**KEYNOTE ADDRESS BY HONOURABLE CHIEF JUSTICE SAKOANE PETER SAKOANE AT THE JUSTICE SECTOR FORUM, MASERU AVANI, MASERU.**

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**7TH SEPTEMBER, 2023.**

**Salutations and Protocol**

(1) We meet in times of trouble for our nation. None dare disagree that these are the times when crime is spiraling out of control. We hear of senseless and horrible murders almost every day. Robberies and burglaries are our daily bread. Firearms disappear in armuories and exhibit rooms under the watch of the police raising the spectre of infiltration and capture by criminal elements. We hear of rapes of children, grandmothers and persons with disability now and then. Stock-theft has become a national sport. Occupants of public office have turned them into dens of bribery and corruption as well as embezzlement of public funds. There is a sense that while the security institutions are winning some of the battles against crimes such as these, they are struggling to get to grips with them.

(2) We therefore, assemble to seriously introspect, take stock and self-correct so that the pendulum is stopped from swinging in favour of criminals. We have heard society’s wailings on the unceasing rise of the tide of criminality and must heed the clarion call to rise to the occasion and fight crime effectively and deliver justice speedily.

(3) This is an opportune moment to look each other right in the eye and ask firmly but politely. “Who dropped the ball where, when and why?” As we introspect, each institution must not apportion blame without first acknowledging how its own failures and weaknesses impact on the ability of the next one to function with optimal efficiency. It is important to appreciate that justice sector institutions are a caravan that travels across the national landscape to deliver justice and protection of the rights, freedoms and security of citizens enshrined by the Constitution in the Bill of Rights.

(4) A vivid description of each institution’s responsibility in this journey is given by the Court of Appeal in the case of **Bolofo and Others v. Director of Public Prosecutions LAC (1995-99) 231 @ 249 A-G and 256 E-J** as follows:

“The police officer that exercises the power of arrest and first detention; the judicial officer who is seized with responsibility to decree the continued detention of the accused or his release on bail and the terms and conditions upon which this is to occur and regulates the conduct of the trial; the Director of Public Prosecutions who determines whether and when a prosecution should be instituted and upon which charges and who exercises a discretion as whether to oppose bail or not; the High Court and this court as the final arbiters of the fate of an accused; and ultimately the prison authorities who are obliged to see to the protection of the public by ensuring the secure incarceration of the committed prisoner and to see to his possible rehabilitation. Even the Social Services that facilitate the reintegration of the released prisoner into society is part of such a unit.

There is a very considerable power vested in those that have to determine whether a person should be detained pending his trial or not. This is particularly so if the processes of criminal justice are dilatory, inefficient and proceedings are constantly delayed. As Ackermann JA put it in the *Letsie* case:

“The maxim ‘justice delayed is justice denied’ is not an empty one.”

Indeed, continued detention without a speedy trial is an arbitrary form of punishment unacceptable in a civilized state. Regrettably this court’s experience of the criminal justice process in the Kingdom indicates that lengthy delays are the rule rather than the exception.

…

Finally, I return to the question of delay and its destructive impact on the principle of fairness which is the foundation stone upon which the criminal justice system is built. I have cited Ackermann JA’s *dictum* concerning the maxim “justice delayed is justice denied” not being an empty one. The learned judge went on to make the following significant and pertinent comments at p259 C-D of the *Letsie* judgment:

“The other side of the coin requires justice for the people as a whole. It is in the public interest that justice be not delayed. Confidence in the judicial system, particularly in the criminal justice system, is of paramount importance for the ethos of justice and human rights and, indeed, for the general wellbeing of society. It is a notorious fact that loss of confidence in the working of the judicial system tempts people to take the law into their own hands. Justice must not only be done, it must manifestly be seen to be done. **Undue delay in finally disposing of a criminal case, where the accused is languishing in goal, can lead to the perception that there is an ulterior motive behind the delay.** (Emphasis supplied)”

(5) I quote these *dicta* to remind each institution about its unshirkable duty to process investigations, prosecutions and hearing of cases with due haste, mindful that it is not an island but a constituent part in the chain of justice delivery. It is for this reason that when society and victims of crime complain that the justice system is failing them, it is for them irrelevant which institution is more helpful than the other. All that people care and worry about are the capabilities and resolve of the security and justice sector institutions to prevent and combat crime and criminality with vigour so that the Kingdom does not become a paradise for criminals.

**The Role of Society**

(6) The war against crime is too important to be left solely to the security and criminal justice institutions. Society has to join this fight. There are at least seven reasons for citizens to join the fight against crime:

● They elect law-makers in Parliament and policy makers in the Executive who are ultimately accountable to them.

● They report offences, give information to law-enforcement agencies and act as witnesses in courts to provide relevant evidence.

● They may be called to serve as assessors in criminal trials.

● They become victims of crime who are directly impacted by crime. Their victim impact evidence is highly useful in determining factors that aggravate the crime and call for harsher sentences.

● They participate in community crime prevention initiatives and village watch schemes as *Mahokela*.

● They are predisposed to become involved in crime as suspected offenders or offenders. In this way they play a proactive and not a passive role in influencing and manipulating processes of law-making and compliance with the law.

● The private sector is involved in security and crime control measures like use of private security companies and administration of electronic surveillance systems.

(7) It is in realization of the citizenry’s role that the law empowers them to combat crime. I make mention of the **Criminal Procedure and Evidence Act No.7 of 1981** which provides as follows:

→ Chiefs are empowered to arrest persons in the following circumstances:

● persons found in possession of any implements of house-breaking and are unable to account satisfactorily for such possession;

● persons found in custody of anything reasonably suspected to be stolen or dishonestly obtained;

● persons loitering in any place by night under circumstances which afford reasonable grounds to believe that they are about to commit or have committed an offence;

● persons reasonably suspected of committing or having committed an offence governing the possession or disposal of arms and ammunition; and

● persons reasonably suspected of being or having been in unlawful possession of stolen animals or produce (*vide* section 25).

→ Private citizens are empowered to arrest persons who in their presence commit or attempt to commit criminal offences such as murder, treason, sedition, rape, robbery, assault, house-breaking, stock-theft, theft of motor vehicle (*vide* section 27).

→ A private person is empowered to arrest persons who are seen engaging in affray in order to prevent them from continuing the affray (*vide* section 28).

→ The owner of property and any person authorized by the property owner is given power to arrest persons found committing an offence on the property (*vide* section 29).

→ Citizens are empowered to arrest persons reasonably suspected of having committed offences ranging from treason, murder, sedition, rape, robbery, assault, house-breaking, stock theft and theft of motor vehicle (*vide* section 30).

→ Private persons can and should arrest persons who offer to sell, pawn or deliver any property which is reasonably believed to be stolen property (*vide* section 31).

→ Any person who rescues or aids an arrested person to escape, attempt to escape or harbors or conceals such person is liable to prosecution and punishment of two years imprisonment (*vide* section 44).

→ Chiefs and private citizens are authorized to use reasonable force and even kill a person who flees from arrest and cannot be prevented from escaping by other means short of killing. Such killing is deemed in law to be justifiable homicide (*vide* section 44).

(8) Apart from being empowered to arrest criminals, citizens bear the following civic duties:

● to render assistance when called upon by the police to arrest suspects and retain them in custody (*vide* section 39);

● to attending court proceedings and give evidence when so directed by subpoena issued by courts. A witness who disobeys a subpoena or avoids its service is liable to be arrested and detained in custody (*vide* section 66);

● a witness who is about to abscond or has absconded can and should be arrested. He / she is not allowed to deny society the truth of what he / she knows (*vide* sections 72 and 205);

● a witness is liable to punishment if the witness refuses to testify in court (*vide* sections 68 and 207);

● a witness is liable to prosecution if the witness gives perjured evidence because justice is a search for truth and not lies (*vide* section 86 of the **Penal Code, 2010**);

● the Crown has the corresponding duty to maintain the welfare of witnesses by giving them allowances for travel, meals, accommodation and protection. (*vide* section 210 and**Witness Protection Act No.5 of 2021**).

**Internal Checks and Balances**

(9) The criminal justice system operates on checks and balances:

● Outside the court process, the police’s duty is to investigate reported crimes and arrest persons who are reasonably suspected to be involved in their commission. There is no time-limit for conducting investigations. Time limits only kick-in upon a suspect being deprived off liberty when arrested and charged. The police have to bring the arrested person to court within 48 hours.

● The arrested person is brought to court via the prosecutor who takes over, carefully and objectively assesses the evidence and decides whether a prosecutable case exists. If such a determination is not possible because of paucity of evidence, an application is made to remand the accused in custody pending further investigations for a stipulated period. The arrested person remains in custody for a maximum period of 60 days if not released on bail (*vide* section 4 of the **Speedy Court Trials Act, 2002**).

● If the accused person applies for bail, the court’s duty is to determine the application by reference to materials placed before it and, where relevant, the statutory requirements and bail restrictions in serious offences referenced in the **Criminal Procedure and Evidence (Amendment) Act No.10 of 2002**. In respect of the serious offences, the accused person must satisfy the court that exceptional circumstances exist for granting bail.

● In sexual offences, the prosecutor is duty-bound to contact the victim and obtain information relevant to the question whether the bail application should be opposed and, if granted, the suitable conditions that should be imposed. (*vide* section 29 of the **Sexual Offences Act No.3 of 2003**).

● Both the prosecution and the accused person are entitled to review / appeal decisions to grant or refuse bail (*vide* section 108 of **Criminal Procedure and Evidence Act, 1981** and Court of Appeal decisions).

**Bail**

(10) Criminal justice systems of democratic societies are underpinned by the golden thread of presumption of innocence until proved guilty in a court of law. This golden thread is provided for in section 12(2) (a) of the Constitution which reads as follows:

 “Every person who is charged with a criminal offence-

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;”

(11) Thus, arrest and a charge of a person does not imply that he has committed an offence. Bail is provided for in section 6 (5) of the Constitution read with section 101, of the **Criminal Procedure and Evidence Act, 1981**. Section 6(5) reads as follows:

“(5) If any person arrested or detained upon suspicion of his having committed, or being about to commit, a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.”

 Section 101 provides that:

“(1) The accused may, after the time of commitment, apply in writing to the magistrate who granted the warrant of commitment, or the magistrate of the area o jurisdiction in which, he was committed for trial, or the magistrate within whose area of jurisdiction he is in custody, unless bail has already been refused by a magistrate or to the High Court, to be admitted to bail.”

 Simply put, bail is a conditional release on the solemn undertaking by the suspect that he will cooperate with police investigations and not jeopardise the trial. The object of bail is neither punitive nor preventative.

(12) I comment on bail to dispel the notion that by granting bail, the courts undermine the efforts of the police and encourage commission of crimes. Each bail application is considered and decided on the facts peculiar to the case. There is no one-size-fits-all formula for reaching decisions. It is for this reason that bail applications of persons facing similar charges or who are jointly charged may yield different outcomes and bail conditions.

(13) When accused persons apply for bail, as it is their right to do so, the court always wants to know the attitude of the DPP and public prosecutors as the officers of court duty-bound to provide information on any objections forthcoming from investigating officers and, by extension, victims of crime and the community. The court’s responsibility is to balance the scale by weighing the conflicting interests of the victim or the community with the accused’s right to unrestricted liberty pending finalization of the trial. However, the attitude of the DPP and pubic prosecutors is not controlling or dispositive. It also does not follow that just because the DPP does not object, bail should be granted as a matter of course. Courts retain a discretion in matter of bail.

(14) The decisive consideration is that the accused person should not be kept in pre-trial detention awaiting perpetual investigations or as a form of anticipatory punishment. Ordinarily, therefore, bail will be granted if to grant it does not prejudice the ends of justice. Some of the main factors that weigh with courts are:

● The seriousness and strength of the case and whether the accused person has cooperated with the police during investigations.

● Intimidation of witnesses and tampering with evidence or causing evidence to be suppressed or distorted.

● The severity of punishment if convicted and whether such punishment might induce the accused to abscond and not stand trial.

● Prejudice to the accused caused by delays in finalizing investigations and completing the trial.

● The extent to which the accused might be prejudiced in engaging legal assistance to prepare effectively for his defence if he remains in custody.

● The health of the accused.

(15) Being a constitutionally grounded right, bail cannot, therefore, be scrapped by legislative fiat. What Parliament can do is to legislate for circumstances under which it should be restricted as it has already done under the **Criminal Procedure and Evidence (Amendment) Act No.10 of 2002**. The Amendment provides that accused persons who are charged with the following offences should not be granted bail unless they prove that exceptional circumstances permit:

 ● Murder of law enforcement officers and witnesses;

● Murder in the course of committing or attempting to commit rape, robbery, stock theft, theft of a motor vehicle and indecent assault of a person under the age of 16 years;

● Robbery including use of a fire-arm, infliction of grievous bodily harm and or theft of a motor vehicle;

● Repeated rape of a victim by the accused or any of his co-perpetrators;

● Rape of persons under the age of 16 years and of persons with disability;

● Serial rapists;

● Persons with previous convictions for the above offences and persons who while on bail commit any of them.

(16) As regards sexual offences, prosecutors have special duties to contact victims and notify them about bail applications so that they can voice their concerns and attitude. This is lost to many prosecutors.

(17) Thus, the perception that courts are liberal with bail, arises not from inadequacies in laws regulating its grant but with their enforcement. Most of the bail applications are not opposed and, even in the few cases where there is opposition, it is often not strong. In some cases, judicial officers fail to spot that exceptional circumstances have not been pleaded. Vigilance is absolutely necessary in bail applications because prosecutors often do not oppose bail applications in offences listed in the Amendment.

**Delays**

(18) The wheel of justice turns slowly for good and bad reasons. Sometimes investigations take in complex crimes, accused persons are not tried with the necessary speed and victims of crime wait for justice. Such systemic delays have attracted the intervention of Parliament in terms of the **Speed Court Trials Act No.9 of 2002.** This statute provides for the three key principles of diligence, efficiency and responsibility as follows:

● Accused persons must be charged within 48 hours from the time of arrest unless the filing of a charge sheet or indictment is not possible due to the complexity of the case.

● If the charge sheet or indictment is not filed within 48 hours on account of the complexity of the case, it must be filed within 90 days from the date on which the accused first appeared in court for remand. The 90 days period may, on good cause, be extended by the court to 120 days. If no charge sheet or indictment is filed within the stipulated period, the charge has to be dismissed.

● The accused should not be remanded in custody for a period exceeding 60 days unless there are compelling written reasons to continue the remand in custody.

● When a criminal trial starts, it must continue on each of the scheduled dates until it is finalised unless there are compelling written reasons rendering its interruption.

● In cases where the accused person pleads guilty, the hearing date should not exceed 30 days from the date or time of the entry of the plea of guilty.

● In cases where the accused person does not plead guilty, the trial must commence within 60 days from the date of entry of the plea or from the date of first appearance in court pursuant to arrest or service of summons.

● If it is not possible to commence a trial on a plea of guilty within the 30 days because the accused person withdraws his plea of guilty, he shall be deemed to have been charged on the day that the court permitted his withdrawal of such plea, in which case the trial must commence within 60 days of the withdrawal of the plea.

● If the trial on a plea of guilty does not commence within 30 days or the trial on a plea of not guilty does not commence within 60 days, the charge or indictment must be dismissed if the accused so applies. Failure by the accused to apply for dismissal constitutes a waiver of his right to apply for the dismissal.

● A prosecutor or defence lawyer who knowingly sets the date of trial without disclosing that a witness would not be available or files an application for postponement for frivolous reasons or on misleading information, is liable to disciplinary action by the court.

(19) The issue for this gathering to discuss is whether the provisions of the **Speedy Court Trials, Act** are being enforced as expected and, if not, what are the problems and whether such problems have been reported to Parliament for remedial action as required by section 13 of the Act.

**Sentencing**

(20) Sentencing is the most challenging part in criminal trials. The challenges arise from the operationalization of two hybrid models for sentencing. The first model is that of **individualized justice**. The model presumes that criminals are deprived and not depraved. It requires that the offenders’ personal problems be identified and analyzed by probation officers and social workers. These professionals enquire into the nature of socio-economic circumstances of the offender and other psycho-social problems that confronted the offender prior to the commission of the offence and at the time of its commission. Punishment is then calibrated to considerations of the rehabilitation and amelioration of the offender’s personal problems.

(21) The second model of sentencing is the **tariff model**. In this model, the seriousness of the offence determines the severity of the sentence. A severe punishment is often attracted despite personal problems and socio-economic circumstances of the offender. The sentence is calibrated to considerations of retribution and deterrence. Parliament prescribes punishments in words that respect the discretionary powers of courts to tailor punishments to the unique circumstances of the crime so that punishments fit the crime and the criminal. This is so because of the imperative of the separation of powers principle which places the prescription of offences to Parliament but leaves this suitability to the Judiciary.

(22) During times of rampant criminality, the commonplace cry of communities is that courts should put the fear of GOD in the hearts of criminals by imposing long sentences and permanently banishing them to death through the death penalty. None can sensibly disagree. But the acceptance of this sentiment does mean that judicial officers must apply the Biblical principle of an eye for an eye and a tooth for a tooth by rote. The application of this principle is reserved for the crime of murder and, in exceptional circumstances, treason and rape. Even then, its application in cases of murder depends on the outcome of the court’s inquiry into the existence or otherwise of extenuating circumstances.

(23) The enquiry into the existence or otherwise of extenuating circumstances requires a search for factors that reduce the moral blameworthiness of the convicted person as distinct from his legal culpability. Factors that reduce moral capability include youthfulness, immaturity, intoxication (albeit not deliberately induced to fortify to kill), provocation, belief in witchcraft. The list is not exhaustive. Such factors rule out the imposition of the death sentence but do not prevent courts from imposing other harsh sentences such as life-sentence and other stiff sentences.

(24) It is internationally accepted that severe prison sentences and the ultimate penalty of death by themselves do not sufficiently deter people from committing terrible offences. Certainty of arrest and conviction do. People commit crimes if there is a possibility or chance of not being arrested and escaping punishment. So, the high likelihood of criminals being arrested, convicted and certainly punished is the ingredient of deterrence. Predictable justice is the greatest deterrent.

(25) Be that as it may, harsh punishments are by themselves reactive and not preventative. This says that being tough with crime must be twinned with being tough with its causes such as poverty and unemployment. Government should redress conditions of immiseration.

**Participation of victims in the sentencing process**

(26) As currently configured, the criminal justice system puts victims of crime at the periphery and not its centre. In the main, crime is an injury to the King. This is the reason prosecutions are brought in the name of the Rex (the Crown) and not the victim. The victim’s civic duty is to aid in the prosecution of the crime by providing information to the police and testifying in court as witness for the Crown. If the victim desires to be compensated for the harm, pain and suffering caused, he / she should bring their own case for compensation against the accused in civil courts after being convicted by the criminal court.

(27) This patently unsatisfactory feature of the criminal justice system has attracted internationals calls for reform. The first strand of the reform is that victims should be given a platform to provide crime impact statements to criminal agencies and courts about the effects and aftermath of the crime. The purpose of victim impact statements is to provide information to the police and prosecutors to identify necessary support and protection of victims and their relatives to make decisions on whether to oppose bail. More importantly, victim impact statements become relevant in judicial determination of the harshness of sentences.

(28) The second strand of reform is to enhance the jurisdiction of criminal courts to deal with victims’ claims for compensation. This would ease the victims’ burden of instituting a claim for damages in separate proceedings in civil courts. The third strain of reform is that Parliament should legislate for victims’ compensation in fund to be administered independently of the courts. Under such a fund, victims will be compensated by Government leaving it to pursue those criminals who default to compensate victims.

**Limited Resources**

(29) The allocation of resources to the justice sector institutions has been on the decline for countless years. It is as if there is a silent campaign to defund law enforcement and the administration of justice. The budgeting processes are under the tight control of the Ministry of Finance which issues call circulars with a *priori* ceilings. The ceiling are set without the input of institutions and reference to their strategic plans. Each institution submits its own budget proposals leading to budgetary allocations that are fragmented and *ad hoc*. The result is that they get are woefully inadequate budgets which do not capacitate the agencies to tackle challenges of the ever rising levels of crime and volume of cases that enter the judicial system. There is a need to devisea comprehensive justice sector – widestrategic plan around which budgetary allocations can be rationalized and coordinated in order to avoid disparities in resources.

(30) Budgets that are not responsive to the felt needs of institutions compromise their capacity to effectively deliver security, law, order and justice in the following manner:

● Visibility and high mobility of the police necessary for crime detection, prevention, rapid response and timely investigation are not achievable. Criminals will often be a step ahead of the police and disappear with ease. Hence, as recommended by the Justice Sector Conference nineteen years ago in 2004, helicopters must be bought for the police.

● There are few police officers trained in forensic science and special skills to investigate complex crimes like cyber-crime and financial crimes. Lack of proper training in investigating crime yields investigations that are sloppy and tardy. Investigators that are poorly trained torture suspects to extract confessional evidence well aware that such evidence will be thrown out of court. This spoils many cases resulting in victims not getting justice.

● Many prosecutors lack experience and expertise to prosecute complex and high profile cases. Without expertise and thorough preparation, prosecutors cannot marshal the evidence deftly and coherently. In the process, witnesses fail cross-examination leading to acquittals that would otherwise have been avoided.

● Judicial officers are rendered functionally semi-illiterate because of lack of key tools of trade like legislation, updated law reports and books.

● Correctional institutions lack facilities conducive for rehabilitation of inmates because of overcrowding and lack of auxiliary support staff.

● There are few facilities for holding suspects, awaiting trial prisoners and providing accommodation to witnesses.

● There are few chambers and court-rooms. Central and Local Courts where the majority of Basotho go for justice are dilapidated and unusable during adverse weather conditions such as when it is raining or cold. Judicial officers use the courtrooms on a rotational basis. This means that other cases do not proceed when the court-room is not available and climatic conditions do not permit.

● Delays in investigations and hearing of cases leads to huge backlogs, breach of accused persons’ constitutional rights to trial within a reasonable time and to loss of interest to testify by witnesses and even death.

● There is reluctance of witnesses to come to court and testify if they are not guaranteed travel, meals and accommodation expenses.

● An under-resourced office of Chief Legal Aid Counsel cannot provide legal aid services to persons accused of serious and complex cases and other accused persons who are in need of legal assistance because they are unable to follow court proceedings due to ignorance, illiteracy, youthfulness or disability.

**Integrity**

(31) The story of the justice system cannot been completed without a chapter on corruption. This is because the essence of justice lies in the fairness and integrity of its processes and actors. Without fairness and integrity, no amount of resources provided to the institutions can redeem their underperformance and restore loss of trust by the public. Corruption is, therefore, the big elephant in the room. It is legally defined by the **Prevention of Corruption and Economic Offences Act No.5 of 1999** and the **Penal Code, 2010** as receipt of a benefit, gift or inducement to perform duties properly or improperly or not at all. But in its classical sense, corruption is more than this. It covers degeneration of morals, decay and failure of an institution and its employees to live by the norms and standards society expects and appropriately judges. So, corruption is more than acting under the influence of receipt or offer of a benefit, gift or inducement. It is about an inexcusable failure of character and inability to perform to the satisfaction of the consumers of justice.

(32) The octopus that is corruption manifests itself in all manner of forms. A few of them are the following:

● Unexplained and unreasonable delays to investigate reported offences.

● Arrests without warrants on the basis of information supplied by persons who have heard and not witnessed commission of an offence.

● Associating with and tipping-off criminals.

● Shielding colleagues, relatives, lovers and friends suspected or reported to have committed crimes from investigation, arrest, prosecution and conviction.

● Causing the rich, highly placed and politically connected persons charged with indictable offences to appear for trial in the High Court without them being first arrested, remanded and committed for trial in the Magistrate’s court as stipulated under sections 33 and 34(3) of the **Criminal Procedure and Evidence Act, 1981**. This is a subversion of the constitutional principle of equality before the law.

● Not opposing or granting bail applications that do not satisfy the requirements of the **Criminal Procedure and Evidence (Amendment) Act, 2002** and Part VII of the **Sexual Offence Act, 2003**.

● Withdrawing of charges on flimsy grounds and reducing serious charges to minor ones without reference to investigating officers and explanation to victims.

● Not serving witnesses with subpoenae or warrants of arrests for accused whose whereabouts are known by communities.

● Mutilating and hiding dockets, court files and records of proceedings.

● Perpetual postponements of cases for unexplainable and unexplained reasons and delays to make rulings and deliver judgments.

● Making judicial decisions that are totally devoid of support by principle or precedent.

● Coming to work drunk, late and leaving early to attend private businesses.

● Recklessness in the use and management of resources.

● Sexual harassment of co-employees and promotions and trainings done in return for sexual favours.

(33) It behoves us as servants of the law and justice to be exemplary in ethical conduct. The nation expects to be served by law enforcement and judicial officers whose behavior is, like Caesar’s wife, beyond suspicion.

**Law Reform**

(34) I cannot conclude without a few words on reform of laws and processes. It should not be lost to the Executive and Parliament that enactment of laws should be matched with their effective implementation. This requires that when the Executive brings bills to Parliament and it passes them into laws, both must first be satisfied that they have been costed in terms of financial, human and capital resources required for effective implementation. For this to be done in an organized and efficient manner, Parliament should establish a committee to monitor and oversee this exercise. It does not make sense to make laws without state agencies not being capacitated to enforce and implement. Absent adequate resources and requisite capacity-building of institutions, written laws become paper tigers.

(35) A template for reviewing resources for effective enforcement of laws is the **Speedy Court Trials Act, 2002**.Section 13 thereof obliges Ministers of Justice**,** Human Rights, Rehabilitation and Home Affairs to prepare and submit annual reports to Parliament on the impact of its implementation upon the Police Service, the Prosecution and the Judiciary. The reports must among others, come up with suggestions for adoption of rules and statutory amendments necessary to improve the administration of justice and to meet the objectives of the Act as well as additional resources needed to achieve its effective implementation.

(36) The glaring omission that Parliament made was not to include the Correctional Service in the list of justice sector institutions in respect of which the Ministers should report. This omission needs to be rectified sooner rather than later.

(37) In order to shorten trials, plea bargaining should be legislatively provided for within the broader context of the criminal justice system. This will help in effective, robust management of cases speedily and cheap disposal of a large number of cases.

(38) The Director of Public Prosecutions should consider adoption of prosecution guidelines to assist decision making in prosecution offences and withdrawal of charges. It is necessary that victims and investigating officers are informed about reasons underlying prosecutorial decision.

(39) Crime intelligence is central to effective crime control and security of society. The State has no choice but to build strong systems and protocols to protect and incentivize informants and whistleblowers. Parliament should enact necessary laws in this regard.

(40) Justice processes and records-keeping throughout the entire justice sector should be digitized in the following manner:

● The police service should adopt an automated investigation system such as the one in current use to process investigations and compile dockets in prosecution and trials of traffic offences.

● An automated case management system should be that in place at all levels of the judiciary to prevent phenomena of misplaced, missing, lost and destroyed court records.

● Video and audio technology should be used to link correctional institutions to courts to conduct remand hearings, bail applications and to facilitate giving of evidence by witnesses who have challenges of coming to court. This will reduce costs and security risks associated with transporting witnesses and prisoners to and from the courts and correctional facilities.

(41) I move towards the end by repeating what I said at the beginning. We are assembled here as the justice sector family. This is a family of watchdogs of security, law, order and justice. It is expected of us to deliver, on our respective constitutional mandate efficiently and without fear, favour or prejudice. As the adage goes “If you want peace, work for justice.” Without justice there is no peace. The justice we talk of is done when criminal suspects are arrested, the guilty are deservedly punished and the innocent are acquitted. It follows that if and when the guilty escape arrest, prosecution and punishment, justice is not done. Any delays in arresting, prosecuting, trying and punishing the guilty is delayed justice. Delayed justice is denied justice.

(42) In essence, therefore, the proper discharge of your constitutional mandate is to investigate crimes with efficiency, prosecute them with vigour, conduct trials with reasonable speed and punish the guilty such that criminals are deterred from committing crime. This is the only way to win back this nation’s confidence. The nation’s confidence is not guaranteed but earned through sweat and blood. And we dare not fail to earn it if our institutions that anchor democracy and the rule of law are to command nation’s trust and confidence.