

ADDRESS BY THE HON. CHIEF JUSTICE M. DIBOTELO AT THE OFFICIAL OPENING OF THE LEGAL YEAR ON TUESDAY 5TH FEBRUARY 2013.

- Your Excellency the President of the Republic of Botswana, Lt. General Seretse Khama Ian Khama
- The Deputy Speaker of the National Assembly, Hon. P. Moatlhodi
- The Judge President of the Court of Appeal, Mr. Justice Kirby
- The Former Chief Justice Mr. Julian Mukwesu Nganunu
- Honourable Ministers
- Court of Appeal Justices and your spouses
- Your Lordships and Ladyships Judges of the High Court and your spouses
- Judge President of the Industrial Court
- Your Lordships Judges of the Industrial Court
- The Attorney General
- Permanent Secretary to the President
- Permanent Secretaries
- Your Excellencies of the Diplomatic Corps and International Organisations
- Honourable Members of Parliament
- The Chairman of Ntlo-ya-Dikgosi Kgosi Puso Gaborone and Members of Ntlo-ya-Dikgosi
- Registrar and Master of the High Court and his Deputies
- Your Worships of the Magisterial Bench
- Chairperson of the Law Society of Botswana Mr. Lawrence Lecha
- Attorneys at Law
- President and Members of the Customary Courts of Appeal
- Your Worship, the Mayor of Gaborone
- Your Grace Bishop Setlalekgosi and The Rev. Kgerethwa
- Invited Guests
- Ladies and Gentlemen

1. **INTRODUCTION**

1.1 I am honoured to address this august assembly of members of the legal fraternity and the distinguished supporting arms of government.

Your regular presence at these occasions is never taken for granted. I consider it not only to be well-meaning but a factual attestation of your profound commitment and keen interest on the well being and business of your judiciary.

1.2 Your Excellency, Ladies and Gentlemen, I am pleased and privileged to welcome you all to the opening of the Legal Year for 2013 in the new Halls of Justice in Gaborone.

1.3 Director of Ceremonies, we are here today gathered in a more spacious, honourable and befitting courtroom enough to accommodate the Bench, our dignitaries and invited guests. This is a far cry from where we have in the past congregated for similar occasions. We are greatly indebted to you Your Excellency and Your Government for the support you have consistently accorded us amidst the turbulence and uncertainty created by the global economic crunch, by ensuring that the judiciary is reasonably resourced to discharge and execute its constitutional mandate.

1.4 The opening of the legal year affords me as Head of the Judiciary a very important platform to appraise the nation about the state of their Judiciary, and more importantly the milestones achieved, constraints, to give an update on the on-going projects as well as a glimpse of our roadmap in the coming legal year.

1.5 Your Ladyships and Lordships, before proceeding any further, please allow me to congratulate and extend a warm welcome to the newly appointed members of the High Court Bench, Honourable Justices Busang and Sechele.

2. **OVERVIEW OF SOME OF THE PAST YEAR (2012) EVENTS**

2.1 Your Excellency, 2012 was yet another hectic and eventful year in the history of the Judiciary. A number of critical and significant events took place during the course of the year. Whilst I do not intend to belabour this distinguished audience with a complete outline of all the events of the past year, it is worth mentioning and sharing some of the most significant, in particular those which are consistent with our mandate and cannot be ignored:

2.2 **Relocation of Headquarters / Opening of the High Court Division and Court of Appeal in Gaborone**

2.2.1 The Headquarters of the Botswana Judiciary relocated from Lobatse to Gaborone culminating in the official opening of the Gaborone Division of the High Court and Court of Appeal building which was officially opened by Your Excellency on 6 July 2012.

This magnificent facility and one of the imposing landmarks in the capital city which cost nearly P370 million could not have come at a better time. The Lobatse facility was on the brink of bursting at the seams. The working space in Lobatse could no longer accommodate and support the workload and a series of services a modern High Court was expected to provide. This facility has therefore not only provided a welcome facelift to the city of Gaborone but has by great measure enhanced and

provided dignity to the work environment of the Judges and support staff. It has equally brought about a sense of self-worth and pride to the users of our services who include lawyers, litigants and members of the public.

2.2.2 **Conditions of Service for Magistrates**

Director of Ceremonies, I am delighted to report that Government has finally approved a new salary structure for Magistrates which is set for implementation with effect from April 2013. Magistrates perform judicial and quasi-judicial functions at the lower bench, where tens of thousands of trials, applications and miscellaneous matters are dealt with throughout the country. It must be acknowledged that at times they work under some of the most hostile, demeaning and risk laden circumstances.

2.2.3 I commend the Magistrates for their patience, hard work and dedication in serving this nation by taking justice to the people. I further wish to express my gratitude to His Excellency and the Government for improving some of the conditions of service for Magistrates as well as providing real safety and security for them.

2.3 **Caravans for Stock Theft Courts**

2.3.1 Ladies and Gentlemen, in April 2012 Government provided seven (7) mobile caravan accommodation for use by our Special Stock Theft Courts magistrates in Molepolole, Francistown, Mochudi, Letlhakane, Selibe Phikwe, Palapye and Jwaneng to facilitate the faster disposal of cases involving stock theft. These mobile caravans will provide the necessary court services closer to some of the witnesses and exhibits in areas located far from

the current permanent Court centres. Magistrates and support staff responsible for these Courts will therefore be spending part of their time out in areas where the cases are heard.

2.3.2 Your Excellency the Judiciary has an acute shortage of vehicles for an establishment of its size. The aforementioned caravans did not come with the necessary and suitable vehicles to tow them to places where the court sessions will be held. The intended impact of the caravans was to facilitate the quick disposal of stock theft cases in some of the furthest parts of this country. The impact of the stock theft courts will not be felt unless the government provides us with suitable vehicles, preferably Toyota Land cruisers, considering the nature of the terrain of the areas where the livestock will be located and where these courts are intended to be held.

2.3.3 Your Excellency whilst we are committed to serving the nation, our efforts are often stifled by our over reliance and dependency on some departments. With specific reference to the stock theft courts, it is undesirable if not totally unacceptable for the Administration of Justice to continuously approach the CTO cap in hand begging for suitable vehicles whenever the Magistrates need to use the caravans to travel to attend stock theft cases. I therefore urge the government to be supportative and responsive in strengthening the stock theft courts by supplying us with appropriate vehicles which will tow the stock theft caravans.

2.4 **Judicial Conference**

2.4.1 Your Excellency, the Judiciary held its annual Judicial Conference on the 25th and 26th October 2012 in Palapye to

amongst others introspect, engage with stakeholders and exchange thoughts on topical issues concerning the Judiciary. Some of the issues the conference addressed involved bail and a review of the performance of Judicial Case Management at both the Magistrates and High Courts. Our key and main stakeholders participated at the Conference and shared their thoughts and experiences regarding our operations and gave us insightful thoughts on areas that still need to be improved in order to meet their expectations. Our Stakeholders' feedback will be taken into account in our cycle of planning for implementation.

2.4.2 **Stations Visits**

Director of Ceremonies, during the year 2012, as is now the norm, I conducted visits to all our Magisterial Stations accompanied by Senior Management of the Administration of Justice to appreciate, experience and gain first-hand knowledge of the infrastructure, workload and general conditions they work under, the challenges they face and how these could be addressed. The visits are always an eye-opener and I wish to take this opportunity to thank the Magistrates and support staff out there for their consistent dedication to service by giving their all in spite of the often trying circumstances they operate under. I want to assure you of my commitment and intention to devote my energy and attention on entrenching the value add of JCM on the Magistrates Courts to achieve a much higher yield of case disposal rates in all our Courts. I want to thank all our stakeholders for their support in making the initiative of JCM a success for our mutual benefit.

3. **PLANNED ACTIVITIES**

3.1 **Alternative Dispute Resolution - Court Annexed Mediation**

3.1.2 Your Excellency, In 2007 the Judiciary decided that it would introduce Court Annexed Mediation (CAM), a component of Alternative Dispute Resolution (ADR), once Judicial Case Management (JCM) had taken root in our Courts. This decision was arrived at after consultation with Judges and other Stakeholders. I am today confident to announce that Judicial Case Management (JCM) has by and large taken root in our Courts, in particular at the High Court level.

3.1.3 At the beginning of November, 2012 a delegation led by myself, which included the Judge President of the Court of Appeal Hon. Mr. Justice Kirby, Hon. Mr. Justice Makhwade of the High Court who is charged with overseeing the implementation of JCM, the Registrar and two of his Deputies, visited the United States of America to benchmark on Alternative Dispute Resolution (ADR) practised in the Courts of Phoenix and San Francisco. After listening to presentations by Judges, court officials, practising mediators, both in public and private domain, and observing mediation sessions we were more than convinced that Court Annexed Mediation (CAM) remained the most appealing option available to us as part of the solution to expediting the disposal of cases.

3.1.4 It is now five (5) years since we started the implementation of Judicial Case Management (JCM) and I have a strong conviction that we are ready to adopt and implement Court Annexed Mediation in this jurisdiction following our successful benchmarking study on ADR in the United States of America (USA).

- 3.1.5 In gearing ourselves up for the use of ADR we are at an advanced stage of developing a suitable training programme for our Mediators and other key Stakeholders. Once fully implemented we will in our Courts have trained Mediators in the form of Registrars who are already on Government payroll and our court annexed mediators will therefore not be paid by the litigants. This innovation will strengthen our commitment to providing affordable quality service and improve case disposal by our courts.
- 3.1.6 We will endeavour not to leave out any of our key stakeholders in our training programme so as to enhance the successful implementation of the initiative. The design of our programme is consequently such that starting March 2013 training will be provided to all Judicial Officers, (the would be Mediators) namely Judges, Registrars and Magistrates, as well as their support staff, and later extended to Private and Government Attorneys and other Stakeholders. This arrangement is intended to promote and achieve the maximum and wider buy-in into Court Annexed Mediation (CAM) by all the Stakeholders of the Judiciary.
- 3.1.7 Director of Ceremonies, The training will be facilitated by Judge Gordon Low, a retired Judge from Utah, United States of America with vast and extensive experience in Alternative Dispute Resolution (ADR). He has undertaken to conduct training for a period of six (6) months in Botswana at no cost to the Administration of Justice save for transportation in and around the country. We are greatly indebted and grateful to UNDP which has agreed to support and finance part of the training programme. I wish to extend my gratitude to retired Judge Low for his support and spirit of volunteerism by

participating in the ushering and entrenching this reform in our jurisdiction. I urge all stakeholders to embrace and grab this opportunity to familiarise themselves with the principles of ADR due to be offered in the coming training.

4. **AOJ WEBSITE**

4.1 Director of Ceremonies, with a view to improve information management the Judiciary will today launch its website. The website contains a variety of relevant and up-to-date electronic information which will enable visitors anywhere around the globe to walk through the doors of Administration of Justice and learn a lot about the business offerings of our Judiciary, its history, key mandate, people, customers, stakeholders, core values, programmes and operations.

4.2 This Website will also serve as an electronic front desk for the Judiciary and permit customers to interact, transact and have access to a wide variety of useful information about the organisation.

4.3 The address for our website is www.justice.gov.bw. I am hesitant at this stage to say more about this exciting development as the website will speak for itself during the official launch by Honourable Minister of Defence, Justice and Security soon after this Ceremony.

5. **STAKEHOLDERS' REVIEW CONFERENCE ON JUDICIAL CASE MANAGEMENT (JCM)**

5.1 Your Excellency, as the Administration of Justice we value and hold our Stakeholders both internal and external in high esteem. As part of our commitment to stakeholder engagement

and participation our last Stakeholders' Review Conference was held in October 2011. We continue to treat with utmost seriousness and put to use the insightful feedback we get from our Stakeholders. Most of our recent reforms bear testimony of the value add of this engagement.

- 5.2 We are planning to convene another Stakeholders' Review Conference on Judicial Case Management (JCM) on the 25th October 2013 to afford us a platform to synergise and assess progress on the implementation of the 2011 Conference Resolutions or recommendations which amongst others included the amendment of the Criminal Procedure and Evidence Act with the view to move mentions for murder cases from the Magistrate Courts to the High Court. This intervention will ease off the current heavy and unmanageable caseloads in the Magistrate courts and improve efficiency.

6. **CORRUPTION CASES**

- 6.1 Ladies and Gentlemen, we are not oblivious to the steady rise of corruption related cases in this country which have become more complex over the years. In support of the government's campaign and position for zero tolerance on corruption we have now dedicated a Judge of the High Court on a rotational basis to deal with all corruption and economic crime cases in the country. Hon. Mr. Justice Motswagole, has been assigned to start the ball rolling over this special class of cases.
- 6.2 As I have previously emphasised in relation to this innovation it is of utmost importance that institutions such as the Attorney General's Chambers, Directorate of Public Prosecutions and the Directorate of Corruption and Economic

Crime must be capacitated and adequately resourced to enable them to thoroughly investigate and effectively prosecute corruption cases, otherwise the guilty will increasingly go scott-free to the detriment of the country's developing economy and image.

6.3 I once again want to remind all that the core function of the court is to adjudicate over cases and dispense justice fairly and not to carry out investigations of offences before the suspects are arraigned before the courts.

6.4 I take this opportunity to implore our key Stakeholders in the Criminal Justice System to render the necessary support so that these cases are expeditiously resolved as corruption can be likened to a malignant cancerous tumour and has to be nipped before reaching levels where it will be difficult to manage.

7. **SPECIAL STOCK THEFT COURTS**

7.1 Your Excellency, the Mobile Special Stock Theft Courts are now fully operational and presided over by experienced citizen Magistrates well versed with indigenous knowledge regarding the behaviour and description of livestock.

7.2 Training in the interpretation and implementation of the Stock Theft Act and related areas is in place and continues to be provided to most of the Magistrates presiding over stock theft cases and their bench Clerks in an endeavour to improve specialised knowledge base in the handling of stock theft cases and efficiency. Since the commencement of the operations of the Special Stock Theft Courts, I am confident to say, there has been a noticeable impact as evident from speedier trials, ready

availability of real evidence and not carcasses or hides as well as increased convictions and higher disposal rates. Magistrates dedicated to these Courts are well equipped to speed up the resolution of stock theft cases and by extension deter prospective thieves resulting in a marked and commendable reduction of stock theft cases.

- 7.3 Director of Ceremonies, in order for these Courts to continue exerting the desired impact there is need for our key Stakeholders, especially the Police and the Directorate of Public Prosecutions, to intensify their efforts in the areas of investigation and prosecution since the ultimate outcome of criminal cases to a large extent depends on the quality, relevance and reliability of evidence adduced before the Courts.
- 7.4 I therefore on that note urge the Commissioner of Police to assign qualified and experienced investigators to stock theft cases. I equally urge the Director of Public Prosecutions to assign and dedicate competent and well experienced prosecutors who are conversant with indigenous description of livestock to prosecute this category of cases, and to continuously train them just as we in the Administration of Justice have done and continue to do with Magistrates so that the system is not found wanting through lack of cohesion.
- 7.5 The designation of dedicated Prosecutors to the Special Stock Theft Courts will address delays attributable to the lack and sometimes unavailability of suitable and competent prosecutors when the cases are due for hearing. Unless these steps are taken the guilty will continue to go scot free to the detriment of

the farmers and the economy as the function of the Court is to adjudicate and not to investigate cases.

8. **FAMILY UNIT / DIVORCE**

8.1 Director of Ceremonies, one of the Pillars for Vision 2016 is that of “A United and Proud Nation”. The emphasis is on the family as the key institution for the growth and development of this Republic as well as for a sustained and orderly handing down of social and moral values which have kept our communities together. A strong family unit encourages responsible parenting and strengthens the institution of marriage. A strong family unit provides the desired social foundation for the eradication of social ills such as the high incidence of teenage pregnancies, alcohol and substance abuse, high divorce rates, prostitution, and gender based violence, street or delinquent children and the spread of HIV.

8.2 Your Excellency, in my speech at the opening of the 2011 Legal Year I expressed my concern regarding the high divorce rate for a small population as ours which in my observation was quite alarming. On that occasion I revealed that divorce cases that were registered in the High Court for 2009 and 2010 were 971 and 1172 respectively. Family break ups are still a cause for concern and the problem is not ebbing as evident from the continuing rise of divorce cases heard by our courts from one year to the other. For the years 2011 and 2012 the figures for registered divorce cases were 1118 and 971 respectively. Some of these divorce cases involve the dissolution of relatively new marriages. The marriage vows seemingly no longer carry any value and the sanctity they once represented. Given this trend, we should be worried about the quality of the next generation

families as well as the place of the social unit called “family” in the future.

- 8.3 In terms of Section 15 (1) of the Matrimonial Causes Act, Cap 29:06 there are basically four grounds on the basis of which the High Court may grant divorce, namely adultery; unreasonable behaviour; separation for a continuous period of two years and desertion for a continuous period of two years.
- 8.4 The statistics for the past twenty four (24) months show that the majority of divorce cases instituted by both men and women are based on the ground of unreasonable behaviour. More importantly it has always been assumed in the past that it is mostly men who are irresponsible, have the propensity to behave in an unreasonable manner, in the process driving most women to seek for divorce on this ground. A closer analysis of our statistics is portraying a different picture as they have revealed that an equal number of men have approached the courts to claim divorce against women on the ground of unreasonable behaviour as well.
- 8.5 It is axiomatic that a society which enjoys respect, prosperity and tranquillity starts with a stable family unit and that dysfunctional families are stigmatised and more often than not lack dignity. These are certainly not the type of family structures we would like Botswana to be synonymous with, neither will they enable us to achieve some of the vision 2016 pillars. We therefore need to jealously guard against the erosion of our moral values and identity as Botswana. Broken homes and high divorce rates often provide good fodder for social ills of all sorts. The continuing deterioration of our social and moral

fibre as a nation needs to be urgently and intelligently confronted.

8.6 This emerging unpleasant scenario should set the impetus for us as a nation to have a “*Family Pitso*” which will bring together all the main Stakeholders to seriously introspect on the causes of high divorce rates, dysfunctional families and how we can arrest the situation so as to realise our Vision of “A United and Proud Nation” with strong families, bound together by acceptable, social, moral and family values routed in our diverse cultures and norms as Batswana. We also need to revisit and revitalise our traditional extended family system which to a large extent respected the sanctity of the marriage, kept the marriage union and the society intact through non-formal yet respected restorative interventions, such as mediation, negotiations, conciliation, and supplication.

8.7 You may also like to know that there is yet another developing and emerging and very worrying form of abuse, again threatening the existence of the family. This type is instigated and directed at the parents by their children. Let me not dwell on it, but leave it with you as food for thought regarding the continuing disintegration of the family and the social moral fibre of our society.

9. **UNCLAIMED MAINTENANCE MONIES**

9.1 Your Excellency, Ladies and Gentlemen, we are sitting on huge sums of uncollected maintenance monies. Many reasons are often advanced for such non collections of these monies but the key ones are that the beneficiaries are discouraged by the cost of travel and distances they have to travel to Magistrate Courts

in order to access the money. It has been noted that in some instances, the travel expenses exceed by far the amount to be collected. As at the 31st December 2012 there was an amount of **P11 060 663.42** (eleven million sixty thousand six hundred and sixty three Pula forty two Thebe) of unclaimed maintenance money.

9.2 Ladies and Gentlemen, the failure to collect maintenance monies is worrisome and severely prejudicial to the welfare of the intended beneficiaries as it leads to deprivation which in the circumstances is preventable with the concerted efforts by all concerned given the already existing Government structures such as Government Accounting and Budgeting System (GABS). The majority of the beneficiaries affected by this scenario are vulnerable children and women.

9.3 Your Excellency, I once again entreat the Government to put in place support structures and processes that would make it possible and easy for the Maintenance beneficiaries to collect their money through the use of the Government Accounting and Budgeting System (GABS) at Government Revenue Offices and Post Offices throughout Botswana. This will go a long way in supporting our mandate of taking and expanding access to our services.

10. **MANPOWER/RESOURCES**

10.1 Your Excellency, Ladies and Gentlemen, though I have already acknowledged and appreciated the support the Government continues to extend to the Judiciary so that it can confidently and effectively discharge its constitutional mandate, there are

areas in which we are continuing to experience serious challenges and have brought them to the attention of Government for consideration and action.

- 10.2 These areas relate to amongst others key manpower resources urgently required to support the expansion of the Judiciary. Upon our relocation from Lobatse to Gaborone and expansion of the High Court we have been experiencing serious strain in the distribution and allocation of staff to support the operations of both courts as there has been no corresponding human resource increase. This has overstretched our staff and threatens to compromise our efficiency if not addressed as a matter of urgency. A proper court cannot operate with empty registries as this will delay our processes and jeopardise the security and confidentiality of information entrusted with us.
- 10.3 Director of Ceremonies, I will cite two examples to drive this point home. For the Gaborone High Court Registries we desperately require (36) Clerks but we are currently operating with only fifteen attending to all our Registries. This means that at any given time one clerk performs a whole range of duties, which situation often compromises accuracy and efficiency and our agreed standards on turn around times of cases. Not only that, fatigue, work related stress and unending sick leaves are now prevalent and the norm amongst this category of employees.
- 10.4 The Registries are figuratively speaking our Boiler rooms where registration of cases and filing of documents are done. Our Boiler rooms are slowly grinding to a halt. Some filed documents are now not reaching the files at all or on time due

to shortage of Clerks and this is severely impacting our case disposal, cumulatively leading to the creation of the monster we had successfully eliminated i.e. backlog. The situation applies across the Judiciary at our Lobatse and Francistown Divisions of the High Court as well as the Magistracy.

10.5 The other critical and saddening issue is that of Court Reporters. A Court requires the barest minimum of two (2) Court Reporters. Court Reporters sit in Court and record court proceedings verbatim. Let me highlight that the court cannot function without a Court Reporter as the latter's record is by law the court record and not that of the Judicial Officer. In the absence of the Court Reporter, the court will therefore not be properly constituted, it may not sit and matters set for the day not heard, leading to wasted court days, increased anxiety of the litigants, a frustrating day for the Judicial Officer and an additional statistics that would at some point form the backlog of cases we have talked about. Besides recording court proceedings a Court Reporter transcribes court proceedings for appeal purposes, types orders, judgments, and closes the events. One Court Reporter cannot, given our ever busy courts, perform all these key functions and cope, without compromising quality. This situation has resulted in delays in the hearing of appeals and preparation of judgments and case completion levels.

10.6 Your Excellency, I submit that historically the Judiciary has always been under resourced. I therefore earnestly ask Government to appreciate some of the depressing circumstances under which we are operating and to expeditiously avail the necessary manpower as requested by the

Judiciary to enable us to effectively and efficiently serve the country by timeously resolving disputes brought before the Courts and enhance public confidence on our judiciary.

- 10.7 As a Judiciary we have an obligation to assure the nation that we are able and capable of serving it and stem out self-help. A begging and non performing Judiciary can harm the reputation of our country's consistent and commendable governance performance ratings both at continental and global level, and adversely affect foreign investment confidence.

11. **DIAMOND BENEFICIATION PROCESS**

- 11.1 Your Excellency, at our last Judicial Conference we received an insightful and informative presentation by officials from the Diamond Trading Company on the role of the Judiciary in the Diamond Beneficiation Process. What motivated the presentation was the relocation of the diamond sorting function from De Beers, London to Gaborone and the role the Judiciary has to play and as well as its readiness to handle the accompanying challenges.
- 11.2 Director of Ceremonies, it would appear that so far only the positives of this relocation have been publicly highlighted, chief amongst these being business and job opportunities in the cutting and polishing of diamonds, jewellery manufacturing and the expected increase in customs and duties generated revenue which will stimulate the economy.
- 11.3 *Your Excellency, Ladies and Gentlemen, in view of the expected business opportunities likely to be generated by the relocation of the Diamond Beneficiation Process to Botswana, we cannot*

ignore the looming threat of sophisticated industry related crime in all its ugly forms such as money laundering, corruption, smuggling, drug trafficking, terrorism, organised crime, and robberies (my emphasis).

- 11.4 I ask Government in the light of these expected developments to ensure that the Courts are well resourced to deal with these anticipated sophisticated crimes and daring international criminal syndicates. I further need to underscore the urgency for the adoption and implementation, of a multi-sectoral approach in dealing with these challenges. Some of the modalities of dealing with these challenges might entail effecting the necessary amendments to the DCEC Act to fully cater for offences such as money laundering and other forms of corruption and economic related crimes.
- 11.5 I, however, wish to assure the nation of our readiness as a Judiciary to face the challenges that might arise head on; we shall put measures in place to ensure that Judicial Officers are well equipped and constantly trained to build capacity and are abreast with the changing legal, political and economic trends in this Global Village.

12. **BAIL**

- 12.1 Your Excellency, Ladies and Gentlemen, the public outcry on its perception on how the Judiciary has and is handling the issue of Bail in this country is unnerving. I want to assure the nation that their concerns have not fallen on deaf ears. I must, however, highlight that in a rather unfortunate turn of events, there has of recent been some disturbing developments among some of our key stakeholders. There seems to be a blame game amongst Stakeholders in the judicial and legal system on the

issue of bail in particular with regard to the granting of bail to those who have committed certain types of offences and repeat offenders. Some of these stakeholders who are in fact the first port of call for most of the offenders before being brought to court have taken a swipe at the Judiciary for releasing offenders on bail. Whilst admitting that it is the court as the arbiter which is vested with the power to decide whether one is released on bail or not, the court does not act in isolation neither does it rely on any other facts other than those presented before it to make a determination and the providers of this information are none other than the Police as investigators and the Prosecution.

12.2 Director of Ceremonies, the public ought to be reminded that both Section 5 of the Constitution of Botswana and Sections 104, 111 and 114 of the Criminal Procedure and Evidence Act, Cap 08:02 entitle accused persons to apply for bail and oblige Courts to consider such an application and where feasible to grant bail to such persons.

12.3 Statistics from the magistrates courts reveal that of the more than 85% of the accused persons said to be repeat offenders released on bail, such bail was granted by the courts with the consent or no objection of the prosecution. Statistics from the Magistrates Courts on bail applications further show that there were a total of 2241 applications for the years 2011 and 2012. Of this total, 2112 were not opposed and 129 were opposed by the prosecutors. The unopposed applications represent 94% of the total applications. It may be prudent for the prosecution and police to adopt and take informed positions on this issue to enable the courts to arrive at fair and just decisions. The

statistics in respect of repeat offenders were availed to the Director of Public Prosecutions at our last Judicial Conference where the issue of bail was discussed. It is further intended to engage the stakeholders on the subject.

12.4 Director of Ceremonies, with a view to restore harmony and strengthen our working relationships I wish to take this opportunity to also implore the Attorney General to approach the Court of Appeal on a point of law for clarity, uniformity and consistency with regard to conflicting decisions of the High Court on whether or not a Magistrate has jurisdiction to grant bail in murder or attempted murder cases and on a variety of issues pertaining to bail in general.

12.5 I make this plea as I am constrained to issue a Practice Directive as this would amount to interfering with the Judges' judicial functions or in one way or the other overruling a Judge's decision.

13. **THE LAW SOCIETY**

13.1 Director of ceremonies I wish to congratulate the newly elected Chairman and Council of the Law Society of Botswana. I wish to assure them of my commitment to continue working with them in a cordial and mutually beneficial manner. The law Society is an important stakeholder of the judiciary in most jurisdictions. It is therefore important that it supports and make the necessary contributions by creating a reputable judiciary it can identify with.

13.2 I implore the Society as one of our primary stakeholders to engage with us in a cordial and non-confrontational manner. It

does not serve the interests of anyone for the Law Society to position itself as a critic and opponent of the Judiciary. This notwithstanding however, I wish to congratulate the Law Society for its great efforts and contribution in exercising oversight and ensuring professional and ethical behaviour amongst its members. I encourage you to continue the good work.

- 13.3 Ladies and gentlemen, I also note and acknowledge the concern, especially by the Law Society, about delayed judgments. I wish to assure the Law Society and nation that this matter has been seriously attended to and that there will be marked improvement in this area.

14. **CONCLUSION**

- 14.1 I thank you, Your Excellency and all who are here for our Legal Year Opening. I thank all Government Departments that have given the Administration of Justice all the support we have received.

I thank Bishop Setlalekgosi and Reverend Kgerethwa for blessing all of us gathered here today.

I further wish to thank the Commissioner of Police for the vigilance and support of his officers for providing security and order.

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

14.2 Finally, I wish all the members of the Bench and the Bar a productive and prosperous Legal Year.

I thank you.

PULA! PULA! PULA!