



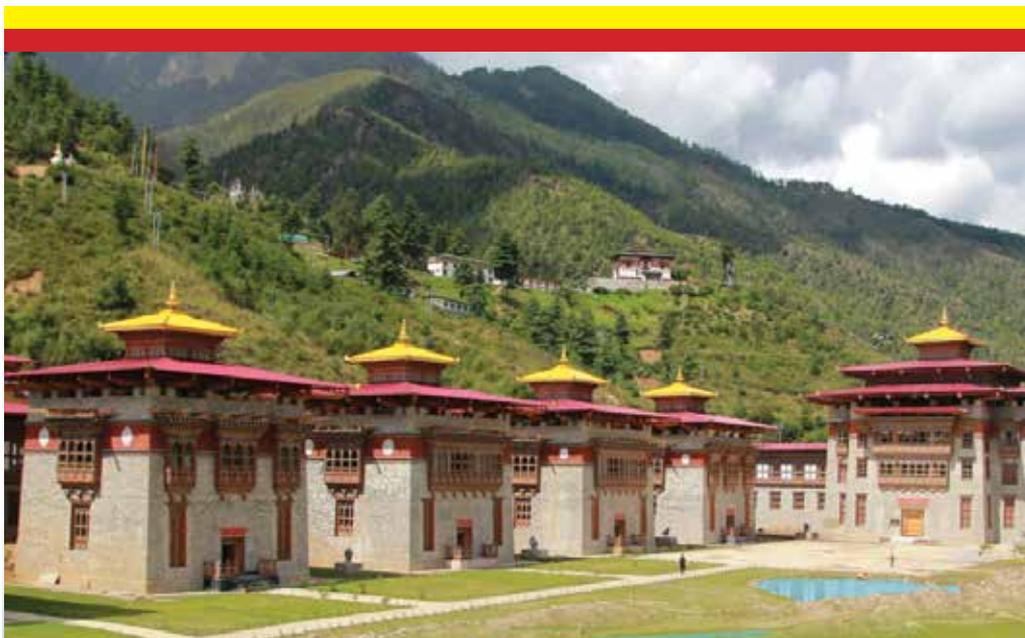
THE JUDICIARY
OF
THE KINGDOM OF BHUTAN

Annual Report
2014

ANNUAL REPORT

Judiciary of the Kingdom of Bhutan

2014





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Judiciary of the Kingdom of Bhutan, 2014

A strong judiciary that upholds the rule of law is a *sine qua non* for a “fair and just society”. Without the rule of law and the assurances that comes from independent decision-makers, it is obvious that equality before the law will not exist. The Judiciary has always endeavored to safeguard, uphold, and administer justice fairly and independently without fear, favour, or undue delay in accordance with the rule of law to inspire trust and confidence and to ensure that justice remains to be efficient, inexpensive and easily accessible to the people. In order to mirror the achievements and accountability, to identify and reflect on the challenges faced, to adopt innovative policies and programs in response and above all to inform the public, the Judiciary comes out with an Annual Report every year. The Annual Report also highlights the major events of the Judiciary and provides overall statistics of the cases.

Infrastructural Development

The Supreme Court which was temporarily housed in Kuengacholing moved to the new Supreme Court complex in July 2014, which was inaugurated by Shri Narendra Modi, the Prime Minister of India on 15th June, 2014. The new Supreme Court, located in Hejo is symbolically placed alongside Trashichhodzong, the seat of Executive and Druki Gyelyong Tshokhang (Parliament), the seat of the legislature.

With generous funding from donor agencies, the Judiciary successfully completed the construction of court buildings in Bumthang, Trongsa, Lhuntse, Pema Gatshel, Tsirang, Dagana and Zhemgang. While the construction of the court buildings in Bumthang and Trongsa were funded by Swiss Development Cooperation (SDC) and Austrian Development Agency (ADA), the court buildings in Tsirang, Dagana and Zhemgang were funded by ADA. The DANIDA funded the construction of Pema Gatshel court and the Royal Government of Bhutan funded the construction of the Lhuentse court. The court building in Trongsa and Bumthang were inaugurated by Her Majesty the Gyaltsuen.

The ground breaking ceremony for the construction of court buildings in Punakha and Wangdiphodrang courts were also carried out. With infrastructural development in terms of new court buildings being achieved in almost all the Dzongkhags, the only Dzongkhags without modern court buildings are Thimphu, Haa, Paro, Chhukha, Sarpang, Trashy Yangtse and Gasa.



Visitors and Guests

His Majesty the Druk Gyalpo granted an audience to the Judges at the Supreme Court complex. The new Supreme Court complex was also graced by many important dignitaries and guests, including His Eminence, the Je Khenpo, who blessed the building in a special ceremony and Their Majesties the Queen Mothers graced the installation of the Adornment of the *Nga Chudru Kilkhor* (Mandala of Great Seal of Zhabdrung Rimpochhe) & *Ganjira* or *Sertog*. Many international eminent personalities also visited the Supreme Court complex and other courts in the country.

Human Resource Development

The Judiciary's growth in this field has been steady and progressive. The 21st National Judicial Conference, which was held on 2nd and 3rd July 2014 discussed on procedural uniformity, jurisdictions, the appeal system and, administration and human resource development.

A series of workshops were organized by the Supreme Court to familiarize the judges and legal fraternity on “contract and agreements” as commanded by His Majesty during the Judicial Conference. His Majesty expressed concerns that with the increasing Foreign Direct Investment and globalization, Bhutanese counterparts should be well versed and in a position to be able to negotiate favourable terms of contracts.

The Bhutan National Legal Institute conducted a number of trainings for judges and lawyers on many topics including child justice system, alternative dispute resolution and others. All the Judges in the twenty Dzongkhags were given training on Domestic Violence and Human Rights issues. Several meetings were also held for all the judges *in re* discourse on the judicial ambiguities. Furthermore, Bench clerks were trained on “Court Craft: Judgment Writing, Court Etiquette, Judicial Forms & Legal terminology and Tshogpas of various Dzongkhags were given ADR (mediation) Trainings.

Awards

The Civil Service Awards initiated by His Majesty the Druk Gyalpo has made it possible to recognize those who by their service have made a significant and meaningful impact on national life. The award recipients for the year 2014 in the Judiciary included one life time service medal, 5 gold medals, 10 silver and 26 bronze medals.



Tribute

To pay tribute to His Majesty the Fourth Druk Gyalpo on His 60th Birth Anniversary Celebration, the Judiciary published three books, which were released by HRH Ashi Sonam Dechan Wangchuck on 15th November, 2014. The books are “Building of the Supreme Court”, Nyentho Thrimgi Zhokay Namzhang” and Thrimgi Zhiten Drimed Norbui Melong”. The first two chronicle the history of architecture and building of the Supreme Court complex in English and Dzongkha while Thrimgi Zhiten Drimed Norbui Melong enshrines the history of Bhutanese laws.

Retirement of the Chief Justice, Lyonpo Sonam Tobgye

The Chief Justice of Bhutan, Lyonpo Sonam Tobgye demitted office on 15th November 2014 in compliance with the Constitution. Lyonpo Sonam Tobgye retired after an illustrious career of 43 years in service of Tsa-Wa-Sum.

Lyonpo Sonam Tobgye under the guidance of their Majesties developed infrastructure through the construction of independent court buildings and strengthened court structures by establishing additional benches in busy courts. He introduced uniform courtroom paintings that symbolized Bhutan’s cultural, historical and religious significance. Under the command and guidance of His Majesty, he initiated the change in nomenclature from Thrimpon to Drangpon and introduced the turquoise green *kabney* to strengthen the independence of judicial personnel. The Post Graduate Diploma in National Law (PGDNL) for lawyers and two-year Diploma in National Law (DNL) for bench clerks were also introduced. Several law graduates were sent to study LL.B. and LL.M. in India and overseas. Application of a comprehensive code of conduct and ethics for court officials has strengthened the professionalism and service delivery by the judiciary.

The Judiciary acknowledges the former Chief Justice, Lyonpo Sonam Tobgye’s service to the institution and owes him a huge debt of gratitude.



His Majesty The King appointed Dasho Tshering Wangchuk, the senior-most justice of the Supreme Court, as the new Chief Justice of Bhutan. He is the youngest chief justice in the region.

His Majesty also conferred the orange scarf on Dasho Tshering Wangchuk, 51, in recognition of his sacred responsibility as chief justice in the service of the nation.

He was awarded the Coronation Gold Medal in 2008 and the red scarf in December 2013 by His Majesty The King.

Appointment of the New Chief Justice of Bhutan

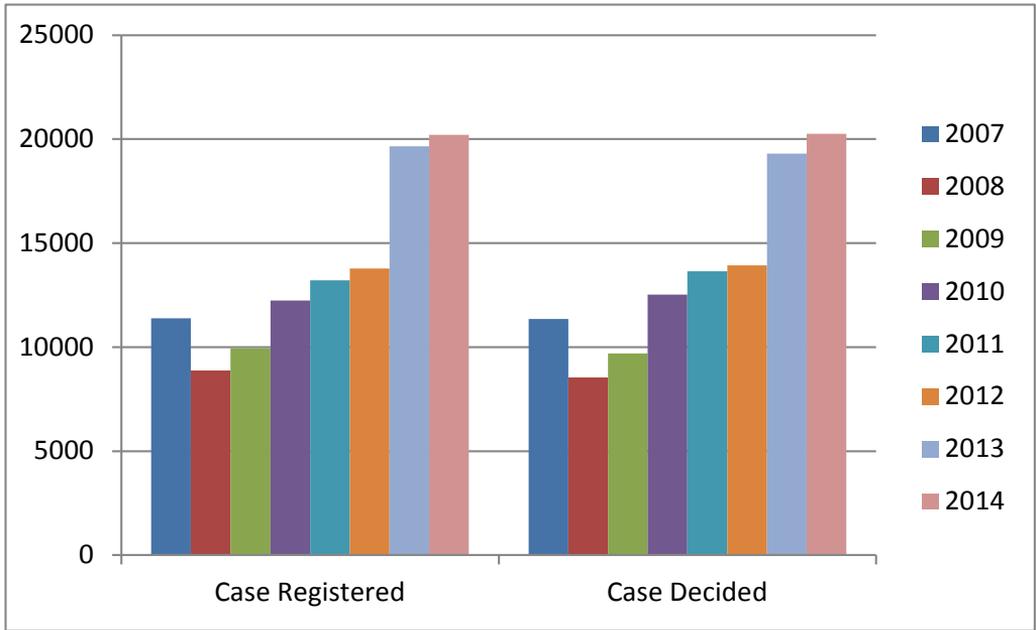
Justice Tshering Wangchuk was appointed as the new Chief Justice of Bhutan on 28th November 2014. He was conferred the orange scarf in recognition of his sacred responsibility as the Chief Justice of Bhutan. He completed LL.B from Delhi University in 1998 after obtaining his bachelor's degree in history from St. Stephen's College, New Delhi in 1983-86. He had done his LL.M in International Law and Judicial process from George Washington University, USA in 2003. Lyonpo Tshering Wangchuk served as a legal officer in the High Court, Militia Officer in the Army, Drangpon of the Samdrupjonkhar District Court and as the Justice of the High Court and Supreme Court.

Judicial Responsibility and Accountability

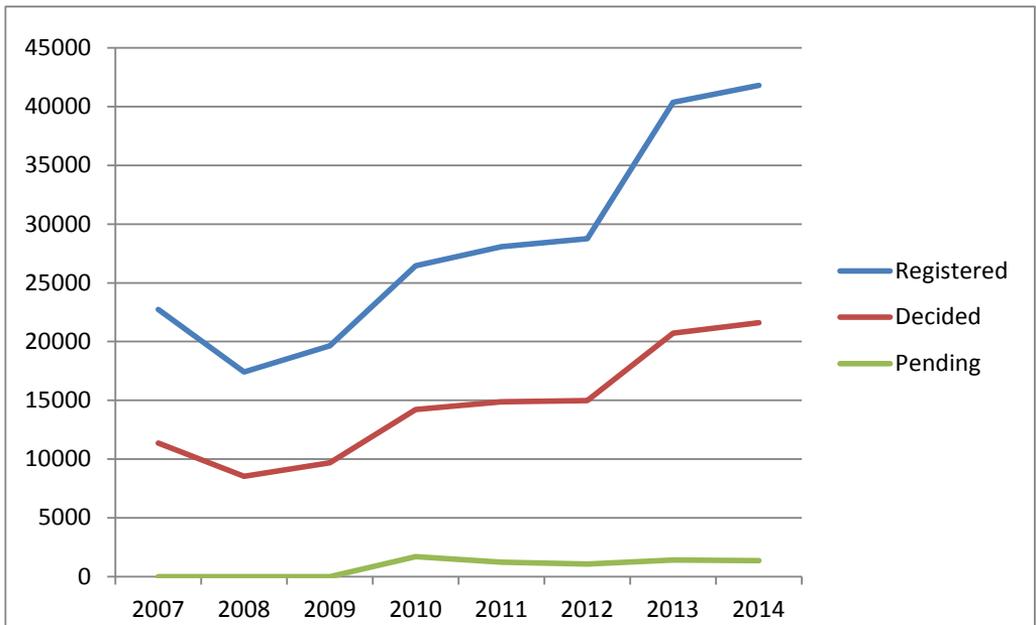
It is a responsibility of the Judiciary to uphold the rule of law and ensure that a young democracy progresses. The Judiciary being the custodian of the Constitution and the rule of law will continue to work towards fulfilling the aspiration of the people, and deliver justice to all manner of people according to law without fear or favour, affection or ill-will, so that the trust and confidence of the people in the justice system is ensured.

One recurrent criticism of the public against the Judiciary has been the lack of complaint redressal system in the Judiciary. The Judiciary proposes to establish a system to address this issue and concern of the public. It has been proposed that a thorough research on judicial responsibility and accountability would be carried out before the establishment of the complaint redressal system. Further, each Justice of the Supreme Court will be allocated five districts each on a yearly rotation basis (circuit system). The Justices will be required to visit their respective district and oversee the district in the administration of Justice and annually submit confidential report highlighting the track record of the Judges under their circuits. The Justices will ensure the independence of decision-making of Judges under their respective jurisdictions and judicial accountability.

The necessity of judicial accountability and responsibility is important to create a reliable, fair and efficient justice system and to inspire public confidence in the institution. Thus, Judges must channel their conduct according to the ethical obligations arising out of their office. In doing so, judges honoring the importance attached with the judicial office will therefore assure that every proceeding is heard and decided fairly. A judge must be honest to his Oath of Office and must uphold the Constitution and the Laws without fear or favor.



Trends of Cases Registered and Decided, 2014



Trends of Cases Registered, Decided and Pending, 2014

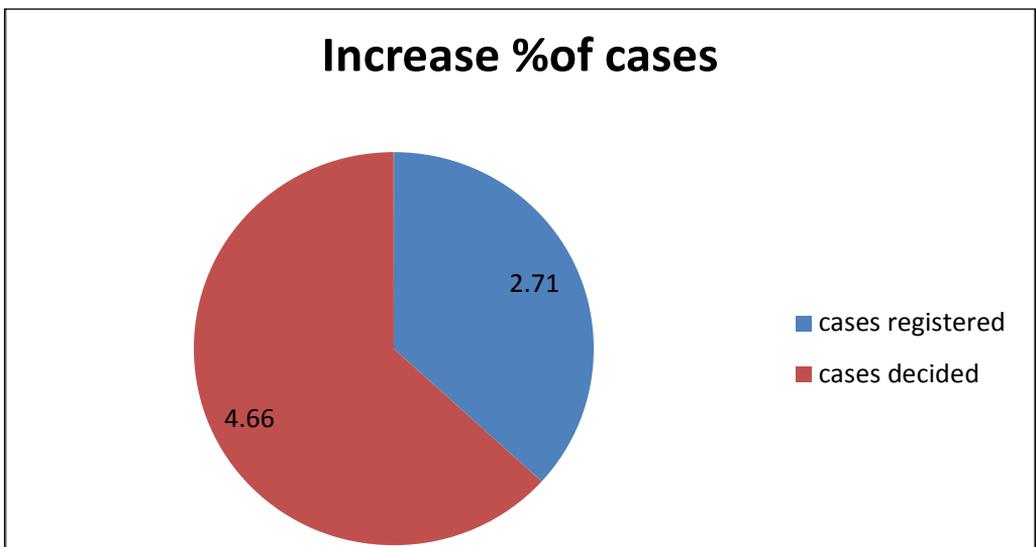
Statistics

The caseload of the Courts in 2014 is as follows:

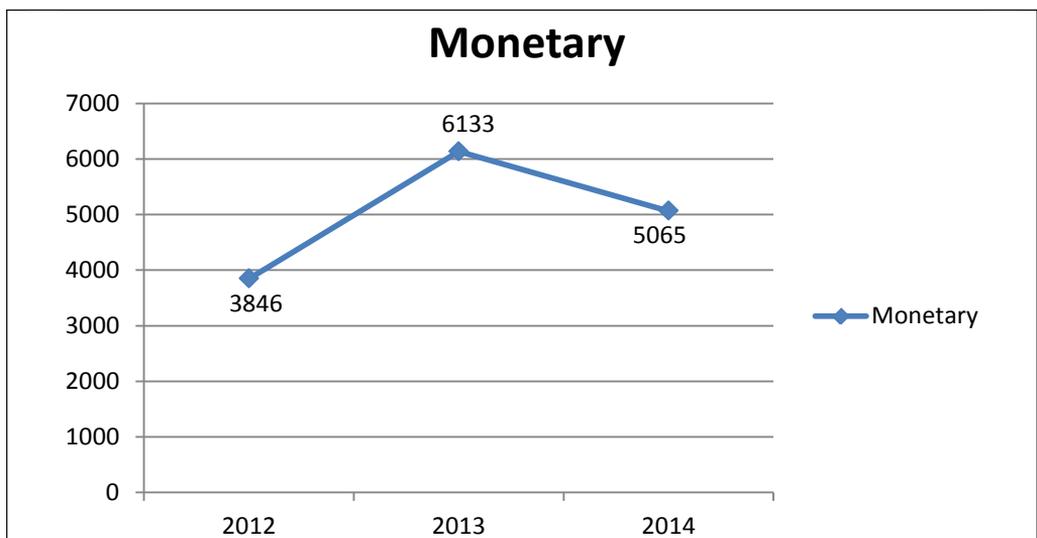
- (a) 1402 cases were brought forward from 2013.
- (b) 20, 202 new cases were registered.
- (c) The highest numbers of cases were recorded in Thimphu, Phuentsholing and Samtse with 5972 cases, 1423 cases and 1296 cases respectively.
- (d) 20, 249 cases were decided. Out of which 14444 cases were decided within 108 days.
- (e) 359 cases were appealed to the High Court. Out of which 120 cases appealed to the Supreme Court.
- (f) There are 1355 pending cases. Out of which, 28 cases have been pending beyond one year.

Comparative Statistics of 2013 and 2014

- (a) There was an increase of 2.71% cases registered from 2013.
- (b) The Courts rendered 20,249 decisions, an increase by 4.66 %.
- (c) There were 5065 monetary cases followed by 4837 matrimonial cases, excluding the application for marriage certificates.



Analyzing the case statistics over the years, the highest number of cases registered in the court are monetary cases. After the moratorium on bank loans, there has been a drastic increase in private lending and borrowing which may be attributed to gambling. Many took advantage of the situation in the hopes of making money by using the existing loopholes in the provisions of the Movable and Immovable Act 1999, Financial Services Act 2011, Penal Code of Bhutan 2004 and the Evidence Act of Bhutan. Case statistics maintained with the Supreme Court shows that there has been 24.06% in the increase in private loans. Therefore, in order to have means and process to control such type of loans, the Judiciary shall endeavour to introduce a system of checks and balances which may include compulsory registration/notarization of the loan agreement, based on the loan amount involved.



Challenges:

The main challenge is to ensure that the trust and confidence of the people are maintained in the justice delivery system, and to set up a mechanism for effective dissemination of information designed in a manner that enables people to understand and appreciate the task, roles and responsibility of the Judiciary. The following are some of the challenges faced by the Judiciary:

- (a) There are constant amendments to the existing laws and new laws are being enacted to suit the needs of the society. However, there is a vacuum in raising awareness. Therefore, there is need to devise strategies and means to disseminate information on new laws enacted by Parliament to the stakeholders.

- (b) Appeals are disposed off timely, and judgments have become more principled and transparent. False ideas and vain expectations along with frivolous appeals are not permitted to negate the legitimacy and efficacy of the appeal system. Excessive and indiscriminate access would invariably overburden the Supreme Court and High Court in due course of time. Therefore, unnecessary and unwarranted appeal aimed to harass or buy time need to be checked and weeded out during the miscellaneous hearings conducted by the appeal courts.
- (c) Cases may be similar but never identical. The Bhutanese Courts follow the doctrine of stare decisis. However, it must be noted, that doctrines of precedent, albeit of persuasive value, do not apply to courts at the same level. Therefore, the affected parties must move the High Court if there are any disparities in sentencing, and the precedent set by the appeal court is applicable to all the lower courts. Any move to review the sentencing structure must be approached with caution. The sole objective of law is to “stamp out criminal proclivity”. Punishment ought to fit the crime, however, in practice sentences are determined largely by mitigating and aggravating circumstances. His Majesty the Druk Gyalpo commented that Judges must apply their minds with rationality; otherwise computers will suffice, which may not render fair justice.

It is a well established fact that although legislature is the lawmaking body, interpreting the law by the courts can make comprehensive changes in the actual implementation and overall scheme of the law. It is generally believed that the law is deemed to be what the court interprets it to be. Therefore, the courts have the responsibility to give purposive and rational interpretation. The issue associated with section 39 of the Penal Code of Bhutan (Amendment 2011), is a classic example. The provision before the amendment had problems associated with the differences in the Dzongkha and English texts. Therefore, the courts on the basis of an Executive order issued by the Chief Justice on 01/08/2005 adopted an interpretation using discretion to determine the compensatory damages. However, the 2011 amendment removed the word “maximum” from the English version instead of making correction in the Dzongkha version. This has now made the provision unreasonable if interpreted literally, as the Judges are required to award an amount fixed by statute as compensatory damages, irrespective of the gravity and seriousness of the injury. The judges are denied of the opportunity to use common sense, discretion and reasonability to enforce the law.

It also denies the defendants of the reasonability and fairness in paying compensatory damages. Therefore, in such cases the Judges should follow the golden rule of interpretation rather than the literal interpretation and use discretion in awarding compensatory damages based on gravity of the injury and the existing mitigating and aggravating circumstances.

Reforms

Over the past years, the Judiciary of Bhutan has witnessed unprecedented development guided by the wisdom and vision of His Majesty, the Fourth *Druk Gyalpo*, King Jigme Singye Wangchuck and His Majesty Jigme Khesar Namgyal Wangchuck. The accomplishments, made with grace, precision and consummate skill, have had the combined effect of significantly strengthening the Judiciary and providing Bhutan with an ever more efficient legal system, enhancing greater transparency and strengthening the Rule of Law. However, as reforms are never a onetime endeavour, the Judiciary aspires to establish a reform division which is capable of anticipating and identifying challenges faced by the Courts to formulate and adopt innovative policies and programs in response. The client's needs and satisfaction shall be reviewed on a regular basis, especially, the service user's expectations from the courts - assess needs and perceptions. The improved data collection would be a useful source of information to improve processes and services.

Conclusion

It is the constitutional duty of the judiciary to safeguard, uphold, and administer justice fairly and independently without fear, favour, or undue delay in accordance with the rule of law. A judge must be honest to his/her Oath and must uphold the Constitution and the Laws without fear or favour. Every judicial action and speech must be according to the rule of law to inspire trust and confidence in the administration of justice. Society is entitled to expect that a judge must be a person of high integrity and honesty, have moral vigour and ethical fairness, and is impervious to corrupt or venial influences. It is therefore implicit that a judge's conduct must be free from impropriety and be in tune with the highest standards of probity. Judges individually and collectively must attach great importance to maintaining the confidence of the people. Although a judge is vested with statutory power, he/she should not exercise it arbitrarily. Judges should pronounce reasoned judgments invariably addressing the losing party as to why he or she has lost a case, within the parameters set by law.

His Majesty's Address to the Nation on the 107th National Day decreed that *"Corruption is unambiguous- there is no great or small corruption. And no one can be above the law. But there is an even greater threat that is ignoring corruption. When the corrupt are not held to account, those who observe due diligence, work hard and professionally are most likely to be discouraged. We mustn't allow the later to lose morale by rewarding everyone indiscriminately, irrespective of his or her performance. That is why, corruption must be curtailed and, more than ever before, extraordinary service must be recognized and rewarded."* The Constitution confers duty upon every citizen to acknowledge corruption as a social evil, which require a pro-active State and social diligence to curb and combat such malady. Corruption destroys the fabric of society and results in the violation of several basic rights of the people. It stifles economic growth, inflates cost for government, negates progress and denies prosperity. Above all else, the civil servants must take responsibility and be held accountable for proven cases of dereliction of duty and official misconduct leading to wastage of resources and financial burden on the government. Corruption, which is anti-thesis to good governance, must be prevented, minimized, detected and punished. Therefore, the Judiciary pledges to play a part in this noble effort to uphold justice and act against corruption.

A new year marks a beginning of another opportunity for our institution to strive to uphold the ideals of the Constitution, to accomplish the visions of His Majesty the Druk Gyalpo and to fulfill the aspirations of our people. With such great responsibility, the Judiciary renews our pledge to:

- Uphold the rule of law;
- Maintain the highest standards of personal conduct;
- Administer justice expeditiously, fairly and inexpensively;
- Ensure consistent interpretation of the provisions of all enactments based on established principles of law to avoid repugnancy and inconsistency between the Acts;
- Decide cases with utmost diligence and care to ensure better protection of the freedoms, reputations, fortunes and the lives of the people;
- Ensure Due Process of Law and be faithful to the principles of equality under law, fairness, rationality and comprehensibility in adjudicating cases;

- Devise means for enhancing the performance of the courts in providing better judicial services to the public - ensure proper judicial management of pre trial discovery; reduce delay through efficient management of cases by adopting scheduling procedure; ensure parties have fair opportunity of submitting their claims and evidences; ensure no undue interruptions impede the hearing processes;
- Maintain court decorum in accordance with the established Driglam to ensure protection and continuity of our customs and traditions;
- Enhance public confidence in the judicial process through proper implementation of the Civil and Criminal Procedure Code, 2001 and other laws;
- Encourage Alternative Dispute Resolution within the ethical framework based on the ideals of fairness, impartiality, justice, integrity and peace;
- Be courteous and responsive to the needs of the society;
- Ensure protection and accomplishment of national objectives and policies with perseverance and commitment;
- Work towards accomplishing a just society and further the cause of justice;
- Exercise and keep healthy to serve the Tsa- Wa- Sum with integrity, commitment and humility.

As commanded by His Majesty during the 21st National Judicial Conference, the Judiciary must continue to enhance trust and confidence in the system. The judicial officials must maintain integrity based on the Code of Conduct. If one or two are incapable and fails to maintain integrity, it will amount to failure as an entire institution. Therefore, judicial officials must be united, take responsibility, be accountable and serve with humility.

Thursday, January 08, 2015

