

JUDICIAL CONFERENCE

MAJESTIC FIVE LODGE

PALAPYE INTERNATIONAL CONVENTION CENTRE
(P.I.C.C.)

25 - 26 JULY 2013

THEME: “JUDICIAL REFORMS – PROSPECTS
AND CHALLENGES”

WELCOME AND OPENING REMARKS

BY HON. CHIEF JUSTICE MARUPING DIBOTELO

SALUTATIONS

1. The Guest Speaker – UN Resident Coordinator & UNDP
Resident Representative Mr. Anders Pedersen;
2. Honourable Judges of the High Court;
3. Former Chief Justice Mr. Julian Nganunu;
4. Former Judges of the High Court Mr. John Mosojane & Dr.
Unity Dow;
5. Honourable Attorney General Dr. Molokomme;
6. Honourable Member of Parliament for Palapye Mr. Goya
7. Permanent Secretary Ministry of Defence, Justice and
Security Mrs Tsiane
8. President of the Customary Court of Appeal (North) Kgosi
Masunga;
9. Members of the Magisterial Bench;
10. Acting District Commissioner Mrs C. Lesetedi;
11. Kgosi Motshidisi of Palapye;
12. Council Secretary for Central District Mr. Dipholo;
13. Commissioner of Police Mr. Makgophe and Commissioner of
Prisons Mr. Motlalekgosi;
14. Director of Public Prosecutions Mr. Sechele;

15. Director of DCEC Mrs Seretse;
16. Ombudsman Mrs Bakwena;
17. Registrar & Master, Your Deputies & Assistants
18. President of the Land Tribunal (North) Mr. Nare;
19. Representative of Law Society of Botswana Mr. J. Isaac;
20. Distinguished Guest, Ladies and Gentlemen;

1. Welcome

We are back again at Majestic Five Hotel, Palapye, our venue for last year's Judicial Conference. It would appear that as a Judiciary we are developing some unsaid attachment to the Central District, especially Palapye. It is more than a coincidence that we have gathered to this particular venue once again not only because of its welcoming ambience and beauty but more because of its centrality and convenience to all of us.

Director of Ceremonies, Your Ladyships, Lordships, Ladies and Gentlemen, it is my singular honour and privilege to welcome you all to our 2013 Judicial Conference.

I wish to extend a warm welcome to our Guest Speaker Mr Anders Pedersen, the United Nations Resident Co-ordinator and United Nations Development Programme (UNDP) Resident Representative who generously deemed it befitting to set aside time in his busy schedule by accepting our invitation to come and officially open our conference. You are most welcome, Sir, to this conference. I also wish to welcome our key Stakeholders like the Attorney General, the Director of Public Prosecutions, Commissioner of Police and Commissioner of Prisons who have been requested and have kindly accepted to be resource persons at this Conference.

Until recently, the UNDP has been our critical and strategic development partner in introducing and driving some of our reforms which have been instrumental in enhancing the efficiency and performance of our Judiciary such as the Judicial Case Management (JCM). The UNDP has also pledged to continue as our strategic development partner by providing financial support for our planned organisational restructuring.

Ladies and Gentlemen I wish to recognise the presence and welcome all the officers here present who have recently joined the Administration of Justice and are attending and participating at this Conference for the first time.

Please join me in congratulating the Registrar and Master, Mr Godfrey Nthomiwa following his appointment to the High Court Bench as a Judge. He will effectively assume this position at the beginning of August 2013. We recognise and appreciate the selfless service and enormous contribution Mr. Nthomiwa has made to the growth of this organisation for the past twenty eight (28) years. I take comfort in the fact that whilst one section of the organisation has lost the other has gained. Upon being appointed a Judge of the High Court Mr. Nthomiwa had worked for the Judiciary for a period covering some 28 years.

Director of Ceremonies, we have been convening conferences of this magnitude and nature for many years. Consequently, some of us may have fallen into the folly of losing the significance and importance of these gatherings. We must avoid the tendency of not giving our Conference deliberations

the seriousness they deserve by either not attending some sessions whilst on a frolic of our own or just being unenthusiastic in approaching the issues placed before us. There is need to change this culture and develop positive attitudes for we are the best placed people who know where we would want to see this judiciary in the future. We perhaps need to be reminded that we are jointly and collectively responsible for the quality of the outcomes of this conference's deliberations. The significance of this conference cannot be over emphasized hence it has now like the opening of the Legal year become a permanent feature of our annual calendar of events.

We ought to treat the two (2) days for this conference as official days though removed from our courts and offices. Ladies and gentlemen I wish to encourage you to use this rare occasion to engage in intelligent, meaningful and fruitful discourse that would transform the Administration of Justice and support implementation of its reforms programme.

We need to remember that we are all part of this organisation and such your input is key to the development of this organisation albeit our differences of opinion.

Our judiciary continues to enjoy good reputation throughout the continent and globally, this did not just happen as it was earned through years of hard work, dedication and commitment and able leadership. You are now part of this success story and we need to work hard to do even better as we are not there yet. I want to assure you that I am convinced that you have what it takes to take this judiciary to another level and to keep it in the forefront as an envy of other judiciaries. Let us enjoy and take pride in serving our nation. The impact and change we can bring in enhancing our democracy should under no circumstances be underestimated.

2. CONFERENCE THEME

2.1 Your Ladyships, Lordships, Ladies and gentlemen, the theme for this year's Judicial Conference is “**Judicial Reforms – Prospects and Challenges**”.

2.2 With the view to improve efficiency in the management of our court records and case information in our organisation, we in 2005 introduced Court Records Management System (known as CRMS). This is our technology tool used for recording and keeping all our files and other information safe for accurate and quick reference.

CRMS was very instrumental in effectively moving us away from manual management of court records and other information. Developments in the use of IT by different business sectors, and the growth of the business of our courts compromised our operations and efficiency through delayed search for information, inaccurate data and other cases statistics, over spilling storage facilities and losses. With the advent of CRMS access and accuracy of court information has improved significantly. Users are now able to view information associated with individual cases and Court Orders. The system has now been upgraded to exploit its other capabilities that would now accommodate other essential add features such as the requirements of Judicial Case Management (JCM).

Ladies and Gentlemen Judicial Case Management (JCM) is another reform we introduced in the High Court and Magistrates Courts in January 2008 and February 2010 respectively. Through the JCM the pace of litigation in all cases is now driven by the Judicial Officer instead of the parties/attorneys as was the case before the reform. This development has brought about a lot of change by expediting service delivery resulting in quick and increased case disposal rates.

2.3 Having noted the benefits of these two reforms I have just alluded to and their impact in improving the performance of the judiciary, we have gone a step further to consider other systems and avenues that could support our drive for improved yet affordable access to Justice by introducing ADR. In preparation for the piloting and subsequent roll out of this reform we at the beginning of March 2013, had Judicial Officers, key Stakeholders and some support staff trained by Judge Low from the United States of America, on the principles of Court Annexed Mediation.

2.4 As part of the theme for this year's Conference it is important for all of us to introspect and take stock of the Judicial Reforms I have mentioned. Whilst acknowledging that these reforms have served us well so far, we cannot deny that they have not been without their own challenges. It is in this context Ladies and gentlemen that we particularly need to genuinely interrogate these challenges, whether systemic or human created, evaluate them with the view to develop strategies which going forward would enable us to enjoy their full potential.

We need to be mindful of the fact that these reforms are forms of investment and do not come cheap and for that reason it is our joint responsibility to ensure that we do not allow such investments and the aspirations with which they were introduced to disappear into oblivion.

2.5 Director of Ceremonies, I have observed with some concern, that most of the attendees at our Conferences are good listeners whilst some are reserved and at time conservative with their thoughts and view. Some rarely actively participate in the proceedings and activities of this occasion.

2.6 I wish to assure you that this is your conference and my expectation are that you should own it and feel free to air your views of course within the confines of the programme. This is not the Chief Justice's conference or that of the Judges of the High Court. Do not feel intimidated or dismiss your thoughts and views without sharing them. They may be just what the organisation needs and has been waiting for. Let us bridge the perceived knowledge gap as we are here to learn from each other's wisdom. I therefore implore you to share your ideas and experiences both in the Plenary and group discussions for the development of this Organisation.

3. **MATTERS FOR CONSIDERATION**

Esteemed delegates, please allow me at this juncture to update and share with you the following critical issues for your earnest consideration:

3.1 **MANPOWER CONSTRAINTS / RESOURCES**

3.1.1 The historical and continuing under resourcing of the Judiciary is a matter we have submitted to Government.

We appreciate the efforts and support that the Government has extended to us so far in ameliorating the situation. We have for instance been provided with utility vehicles recently for use by the special Stock Theft Courts. We have also been granted additional Magisterial posts and accompanying support staff for the Traffic Courts. This action on the part of the Government is commendable.

3.1.2 We do appreciate that the onset of the Global Economic down turn resulted in the sudden reduction of existing revenues causing strategic adjustments for some projects on the part of government. We were as the Judiciary equally affected by this development. We continue to earnestly ask Government to avail the necessary manpower we have requested, such as Court Reporters and Registry Clerks, to enable the Judiciary to effectively and efficiently serve the country by timeously resolving disputes brought before the courts. A truly functional judiciary which enjoys the confidence of the people it serves is to us critical.

3.1.3 It is a reality that most of our courts countrywide are grinding to a halt in the preparation of records of proceedings as they are serviced by one (1) instead of two (2) Court Reporters. In terms of the law it is the latter's record which is considered and recognised as the Court Record. This situation has and continues to delay the hearing of appeals, preparation of judgments resulting in low case disposal rates. This situation causes irreparable prejudice in some instances to the litigants and other interested parties. This scenario goes against the saying "**Justice is sweetest when freshest**". A delayed judgment or decision causes a lot of anxiety, trauma and in some instances loss of confidence in the Justice system's ability to resolve their disputes and enforce rights timeously.

3.1.4 The shortage of Registry Clerks is also slowly bringing our processes to a halt as filed court processes and other documents are not reaching the files at all or on time, culminating in the creation of unnecessary backlog.

It is a sad reality that on account of current resource constraints we have not been able to keep pace with our development programme. We are afraid that should this situation continue we are likely to lose credibility as a Judiciary will not be able to effectively deliver on its mandate to the nation.

Whilst grateful for the infrastructure of our courts, we need to acknowledge that it is not the buildings as such which make the judiciary functional, but the people who work in them and serve the nation. This is currently the resource that we need most. We have in the past as we continue to do done our very best with the little made available to us, but ladies and gentlemen the truth is, we may be steadily sinking, albeit our efforts at reengineering our processes and the incremental use of technology. These reforms still need people to drive them.

3.2 **JUDICIAL ETHICS**

3.2.1 Director of Ceremonies, for the benefit of new members and even old members, I wish to restate that we have a

Judicial Code of Conduct. I have asked that it be distributed to all Judicial Officers at this Conference. I implore you to peruse -it, internalise it and observe the dictates of this living document. As a matter of fact, we have an Ethics Committee chaired by Hon. Justice Gaongalelwe, its other members are Hon. Justices Tafa and Newman.

3.2.2 Ladies and Gentlemen, I am bringing the issue of Judicial Ethics to the fore as I have been receiving many unpleasant reports and complaints, which include amongst others, delayed judgments, irregular conduct of court proceedings and use of inappropriate language by some Judicial Officers. As the embodiment and representatives of that which is fair, just, good and acceptable we need not be reminded of our obligation to be sensitive, judicious and mindful of the feelings of the Public and their complaints.

If we do not keep our conduct in check, we stand to lose the respect, dignity and honour associated with being a judicial officers. Let us try not to bring dishonour and

shame to the Bench. Our conduct, etiquette, language should clearly set us apart as sober minded people, befitting our call to the Bench. Let there be no scintilla of doubt in the mind of an ordinary man that there was no error of judgment on your appointment.

3.2.3 Our Code of Conduct requires all Judicial Officers to conduct themselves with integrity so as to sustain and enhance public confidence in the Judiciary. We are enjoined to ensure that our conduct is above reproach both in our private and public lives.

3.2.4 Good courts and court officials of integrity, with good values give the public confidence in their sense of judgment and ability to fairly and justly resolve their problems. This includes timeous resolution of disputes brought before our courts.

3.2.5 I must again remind you that our Code of Conduct requires all Judicial Officers without exception to perform all judicial duties, including the delivery of reserved judgments, with promptness and professionalism at all

times. As Judicial officers be mindful of the fact that you carry a huge responsibility which by extension involves the welfare of other people beyond the litigants appearing in your courts.

3.2.6 We are also required by the Code to carry out our duties with appropriate consideration for all parties, witnesses, court personnel and legal practitioners. You must always bear in mind that one of the cornerstones of our values as a society and the judiciary is Botho. This value should be exhibited and underlie our engagement and interactions with all those who come before us and those who work with us, irrespective of their status in our society. Intemperate and demeaning language in particular is totally unacceptable.

3.2.7 A Judicial Officer holds an exalted and honourable status. It thus behoves a Judicial Officer to at all times be bound by the judicial oath to the best of his/her ability and professionalism. A Judicial Officer must be consistent in terms of punctuality, decorum and integrity so as to earn

the respect, status and authority of the office both in court and outside.

3.3 **POACHING OF WILDLIFE**

3.3.1 Director of Ceremonies, we are all aware of Government's concerted efforts in diversifying the economy from our overdependence and reliance on mineral resources, especially diamonds, as the main source of Government revenue and export earnings. In this regard, we take judicial notice of Government strident efforts in promoting growth of the tourism sector as a potential alternative source of revenue for the Botswana economy. We are indeed blessed as a nation to have a unique and indigenous wildlife, fauna and flora in our country which we sometimes neglect and take for granted whilst other people have to travel from far and at great expense to come and admire the same. If we do not take proper care, nurture and take proactive action to conserve our wildlife and environment, all these species which tourists come to see will soon become extinct. Much has been lost and its our call to jealously guard against the depletion of what

we still have. The domino effect is that foreign currency from tourism will not flow into the fiscus and this will not augur well for us as a country.

3.3.2 Tourism is a significant contributor after diamond mining to the Gross Domestic Product (GDP). However, tourism is under threat as a result of poaching which is on an alarming increase.

3.3.3 Ladies and Gentlemen, the alarming increase and disturbing prevalence of poaching of our wildlife in some parts of the country, particularly the Rhino, calls for the imposition of stiffer and deterrent sentences and in some appropriate instances, denial of bail.

3.3.4 I urge Judges and Magistrates to impose condign punishments, befitting the seriousness and prevalence of the offence.

3.3.5 I also urge the Commissioner of Police to consider strengthening the Police Service by introducing a Special

Unit in areas where poaching of wildlife is rampant, and to be manned by qualified and experienced Investigators.

- 3.3.6 I equally urge the Director of Public Prosecutions to assign and dedicate competent and well experienced Prosecutors to a Special Prosecuting Unit to deal with cases of poaching of Wildlife.

As a responsive judiciary we need to provide the necessary support within our mandate to address this situation whilst it can still be managed.

- 3.3.7 As I have emphasised many times in the past for those who care to note, unless these institutions are strengthened and resourced by the Government the guilty will go free much to the detriment of the country and its economy.

3.4 **DIAMOND BENEFICIATION**

- 3.4.1 Director of Ceremonies, those who were present at last year's Judicial Conference will recall that a presentation was made by the Botswana Diamond Hub Coordinator on

the “Role of the Judiciary in Diamond Beneficiation.” We had requested such a presentation as a means of ensuring that the Judiciary stays in touch and abreast of the developments in the Diamond Trading landscape in preparation for the relocation of the Diamond Trading Service from London to Gaborone.

3.4.2 Ladies and Gentlemen, as I observed at the opening of the 2013 Legal year, we cannot ignore the looming threat of sophisticated industry related crime in all its ugly forms, such as money laundering, corruption, smuggling, drug trafficking, organised crime and robberies likely to visit our shores due to the relocation of the Diamond Beneficiation Process to Botswana.

3.4.3 Your Ladyships and Lordships, we must ensure that as a Judiciary, we are well equipped in terms of resources and expertise needed to address some of the challenges likely to be brought about by the said relocation.

3.4.4 I also ask Government to ensure that courts are well resourced to deal with these anticipated and sophisticated crimes by International Criminal Syndicates.

3.4.5 Director of Ceremonies, it may be of interest to the Conference delegates to know that on the 4 February 2013, I led a team of High Court Judges on a visit to the Diamond Training Company (DTC) of Botswana as a follow-up to last year's Judicial conference presentation from DTC representatives. We found the visit to be very worthwhile and fruitful.

3.5 **Court Annexed Mediation (CAM)**

3.5.1 Director of Ceremonies, I wish to report that the training programme on Court Annexed Mediation for our Judicial officers, some support staff and key Stakeholders was a success.

3.5.2 The training which commenced in March 2013 was facilitated by the retired Judge from Utah, United States of America, Mr. Gordon Low. We are greatly indebted and

grateful to Judge Low and his wife for his support and spirit of volunteerism by ushering and entrenching this reform in our jurisdiction. More details on the status of the implementation of this reform will be presented to you in the course of this Conference.

3.6 **Specialised Courts**

3.6.1 Director of Ceremonies, at the last Judicial Conference, I spoke about the need for us as a Judiciary to decongest our courts and hive off certain matters which are supposed to be dealt with by specialised courts. I am here referring to labour and land disputes which should now find their way to the Industrial Court and Land Tribunal respectively.

3.6.2 The specialised courts are better placed to deal with these matters and in the process building and developing jurisprudence. While it may be necessary to bench mark in the Region on how other Jurisdictions are dealing with Industrial and Labour related cases, I believe it is time to start dialogue, debates and consultations around these

issues to publicly interrogate the pros and cons of these proposals.

4. **STAKEHOLDERS**

4.1 Director of Ceremonies, Please allow to briefly touch on a subject relating to some of our key Stakeholders. The opening of legal year is a platform for the Chief Justice as the Head of Judiciary, to make a policy statement to the nation on planned activities, subject to resource availability, and also to prepare and take on board the main key Stakeholders.

4.2 Ladies and gentlemen, I am giving this background as I am surprised and disappointed by some of our key stakeholders who have now turned out to be our opponents as they profess at other fora that we are establishing courts in Shakawe, Kang, Nata and Bobonong as well as Special Stock Theft Courts without them being consulted.

- 4.3 Director of Ceremonies, in my three successive legal year opening speeches I have categorically stated the intention of the Judiciary to take justice to people in the above localities. The vision of this Judiciary is “Access to Justice for all by the year 2016” and initiatives to achieve this vision include physical access by reducing distances litigants have to travel to courts to within a radius of 100km.
- 4.4 Esteemed delegates, when I make these policy pronouncements at the opening of the legal year in the presence of our key Stakeholders the intention is for them to prepare themselves and to be part of the projects.
- 4.5 Director of Ceremonies, it is therefore unfortunate that when these projects are now coming to fruition some of our key Stakeholders pretend to be hearing of the projects for the first time.
- 4.6 I ask our main Stakeholders to be part of our efforts in taking justice to the people and not frustrate these noble initiatives. We are open to any proposals or suggestions

aimed at ensuring that these efforts are realised to the fullest extent.

5. **CONCLUSION**

Director of Ceremonies, Your Ladyships, Lordships, distinguished Guests, Ladies and Gentlemen once again I heartily welcome you all to the Judicial Conference. It is my hope that you will enjoy your stay for the duration of the conference.

I look forward to candid and open sharing of experiences and strategies which will ultimately find their way into our resolutions and help us to tackle the challenges brought by the reforms.

I wish you a pleasant stay and fruitful deliberations.

I thank you all for your kind attention.

Pula! Pula! Pula!