution.

In her concluding remarks, she pointed out that once the trial is concluded; if the accused is found guilty he or she would be requested to address the court in mitigation. This would be followed by the passing of the appropriate sentence which takes into cognizance the nature of the offence committed and also whether there are any extenuating circumstances which would guide the Court in arriving at the appropriate sentence.

THE JUDICIARY SECTOR CONSULTATIVE MEETING ON GENDER BASED VIOLENCE

**STOP
VIOLENCE
AGAINST
WOMEN**



By Shodzani Mokolwane

In response to the adverse impact and the challenges posed by the Gender Based Violence (GBV) on the society, the Justice sector led by His Lordship the Honourable Chief Justice Terence Rannowane, met on the 14th of October 2020 at the Gaborone division of the High Court. The purpose of the consultative meeting was to establish strategies which are geared towards reducing the GBV scourge with the hope that in the fullness of time, it will be eradicated. Moreover, the purpose of the meeting was to discuss ideas on how to give the GBV cases the urgency they deserve.

The representatives were from the following sectors: Ministry of Defence, Justice and Security; Ministry of Nationality, Immigration and Gender Affairs; Attorney General; Directorate of Public Prosecutions; Botswana Police Service; Botswana Prison Service; Law Society of Botswana and Legal Aid Botswana.

According to the Domestic Violence Act and other statutory provisions such as the Children's Act and the Penal Code, the courts issue interdicts through restraining orders and allied reliefs. The major pervasive criminal conducts include: rape, murder, defilement, incest, indecent assault, threat to kill and use of abusive language.

Gender Based Violence has always been a problem in this country. In its extreme manifestation it translates into gender-based killings or to be more precise, femicide which is now a national priority. The root cause of this problem is yet to be established, but the Honourable Chief Justice aligned to the supposition that femicide occurs because violence against women continues to be accepted, tolerated and justified.

Botswana are looking upon the Justice Sector for solutions to this crisis. The modalities of how to approach this national priority, will be guided by the numbers on the ground.

The statistics on GBV cases were shared from the various Magistrate Courts; from both the Southern and Northern regions; Molepolole and Serowe Magistrate Courts were the highest in terms of reported cases respectively.

The Administration of Justice aims to introduce the roving basis of courts while piloting with the Magistrate Courts that had registered the highest number of GBV cases, which are the ones stated above including Francistown Magistrate Court. As a short-term strategy, the mobile courts will be used for this purpose. The piloting is aimed to start early November 2020. The meeting came up with long term strategies:

The proposed steps and measures are:

- To designate and dedicate specialised Anti GBV courts for all major centers, within the existing limited resources.
- Identify and designate Judicial Officers to handle GBV cases as and when they arise.
- To expedite the investigations of the cases and award the victims the necessary confidentiality they deserve
- To reconcile the GBV statistics across the Judiciary sector for a true reflection of what is on the ground.
- To deny the victims/ complainants the right of any intentions to withdraw the reported cases.
- The Legal Aid of Botswana to enforce Public Legal Education, especially to the rural communities.
- The Botswana Police Service to introduce Gender and Child Protection Unit.
- Lastly the sectors agreed on having a common definition of Gender Based Violence.

From the meeting, the Sub-Committee was nominated to look at the modalities to implement the decisions, therefore, more information will be communicated as more meetings will be held, together with progress reviews.

Challenges such as ineffective protection orders, expensive legal fees, the reconciliation attempt by law enforcers, accountability, lack of public legal education, accessibility of courts/ police stations and the Legal Aid of Botswana assessment process which clients find unfavourable; were acknowledged. The Sub-Committee would look at them and communicate the decisions.

The Honourable Chief Justice requested the law enforcers to not only be tough on GBV wrongdoers, but also on the causes or reasons of GBV. A law development on the injustices occurring to the victims especially children, was suggested. The locality of where the piloting will start, will be as indicated earlier but dictated by the numbers.

FORMULATION OF RESPONSE TO COVID-19 OUTBREAK IN THE GABORONE DIVISION OF THE HIGH COURT



By Shodzani Mokolwane

Like other organisations, the Administration of Justice (AoJ) particularly the Gaborone division of the High Court was not spared from the ripple effects of the Covid-19 pandemic which has engulfed the entire globe. As part of the interventions, The Honourable Chief Justice Terence Rannowane chaired a meeting which was aimed at giving an update on the outbreak and to formulate a response to the now elevated risks posed by the pandemic. Moreover, the meeting was aimed at providing an update on the new measures which have been put in place.

The Registries at the Gaborone division of the High Court were dealt a mighty blow by the pandemic and as a result, service delivery was adversely affected. Following the closure of the Registries, the Deputy Registrar-Legal promptly came up with stop-gap measures of service delivery which were designed to minimise the interruption of service delivery particularly at a time when some officers were placed on self-isolation. The increase of the Covid-19 positive cases necessitated measures/initiatives to be put in place by the Registrar and Master's office and this included the commencement of the rotational shift working arrangements for AoJ, in line with the Directorate of Public Service Management Directive (DPSM).

From inception, the rotational shift work arrangement was meant to be a trial face for a period of four (4) weeks, and was subject to amendment and review at any time in response to emerging challenges or improvements. The sole purpose of the initiative was to strike a balance between the efficient delivery of service and containing and curbing the spread of the virus.

The Honourable Chief Justice emphasised the significance of providing quality service to the public and the importance of remaining alive at the same time. He stated that the face shields for registries and automatic sanitiser dispensers have been procured for the members of staff.

The District Health Management Team (DHMT) Gaborone staff members: Miss Onkabetse Molefane and Miss Joyce Gabathusi, honoured the Chief Justice's invitation to address members of the meeting. The DHMT presentation shared and clarified several issues as follows:

- **Isolation:** is when one has tested positive for the Covid-19 virus and granted permission to avoid any form of contact with others. It can either be at home or a hotel; if it is home isolation, the DHMT has to assess suitability of the place before one can be placed on self-isolation.
- **Fumigation:** entails the use of chemicals for the purpose of purifying. People cannot use/ occupy the space immediately after fumigation.
- **Disinfection:** entails the use of bleaches/ soaps. People are allowed to use the space immediately after disinfection.

How to control the spread of infections?

We are encouraged to practice hand hygiene, and to know **when, how, and which** methods to use - either clean water and soap or the hand sanitiser. The use of clean water and soap is the method which is highly recommended because it covers more surface of hands than using the hand sanitiser. It is generally not easy to wash hands properly; it is therefore important to ensure that the area between fingers is sufficiently washed, and then the back and front hand, and then the palms. After washing the hands, it is important to position the hands properly by ensuring that water drips directly into the water container so as to avoid water spreading to the other parts of the hands.

A hand sanitiser should contain at least 60% alcohol content. Sufficient sanitiser needs to be applied so as to cover the rest of the hand. It is important to always disinfect surfaces/ environment because the virus can survive for at least seven (7) hours on surfaces; it is therefore important to disinfect in the morning, in the afternoon and in the evening. It is a requirement for each and every office to have sanitisers particularly because, as people come in and out of the office they invariably touch the door knobs, desks, and officers exchange files and so on. Therefore, surfaces need to be sanitised to avoid leaving and carrying the virus in or out of the office.

Respiratory hygiene (Mask)

Clean face masks should be used regularly and consistently. Masks are designed to capture everything that comes from the mouth and nose. Efficient utilisation of the masks is critical and this requires proper handling, adjusting, and putting them on or taking them off efficiently.

It is important to adjust the mask from your ears and not from the front in order to avoid touching it and also to avoid the possibility of passing the virus. If it is a cloth mask, it is important to wash the mask on a daily basis; if it is a medical mask, it has to be disposed of once it has been used. The medical mask needs to be covered all the time when it is being disposed.

People are encouraged to have at least two (2) masks for each day, so that when one takes off the mask for whatever reason, then the other mask may be used immediately thereafter. It is important to cover the mouth and nose when coughing or sneezing; and the exchange of greetings should be limited to a simple gesture of waving or a bow.

Environment hygiene

If there is a specific environment where there was an individual who tested positive, the environment needs to be disinfected within a period of seven (7) days. It is imperative to disinfect the path way of the employee who has tested positive rather than disinfecting the entire building. The surfaces which are frequently touched have to be disinfected at least three (3) times a day with appropriate disinfectants or regular soap products such as Jik, Pinegel, Domestos and liquid soap.

The cleaning personnel should dress in a proper Personal Protective Equipment (PPE). That is:

- ✓ Eyes covered with Goggles
- ✓ Masks or face shields
- ✓ Protective apron/ Gown/ coverall over their clothes
- ✓ Gumboots or closed shoes or shoe covers
- ✓ Cover their hands with heavy duty or latex gloves and they should reach the elbows.

Community transmission Prevention

- a. A person who displays flue like symptoms should not report for duty and is advised to visit the following clinics for people in Gaborone and surrounding areas:
 - Lesirane Clinic
 - Nkoyaphiri Clinic
 - Block 8 Clinic
 - Block 9 Clinic
 - Mafitlhakgosi Clinic at Tlokweng
 - Magope Clinic at Ramotswa

Following a visit to the clinic, and upon completion of time in quarantine, a medical report needs to be submitted to the duty station. Employers should not penalise employees who were absent from the duty station during the period spent in quarantine, nor should such employees be stigmatised.

- b. Places of work should always provide a device form like a questionnaire to check covid-19 symptoms for visitors at the entrances because temperature checking alone is not enough.
- c. Colleagues are discouraged from eating from the same plates, especially at places of work. This is so because, people tend to trust each other and forget the covid-19 protocols. Saving life is now the priority so much so that during such trying times the mantra shouldn't be **"Sharing is caring"** but rather **"Sharing is Covid"**.
- d. Ladies are discouraged from keeping long or artificial nails because this may pose a high risk of contracting the virus given that it is easy to miss to clean or sanitise the nails where the virus could possibly hide.

Contact tracing

This is a systematic approach to identify contacts of a person with suspected, probable or confirmed case of Covid-19 for purposes of monitoring and or minimizing the spread of infection.

Contact: any person who came into contact with a Covid-19 case (Index) within a time frame of four (4) to fourteen (14) days of either onset of symptoms or collection of specimen. These are classified as follows:

Primary contact:

- Face to face contact with a Covid-19 case within two (2) meters for more than fifteen (15) minutes in one of the following-car / bus/aircraft, room or household.
- One who has had physical contact with Covid-19 case.
- Care provider who has not conformed to Covid-19 protocols.

NB: This happens more in workplaces as people tend to trust one another and do not conform to Covid-19 protocols e. g during meal break times.

Casual contacts

A person who might have had contact with a Covid-19 case within two (2) meters for less than fifteen (15) minutes. During contact tracing they will be listed for purposes of ease of follow up and monitoring in case a primary contact becomes positive but they may not necessarily be quarantined.

Contact tracing is divided into three (3) sections:

- Resulting
- Contact tracing
- Dispatch- there is facility dispatch and home quarantine

After testing, results are expected after three (3) days/ 72 hours for Gaborone results, especially the Block 8 and Block 9 clinics, but for other clinics it is three to five (3-5) days. The results are sent out through short message service (SMS) to the numbers provided by the tested client. The essential service staff are released from quarantine on day five (5).

The isolation centres in Gaborone are:

- DC tours apartments
- University of Botswana hotel
- Sir Ketumile Masire Teaching Hospital

Empowerment of Safety, Health and Environmental Coordinators (SHEC)

Management was advised to depend on SHECs; role clarity is very important in organisations.

Ms Susan Mayisela has been engaged on temporary basis, following the unfortunate passing of the then Safety, Health and Environment Coordinator- Mrs Linda Kgari; may her soul rest in eternal peace. She will pick the baton that Ms Kgari left to continue the race by providing the necessary guidance to navigate through the pandemic and all other safety, health and environment matters.

Lastly, the responsibility lies with each one of us to reduce the number of active cases and to win the fight against Covid – 19. Let us assist the health team to flatten the Covid-19 curve.

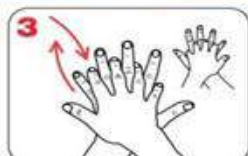
How to handrub? WITH ALCOHOL-BASED FORMULATION



Apply a palmful of the product in a cupped hand and cover all surfaces.



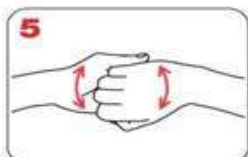
Rub hands palm to palm



right palm over left dorsum with interlaced fingers and vice versa



palm to palm with fingers interlaced



backs of fingers to opposing palms with fingers interlocked



rotational rubbing of left thumb clasped in right palm and vice versa



rotational rubbing, backwards and forwards with clasped fingers of right hand in left palm and vice versa



rinse hands with water



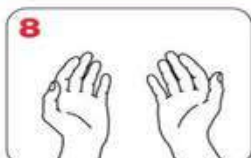
dry thoroughly with a single use towel



use towel to turn off faucet



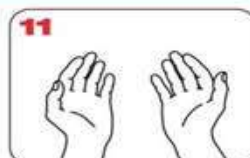
20-30 sec



....once dry, your hands are safe.



40-60 sec



....and your hands are safe.



WHO acknowledges the Hôpitaux Universitaires de Genève (HUG), in particular the members of the Infection Control Programme, for their active participation in developing this material.



October 2006, version 1.



His Lordship Mr Terence T. Rannowane
**THE CHIEF JUSTICE OF THE
REPUBLIC OF BOTSWANA**



Hon. Justice Ian Stuart Kirby
PRESIDENT OF THE COURT OF APPEAL



Hon. Judge Abednego B. Tafa
**JUDGE PRESIDENT OF THE
GABORONE HIGH COURT**



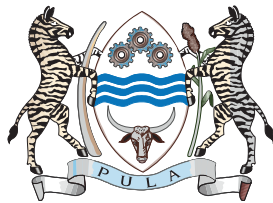
Hon. Judge Modiri Seabelo Letsididi
**JUDGE PRESIDENT OF THE
LOBATSE HIGH COURT**



Hon. Judge Lot Moroka
**JUDGE PRESIDENT OF THE
FRANCISTOWN HIGH COURT**

**KNOW
YOUR JURIST**

TELEPHONE: 3718042
FASCIMILE: 3915119
REFERENCE:



Registrar and Master
The High Court of Botswana
Private Bag 00220
Gaborone
BOTSWANA

REPUPLIC OF BOTSWANA

ADMINISTRATION OF JUSTICE

PRESS RELEASE

TO: All Media Houses

RESTRUCTURING OF THE JUDICIARY

The public is informed that in pursuit to Restructuring of the Judiciary, the position of Registrar and Master has been separated.

With effect from the **1st December 2020**, we will no longer use the nomenclature of Registrar and Master, as the assignment will be done by two different and separate officers in line with the existing legislation.

In addition to the above development, there will also be a separate office of the Registrar of the Court of Appeal.

The appointments for these offices are as follows:

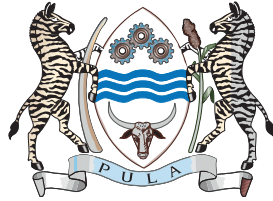
- 1) Registrar of the High Court is Ms. Juliana Angela Dube
- 2) Master of the High Court is Ms. Silibaziso Mtunzi-Daramola
- 3) Registrar of the Court of Appeal is Ms. Nomsa Sinki Moatswi

These offices will administratively be under the direct supervision of the Chief Registrar.

DATED AT GABORONE THIS 13th DAY OF NOVEMBER 2020

MICHAEL L. MOTLHABI
CHIEF REGISTRAR

TELEPHONE: 3718042
FASCIMILE: 3915119
REFERENCE: RM



Registrar and Master
The High Court of Botswana
Private Bag 00220
Gaborone
BOTSWANA

REPUPLIC OF BOTSWANA

ADMINISTRATION OF JUSTICE

PRESS RELEASE

TO: All Media Houses

RE: INCREASED MONETARY JURISDICTION AND ROLL OUT OF THE SMALL CLAIMS COURTS

The above matter refers;

Members of the public are informed that pursuant to Statutory Instrument No. 117 of 2020 published on 18 September 2020, the Small Claims Courts monetary jurisdiction has been increased from P10 000.00 to P30 000.00. The increase in the monetary threshold is with effect from 18 September 2020.

Members of the public are further informed that in addition to the existing Small Claims Courts in Francistown and Gaborone, the Small Claims Courts facility is being established and rolled out to **Jwaneng, Palapye and Maun** Magistrates Courts. Members of the public are at liberty to register their cases at these new sites with effect from **Friday 20th November 2020**.

It is worth noting that the increase in the monetary jurisdiction and the roll out of the Small Claims Courts to other centres across the country is in furtherance of the Administration of Justice's Vision of "**Achieving a world Class Judiciary by 2036**" as well as ensuring that the public readily access efficient, just, inexpensive and speedy dispensation of justice.

DATED AT GABORONE THIS 2ND DAY OF NOVEMBER 2020

A handwritten signature in dark ink, appearing to read 'Michael L. Motlhabi', is written over a horizontal dashed line.

MICHAEL L. MOTLHABI
REGISTRAR AND MASTER OF THE HIGH COURT

Case Disposal Standards

Court of Appeal

PROCESS	STANDARD (WORKING DAYS)	CUSTOMER
Civil Appeal	14 months	Public
Criminal Appeal	10 months	Public

High court

PROCESS	STANDARD (WORKING DAYS)	CUSTOMER
Civil Causes	24 Months	Public
Criminal Trials	18 months	Public
Bail Applications	3 Months	Public
Miscellaneous Applications	12 months	Public
Constitutional Applications	6 months	Public
Criminal Appeals	12 months	Public
Civil Appeals	12 months	Public
Matrimonial causes	12 months	Public

Magistrate Court

PROCESS	STANDARD (WORKING DAYS)	CUSTOMER
Civil Trial	14 months	Public
Civil Trial (If default Judgement)	3 months	Public
Civil Trial (If case resolved at case Management Conference CMC)	6 months	Public
Child Maintenance (If there is paternity test)	8 months	Public
Child Maintenance (if uncontested)	5 months	Public
Child Maintenance (if contested)	4 months	Public
Criminal Trial	18 months	Public
Criminal Trial (if accused pleads guilty)	1 month 10 days	Public