

FOREWORD

This special edition of the University of Botswana Law Journal marks the fiftieth anniversary of the Independence of the Republic of Botswana, which we celebrated on 30th September 2016. Having been a member of the legal fraternity for most of those fifty years – in private practice, as Attorney General, as a High Court Judge, and as President of the Court of Appeal – I am honoured to have been asked to write a foreword for this commemorative edition.

When the flag was raised in 1966, the new Botswana had very few legal resources – a modest High Court Chamber in Lobatse, manned by a single expatriate Chief Justice, a few Magistrates Courts, often shared with the District Commissioner’s Office, in the major villages, and no resident private practitioners. Most cases were litigated and settled in the Customary Courts. We also had no university of our own, and facilities were shared with Lesotho and Swaziland, in Maseru and Manzini respectively, with law students spending a two year stint in Edinburgh.

Fast forward to 2016, and how proudly different things are now! Although on the world stage fifty years of history passes in the blink of an eye, in the case of the legal development of Botswana, those years have seen quite remarkable progress. Three Sittings of the High Court, with modern facilities, manned by twenty six Judges, virtually all of whom are graduates of the University of Botswana, bring justice to the people on a continuous basis. So, too, do Magistrates Courts in most villages, and those who commence their dispute settlements in the kgotla now have a seamless passage, if they wish, through the Magistrates Court to the High Court and finally to the Court of Appeal. Thriving private legal practices are present in every town, monitored by an active Law Society, and the days of reliance on outside legal assistance are long past.

As for the University of Botswana, it too has been transformed. On what used to be the dusty runway of the old aerodrome, and the virgin land around it, there has grown up, through the efforts of Botswana and of successive Governments, a modern and successful university, with state of the art facilities, hosting students and staff from many nations. And for those of us of a legal persuasion, pride of place must go to its vibrant law school, which now sees up

to eighty law students graduate each year to serve the nation. It is those former law students, who have played their part in the impressive progress made by the legal profession in those fifty years.

As could be expected, the academics and alumni of the Law School have also contributed the major part of the legal writings which have marked the development of Botswana's jurisprudence. From humble beginnings in 1966, the Botswana Law Reports now run to two or three volumes each year, and record many thousands of High Court and Court of Appeal judgments, many of which were penned by graduates of U.B. Those Law Reports contain a rich historic tapestry showcasing the modernisation and indigenisation of our common law, both by statute and by judicial interpretation of our laws and our Constitution. Many theses, text books, and articles from members of the university have further enriched our legal literature.

And then, of course, there is the University of Botswana Law Journal, to the anniversary edition of which this is the foreword. In pride of place in my own library is the very first copy of Volume 1 of the Journal which rolled off the press in June 2005, signed by the then Chief Justice and the editorial staff. I was fortunate to acquire this at auction during the launch of the Journal. The standard of material in that copy and in the annual editions since then has been consistently high, and has provided much subject matter for our ongoing legal discourse. I extend my admiration and congratulations to the editors and contributors for that achievement. This Commemorative Edition, marking our Fiftieth Anniversary, is a fitting tribute to Botswana from the University and from the Law Department. If that is possible, it surpasses previous editions in the quality and diversity of its articles. It is pleasing to note that valuable contributions are included from other legal stakeholders, such as physical planners and mental health practitioners, and not only from the legal fraternity as such. This is a welcome development, and helps to properly contextualise the impact of the law on society in general.

I will conclude these observations with a reflection on some of the wise counsel of Sir Seretse Khama, first President of Botswana. When asked why, in every speech he made, he repeated again and again his warnings against the evils of racism and of tribalism, when this was now old news, he replied that each time there was present in his audience at least one new face, and that

person too needed to be reminded and educated on those issues. So it is too with the law. Each year a new crop of students will enter the law school, and will need to be introduced to the values which underpin our democracy and our legal profession. The rest of us, too, need to be reminded of those values on a continuous basis.

These values are imbedded, of course, in the Constitution of Botswana, which was written and adopted by our founding fathers, in their wisdom, for the benefit of future generations of Botswana, including our own. It has been rightly said, in the early case of *MOATSHE* that the Constitution is the mother of all laws and institutions in Botswana. It is the creator of parliament and the judiciary. It gives legitimacy to existing law, and authorises the promulgation of new laws. It is the Constitution which promises to all Botswana both now and for the future the full enjoyment of their fundamental human rights, in entrenched clauses which may only be amended if that is the desire of the whole nation expressed in a referendum.

And it is the Constitution which sets out the three branches of government – the Legislature (Parliament and *Ntlo ya Dikgosi*), the Executive (Ministers, Public Service and Local Government), and the Judicature (Courts, Judges and Magistrates). Each of these branches operates, to the extent that this is practicable, independently of the other two, and within its own remit. It is the Legislature which makes the laws, the Executive which gives effect to these, and the Judicature which interprets the laws and ensures their enforcement. It is the delicate balance between those three arms of Government, and the limits imposed by the Constitution on the powers of each which have provided the foundation of our democracy and of the fifty years of peace and stability which our country has been privileged to enjoy. Most important of all is the independence of judiciary – each Judge must take an oath to respect the Constitution, and to administer justice fairly without fear or favour, so that the public can have confidence in the Courts, whose decisions may have a dramatic and final effect on aspects of their lives.

Finally, we owe also to the Constitution those two pillars which are essential to every modern civilized society, namely democratic government and respect for the rule of law. These are imperatives deeply embedded in the national psyche, and they remain constant although the Constitution may be

interpreted and developed in its meaning and effect by judicial pronouncement with the passing years, so as to keep pace with the times and to reflect current thinking and modern mores. We can look back on many seminal judgments, such as *Petrus*, *Dow*, *Rammoge* and *Ramantele* in order to see how this process has developed – and no doubt it will continue to do so.

It gives me great pleasure to introduce this 50th Independence Anniversary Edition of the University of Botswana Law Journal, and to congratulate the authors and editors on an outstanding publication.

Pula!

Hon. I.S. Kirby

PRESIDENT OF THE BOTSWANA COURT OF APPEAL