



REPUBLIC OF BOTSWANA

ADDRESS BY

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ATTORNEY GENERAL OF THE

REPUBLIC OF BOTSWANA

ON THE OCCASION OF THE CEREMONIAL

OPENING OF THE 2014 LEGAL YEAR

TUESDAY 4 FEBRUARY 2014



**Your Excellency the President of the Republic of Botswana,
Lieutenant General Seretse Khama Ian Khama;**

**My Lord the Chief Justice, Honourable Mr Justice Maruping
Dibotelo and Mrs Dibotelo;**

**The Speaker of the National Assembly, Honourable Margaret
Nnananyana Nasha;**

**Honourable Cabinet Ministers here present;, with special
recognition for the Minister Responsible for Justice, Mr D. N.
Seretse;**

**Honourable Judge President of the Court of Appeal, Mr Justice
Ian Stuart Kirby and Mrs Kirby;**

The Former Chief Justice Mr Julian Mukwesu Nganunu;

Honourable Judges of the Court of Appeal;

**Honourable Judge President of the Industrial Court, Justice
Maruping;**

**Honourable Judges of the High Court and of the Industrial
Court;**

**Honourable Chairperson of Ntlo Ya Dikgosi, Kgosi Puso
Gaborone and Dikgosi here present;**

Honourable Members of Parliament here present;

The Permanent Secretary to the President, Mr Eric Molale;

President and Members of the Customary Court of Appeal;

**Your Excellencies Members of the Diplomatic Corps and Heads
of International Organisations;**

The Director of Public Prosecutions, Mr Leonard Sechele and Heads of Division from our Chambers;

Permanent Secretaries, Senior Government Officials and our Special guests from the Government of South Sudan;

Your Grace Bishop Seane; Reverend Kgerethwa and dignitaries of the Church;

Your Worships; The Mayor of the City of Gaborone and Members of the Magisterial Bench;

The Commander of BDF; The Commissioner of Police;

Chairperson of the Council of the Botswana Law Society, Mr Lawrence Lecha;

Learned friends, members of the Legal Profession; My dear spouse Dr J. W. Arntzen

Distinguished Guests, Ladies and Gentlemen;

Another legal year is upon us, and it is time to look back on the past twelve months, to see what we have been able to achieve, the challenges we experienced and how we can make improvements in service delivery during the coming legal year. For in the final analysis, that is our primary responsibility, to ensure the delivery of quality legal and judicial services to the people of this country.

In this regard, Honourable Chief Justice, you have set the perfect tone with your comprehensive overview of the performance of the judiciary during the past legal year.

It is my pleasure therefore to respond to your address this morning, and to share with you our own experiences in the delivery of legal services from the government perspective. Let me begin by congratulating you Hon CJ on the reforms you continue to roll out, especially judicial case management (JCM) which has now taken root in the Magistrate's Courts.

I am pleased to learn that its implementation has had a positive impact on the disposal of cases. We look forward to the piloting of court annexed mediation (CAM), which also promises to take service delivery even further in the justice sector.

The annual Stakeholders and judicial conferences indeed provide justice stakeholders an excellent opportunity to share experiences and design collective solutions. We find them most useful indeed, and in 2013, the DPP presented a number of issues and proposals with respect to the Revised Magistrates Courts Rules, Court Reporters, capacity building for Magistrates, production of the records of proceedings and other operational issues relating to the better working of the Courts. I trust that these will be addressed in the normal course of collaboration between stakeholders in the criminal justice system.

SALUTATIONS

Regarding corruption, it is pleasing indeed that cases have started to come before the specially dedicated judge at the High Court. The Anti Corruption unit at the DPP to which I referred in my 2013 address is up and running. I have taken note of your Lordship's concern that there is need to further resource both the DPP and DCEC.

The staff complement of the Unit is 10 lawyers who were deployed from within the already overstretched establishment of the DPP. In the whole of the Directorate of Public Prosecutions the ratio of cases on average is 163 per Prosecutor. This indeed is an overload which contributes to delays, leads to low staff morale and has slowed down the takeover of prosecutions by the DPP from the Police. It also deprives the Police of the resources they could deploy to execute their primary mandate, which is the investigation of crime and maintenance of law and order.

It is concerning that despite our best endeavours, certain violent crimes continue to be committed around the country by the same group of people. Police statistics show that some of these people are on bail, accused of such serious crimes as armed robbery and grievous harm, and that they are often re-arrested for similar and more violent offences.

All stakeholders need to work together to avoid the creation of a sense of impunity on the part of criminals, some of whom seem to think that they are untouchable. The Commissioner of Police has already warned that the long arm of the law will find them wherever they may try to hide, and I know that he has put initiatives in place to achieve this.

SALUTATIONS

Similarly, the Directorate of Public Prosecutions has introduced in its various offices, court designated Prosecutors with Senior Prosecutors expected to monitor both the workload of Junior Prosecutors and supervision of the latter to ensure a proper handling of cases.

Steps will also be taken to further strengthen the Anti Corruption Unit, including the DPP's outstations, to ensure that they are staffed with attorneys that have the appropriate skills.

In addition, concerted efforts are being undertaken to capacitate the various divisions of the Chambers and the Directorate of Public Prosecutions with lawyers that have the requisite skills and experience to deliver on our mandate.

However, the retention of middle level lawyers in government continues to be challenging, with attrition showing a steady trend around 6% as at November 2013, at State Counsel I and above, which is 1% above the intentionally accepted attrition benchmark. We continue to address issues of staff welfare, remuneration and general conditions of service for Government lawyers.

I have taken note of Your Lordship's observation regarding practising fees for government attorneys, and would like to assure you that this matter is under active discussion between the Honourable Minister of Defence, Justice and Security and the Law Society, in the context of proposed amendments to the Legal Practitioners Act.

SALUTATIONS

In spite of these human resource challenges, we have continued to do our best to deliver a wide variety of legal services to the Government and the public.

Our International and Commercial Division continues to be active in advising the government on commercial contracts and international law, as well as participating in trade and other bilateral negotiations. These include mega-infrastructure projects that entail complex legal issues such as procurement of construction contracts, rail-links with other countries, and provision of electricity, in conjunction with different client Ministries.

One of the challenges we face is the limited specialist skills to unbundle the complex regulatory regimes to deal with those transactions. We continue to engage international legal experts at a great cost to the government to assist with those transactions. We are therefore using our best endeavours to up-skill our lawyers to cope with the complex legal issues that arise in various fields.

On the international scene, we have been active participants with other countries in various meetings and conferences, some of which Botswana e had the honour of hosting. These include, among others, the Workshop on the Ratification of Kampala Amendments to the Rome Statute of the ICC on the Crime of Aggression, which we co-hosted in Gaborone on 15 April 2013 with the Principality of Liechtenstein and the Global Institute for the Prevention of Aggression.

It was at this workshop that His Excellency the President signed the instrument of ratification signifying Botswana's accession to the Kampala amendments on the Crime of Aggression, becoming the first African country to do so.

We also co hosted the second Practical Legal Education, African Symposium with our partners, Slaughter and May, from 15 to 18 October 2013, which brought together a number of top European and African law firms as well as multinational corporations.

In May this year, Botswana will host the Meeting of Commonwealth Law Ministers and Attorneys General, under the theme 'The Rule of Law and Sustainable Development. Botswana is therefore becoming a destination of choice for events in the legal field, and we hope to continue to attract many more, as we move towards establishing a diamond centre.

SALUTATIONS

Similarly, the Legislative Drafting Division of our Chambers has been a beehive of activity, and the results of their labours during 2013 are there for all to see. A total of forty four (44) Bills were tabled in Parliament and thirty (30) were enacted into law.

Some of the important Bills that were assented to by His Excellency the President during 2013/2014 include The Legal Aid, Public Health, One-Stop Border Posts, Medicines and Related Substances, Corruption and Economic Crime (Amendment), National Development Bank Transition and the Land Tribunal Bills. The Corruption and Economic Crime (Amendment) and the Public Health Acts have commenced, while the rest are on notice.

In addition, one hundred and twenty six (126) Statutory Instruments and eight hundred and twenty one (821) Government Notices were published during the past year.

SALUTATIONS

The Law Revision Order updating the Laws of Botswana up to 31st December 2012 was published on 25th October 2013 as Statutory Instrument No. 101 of 2013. I would like to take this opportunity to inform the legal fraternity and other stakeholders that the Botswana Statute Book now consists of one more volume, bringing the total to 17 volumes.

This is due to the increased quantity of legislation that went through Parliament during the past year, in particular the bulky Civil Aviation Regulations. Consequently, chapter 15 contains civil aviation legislation only.

As we are all aware, the Laws of Botswana and the Botswana Law Reports are available online at www.elaws.gov.bw. Our Botswana Law Reports remain behind, with our latest being 2011 Volume 1. We hope to catch up with this gap during the course of this year.

SALUTATIONS

The pilot Legal Aid programme that is being implemented from our Chambers has made major strides during the past legal year. As at 31st December 2013, over 3,000 indigent clients had already been assisted by the Legal Aid Botswana pilot project with a variety of legal problems.

About 40% of Legal Aid Botswana's clients seek assistance in relation to a variety of family law problems including divorce, maintenance, domestic violence and custody matters. Other common matters dealt with by the Legal Aid Botswana pilot project include land disputes, contractual cases, damages claims, industrial matters, wills and estates.

The evaluation performed at the end of the pilot project in March 2013 informed decisions about the model of legal aid to be adopted. The most cost effective way of providing legal services to the indigent proved to be salaried legal practitioners. However a complementary role remains for legal practitioners in private practice and cooperation agreements with NGOs.

Both the Legal Aid Act and Legal Practitioners (Amendment) Act were enacted in 2013 and were assented to by His Excellency on 4th October 2013 and 14th November 2013 respectively. We are making good progress on the drafting of the Legal Aid Regulations, which will facilitate the commencement of the Legal Aid Act and the transformation of Legal Aid Botswana into an independent statutory body.

The Legal Practitioners (Amendment) Act will enable non-profit organisations to establish Law Clinics certified by the Law Society of Botswana and employ legal practitioners. It also provides for a minimum of forty (40) hours *pro bono* service per year per legal practitioner.

I would like to join you, Honourable Chief Justice, in acknowledging the good work of private legal practitioners in this regard.

It would also be remiss of me if I did not comment on a topical subject to which Your Lordship referred that of forum shopping. I respectfully agree with you that this is a matter of grave concern and wish to state in open court that government lawyers are under no instruction to engage in this unacceptable practice. We expect all judicial officers to be independent and impartial, and administer the law in accordance with the constitutional oath of their office. To do otherwise would undermine the integrity and proud tradition that the Botswana judiciary has established over the years and for which it is so well renowned.

We therefore welcome your Lordship's efforts to amend the rules of court to eliminate forum shopping, and I join your call to all stakeholders to stamp out this undesirable practice.

Let me also join your Lordship in congratulating Mr. Justice Godfrey Nthomiwa on his appointment to the High Court bench.

We equally welcome the initiatives you have shared on your roadmap for 2014, which include identification of turnaround times for cases in the High Court and Magistrates Courts. Your reiteration, in open court, of the Mokolodi commitment that Judges will adhere to the three months period for delivery of reserved judgments will come as a great relief to those litigants who have waited many more months, and in a few cases years, to obtain finality to their matters.

I am sure Batswana who live in areas further away from the existing facilities will also be pleased to hear about your plans to establish courts in their areas during this legal year. This will surely go a long way in complementing wider government efforts to take more services to more people in our vast country.

On that positive note, it is my privilege and pleasure to move that the 2014 legal year commence. I wish Honourable Judges, and all legal practitioners and our stakeholders a professionally fulfilling and prosperous year.

THANK YOU FOR YOUR INDULGENCE