

**ADDRESS BY HON. PETER S. SHIVUTE, CHIEF JUSTICE
OF THE REPUBLIC OF NAMIBIA**

**AT THE OPENING OF THE 2017 LEGAL YEAR
SUPREME COURT OF NAMIBIA, WINDHOEK**

8 FEBRUARY 2017

SALUTATIONS**TABLE OF CONTENTS**

	<i>Pages</i>
1. Introduction	3
2. Taking stock of the Legal Year 2016	5
3. Improvement in service delivery	6
3.1 Supreme Court	8
3.2 High Court	9
3.3 Magistrates Courts	12
4. Challenges	13
4.1 Violence against women and children	13
4.2 Witness fees	15
4.3 Need for criminal justice reform	16
4.4 Law reporting	18
5. Judiciary's contribution to national development	19
6. Sustaining service delivery under austerity	20
7. Conclusion	22

1. Introduction

I am filled with pride and joy to welcome you all this morning to the Supreme Court on this auspicious occasion of the official launch of the 2017 legal year. I am very grateful that you have taken off time from your busy schedules to join us.

It is my special honour and privilege to welcome His Excellency, Dr. Hage G. Geingob, President of the Republic of Namibia, to this important event.

I also recognise with appreciation the presence of distinguished representatives of the various institutions engaged in various ways in the promotion of the rule of law and access to justice in Namibia: the Minister of Justice, his deputy and senior officials; the Attorney-General; the Prosecutor General and her senior prosecutors; the Ombudsman; the organised legal profession; the police, and the correctional service. Your presence here today symbolises our interdependence and the necessary relationship the judiciary seeks to foster with stakeholders in the justice sector. I wish, on behalf of

the Office of the Judiciary, to thank you all for taking time to be with us this morning as we reflect on the state of affairs of the Namibian judiciary.

Your Excellency, as Head of State you have very important responsibilities, one of which is to provide support and encouragement to the Judiciary in the execution of its constitutional mandate of rendering justice to all with integrity, fairness, impartiality and fearlessness. Needless to add, Mr President, that your presence for the second consecutive year at this most important event on the Judiciary's calendar demonstrates your commitment to the Judiciary as an important pillar of our constitutional democracy.

This morning, I will share with you, and the nation, the most important activities undertaken in 2016 across the Judiciary, the notable accomplishments, the challenges facing us and the plans the Judiciary has for this year and beyond. I will share with you only the most salient of these developments, successes and challenges and in the process highlight the plans that are in the offing.

2. Taking stock of the Legal Year 2016

A lot has happened since we convened here last year to take stock of the work of the Judiciary and the new Office of the Judiciary created by the Judiciary Act of 2015.

Since then we have witnessed remarkable progress in the operationalisation of the new Office and an improvement in service delivery.

The first order of business was to bring all constituent parts of the Office of the Judiciary under a unified command. Great strides have been made towards that end but more still needs to be done, especially as far as legislative reform is concerned. Important pieces of legislation are still out of harmony with the changes brought about by the Namibian Constitution Third Amendment Act and the Judiciary Act of 2015. A notable example is the governance of the magistracy. The appointment, discipline and remuneration of the magistracy must be harmonised, not only in tandem with the Namibian Constitution Third Amendment Act, but also with the twin

principles of the independence of the Judiciary and separation of powers.

The Office of the Judiciary is now properly established in spite of the birth pangs which are to be expected in the formative stages of any new organisation. The professionalism and dedication of the permanent secretary and her top management has contributed greatly to the moulding a new Office from scratch. We now have a financial system in place, the IT operation has taken off the ground and HR systems are solidly in place. This year the emphasis will be on consolidating the gains so far made and creating a formidable administrative machinery that will assist the courts in efficiently discharging their adjudication function.

3. Improvement in service delivery

A hallmark of a well-functioning justice system is the effective and timely disposal of cases that come before the courts. Delays in the delivery of justice had for long been a blot on our legal system.

I am pleased to report that the disposal of cases has generally improved throughout the hierarchy of our courts.

The appointment in the last legal year of research assistants to assist judges with research for the preparation of judgments has produced the intended result. The number of reserved judgments has been significantly reduced in both the Supreme Court and the High Court. These young researchers, most of whom came fresh from Law School, have proven to be a valuable asset to the Judiciary and I am convinced that we must strengthen the programme. We intent to devote significant resources to provide them with quality in-house training so that they can become even better lawyers and a critical national resource.

In order to enlarge the pool from which we can appoint judges, the Office of the Judiciary started a programme to train serving magistrates under our flagship *Aspirant Judges Training Programme*. This programme offers training predominantly to magistrates to empower them to aspire for appointment to the High Court. More than 20 magistrates and research assistants have thus far participated in the programme. We are proud this initiative has already started to bear fruits as three of the trainees were appointed

as acting Judges of the High Court. The Aspirant Judges Training programme will in time create a diverse pool from which we can select acting and future permanent judges of the High Court.

3.1 The Supreme Court

As the apex court of the land, the Supreme Court is now functioning well and providing much-needed jurisprudential leadership. The court holds three sessions every year and in the past heard no more than 10 cases per session. The number of cases enrolled per term has since increased from 10 to 15 and the speed of delivery of judgments has improved remarkably. In 2016 alone, the Court handed down 37 judgments, including some which, regrettably, had been outstanding for quite a long time. It is my expectation that all the old judgments of one retired judge since allocated to other judges for completion will be delivered in the first part of this year. In the same year the court received and disposed of 5 civil petitions and 3 criminal petitions.

Towards the end of last year we finalised the new draft rules of the Supreme Court which will, once implemented, contribute to making

the Court even more efficient. We are also considering the implementation of greater outreach initiatives to generate greater public interest in the court's work by publishing on the court's website summaries of forthcoming cases and providing summaries of the court's decisions once delivered.

3.2 The High Court

Last year we shared with you the significant reforms initiated at the High Court: Judge-controlled litigation (also known as judicial case management), mediation and electronic filing. All three of these initiatives continue to be of great value in the early finalisation of cases and reducing litigation costs. I can also report that our own e-litigation system (e-justice), has now been fully rolled out in both the Main Division at Windhoek and the Northern Local Division at Oshakati.

This initiative is borne of the realisation that judicial systems in many parts of the world are increasingly turning towards digitisation and technological solutions, aimed at improving the efficiency and accessibility of justice.

At any given point in time there are more or less 16 to 18 judges (excluding the Judge President) presiding in the High Court of whom 13 hold permanent appointments. Three of the permanent judges serve at the Northern Local Division.

During the 2016 legal year, the Criminal Stream of the High Court comprising 5 permanent judges, attended to:

- 89 criminal trial matters, of which 20 were registered during the 2016 legal year,
- about 2000 criminal review matters; and
- close to 200 criminal appeals.

The judges in the Civil and Labour Stream, numbering 5 permanent and 5 acting judges, each handled between 100 - 250 defended matters under judicial case management. In addition to the matters under judicial case management, the judges of that Stream finalised between 600 – 650 matters per month on the Residual Motion Court Roll.

Having regard to the aforementioned figures, the time required to manage the amount of cases, prepare for court, attending to hearings and writing judgments, our educated guess is that during the 2016 legal year –

- the five judges in the Criminal Stream attended to a workload which would ordinarily require six to seven judges, while
- the eight judges in the Civil and Labour Stream attended to a workload which would ordinarily require no less than 15 judges.

Notwithstanding the obvious constraints, the 15 judges of the Main Division during 2016 delivered a total of 439 judgments as follows: 191 civil, 25 labour, and 203 in respect of criminal trials, criminal appeals and criminal reviews. The three judges of the Northern Local Division delivered a total of 104 judgments as follows: 31 civil and labour, and 73 criminal trials, criminal appeals and criminal reviews.

3.3 The Magistrates Courts

Turning to the magistrates courts. Magistrates across the country participated in various courses, including criminal procedure and wildlife protection. Training in wildlife protection has become very important in the light of the disturbing trend of wanton poaching of our country's endangered wildlife species.

During the first two quarters of 2016 the magistrates courts attended to 25,787 criminal cases of which 12,768 were finalised. That translates into 49.5% cases completed during that period. A total of 19,452 criminal cases were carried forward to the October - December 2016 quarter of the year.

The magistracy remains committed to work down the backlog. Therefore, in 2017 the magistracy intends to focus on the following initiatives:

- (a) To facilitate at each magistrate's court regular monthly meetings between the magistrate, the prosecutor, the police and legal aid;

- (b) To ensure proper management of the court rolls through magistrates requiring parties appearing before the court to respect agreed schedules;
- (c) To construct additional prefabricated court rooms to meet the nationwide shortage of court rooms;
- (d) To reintroduce reception courts at major magistrate court centres and for those courts to operate after hours and on Saturdays in order to work down the backlog of cases.

4. The challenges

Your Excellency,

I will briefly sketch some of the challenges being experienced in the administration of justice.

4.1 Violence against women and children

It is sad to note that violence against women and children (invariably involving rape or murder) remains a very serious problem in our

society. The gravity of the problem is apparent from the criminal cases heard in the High Court. To give you some idea, between 2015 and 2016 a total number of 45 cases were tried and finalised in the Main Division of the High Court at Windhoek. Of these, 33 concerned violence against women and children. Therefore, rape and murder of women and children constitute over 70% of the criminal cases registered at the High Court.

To put to rest the commonly held view that courts are soft on violence against women and children, I wish to provide the following statistics in respect of the High Court: the average sentence imposed for murder committed against women or children in the High Court is 31 years while the average sentence for rape is 19 years.

Your Excellency

A matter which requires urgent attention is the phenomenon of the rendering of agency services by the Judiciary to the other agencies of government. The Office of the Judiciary performs a wide range of functions on behalf of several offices, ministries and agencies without

matching resources to enable it to do so. For example, we collect taxes, conduct marriages, administer the issuing and renewal of liquor licenses, etc. It is an understatement that the rendering of these functions makes us lose focus on our core function of adjudication. In order not to cause disruption of government programmes we have continued, under trying circumstances, to render agency services on behalf of several ministries and agencies. It is important that these ministries and agencies engage with the Office constructively and meaningfully to find an enduring solution to the burden that agency services impose on the Office of the Judiciary.

4.2 Witness fees

The payment of witness fees to individuals subpoenaed to testify in criminal trials constitutes a very big proportion of the operational expenses of the Office of the Judiciary. Often, witnesses are compelled to appear at court but end up not testifying for one or other reason but the Office of the Judiciary still has to pay them for being required to be available. There is, as a result, a lot of wasted expenditure which can only be avoided if the authority which compels

witnesses' attendance at court bears the responsibility for meeting those expenses. On this score too, we look forward to a constructive engagement with the prosecutorial authorities to find a solution in the public interest.

4.3 Need for criminal justice reform

We are all aware of the public's frustration with aspects of the criminal justice system: For example, the granting of bail to repeat offenders; the rather long delays between arrest, appointment of legal aid counsel, first appearance at court and the ultimate finalisation of criminal cases.

In my view, criminal justice reform has not kept pace with modern trends and with the new and alarming forms of criminal behaviour such as cyber-crime and the pillaging of Namibia's precious but endangered wildlife. There are two aspects to this: The first speaks to the need for improved cooperation amongst stakeholders in the criminal justice system with the view to creating a nimble, effective and caring criminal justice system. The second aspect concerns the

importance of proactive legislative reform driven principally by the executive law enforcement agencies.

As for the first, the consensus that emerged amongst stakeholders at last year's first ever Judicial Conference is that all institutions involved in the criminal justice system must cooperate and coordinate their activities without compromising their autonomy and functional independence from one another. Often, we duplicate activities and resources and work at cross purposes. Therefore, this year and beyond, we plan to have regular monthly meetings within the framework of the Criminal Justice Forum between prosecutors, magistrates, police officers and senior court staff where issues of mutual concern will be discussed. If there are immediate and obvious solutions to challenges identified in this fora, they must be implemented without much bureaucracy so that justice is dispensed in a way that instills public confidence and trust.

In addition, I am planning this year to bring together stakeholders so that we can collectively craft a shared vision for a well-functioning criminal justice system. Criminal justice reform must enjoy top priority this year! The ideal must be to ensure that criminal trials,

especially those engendering emotional distress in the victim, are heard while memories are still fresh and before recollection fades. Victims of especially violent crime must get closure as soon as possible and move on to rebuild their lives.

As regards the second aspect, I cannot stress too strongly the need for us, as a nation, to prioritise law reform to deal with cyber-crime and the escalating destruction of our wildlife through mindless poaching.

Your Excellency,

4.4 Law reporting

Ready access to judgments of the Supreme Court and High Court is a vital component of access to justice. Currently, these judgments are available on the High and Supreme Courts' website and through the Namibia Law Reports published by Juta in collaboration with the Legal Assistance Centre. I have it on good authority that due to funding difficulties, the Namibian Law Reports are facing imminent discontinuance. That will be a drawback for our judicial system. I can

only hope that the impending disaster can be averted through co-operation between the Office of the Attorney-General, the Law Reform and Development Commission, the Office of the Judiciary and the organised legal profession.

Your Excellency

5. Judiciary's contribution to national development

We in the Judiciary are alive to the important role we must play in national development. Efficient and effective courts can promote direct foreign investment into our economy. You will be pleased to know, Mr. President, that in the World Bank's Ease of Doing Business in Africa Index under "Enforcement of Contracts", Namibia has consistently scored very well on the existence in our legal system of court-connected mediation and the existence of procedures which facilitate speedy conclusion of cases. We have, however, not done well as regards the existence of a set of rules dedicated solely for the handling of commercial disputes – a matter of great concern to any foreign investor. The High Court has, therefore, embarked upon an initiative to introduce a dedicated Commercial List for the

adjudication of commercial disputes. The expectation is to produce a strategy framework document by the middle of this year to be discussed with the Attorney-General's Office, the business community and the legal profession. A draft legislative framework will then be presented to Government sometime next year.

We in the Judiciary are proud that the Office of the Judiciary is contributing significantly to the development of human capital of our country. Through its many divisions, the Office of the Judiciary has been harnessing human capital from Namibia's own tertiary institutions through recruiting young professionals from the University of Namibia. Of the research assistants employed by the courts, 92% are graduates of UNAM. While forty-five (45) out of 94 magistrates serving in our district courts are graduates of UNAM.

Your Excellency,

6. Sustaining service delivery under austerity

The Judiciary is no less affected by the financial constraints facing the rest of the other organs of our state. We accept that we too have

to make sacrifices as the country manoeuvres its way back to recovery. The unintended consequences of the current financial difficulties are, however, of great concern.

At the request of the Ministry of Finance, the Office of the Judiciary has implemented very deep cuts in operational expenses in the current financial year. Given the proposed budget allocation for the 2017/2018 fiscal year, the anticipated cuts are going to be even more debilitating.

The self-imposed austerity measures have adversely affected the operations of the courts. The mediation process at the High Court is under threat of being discontinued because of our inability to pay mediators' fees. That will in turn affect the disposal of cases outside court without the need for going through costly and lengthy trials. In addition, if additional resources are not allocated to the Judiciary it will not be possible to appoint additional judicial officers. There will be no promotions in the magistracy and we may have to discontinue periodical courts. Because funds will be in short supply, the Office of the Judiciary might not be able to pay court fees such as witness and

interpreters fees associated with criminal trials in both the High Court and Magistrates Courts. We could well be forced to close down court offices for extended periods of time if we are not able to cover water and electricity expenses as and when they become due and payable. It is my earnest wish that with the cooperation of the Executive and the Legislature, these consequences could be averted.

7. Conclusion

That said, we should remain optimistic about the future and be inspired by a future of exciting prospects and opportunities. We have to continue to build relationships and partnerships with institutions both within and without the legal field to harness the potential and resources offered by each institution in our quest for excellence and improved delivery of justice to all.

I, therefore, urge all involved in the delivery of justice to approach the New Year with optimism and enthusiasm.

It would be remiss if I did not thank the Law Society of Namibia, the Namibia Law Association and the Society of Advocates of Namibia for

their continued support to the courts. A word of thanks goes to the legal practitioners who take up *pro bono* and *amicus curiae* briefs to assist indigent litigants. Your contribution in assisting indigent litigants has not gone unnoticed. Rest assured that your service to the community is much appreciated and valued.

Finally, I wish to extend a thoroughly deserved word of gratitude to the staff of the Office of the Judiciary for organising today's flawless event. The success of today's proceedings will no doubt imbue us all with zeal and zest in the delivery of justice to the nation, this year and beyond.

I thank you.