

REPUBLIC OF NAMIBIA

MINISTRY OF JUSTICE

OFFICE OF THE JUDICIARY¹

VOTE 21

**BUDGET MOTIVATION
FINANCIAL YEAR 2018/2019**

[To be checked against delivery]

¹ Address delivered by the Minister of Justice, Mr. Sakeus E.T. Shanghala, MP on behalf of the Office of the Judiciary on 19 April 2018, National Assembly, Tintenpalast (Parliament Building), Windhoek, Namibia.

**Chairperson of the Whole House Committee,
Honorable Members of the Whole House
Committee,**

1. I take the floor to motivate Vote 21-**Office of the Judiciary**. In doing so, I am humbled by the confidence and trust bestowed upon me by the President, Dr. Hage Geingob, who has seen it fit to appoint me as Minister of Justice for our motherland. As per my oath of Office, I will strive to exercise my functions to the best of my abilities and in accordance with the laws of the Republic, without fear or favor.
2. To my predecessor, who also happens to be my successor, and I am the same to him, AK47, Dr. Albert Jakkobo Kawana, the Attorney-General, thank you for your time at the Ministry of Justice. History will record you as the first Permanent Secretary of the Ministry of Justice, as well as the longest serving. Your work has been visible in shaping the administration of the justice system of our country. Whether at the Ministry or at the Office of the Attorney-General, your work will be memorialized by the ongoing reforms which are building on your efforts. Thank you once again for your service.
3. The same appreciation must be extended to Dr. Ernest Ngarikutuke Tjiriange, as well as Mrs. Pendukeni Iivula-Ithana, one of my adopted mothers, a veteran of this House from its inception, as well as my predecessor both at the Law Reform and Development Commission and the Ministry of Justice, Honorable Daniel Utoni Kollie Nujoma.
4. I pay tribute to all of you whilst you are still alive. You have each steered the justice agenda during your tenure in immeasurable ways, that if I recite your work now, I will veer off the purpose for which I have taken the floor. Yet it would have been amiss, if I did not honor you in your life. (I do not want to be asking for signs.) Soon I will organize an event to chronicle the magnificent work done by the justice sector in consolidating democracy in Namibia where we can pay proper tribute to all of you, and reflect on the journey traversed.
5. Having said that, I must now turn your attention to **section 13 of the Judiciary Act, 2015 (Act. No. 11 of 2015), which states that the Minister responsible for Justice represents the Office of the Judiciary in both Cabinet and the National Assembly.**
6. It is based on this provision that I have the legal basis, and pleasure, to present the budget of the Office of the Judiciary on behalf of the Honorable Chief Justice, the Head of the Judiciary.
7. Although, the Honorable Members of this August House, members of the media and especially members of the public associate the Minister of Justice with the Office of the Judiciary, encompassing the lower, high and superior courts, the Minister of Justice represents the Office of the Judiciary only in Cabinet and the National Assembly. As indicated by the separation in Vote numbers between the Ministry of Justice (Vote 16) and the Office of the Judiciary (Vote 21), the Judiciary is wholly independent from the Ministry of Justice in terms of financing and material operations.

8. I would like to reiterate this point by taking a moment to explain the concept of the “Independence of the Judiciary”.

Independence of the Judiciary

9. The Republic of Namibia, like many other countries, has followed the trend of performance budgeting. This is where the Minister signs a performance agreement with specific outcomes to which he or she commits and is given a budget, within the available resources, to meet those targets.² For the Office of the Judiciary the question of who should set the objectives for judicial sector performance—the Executive, the Judiciary, or both—goes to the heart of Judicial Independence.
10. Therefore, in order to maintain Judicial Independence, the measure of a successful Judiciary lies in how well the Judiciary provides access to Justice. This is not a task the Judiciary can achieve alone.
11. I am compelled to quote Article 78(3) of the Namibian Constitution, which states:

“No member of the Cabinet or the Legislature or any other person shall interfere with judges of judicial officers in the exercise of their judicial functions, and all organs of the State shall accord such assistance as the Courts may require to protect their independence, dignity and effectiveness, subject to the terms of this Constitution or any other law.”

² Webber D, *Good Budgeting, Better Justice: Modern Budget Practices for the Judicial Sector* Law and Development Working Paper Series 3 76.

12. Additionally, an effective judicial system requires, at a minimum, transparent legislation, fair laws, and predictable enforcement. It also requires a Government that is legitimate, accountable and committed to maintaining order by lawful means. Poverty cannot be fought without effective and equitable systems of justice.

Legislation

13. The Office of the Judiciary has therefore been working closely with the Ministry of Justice to ensure that the Small Claims Court Bill; and Divorce Bill can be passed as soon as possible. Other legislation essential to Namibia and sadly seen too often in the courts relates to Gender Based Violence and Rape. Laws combatting such despicable actions will also be considered this year.

Access to Justice

14. Legislation alone does not make a successful Judiciary, but its fair, speedy enforcement does contribute to access to justice.

Fairness

15. It is impossible to accurately determine fairness based on statistics, but one could argue that if the parties feel that the matter was not fairly adjudicated, they will appeal. In terms of Civil judgments there were 3 appeals registered in 2015, 2 in 2016. Low appeal rates, in civil matters, indicate the fairness and soundness of the judgments.

16. In criminal matters heard in the Magistrate's Court a review matter arises when an unrepresented accused is convicted and sentenced by the magistrate. In such a case the Magistrate is obliged to refer the record of proceedings to a High Court Judge for the latter to review whether the proceedings in the Magistrate's Court was in accordance with justice.

17. The finalization rate of such reviews increased from 95% in 2015 to 98% in 2017, which represents a 3% increase in agreement with the conviction and sentence between the Magistrate and the reviewing Judge. This number is a representation of fairness.

Speed

18. Another essential component of access to justice lies in the speed. I would like to reiterate the age-old mantra of Sir Edward Coke in Part 2 of his *Institutes of the Laws of England* (written circa 1620s).³ He commented:

“And therefore, every Subject of this Realm, for injury done to him in goods, in lands, or in person, by any other Subject may take his remedy by the course of the Law, and have justice, and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay.”⁴

19. To ensure a speedy trial the Office of the Judiciary has implemented three programs, namely, Compulsory mediation; E-justice; and the Aspirant Judges Training Program.

20. These reforms have been implemented since 2016 and have provided a marked improvement in the speed at which the wheels of justice turn. We boast a 96% delivery rate of judgments in the same year as the case was heard.

Attack on Judges

21. In recent weeks there has been an alarming increase in the verbally violent attacks against judges that are fulfilling their mandate to their best ability. I will deliver a separate Ministerial statement in due course to speak more fully to the issues which such attacks raise. Making unfounded, defamatory statements against a judge goes to the heart of the rule of law, judicial independence and the consolidation of democracy to which we all strive. Such senseless speech must come to an immediate end.

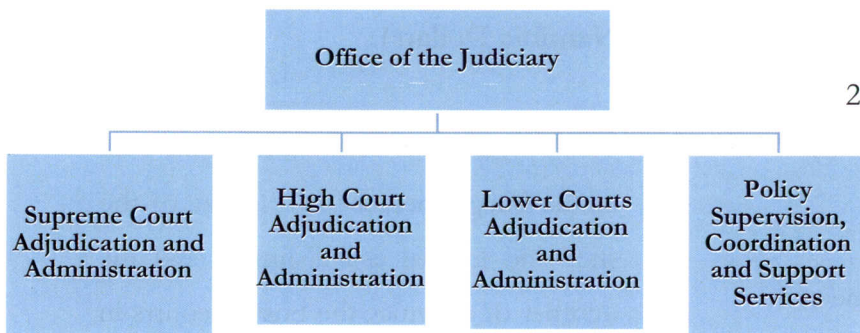
22. Having set out the highlights of the past financial year and having addressed some of the issues faced by the Office of the Judiciary, I now turn to motivate Vote 21 per activity.

³ R v Lord Chancellor [2017] UKSC 51.

⁴ Free, because nothing is more iniquitous than saleable justice; full, because justice ought not to limp; and speedy, because delay is in effect a denial.

Motivation

23. For the 2018/19 financial year, the Office of the Judiciary is requesting a total of N\$366 348 000 (**Three Hundred and Sixty-Six Million, Three Hundred and Forty-Eight Thousand Namibia Dollars**) to fund four Programs as it will be presented below.



24. It must, however, be noted that the proposed budget for the 2018/2019 financial year reveals a decrease of N\$ 32 620 000.00 (**Thirty-Two Million, Six-Hundred and Twenty Thousand Namibia Dollars**) to that of 2016/17. (*8.9 % decrease*).

25. It is now my pleasure to present the proposed budget allocation for the Office of the Judiciary in accordance with the Programs outlined in the Medium-Term Expenditure Framework (MTEF).

Program 1: Supreme Court Adjudication and Administration

26. This Program has been allocated an amount of N\$ 20 890 919.00 (**Twenty Million, Eight Hundred and Ninety Thousand Nine Hundred and Nineteen Namibia Dollars**).

27. The primary objective of this Programme is to provide accessible, quality and timeous administration of justice in the Supreme Court, the Apex Court of the land. The allocated funds will be utilized to improve the court system by rendering the necessary judicial and administrative support to the Court in its adjudication of matters before it.

28. The function of the Supreme Court cannot be under stated. The Chief Justice and the Supreme Court Judges preside over the general tenor of the jurisprudence of this country. They have delivered a sterling service to this Republic since Independence, and they deserve our commendation.



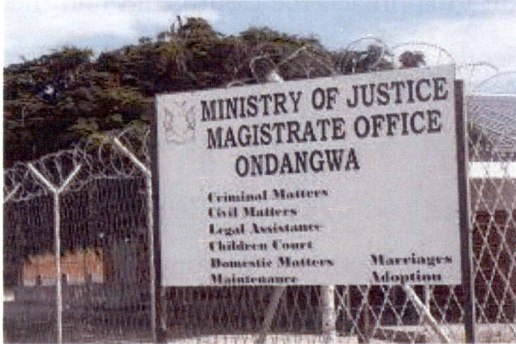
Program 2: High Court Adjudication and Administration

29. This Program has been allocated an amount of N\$ 81 977 050.00 **(Eighty-One Million, Nine Hundred Seventy-Seven Thousand and Fifty Namibia Dollars)**.
30. The Program is aimed providing accessible, quality and timeous administration of justice in the High Court.
31. The funds allocated to this programme as it is with the Supreme Court, are expected to be used to improve the court system by rendering the necessary judicial and administrative support to the Court.
32. The High Court, as is known, is the first point of appeal from the Magistracy and it is really inundated with a heavy case load. Efforts will be made to investigate the increase of jurisdiction in the Magistrates Courts, from the N\$ 25 000.00 monetary limit, to for instance, N\$ 50 000.00 or N\$ 70 000.00, so that more matters are resolved at the Magistracy and there is no need for their elevation to the High Court.

Program 3: Lower Courts Adjudication and Administration

33. This Program has been allocated an amount of N\$ 181 656 147.00 **(One Hundred and Eighty-One Million, Six Hundred and Fifty-Six Thousand, One Hundred and Forty-Seven Namibia Dollars)**.
34. This Program has been allocated the bulk of the budget because of the size of the staff and judicial establishment and the number of activities the busiest courts in the country are required to carry out. The magistrates, staff of the magistracy, both at the district and regional courts, are the backbone for the judiciary in this country. These are the unsung heroes of today who work all over the country, far from their homes in most cases, and have made their posted stations their new homes. To you I say, keep it up. I know that your accommodation, your offices – are far from conducive in most cases, yet you continue, day in and day out, to render your service. What more can Namibia ask from you.
35. Therefore, this sought allocation of funds will be utilized to improve the court system through effective and efficient

administration of justice in all magistrates' courts in the country. As well, some of these funds will also be utilized in conducting judicial inquiries across the country.



Program 4: Policy Supervision, Coordination and Support Services

36. This Program has been allocated an amount of N\$ 81 823 885.00 (**Eighty-One Million, Eight Hundred and Twenty-Three Thousand Eight Hundred and Eight Five Namibia Dollars**).

37. This Program forms part of the key mandate of the Office of the Judiciary and it is aimed at creating a conducive environment within which the constitutional mandate of the Office of the Judiciary is fulfilled. The funds allocated to this Program will be utilized to facilitate the process of addressing infrastructural challenges (*e.g.* court rooms, ITC needs and staff housing),

appointment of staff members, training of judicial officers and support staff. These funds will also be used to monitor the norms and standards for the exercise of the judicial functions of all courts in the country.

Conclusion

38. I conclude by remarking that learning to work more effectively within the constraints of Government budget rules and procedures is often a frustrating, but necessary, experience for those managing and reforming judicial systems. Many of these frustrations can be traced to the vexed issues of judicial remuneration levels, the necessity for certain time-consuming legal processes, and the frequent requirement of expanded or much-improved court facilities.

39. I assure you that the budget allocation for Vote 21 is expended meticulously on realizing the dream of access to justice for all. The rule of law, and the effectiveness with which it is administered, is one of the keys to social and economic progress.

40. I am oft quoted saying, “strangle the judiciary and institutions concomitant to it, and you can bring an end to this project we have embarked upon, democracy in Namibia.”

41. Whilst I appreciate the financial constraints, there is a limit to how far you can stretch an elastic band – it is called elastic limit. Please consider some of these votes with careful reflection because no one would want to approach the Courts and find them closed due to want of funds to operate efficiently.
42. We therefore thank the Chief Justice, the Deputy-Chief Justice, the Deputy Judge-President, the Magistrates, the Permanent Secretary, as well as the Registry staff, for their efforts in keeping our judicial system running, and not only running, but at a pace where some of our neighbors have commented with approval and seek to emulate from our ingenuity. Our judges are invited to sit on the highest benches of our neighboring countries. This is a testament to the confidence and integrity with which this justice system is being administered. I therefore salute our Judiciary.
43. I now seek the indulgence of the House to approve the allocation of
N\$ 366 348 000.00 (**Three Hundred and Sixty-Six Million, Three Hundred and Forty-Eight Thousand Namibia Dollars**) for Vote 21.

I Thank you.

End.