

**ADDRESS BY THE HON. CHIEF JUSTICE M. DIBOTELO AT THE  
OFFICIAL OPENING OF THE LEGAL YEAR TUESDAY 4TH  
FEBRUARY 2014.**

- Your Excellency the President of the Republic of Botswana,  
Lt. General Seretse Khama Ian Khama
- The Hon. Speaker of the National Assembly, Mrs. Margaret  
Nasha
- The Judge President of the Court of Appeal, Mr. Justice Kirby
- Court of Appeal Justices and Mrs. Legwaila
- Your Lordships and Ladyships Judges of the High Court and  
your spouses
- The Former Chief Justice Mr. Julian Mukwesu Nganunu
- Former President Sir Ketumile Masire and Former Vice  
President Mr. Mompoti Merafhe
- Hon. Ministers
- Judge President of the Industrial Court and Judge of the  
Industrial Court Mr. Baruti
- The Attorney General
- The Deputy Speaker of the National Assembly and Assistant  
Ministers
- Permanent Secretary to the President
- Former Judges of the High Court
- Permanent Secretaries
- Your Excellencies of the Diplomatic Corps and International  
Organisations
- Honourable Members of Parliament

- The Chairman of Ntlo-ya-Dikgosi 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
- Commander BDF
- Deputy Commissioner of Police
- Your Worship, the Deputy Mayor of Gaborone
- Your Grace Bishop Seane and The Rev. Kgerethwa
- Invited Guests
- Ladies and Gentlemen

## **1. INTRODUCTION**

1.1 Your Excellency, practice and tradition requires the Chief Justice to give an address at the commencement of every legal year, to the nation, on the state of the judiciary. The address takes stock of our achievements in the past year and the challenges on the judiciary's constitutional and statutory mandate. It also gives me an opportunity to update the nation on any ongoing

projects as well as a glimpse of our roadmap in the coming year.

1.2 Today, I am happy to address an auspicious assembly, graced as is the tradition, by the President of the Republic, Lt. General Seretse Khama Ian Khama, government ministers, members of the Judiciary and the public.

1.3 Before delving further into my speech, your Excellency, Ladies and Gentlemen, may I heartily welcome you all to the opening of 2014 legal year.

## 2. **APPRECIATION**

2.1 As we mark the commencement of the 2014 legal year we begin by expressing our profound appreciation of His Excellency and His Government's support consistently accorded us in recognition of our constitutional mandate by ensuring that the Judiciary

is allocated sufficient resources to discharge and execute this mandate.

2.2 Ladies and gentlemen, before proceeding any further, please allow me to congratulate and extend a warm welcome to our newly appointed Judge of the High Court, former Registrar and Master of the High Court, Mr. Godfrey Nthomiwa; also allow me to recognize the Acting Registrar and Master of the High Court Mr. Michael Motlhabi.

### **3. OVERVIEW OF PAST YEAR EVENTS (2013)**

In the past year we have made great strides to realize our constitutional mandate to render justice to all without fear or favour. The judiciary's core mandate is to ensure justice for all, irrespective of their status. For many ordinary people, the quest for justice has been hampered by lack of physical access to the courts because of long distances, exorbitant legal fees, way beyond the reach of ordinary people, complex and unfriendly procedures and delayed judgments.

Your Excellency, 2013 marked a year of significant events which were intended to address some of the challenges, I have alluded to above.

Without imputing any order of importance I will briefly outline some of these events.

### 3.1 **Court Annexed Mediation**

3.1.1 It has been six (6) years since the inception of

Judicial Case Management (JCM) at the High Court.

At the opening of the legal year in 2013 I indicated

that Judicial Case Management (JCM) was

entrenched in our courts and we were ready to

move on to the next stage of creating programmes

designed to enhance productivity in our quest for

affordable quality service delivery. I am happy to

report that we are ready to adopt and implement

Court Annexed Mediation (CAM) in our Judiciary

which is a form of Alternative Dispute Resolution

(ADR). Most of our key players in the implementation of court annexed mediation i.e. Judges, Registrars, Magistrates, Attorneys and some of our support staff were during the course of the year inducted on the basic principles of Court Annexed Mediation.

3.1.2 It is planned that the roll out of Court annexed mediation (CAM) will be preceded by a pilot project introduced at the High Court first once the Rules of Court have been amended. We are very fortunate to have on our Bench a trained professional Mediator, namely, Hon. Justice Busang who has graciously agreed to oversee the implementation of mediation once we are ready to start. In order to allay any anxieties on the part of the parties it should be noted that anything done or said in mediation cannot be subsequently used in the litigation before court nor will it form part of the case record. It is expected that public education will, resources

permitting, be provided with a view to sensitize and promote awareness about this form of dispute resolution in our jurisdiction. We are optimistic that CAM will play its part in reducing backlogs, expediting the rate of disposal of cases and in reducing costs and other expenses associated with formal litigation.

### **3.2 JCM at the Magistrates Courts**

3.2.1 Director of Ceremonies, the year 2013 marked the second anniversary of JCM implementation in more than 90% of our Magistrate Courts. Some of the celebrated quick wins worth special mention following the roll out of JCM to the Magistrate Courts has been the marked increase in case completion rates for certain case types, timely and easy retrieval of case information as well as improved progress monitoring. There is no doubt that the implementation of JCM in the Magistrates’

Courts has shown an improvement in the disposal of cases and with the introduction of court annexed mediation in due course we hope to see the situation improve even further.

### 3.2.2 The infrastructure, workload and general

Conditions Magistrates work under are challenging as I noted during my tour of Magisterial stations toward the end of 2013. I take this opportunity to assure Magistrates of my support and commitment to improving their work environment and challenges. These include among others the shortage of manpower and appropriate equipment, especially electronic ones. On this front I am pleased to announce that Government subsequently approved and provided the judiciary with 39 posts comprising of 12 Court Reporters and 27 clerks of court. This will no doubt translate to increased efficiency and as the selected personnel take up



appointment, the marked improvement in service delivery will be evident to our stakeholders and other court users.

3.2.3 Turnaround time for disposal of cases was also developed through the re-engineering process. This will help to measure the performance of the Magistrates courts and the High Court. The turnaround times have been made public by posting the same on our website which was launched by the Honourable Minister of Defence, Justice and Security at the opening of the 2013 legal year. Those of you who use internet must have realized that the website is fully functional with a variety of information for consumption by the public. I encourage all of you to use our website to access information about the Judiciary which includes Court rolls for cases enrolled in our courts daily.

### **3.3 Corruption Cases**

3.3.1 The Judiciary joins hands with the nation in scorning the ills of corruption in our Society. I briefed the nation last year that a Judge of the High Court was dedicated to deal with corruption cases. The Director of Public Prosecutions has already started committing such cases to the High Court for trial. There are 11 cases at varying stages of management pending before the High court. Some of the cases have trial dates already set. We are optimistic that the disposal of such cases is going to be speeded up.

We urge those responsible to speed up the investigations of several other cases which are still at mention stage at the Magistrates Courts.

3.3.2 I will however repeat my call of last year that there is need to adequately resource institutions like the

Police, DPP and DCEC to enable them to thoroughly investigate and effectively prosecute such cases.

### **3.4 Operations of Special Stock Theft Courts**

3.4.1 Ladies and Gentlemen, last year I acknowledged Government's benevolence in funding the Judiciary for the procurement of seven (7) mobile caravan accommodations for use by Special Stock Theft Courts in Molepolole, Francistown, Mochudi, Letlhakane, Selibe Phikwe, Palapye and Jwaneng. I take this opportunity to remind you that the intended purpose of the caravans is to bring the services of this Special Court closer to the people, the exhibits as well as to facilitate the quick disposal of stock theft cases in some of the furthest parts of this country.

3.4.2 Your Excellency, we are greatly indebted for the pledge you made during last year's session of the

opening of the legal year. In response to my request Government has provided us with vehicles. Today I am pleased to announce that we have received the seven (7) vehicles we had requested i.e. 3 Toyota Prados and 4 Toyota Hiluxes. The Judiciary expresses its gratitude for this noble support from Government. We pledge to live up to our promise to the nation by ensuring that the courts hear and complete stock theft cases within the shortest period possible and within areas in close proximity to their villages.

3.4.3 Your Excellency, ladies and gentlemen; justice is a product of an assembly line of many actors working together to achieve justice for all. Other actors include the DPP, the Defence Lawyers, Attorney General and various ministries. For our people to get justice, we need the justice chain to cooperate and work together to achieve a common purpose.

3.4.5 Consequently, we look forward to the commitment, support and cooperation of our key Stakeholders such as the Police, DPP and Defence lawyers in making this Special Court a success. It will accord us the opportunity to test the strength of our collaborative efforts as well as the effectiveness of Special Courts.

As the Judiciary we expect the Police, investigators and Public Prosecutors with specialized training and in-depth understanding of the dynamics of the stock theft industry and its operations which has over the years become lucrative, sophisticated and more complex, to take the lead in the investigations and prosecution of these case types. This level of efficiency would reduce incidents of livestock exhibits going missing, dying or even getting stolen again.

3.4.6 An analysis of the Special Stock Theft Courts statistical information for the period January to

December 2013 shows that Jwaneng and Molepolole are doing exceptionally well with a monthly disposal rate of over 90%. The provision of vehicles and fully equipped caravans has been the pivot in the turnaround times.

3.4.7 However, the same cannot be said about Letlhakane, Palapye , Selebi Phikwe, Francistown and Mochudi whose monthly disposal rates stand at 50% and below. This is unsatisfactory.

3.4.8. We requested and have received reports on the causes thereof including strategies and plans to address the same. The reasons advanced for the low disposal rates resulting in high numbers of pending cases at these Stations range from surmountable teething operational problems such as non-availability of prosecutors, defence attorneys, late arrival of inmates from remand facilities, lack of camping equipment for support

staff as well as caravans and camping equipment for the other Stakeholders.

Some of these issues are being addressed at Station and National level with our stakeholders.

3.4.9 It is critical that the Magistrates dedicated to these courts fully apply themselves in synergy with our key Stakeholders with a view of ultimately drastically reducing the pending cases. In this regard, the Regional Magistrates in charge of areas where these Special Stock Theft Courts lie shall be required to closely monitor their performance by submitting monthly reports and indicating the interventions which they have put in place to ensure that these courts operate at their optimum level so that stock theft cases are expeditiously dealt with whilst the stock is still there.

3.4.10 Director of ceremonies, cattle ownership is a source of pride and identity for most Batswana irrespective

of their income group. The cattle industry has for many years been a major income earner for most households in Botswana and the larger economy. Stock theft has grown in scale in certain parts of the country and has of recent become a transnational issue, with new and attractive markets opening up in some of our neighbouring countries. It is against this background that stock theft is viewed as one of the most serious offences by Botswana. I therefore warn all the stock thieves and would-be stock thieves out there that the courts will punish them very severely.

### **3.5. Conferences**

3.5.1 Your Excellency, during the past year we convened some conferences of which I wish to highlight the two critical ones, namely, the Judicial Conference in July and the Stakeholders' Conference in October.



3.5.2 The primary purpose of the Conferences was to share the experiences and receive feedback, both negative and positive, from our Stakeholders. This is borne out of the realization that the justice and legal system is not the sole responsibility of the Judiciary. These conferences also afford us a platform to consult and synergise with our key and main Stakeholders on any initiatives we intend to introduce. We appreciate, and extend our gratitude to the support and cooperation we always get from our Stakeholders. We fully recognize that without these Stakeholders the courts cannot function.

### **3.6 Pro-bono work and Legal Aid.**

It is a requirement in the Legal Practitioners Act for private practising lawyers to undertake compulsory 40 hours of pro-bono work to assist the less privileged in our society. This laudable duty apparently has not been embraced by some practitioners and we here implore all

practising attorneys without exception to honour and undertake this exercise seriously.

It is commendable that the Government through the Attorney General's office came up with the Legal Aid programme in recognition of the less privileged members of our Society who cannot afford the cost of engaging attorneys to represent them.

I must acknowledge the good work done by attorneys who are appointed by the Registrar to take up pro deo work in criminal cases. They are doing a splendid job in that area.

### **3.7 Practising fees**

On 8 April 2011 when I officially opened the Secretariat of the Law Society of Botswana I pointed out that attorneys employed by the Government of Botswana, Local Authorities and Parastatals who appear in our

Courts are by law exempted from paying for practising certificates. At that time there were about 281 attorneys working for the Government.

This is what I said in relation to those attorneys:

*“If these lawyers were not exempted from paying for practising certificates the Law Society would be harvesting P421 500.00 per annum at the rate of P1500.00 per attorney fees per annum.*

*I therefore urge the Government to contribute a minimum of P421 500.00 per annum to the Law Society of Botswana in lieu of practising fees which its lawyers would otherwise be paying if they were not exempted in order to assist the Law Society in the implementation of pro bono work.”*

This request is today as valid as it was then and I repeat it and urge the Government, Local Authorities and Parastatals to seriously consider it with a view to paying

a lump sum annually to the Law Society in lieu of the practising fees which their exempted lawyers would otherwise be paying to the Law Society to assist them in carrying out their pro bono work.

#### **4. Forum shopping**

4.1 Your Excellency, Distinguished Guests, Ladies and Gentlemen, during the course of the past year I spoke strongly against forum shopping.

4.2 In the press release which I issued on the matter on 18 October 2013 after approval by the Judges of the High Court I expressed concern that the independence and unshakeable impartiality that has earned our judiciary international acclaim may be damaged by those who think they are at liberty to choose judges. This is what I stated at paragraph 5 of the press release:

*“The issue of forum shopping is a matter of grave concern to the Judiciary and we are going to take steps to stop it. It cannot be acceptable that clients*

*or their lawyers pick and choose who of the Judges should preside over their cases as that gives the impression that Judges are not independent and impartial and they will take sides unduly, in violation of their constitutional duty.”*

4.3 Today, I wish to echo the same sentiments as captured in paragraph 5 above.

4.4 In order to curb and discourage the worrying practice of forum shopping we will be amending the Rules of the High Court to reduce if not altogether eliminate the incidents of forum shopping. It is intended that some of the amendments to the Rules will be as follows:

4.4.1 *Rule 12 of Order 6 will be substituted with a new rule, which when paraphrased, provides that where the defendant’s address for service is within a radius of 100 km from the High Court Registry issuing the Writ of Summons the time limited for appearance*

*shall be 14 Court days after service of the Writ of Summons and 21 court days where the defendant's address for service is outside the radius of 100 km from the High Court Registry issuing the Writ of Summons.*

In essence, this amendment will be removing specific mention of or reference to a High Court Registry at Lobatse or Francistown in Order 6 Rule 12.

4.4.2 *Rule 13 of Order 6 will be substituted with a new Rule that provides, inter alia, that the appropriate office for entering an appearance to defend shall in all cases be the High Court Registry issuing the Writ of Summons.*

4.4.3 *We shall be introducing a new Rule 15 of Order 6 which provides that a cause once registered may not be withdrawn without leave of the Judge to whom it has been allocated and upon good cause being shown.*

4.4.4 *A new Rule 16 of Order 6 will be introduced providing that the same cause shall not be registered at more than one High Court Registry.*

4.5 We are optimistic that these amendments will significantly reduce the incidents of forum shopping. We implore our stakeholders to appreciate and embrace this initiative for the benefit of us all. We have taken note of some of our Stakeholders' concerns which have been a catalyst and reason for their engagement in forum shopping.

## **5. Staff welfare & Accommodation**

5.1 Your Excellency, we are profoundly indebted to your Government for upgrading and improving the conditions of service for the magistrates. We further wish to express our gratitude regarding the recent allocation of some of the Ministerial houses to our Judges. Although we are grateful for the support by Government we wish to register our concern regarding the state of repair of some

of the houses occupied by our Judges. Several requests have been made to DBES for the maintenance of these houses and to a large extent their efforts of restoring some of the houses to a habitable state have not been successful.

It is critical for a judge in the discharge of the functions of his office to have undivided attention and it is totally unacceptable for them to be constantly focusing on the depressing state of their houses instead of concentrating on the business before them. The DBES does not seem to have the capacity to keep these houses in a habitable state.

5.2 Further to the housing needs of Judges, in our quest for improved service delivery, we should be mindful not to leave out other staff supporting the function of the Judiciary. The cry from courts operating all over the country is the lack of staff housing. If we are to achieve our mandate government should harness a plan on the



provision of accommodation to the staff. This will go a long way in reinforcing morale and ultimately the service delivered to the people. There is generally a shortage of houses for rent on the market or where they are available they are beyond reach of an ordinary employee who is in the majority.

I know that there may be no obligation on the part of Government to provide accommodation to its employees as part of the conditions of service. However, it is high time that Government reconsider that position as the absence of accommodation impacts negatively on the performance of officers thereby compromising service delivery.

5.3 Your Excellency, apart from the vehicles allocated for stock theft courts as mentioned above, I have to reiterate that the Judiciary is still and unfortunately saddled with shortage of vehicles for an establishment of its size. We still require to resource our Judges with vehicles and for

carrying out other duties e.g. of serving summonses on defendants in family maintenance disputes. It is unpalatable to be faced with a situation where a Judge is stranded and has to depend on the benevolence of another Judge or another officer to enable him to move around.

5.4 I should perhaps here take the opportunity to say a word or two about Deputy Sheriffs who are appointed by the Registrar who is the Sheriff to perform the functions vested in the Sheriff. There is mounting public outcry that some Deputy Sheriffs are taking undue advantage of the public. We acknowledge that there is little public information about this group of court officers and some have manipulated this dearth of information and the ignorance of the public to engage in irregular practices.

5.5 Measures are now being put in place to address this public outcry or concern. A unit coordinating the relationship between members of the public and Deputy

Sheriffs will be set up. Deputy Sheriffs' tenure of office will now be regulated by a service contract and moneys collected by Deputy Sheriffs will be kept in trust accounts to be audited by the Sheriff's office. The regularity of Auction sales to be conducted on behalf of judgment creditors will be closely supervised by the Sheriff.

- 5.6. In order to ensure that these monitoring and oversight mechanisms yield positive results public education and sensitization interventions will be vigorously pursued so that the public is equipped with adequate knowledge regarding the role of the Deputy Sheriffs. We will therefore in due course be approaching the Government, Your Excellency, for resources to implement these measures.

## **6. ROADMAP FOR 2014**

Our road map for 2014 is geared towards addressing the general complaints from our customers more particularly the expeditious delivery of justice. We are aware as a judiciary of our shortcoming in meeting our customers' expectations. I will repeat hereunder the common areas of concern by our customers:

### **6.1 Inordinate delays in the disposal of cases including delayed judgments:**

It is a fact that when litigants come to court they expect their disputes to be resolved within a reasonable time. This is derived from the old adage that "justice delayed is justice denied." Public concern and unhappiness have been justifiably expressed at inordinate delays by the courts in completing some cases. The several initiatives we come up with are intended to address this concern. For example we have come up with turnaround times for

every case type in both the High Court and Magistrates Courts. Our case disposal rates and performance will now be measured against these turnaround times.

The process of registering court pleadings has also been identified as another serious area of concern. However the delays in this process were as a result of shortage of staff in the Registries and the issue as I have reported is being addressed.

The late delivery of judgments by the Judges of the High Court was discussed and resolved at the recent Stakeholders' conference. The conference in particular reiterated the need for Judges to adhere to the three (3) months agreed timeline for delivery of reserved judgments until this period is reviewed or changed. With these measures in place we expect our customers to see a marked improvement in the quality of services. The judiciary is ever conscious of the bottom line being that "justice delayed is justice denied."

## 6.2 **Transcription of court records**

The other service delivery concern raised by our customers is the delay in the transcription of court proceedings in preparation for appeal. Records are transcribed by court reporters who spend the greater part of the time in court recording proceedings verbatim as required by law.

It must, however, be noted that the situation can only be brought to normal if there are at least two court reporters per judicial officer. We are hopeful that Government will take active steps and regularize this anomaly as a matter of urgency by increasing the posts to that level.

In the meantime we will be approaching the Government for funds to procure and install real time reporting equipment in all our courts. The equipment, though expensive, will permanently rid our courts of delayed

records of proceedings, a problem which has been a source of our frustration for a long time.

### **6.3 Distance to access court services**

While we have managed to have the courts spread across the country we still have areas where court facilities are too far from the people. The introduction of new magisterial stations is an ongoing exercise in consultation with our Stakeholders. Bobonong which was being serviced by Selibe Phikwe is now a new and independent station. We should see in 2014 new courts coming up at Shakawe, Nata and Kang. The opening of these courts will drastically reduce the distance our customers have to travel to access our services. Good things as we know always come at a cost and we implore Government to support us in this regard.

## **7. CONCLUSION**

I wish to conclude by assuring His Excellency the President and the public that in this year we shall accelerate justice delivery to all and sundry and improve drastically the timeous delivery of judgments.

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 Seane and Reverend Kgerethwa for their prayers, messages of encouragement and 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 maintaining 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. I must also thank the organizing Committee which has made it possible for all of us to be gathered here today.

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

**PULA! PULA! PULA!**

|

