

*Statutory Instrument No. 106 of 2020*

**JUDICIAL SERVICE ACT  
(Cap. 04:03)**

**JUDICIAL SERVICES (CODE OF CONDUCT AND ENFORCEMENT  
PROCEDURES) REGULATIONS, 2020**  
*(Published on 21st August, 2020)*

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IN EXERCISE of the powers conferred on the President by section 13 of the Judicial Services Act, the following Regulations are hereby made —

Part I — *Preliminary*

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| Citation       | 1. These Regulations may be cited as the Judicial Services (Code of Conduct and Enforcement Procedures) Regulations, 2020.   |
| Interpretation | 2. In these Regulations, unless the context otherwise requires —<br>“Commission” means the Judicial Service Commission established in terms of section 103 (1) of the Constitution;<br>“evidence leader” means an attorney appointed by the Attorney General to assist in leading evidence;<br>“immediate family” means a spouse, child, parent, grandchild, great grandparent, sibling, uncle, aunt, niece, nephew of a judicial officer or any person living in the same house as a family member of a judicial officer; and<br>“judicial officer” includes the Chief Justice, the President of the Court of Appeal, Justices of Appeal, High Court Judges, Magistrates, Masters and Registrars; and<br>“Panel” means a disciplinary panel appointed under regulation 14 (10). |
| Application    | 3. These Regulations shall apply to every judicial officer and no minimum standard prescribed in these Regulations shall be taken to derogate from the highest standards of ethics expected.   |

Part II — *Code of Conduct*

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| Judicial independence | 4. A judicial officer shall —<br>(a) exercise his or her judicial functions independently and free of extraneous influence;<br>(b) reject any attempt to influence his or her decision in any matter before the court outside the proper process of the court;<br>(c) encourage, safeguard and uphold arrangements, to maintain and enhance the institutional and operational independence of the judiciary; and<br>(d) exhibit and promote high standards of judicial conduct. |
| Integrity             | 5. (1) A judicial officer shall —<br>(a) conduct himself or herself with integrity so as to sustain and enhance public confidence in the judiciary;<br>(b) ensure that his or her conduct is above reproach in his or her public and private life;  |

- (c) encourage and support the observance of these high standard by his or her judicial colleagues; and
  - (d) not give legal or investment advice, except to a member of his or her immediate family and for no fee.
- (2) A judicial officer or immediate family shall not accept a —
- (a) gift;
  - (b) bequest;
  - (c) favour; or
  - (d) loan,

from any person for purposes of a bribe or corrupt practice which is calculated to influence the officer in the execution of his or her duties.

(3) Notwithstanding the provisions of subregulation (2) a gift, award or benefit which cannot reasonably be perceived as a bribe, corrupt practice or one accompanied by intention to influence the judicial officer in the performance of his or her duties shall be acceptable.

6. A judicial officer shall —

Diligence

- (a) devote his or her professional activity to judicial duties, which include presiding in court, delivery of judgments, administrative work and other judicial tasks essential to the courts operation;
- (b) take reasonable steps to develop, maintain and enhance his or her knowledge, skills and personal qualities necessary for judicial office;
- (c) not engage in any conduct incompatible with the diligent discharge of his or her judicial duties or condone such conduct amongst colleagues or staff; and
- (d) perform his or her duties with promptness and professionalism.

7. A judicial officer shall —

Equality

- (a) conduct proceedings before him or her in such a manner as to ensure equality before the law;
- (b) carry out his or her duties with consideration for all persons without discrimination on any ground;
- (c) strive to be aware of, and understand the differences arising from gender, race, religion, culture, ethnic background, sexual orientation, disability or health condition, and shall not discriminate on these or any other basis;
- (d) not be a member of any organisation that —
  - (i) practices any form of discrimination,
  - (ii) contravenes the law, or
  - (iii) brings disrepute to the judiciary; and
- (e) in the course of proceedings before him or her, disassociate from, and caution against the use of any irrelevant comments or conduct by court staff, legal practitioners or anyone subject to the judicial officer's direction, which are sexist, racist or demonstrate discrimination on the grounds prohibited by the law.

8. (1) A judicial officer shall —

Impartiality  
and recusal

- (a) be impartial with respect to his or her decisions;
- (b) ensure that his or her conduct, both in and out of court maintains and enhances confidence in the impartiality of the judiciary;
- (c) disqualify or recuse himself or herself from any proceedings in which his or her impartiality may reasonably be questioned; and
- (d) conduct his or her personal and private affairs so as to minimise the occasions on which it will be necessary to be disqualified or to recuse himself or herself from the proceedings.

(2) Notwithstanding the provisions of subregulation 1 (c), a judicial officer may, instead of disqualifying or recusing himself or herself, disclose to the parties the grounds upon which such potential disqualification or recusal may arise, and if, on the basis of the disclosure, the parties independently of the judicial officer, agree that the basis for the potential disqualification or recusal is immaterial or insubstantial, the judicial officer may continue to preside over the proceedings.

Delivery of reserved judgments

9. (1) Where a judgment is reserved and is to be delivered on notice, the judicial officer shall deliver the judgment within 90 days, except in exceptional circumstances, where the judgment shall be delivered within 180 days from the date it was reserved.

(2) Where a judgment is reserved, and a judicial officer has reason to believe that he or she cannot deliver the judgment within the 90 days, he or she shall notify his or her head of court or division of that fact within a reasonable time.

(3) A head of court or division shall, upon receipt of the notification referred to in subregulation (2), give directions to assist the judicial officer to deliver the judgment within the period provided under subregulation (1).

(4) Notwithstanding the provisions of subregulation (1) the Chief Justice may by Practice Directive, reduce the maximum period within which a reserved judgment is to be delivered.

Civic and charitable activity

10. (1) A judicial officer may participate in a civic or charitable activity where —

- (a) activity or association does not reflect adversely on his or her impartiality or interfere with the performance of his or her judicial duties;
- (b) he or she does not solicit funds or lend prestige of judicial office to such solicitation except for appropriate purposes;
- (c) he or she is not involved in causes or organisations that are to his or her knowledge likely to be engaged in litigation; and
- (d) he or she is not a member of a group or organisation, or participate in public discussions which, in the mind of a reasonable, fair-minded and informed person, would undermine confidence in the judicial officer's impartiality with respect to issues that could come before the Courts.

(2) Subject to the provisions of these Regulations a judicial officer may —

- (a) engage in writing and participate in activities concerning the law, legal system, administration of justice and related matters; or
- (b) speak publicly on non-legal subjects, and engage in historical, educational, cultural, sporting or recreational activities.

Political activity

11. (1) A judicial officer shall cease all partisan political activity upon appointment, and shall not conduct himself or herself in a manner so as to create the impression that he or she is engaged in political activity.

(2) A judicial officer shall not —

- (a) be a member of a political party;
- (b) attend a political gathering or political fund raising event;
- (c) contribute to a political party or campaign of a political party;
- (d) take part in controversial political discussions, except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice; or
- (e) sign petitions to influence a political decision.

Part III — *Enforcement Procedure*

**12.** A judicial officer shall adhere in his or her public and private life, to the provisions of these Regulations. Discipline

**13. (1)** A judicial officer who commits an act of misbehaviour is guilty of an offence. Misbehaviour

**(2)** For purposes of these Regulations, misbehavior includes —

- (a)** a breach of the judicial code of conduct;
- (b)** dereliction of duty;
- (c)** absenteeism;
- (d)** abuse of alcohol or drugs;
- (e)** public or private conduct likely to bring the Administration of Justice into disrepute;
- (f)** commission of any offence involving moral turpitude;
- (g)** dishonesty;
- (h)** abuse of Government property;
- (i)** behaviour disruptive of the smooth and efficient operation of the Administration of Justice;
- (j)** abuse of judicial powers;
- (k)** financial indiscretion or profligacy; or
- (l)** failure to comply with a lawful instruction issued by the Chief Justice as head of the judiciary.

**14. (1)** The Chief Justice may, on his or her own accord, raise a complaint against a judicial officer in a memorandum to the judicial officer and the Commission. General  
complaint  
procedure

**(2)** A complaint against a judicial officer, that has not been raised by the Chief Justice, shall be addressed in writing to the Chief Justice and shall —

- (a)** contain full details of the alleged misbehaviour; and
- (b)** be on oath.

**(3)** The Chief Justice shall, after giving the judicial officer the opportunity to respond to the allegations of misbehaviour in writing, consider referring the complaint to the Commission.

**(4)** The Chief Justice may, where a complaint is alleged to be of criminal conduct, either advise the complainant of his or her right to report the matter to the Botswana Police Service or any other relevant law enforcement agency, or may, subject to subregulation (5), refer the complaint to the Botswana Police Service or any other relevant law enforcement agency for investigation, and the Chief Justice shall inform the judicial officer that a report has been filed against him or her.

**(5)** The Chief Justice may, before taking an action under subregulation (4), refer the complaint to the Commission for its advice.

**(6)** Where the Chief Justice considers a complaint to be frivolous, vexatious or unsubstantiated, he or she shall inform the complainant and the judicial officer accordingly.

**(7)** A complaint of an administrative nature with no ethical violations shall be dealt with administratively by the Chief Justice, or at the direction of the Chief Justice, or the most senior officer at a given station.

**(8)** Notwithstanding the provisions of subregulation (3) the Chief Justice shall, where he or she considers a complaint against a judicial officer to be sufficiently serious, refer the matter to the Commission for consideration at its next regular meeting or at a special meeting called for that purpose, and shall inform the officer accordingly.

(9) The Commission shall, on receipt of a referral made in terms of subregulation (8), consider the complaint and the judicial officer's response and the Commission may deal with the complaint in terms of regulation 15 (2) or refer the matter to a Panel appointed in terms of subregulation (10).

(10) The Commission shall appoint a Panel, which shall consist of a Chairperson and two other members, all of whom shall be judicial officers or former judicial officers, two of which shall be of a rank equal to or senior to the judicial officer concerned.

(11) All complaints shall be dealt with expeditiously, fairly, and with minimum of technicality.

(12) A decision of the Commission, whether framed as advice to the President or proceedings before a Panel, shall be decided on a balance of probabilities with the complainant bearing the onus of justifying a complaint.

Complaint  
against Chief  
Justice and  
President of  
Court of Appeal

15. (1) A complaint against the Chief Justice or the President of the Court of Appeal shall be addressed on oath to the Commission, and the Commission shall, after giving the Chief Justice or President of the Court of Appeal an opportunity to respond, consider the complaint in the absence of the Chief Justice or President of the Court of Appeal.

(2) The Commission shall, where it considers that no further action is warranted, notify the complainant and the Chief Justice or President of the Court of Appeal accordingly.

(3) Where the Commission considers a complaint to be of a minor nature, the Commission shall deal with the matter summarily by counselling, cautioning or rebuking the Chief Justice or President of the Court of Appeal as it deems appropriate, and notify the complainant of the outcome.

(4) Where the Commission considers a complaint to be sufficiently serious so as to warrant removal from office, the Commission shall refer the matter to the President with advice that he or she consider appointing a tribunal in terms of section 97 (3) or 101 (3) of the Constitution.

(5) Notwithstanding the provisions of paragraph (4), where the complaint is sufficiently serious but short of removal from office, the Commission shall refer the matter to a Panel constituted in terms of regulation 14 (10).

(6) The President shall upon receipt of a referral under subregulation (4), either appoint a tribunal in terms of section 97 (3) or a section 101 (3) of the Constitution or, if he or she declines to do so, shall return the matter to the Commission for such further and lesser action as it deems appropriate.

Complaint  
against Justice  
of Appeal and  
High Court  
Judge

16. (1) The Chief Justice shall consider complaints against a Justice of Appeal or a Judge of the High Court and may, as he finds appropriate either proceed in terms of regulation 14 (6), 14 (7) or 14 (8) or in the case of misbehaviour of a minor nature, deal with the complaint summarily by counselling, cautioning or rebuking the Justice of Appeal or Judge of the High Court after giving him or her the opportunity to respond on oath to the complaint.

(2) Where the Commission deals with a referral in terms of regulation 14 (8), the Commission shall consider the matter and proceed, with the necessary changes, in terms of regulation 15 (2), 15 (3), 15 (4) or 15 (5).

Complaint  
against  
Magistrates,  
Registrar and  
Master

17. (1) The Chief Justice shall, at first instance consider complaints against a Magistrate, Registrar and Master and shall proceed in terms of regulation 14.

(2) Where the Commission considers the offence to be sufficiently serious so as to justify a substantial sanction or possible dismissal or termination of service in the case of a Magistrate, Registrar and Master, the Commission shall direct that a full hearing be held by a Panel at which —

- (a) the judicial officer shall have a right to representation by either a legal practitioner or colleague;
- (b) *viva voce* evidence may be heard from a witness who has provided an affidavit;
- (c) cross-examination and re-examination shall be allowed; and
- (d) the evidence leader may be requested to assist the Panel.

18. (1) The Chief Justice may require a judicial officer to take paid leave of absence from duty pending the sitting of the Commission in terms of regulation 14 (8).

Leave of absence  
or suspension  
from duty

(2) The Commission may, if it determines that the officer should be suspended, advise the President that the judicial officer be suspended from his or her duties pending resolution of the disciplinary or criminal charge.

(3) The President shall, where he or she, acting in accordance with the advice under subregulation (2), cause the judicial officer to be informed in writing of his or her suspension, which shall be on full pay and benefits.

(4) A judicial officer who is on paid leave of absence or on suspension shall vacate his or her office and shall return his or her —

- (a) motor vehicle;
- (b) robes;
- (c) Government laptop; and
- (d) mobile cellular device.

for the use of the person who will act.

(5) A period of suspension so imposed shall not affect the judicial officer's period of service and normal leave entitlements, and shall be effective from the date upon which he or she was ordered by the Chief Justice to take leave of absence in terms of subregulation (1).

(6) Notwithstanding the provisions of this regulation, nothing shall derogate from the powers of the President under section 97 (5) or section 101 (5) of the Constitution.

(7) A fine imposed or compensation ordered under these Regulations shall have effect as a civil judgment of the Court and may be recovered in like manner.

19. (1) The procedure of a Panel shall be that —

Disciplinary  
procedure

- (a) the complainant shall deliver his or her complaint in the form of an affidavit, together with an affidavit of any witness, whom the complainant intends to rely on within 10 working days from the date when the misbehaviour upon which the complaint is based occurred;
- (b) the Panel shall consider the complaint and if a *prima facie* case of judicial misbehaviour exists, the Panel shall frame a charge against the judicial officer;
- (c) the judicial officer shall be furnished with the charge and copies of the complainant and witness' affidavits;
- (d) the judicial officer shall, within 15 working days respond to the charge with his or her representations in affidavit form, and an affidavit of his or her witness and where, he or she admits the charge, with any mitigatory facts he or she wishes to raise;
- (e) the Panel shall meet as soon as practicable thereafter, and consider the matter where guilt has been admitted or hold a hearing where guilt has not been admitted, and decide by consensus or majority vote, whether or not in its view the charge has been proven on a balance of probabilities, or where guilt is admitted, on the penalty to be recommended;

(f) where the recommended verdict is one of guilt, the judicial officer shall be notified of the recommendation with reasons thereof, and any previous misbehaviour recorded against him or her and may within 10 working days provide written submissions in mitigation of sentence; and

(g) where the Panel has decided upon a recommended verdict and where applicable, upon a recommended sentence, the Panel shall notify the judicial officer and give him 10 working days to make further representations to the Panel, for consideration by the Commission.

(2) The Panel shall submit the record from the disciplinary hearing and its recommendations to the Commission, together with any further representations from the judicial officer.

(3) The Commission shall consider the matter at its next scheduled meeting or at a special meeting convened to consider the matter, and the Commission shall decide on whether or not to endorse the recommendations of the Panel and advise the President.

(4) The judicial officer shall be notified in writing of the decision of the Commission.

(5) The President shall, upon receipt of the advice of the Commission, notify the judicial officer in writing of the President's decision made in accordance with such advice.

(6) A party to a complaint who fails to honour the timelines set or reasonable extension timeously sought and granted, shall be deemed, in absence of exceptional circumstances, to have waived his or her complaint or his or her right to make representations, as the case may be.

(7) The proceedings under these Regulations shall not be halted or interrupted by interlocutory applications.

**Penalties**

20. (1) The President, acting in accordance with the advice of the Commission may subject to sections 97 or 101 of the Constitution, impose one or more of the following penalties —

(a) a severe reprimand;

(b) a written warning;

(c) a final warning;

(d) a fine not exceeding P5 000;

(e) termination of service with notice or one month's salary in lieu of notice; or

(g) dismissal from employment.

(2) A recommendation or order may be made for compensation to be paid by the judicial officer for misbehaviour that involves loss of, or damage to Government property.

(3) A fine imposed or compensation ordered under these Regulations shall have effect as a civil judgment of the Court and may be recovered in like manner.

**Tribunal**

21. (1) The President may appoint a tribunal under section 97 (3) or 101 (3) of the Constitution.

(2) The tribunal shall have the Registrar of the High Court or a senior appointee of the Registrar as the secretary, and shall sit at a venue provided by the Chief Justice and shall be assisted by the evidence leader where the Chairperson deems necessary.

(3) The tribunal shall be appointed by a letter, which shall contain particulars of the behaviour alleged and an expected date of completion of the enquiry.

(4) The judicial officer against whom the behaviour is alleged, shall be notified in writing of the appointment of the tribunal, the identity of the members and the tribunals' terms of reference.

(5) The tribunal shall conclude the enquiry expeditiously and where the facts grounding the alleged misbehaviour are not materially disputed, the enquiry may be conducted in writing with no *viva voce* hearings or legal representation.

(6) Notwithstanding subregulation (5), legal representation may be allowed for purposes of drafting written material, arguments, representation and in terms of subregulation (11).

(7) The tribunal shall determine its own procedure, but, the rules of evidence in judicial proceedings shall not apply.

(8) The President, Chief Justice or the Commission, shall supply the tribunal with copies of all statements, affidavits, documents or any other material relied upon to found the charge or charges of behaviour raised.

(9) The tribunal may, before proceeding with the enquiry, require the complainant or potential witness to confirm his or her statement in affidavit form.

(10) The tribunal shall address in writing, the particulars of the alleged behaviour and copies of all material on which the allegation is based, to the concerned judicial officer, who shall within 14 working days respond with his or her representations in affidavit form, supporting affidavits from witness if so desired, and where the behaviour is admitted, submissions in mitigation.

(11) The tribunal shall consider the representation and material received and may, where it deems necessary, afford the judicial officer and the evidence leader the opportunity to present *viva voce* evidence, including that of the witnesses.

(12) A judicial officer may be represented by legal practitioner at a hearing, and may call a witness and each witness called shall be —

(a) cross-examined, re-examined or questioned directly by members of the tribunal; and

(b) obliged to answer all lawful questions asked.

(13) A judicial officer and evidence leader shall, where a witness was called, have an opportunity to address the tribunal after such witness's testimony.

(14) The tribunal shall —

(a) make a determination of the facts, the findings as having been established on a balance of probabilities and the reasons for the findings; and

(b) advise the President whether or not the judicial officer shall be removed from office, and the President shall act in terms of the advice.

22. (1) The Chief Justice or the President of the Court of Appeal shall, where he or she receives a report that a Judge or Justice is unfit to continue perform his or her duties on grounds of illness, physical disability, mental affliction or otherwise, meet the Judge or Justice to discuss and resolve the matter.

Removal from  
office

(2) The Chief Justice shall, where no resolution is achieved, notify the Judge or Justice in writing concerning his or her ability to perform judicial duties and require him or her to make representations as to his or her fitness to continue in office within 14 working days.

(3) The Chief Justice shall place the matter before the Commission, which shall decide whether or not to advise the President to appoint a tribunal to enquire into the Judge or Justice's fitness to continue in office.

(4) Where the President has concerns over the fitness of the Chief Justice or the President of the Court of Appeal on grounds of illness, physical disability, mental affliction or otherwise, the President shall meet with the Chief Justice or the President of the Court of Appeal to discuss and resolve the matter.

(5) The President shall, upon receipt of advice in terms subregulation (3) or upon failure to resolve an issue under subregulation (4), decide whether or not to appoint a tribunal in terms of under section 97 (3) or 101 (3) of the Constitution into the Judge or Justice's fitness to continue in office.

#### Part IV — Procedure of Judicial Service Commission

##### Procedure of Commission

23. (1) The Commission may regulate its own procedure in terms of section 103 (5) of the Constitution.

(2) A person who is acting in the position of the Chief Justice, the President of the Court of Appeal or the Attorney General, shall attend a meeting of the Commission and shall have full voting powers in the absence of the Chief Justice, the President of the Court of Appeal or the Attorney General.

(3) The President of the Court of Appeal shall, in the absence of the Chief Justice or a person acting in the position of Chief Justice, chair a meeting of the Commission.

(4) The quorum for a meeting of the Commission shall be four members with the Chairperson having a casting vote in the event of a deadlock and an equality of votes.

(5) The Commission shall meet no less than four times in a calendar year and at any time that the Chief Justice requires.

(6) The Registrar of the High Court shall attend as secretary of the Commission, and may attend with a senior officer for recording purposes.

(7) The Chief Justice shall circulate a written brief together with a proposed resolution to the members of the Commission for consideration where, a decision is required from the Commission as a matter of urgency and it is not practical to have the matter considered at a regular or special meeting, and where the resolution is endorsed by three or more members, the resolution shall thereupon have full force and effect.

(8) A member of the Commission may, upon receipt of the agenda for a meeting, brief his or her principal, and obtain the views of the principal on the matter of the agenda.

(9) The proceedings of the Commission shall be confidential and shall not be subject to recordings in the minutes of the Commission.

(10) Notwithstanding the provisions of subregulation (9) the minutes of the Commission meeting shall record —

- (a) the recommendation made;
- (b) the decision taken;
- (c) the justification thereof without reference to an individual member by name, save, where the context so requires to mention the office they hold; and
- (d) confidential and relevant portions thereof may only be disclosed when this is required by law for judicial proceedings.

(11) Subject to the provisions of subregulation (10) a full record shall be kept of the proceedings of a Panel appointed by the Commission and of the Commission's proceedings on the recommendations of the Panel.

#### Part V — Ethics Advisory Committee

##### Establishment of Ethics Advisory Committee

24. (1) There shall be established, subject to the provisions of the Constitution, a committee on standards of conduct of judicial officers known as the Ethics Advisory Committee.

(2) The Committee shall consist of not more than five members or not less than three members, appointed by the Chief Justice of whom —

- (a) two or three, as the case may be, shall be judicial officers; and
- (b) one or two, as the case may be, be legally qualified persons appointed from a list of not less than four names submitted by the Commission, one of which shall be versed in labour law.

- (3) A member appointed in terms of subregulation (2) shall —
- (a) hold office for a period not exceeding three years as may be specified by the Chief Justice in the instrument of appointment; and
  - (b) be eligible for re-appointment for a further term not exceeding three years.

25. (1) The Ethics Advisory Committee shall render opinions not inconsistent with the code relating to the propriety of contemplated judicial and non-judicial conduct, and all opinions shall be advisory in nature.

Opinions of  
Ethics Advisory  
Committee

(2) A judicial officer sitting as a member of the Ethics Advisory Committee shall not participate in any matter in which he or she has a direct or indirect interest.

(3) An opinion rendered by the Ethics Advisory Committee shall be in writing, and a copy of each opinion together with the request thereof shall be filed with the Chief Justice and the Commission.

(4) The Commission may circulate the opinion of the Ethics Advisory Committee for the benefit of members of the Commission provided that all reference to the name of the requesting judicial officer is deleted.

(5) An opinion of the Ethics Advisory Committee shall not bind a Panel appointed in any proceeding properly before it.

26. A determination of the propriety or impropriety of particular conduct by a Panel shall supersede any conflicting opinion of the Ethics Advisory Committee, but a Panel shall give due weight to such opinion in determining a matter, particularly —

Conflict with  
decisions of  
Panel

- (a) such opinion may be considered as evidence that the judicial officer subject to the investigation endeavored to comply with these Regulations in good faith; or
- (b) an opinion issued to one judicial officer shall not be authority for the conduct or evidence of good faith, of another judicial officer, unless the underlying facts are identical.

#### *Part VI – Transitional Provisions*

27. Any proceedings instituted or judgment reserved prior to the coming into operation of these Regulations shall be dealt with and determined in accordance with procedures in place before the commencement of these Regulations.

Transitional  
provision

MADE this 18th day of August, 2020.

HIS EXCELLENCY DR. MOKGWEETSI ERIC KRABETSWE MASISI,  
PRESIDENT.