

ADDRESS BY HONOURABLE PETER S. SHIVUTE,
CHIEF JUSTICE OF THE REPUBLIC OF NAMIBIA
AT THE OPENING OF THE 2020 LEGAL YEAR
SUPREME COURT OF NAMIBIA, WINDHOEK
12 FEBRUARY 2020

His Excellency Dr. Hage G. Geingob, President of the
Republic of Namibia

Honourable and Distinguished Invited Guests

Ladies and Gentlemen

1. Permit me to welcome you all to the 2020 Legal Year launch and to wish you all a happy and productive New Year.

2. In more ways than one, 2019 was an eventful year for the Judiciary of Namibia and 2020 promises to be no different. The courts at all levels were called upon to decide very important matters affecting our nation's affairs. From matters politico-legal involving elections to criminal cases that attracted immense public interest and debate.

3. The Judiciary has done its best to deal with them all in keeping with what the Constitution demands: impartiality,

independence and administering justice without fear or favour. Although I do not expect everyone to agree with the outcomes of what we did and will do, I am happy that the decisions taken by the courts have been and generally are respected and given effect to. The most important attribute of what we do as a Judiciary which, I hope, engenders public confidence, is that our work is performed in public for all to observe and that we give reasons for our decisions except where the law provides otherwise.

4. I am pleased to report that the Judiciary has made it a priority to allow greater public access to court proceedings. It is only in that way that members of the public can have first-hand information and form their own views based on direct observation of actual proceedings in real-time.

5. The Judiciary, like all other institutions of our State, has been affected by the slow pace of economic recovery and the resultant cuts in expenditure that continue to adversely impact on service delivery. We, however, always try our best to make the best we can with the limited resources available to us. The objectives of the Office of the Judiciary are aligned

to the national vision captured in NDP 5, to make Namibia a safe, secure and peaceful nation governed by the rule of law and striving for improved service delivery for the benefit of the inhabitants of the country.

6. The public expects a judicial system that delivers speedy but fair justice. As a Judiciary, we do our utmost to ensure fair justice, but its timeliness is not entirely under our control because it is a function of resourcing which, ultimately, is within the province of those that allocate resources – the Executive and the Legislature. That is a reality often misunderstood by the public who invariably place delay in the finalisation of cases squarely at the doorstep of the Judiciary.

7. The core responsibility of the courts of Namibia is to conduct trials and hearings. In especially criminal matters, no trial can take place without the participation of publicly funded witnesses. If there are no funds to pay witness fees, no criminal trial can take place. That is a reason for much of the delay in the finalisation of criminal trials in our courts.

Another factor is the speed with which legal aid is granted to accused persons.

8. There is hardly a criminal trial involving a serious offence where an accused person does not seek publicly funded legal representation as they are entitled to do. The delay associated with that process is the stuff of nightmares for judicial officers. There are several reasons for this. Because of inadequate funding, as we understand it, the Legal Aid Directorate in the Ministry of Justice cannot always provide funding timeously. Secondly, once legal aid has been granted, there is no guarantee that the appointed lawyer will see the matter through to finalisation as often accused persons abandon counsel appointed by legal aid and seek the services of a new lawyer who, if appointed, needs time to prepare. Another critical contributing factor to delay is the long waiting period for the assessment of accused persons referred by the courts for mental observation by clinical psychiatrists of the Ministry of Health and Social Services. The delay in finalisation of investigations by the police who are themselves affected by budget cuts has ripple effects: with incomplete dockets the Prosecutor-General cannot

decide whether or not to prosecute and the courts are perennially asked to postpone matters for further investigation.

9. As I proceed to cite the statistics on the performance of the various courts, a clear pattern will emerge which demonstrates the impact of the contributing factors that I have just set out. In particular, it will show that the courts' performance is weakest in the delivery of criminal justice where those factors are felt the strongest. It will also show that those factors are felt the strongest in the Lower Courts and in the criminal stream of the High Court. The Supreme Court is the least affected because for the most part that court does not hear oral evidence and disposes of the cases that come before it on the written record.

The Supreme Court

10. For the period January 2019 to January 2020, the Supreme Court received seven (7) civil petitions and finalised six (6). The Court entertained seven (7) criminal petitions and finalised all seven. A total of seventy nine (79) civil appeals and eight (8) criminal appeals were registered during the

2019 Legal Year. A total of 49 of the appeals registered have already been heard. The balance of the appeals will be heard beginning March this year and the remainder during the second and third court terms in 2020. The Court received 3 requests for review in terms of section 16 of the Supreme Court Act and disposed of all of them. I am pleased to report that there is no backlog at the moment on the roll of the Supreme Court and cases are allocated dates as soon as it is practicable. In rare cases, litigants request expedited hearings of matters and such requests are accommodated if the Chief Justice is satisfied about the merits of the request.

11. The Supreme Court works towards rendering judgment in reserved matters within three months of the hearing taking place. Of the forty-nine (49) matters heard during the period under review, forty (40) judgments were delivered – representing eighty-two percent (82%) delivery within the approved guidelines. These statistics demonstrate that the Supreme Court is performing optimally and meeting the public's expectation for speedy justice.

The High Court

12. The High Court has two divisions: the Main Division here in Windhoek and the Northern Local Division (NLD) with its seat at Oshakati. The Court's work is also divided into a civil stream and a criminal stream.

13. With a judges' complement of sixteen (16) permanent judges and nine (9) acting judges appointed from time to time, the High Court's civil stream held three hundred and seventy-four (374) Motion Court sessions in both divisions during the period under review. The judges in the civil stream heard one hundred and twenty-one (121) urgent applications.

14. The civil stream judges in both divisions attended to seven thousand eight hundred and ninety-two (7892) civil actions. That figure includes new filings made in 2019 and carry overs from the 2018 Legal Year. Four thousand five hundred and ninety-five (4595) civil actions were finalised in both divisions. The Main Division recorded a rate of eighty percent (80%) within-guideline-completion while the NLD

achieved a within-guideline completion of seventy-five (75%).

15. The civil stream judges delivered three hundred and seventy-eight (378) judgments during the period under review – seventy-one (71%) of them within the approved guidelines in the Main Division and eighty one percent (81%) in the NLD.

16. A total of nine hundred and twenty-one (921) civil cases were referred to court-connected mediation, resulting in five hundred and ninety-one (591) out-of-court settlements. The percentage success rate for the Main Division was fifty-seven percent (57%) while that of the NLD was fifty-one percent (51%). The latter statistic shows that the mediation programme of the High Court serves a very important function of reducing the number of cases that actually proceed to court and in that way decongesting the court roll.

17. The judges in the motion proceedings sub-stream of the civil stream heard a total of six hundred and ninety-one (691) applications and finalised four hundred and forty-

seven (447), representing – sixty–eight percent (68%) of them within the approved guideline.

18. For both divisions, the judges in the criminal stream presided over a hundred and sixty (160) criminal trials of which forty–two (42) were completed in the case of the Main Division representing a finalisation rate of thirty percent (30%) and the NLD twenty percent (20%). Seventy–three (73) cases remain on the court’s part–heard roll as a carry–over to the 2020 Legal Year. One hundred and twenty–one (121) cases on the criminal roll involve violence against women and children; forty–one (41) involve either fraud or theft and nine (9) human trafficking.

19. During the period under review, the High Court attended to three thousand two hundred and ninety–four (3294) criminal reviews from the Lower Courts and finalised three thousand and twenty–three (3023) cases – representing about ninety percent (90%). The judges of the criminal stream also heard three hundred and twenty–eight (328) criminal appeals and finalised one hundred and fifty–six

(156) – representing sixty–nine percent (69%) in the case of the Main Division and twenty–four percent (24%) for the NLD.

20. The difference in the finalisation percentage ratio between reviews and criminal appeals is due to the fact that reviews are determined on the written record while in criminal appeals delays are often experienced with the appointment of legal aid counsel.

21. During the 2019 Legal Year, the judges in the criminal stream delivered one hundred and thirty (130) judgments after completion of trials; one hundred and thirty–four (134) criminal appeal judgments and a hundred and fifty–two (152) criminal review judgments. Eighty–one percent (81%) of the judgments were delivered timeously within the approved guidelines at the Main Division and sixty–one percent (61%) at the NLD.

Lower Courts

22. The Lower Courts comprise the regional courts and district courts. Across the country, there are six (6) permanent regional court seats although nine (9) regional

court magistrates serve a total of twenty (20) towns on circuit basis.

23. A total of two thousand five hundred and seventy (2570) criminal cases were heard by regional court magistrates during the period January 2019 to January 2020. Of those, five hundred and twenty-three (523) were finalised. The remaining two thousand and forty-seven (2047) cases were carried over to 2020. The regional courts therefore finalised only twenty percent (20%) of cases during the period under review. During the 2018/2019 reporting period, the regional courts finalised only six percent (6%) of cases. Viewed against that statistic, the latest statistic is an improvement but it still falls far short of the target finalisation percentage of sixty-two percent (62%) for regional courts.

24. There are thirty-four (34) permanent district court seats across the country and thirty-two (32) periodical courts served by ninety-two (92) district court magistrates. These courts deal with criminal, civil and family cases but the majority of those cases are criminal. During the January 2019 to January 2020 reporting period, the district court

magistrates presided over forty–six thousand four hundred and sixty (46460) criminal cases. Twenty–four thousand two hundred and fifty–six (24256) of those cases–representing fifty–two percent (52%)–were finalised during the reporting period and the remainder twenty–two thousand two hundred and four (22204) carried over to 2020. That finalisation rate falls ten percent (10%) shy of the sixty–two percent (62%) finalisation rate set for district courts. It however represents an improvement on the previous year which recorded a paltry twenty–one percent (21%).

Your Excellency

Ladies & Gentlemen

25. I cite these statistics to show the extent of the challenges facing the courts and the scale of resources needed to adequately deal with the problem of backlog, especially for the Magistracy.

26. At the risk of being repetitive, the main reasons for the underperformance of the Lower Courts are: shortage of courtrooms, shortage of magistrates, double–booking by

lawyers, incomplete police investigations and resultant delay in prosecutorial decisions, too many postponement of cases by magistrates and perennially malfunctioning recording equipment. As if that were not enough, magistrate's courts perform a host of agency services on behalf of other ministries and agencies which require supervision by magistrates and therefore sharing time that should have been dedicated to the performance of their judicial functions.

27. To further illustrate the magnitude of these additional functions, statistical data was prepared highlighting amongst others that magistrates solemnized two-thousand seven hundred and thirty five (2735) marriages, considered one-thousand four hundred and sixty eight (1468) temporary liquor licenses and three-thousand three hundred and fifty eight (3358) applications for permanent liquor licenses.

28. Magistrates also attended to two-thousand and forty four (2044) domestic violence applications of which one-thousand six hundred and ninety-three (1693) resulted in interim protection orders of which seven-hundred and fifty-five (755) were made final. An alarming number of four-

hundred and eight (408) of these applications were withdrawn by the applicants.

29. During 2019, a new leadership was appointed for the Magistracy. Based on the reports received since the appointment of the new Chief Magistrate and complemented by her two deputies, better reporting and follow up systems are being implemented to enhance greater accountability by magistrates. Courts need to start on time and spend enough time during the day to hear matters. Reasons for delay must be ascertained as quickly as possible and presiding officers must hold prosecutors and defence lawyers accountable.

30. The most critical challenge facing the new leadership of the Magistracy is to design a workable and effective backlog reduction strategy during 2020. Without such a strategy, the backlog will only worsen and crowd out the new cases filed in the Lower Courts. Under the leadership of the new Chief Magistrate and her executive team, the Magistracy has launched a backlog reduction pilot project targeting the two worst affected areas: The Oshakati Division and the Windhoek Central Division.

31. The pilot project commenced in September 2019 and will end in September 2020. Under the pilot project, all cases which are older than 12 months will receive priority listing and finalisation. Initially, the plan was to enlist the services of retired magistrates to attend to these cases but that was not to be, because we ran into financing difficulties. The alternative was to assign two relief magistrates and the Divisional Magistrate to attend to the Oshakati Division cases and one principal magistrate and one relief magistrate for the Windhoek Central Division. The success of the backlog reduction pilot will depend on total support and commitment from prosecutors, legal aid and the police's investigation teams. I hope that I will be able to report success on this initiative next year.

32. As a Judiciary, we commit ourselves to making every effort to work down the suffocating backlog in the Lower Courts. I call upon the other stakeholders to bring their part.

Central administration

33. For the year under review, the Office of the Judiciary was allocated three hundred sixty eight million four hundred and forty-four thousand Namibia Dollars (N\$368,444,000) for all of its operations. That amount was reduced in the mid-term budget review by eight million two hundred and fifty-three thousand Namibian Dollars (N\$8,253,000) to the current actual of three hundred and sixty million one hundred and ninety-one thousand Namibia Dollars (N\$360,191,000). Seventy-eight percent (78%) of the budget allocation (representing two hundred and seventy nine million seven hundred and eighty-four thousand Namibia Dollars (N\$279,784,000)) goes to personnel expenditure, leaving only eighty million four hundred and seven thousand Namibia Dollars (N\$80,407,000) for the other needs of the Judiciary. As of 31 January 2020 the Office has spent eight-five percent (85%) of its allocated funds.

34. The Office of the Judiciary has an approved personnel complement of nine hundred and thirty (930) of which only seven hundred and eighteen (718) positions are filled at the moment. We still need to fill two hundred and twelve (212)

vacancies if we are to operate optimally. Sixteen (16) High Court judges' positions and twelve (12) magistrates' positions are vacant but cannot be filled due to shortage of funds.

35. Even before the mid-term review, the Office had significantly fallen short on very important expenditure items that have the potential to undermine execution of its core mandate. Items such as payment of witness fees, utilities and subsistence allowances for periodical courts, come from the operational budget. Currently we are experiencing a shortfall of four million Namibia Dollars (N\$4,000,000) in witness fees. What that means is that not only are new trials under threat of not commencing, but part-heard matters may not be completed.

36. Resources are scarce all-round and no doubt demands on national treasury may be increasing, but we have to accept that the situation is increasingly becoming untenable for the Judiciary's ability to deliver speedy justice to the public.

New initiatives

37. The High Court has begun to roll out a Commercial List for the resolution of commercial disputes. In the next few weeks the Judiciary will unveil the courtrooms specially designed for the adjudication of commercial disputes.

38. Also, the development of a new website for the Office of the Judiciary is at an advanced stage. This will be unveiled in due course.

39. Three important pieces of legislation are likely to be introduced in Parliament this year which, hopefully, will improve service delivery by the Judiciary. The first is a Bill to extend divorce jurisdiction to regional courts. The second involves significantly increasing the civil jurisdiction of the District Courts. The third Bill will introduce plea-bargaining in criminal cases which, if properly applied, will result in disposition without trial of criminal cases.

Your Excellency

Ladies & Gentlemen

40. Although I do so with humility and a full appreciation of the responsibility attaching to my office, I can now state categorically that in our collective assessment since the creation of an independent Office of the Judiciary, the Judiciary and its administration have recorded satisfactory results in performance in those areas where we have relative freedom of action; and consistently less than satisfactory in those areas where we depend on the cooperation of other role players. That statement holds true particularly in criminal cases, in trial courts compared to appellate courts and in the magistrate courts compared to the superior courts. The statistics and performance data that I presented today support that statement. I hope it will be taken in the positive spirit that is intended.

41. In conclusion, it would be remiss of me if I do not extend a word of gratitude to all judicial officers, the Executive Director and all judicial support staff for their hard work. Your contribution to the work of the Judiciary, however, big or small, and the pressure you all work under as well as the sacrifices you make, although not recognised at every turn, are most appreciated. You might feel a sense of despair at

times under the weight of responsibility, but take solace in the knowledge that it is for a good cause: To serve our people from whom we derive our legitimacy.

Your Excellency

Ladies & Gentlemen

42. My colleagues and I look forward to being of service to the public in the execution of our constitutional mandate to administer justice and to uphold and protect the Namibian Constitution. We rededicate ourselves to the service of the public during the 2020 Legal Year.

I thank you.