

REPUBLIC OF NAMIBIA



**BUDGET SPEECH BY THE HONOURABLE DR
ALBERT KAWANA, MP, MINISTER OF JUSTICE,
NATIONAL ASSEMBLY,**

VOTE 21,

OFFICE OF THE JUDICIARY

01 APRIL 2016

NATIONAL ASSEMBLY

Honourable Chairperson of the Whole House Committee,

I rise with honour and humility to motivate Vote 21, Office of the Judiciary, to this august House.

In presenting this motivation, I wish at the outset to refer to the recent 3rd Constitutional Amendment, and in particular to Article 78 of the Namibian Constitution (as amended) and the subsequent passing of the Judiciary Act, 2015 (Act No. 11 of 2015), which Act came into operation on 31 December 2015.

The above legislative interventions augmented the already established principle of the independence of the Judiciary. This was done amongst other things through the creation of the Office of the Judiciary as the administrative component of that branch of our State.

Honourable Chairperson,

Honourable Members,

Of particular note, is the fact that section 13 of the Judiciary Act, 2015 provides that the Minister responsible for Justice represents the Office in both Cabinet and the National Assembly.

This provision is thus the legal basis for my standing to present the Budget of the Office of the Judiciary on behalf of the Honourable Chief Justice, the Head of the Judiciary.

The Office of the Judiciary has been allocated Vote 21, which will be operational from 1st April 2016. However, as the Judiciary is still part of the Ministry of Justice until 31 March 2016, I am privy to the Accountability Report and financial statements as well as the programmes and activities of the Judiciary. I shall, therefore, not dwell on the information contained in the collated volumes prepared by our able Minister of Finance. I am furthermore mindful of the fact that only details should be addressed, but pray for your indulgence to highlight succinctly a few critical areas pertaining to the Office of the Judiciary.

Chapter 9 of the Namibian Constitution vests in our Judiciary specific duties, functions and responsibilities. This Chapter outlines the most critical duties and roles that the Judiciary is entrusted with. In addition, the Judiciary derives numerous functions under a number of Acts of Parliament.

Therefore, the budget that I am presenting to this august House today covers the financial allocations to the Office of the Judiciary.

Honourable_Chairperson,

Honourable_Members,

The Office of the Judiciary consists of two programmes.

Programme 01: Administration of Justice – has been allocated an amount of N\$201,762,000 (**Two Hundred and One Million, Seven Hundred and Sixty Two –Thousand Namibia Dollars**).

Under this Programme, there are a number of sub-programmes. Apart from the High Court Main Division situated here in Windhoek, we also have the High Court Northern Local Division in Oshakati, which falls under Programme 01 together with the Supreme Court and the Magistrates Courts.

As to the performance of the courts, the Magistrates Courts handled **36 921 (Thirty Six Thousand Nine Hundred and Twenty One)** cases for the period from April until December 2015 of which **17 644 (Seventeen Thousand Six Hundred and Fourty Four)** cases were finalized. This translates to 48% of the cases finalised. A total of **19 277 (Nineteen Thousand Two Hundred and Seventy Seven)** cases were carried forward to the fourth quarter, January – March 2016.

Honourable Chairperson,

Honourable Members,

It is common cause that there are a lot of challenges at the Magistrates Courts level which need urgent attention. Article 12 of the Namibian Constitution requires that those who appear before our Courts should be accorded a fair trial. Article 12(1) (b) requires that trials should take place within a reasonable time. Therefore, more effort shall be directed towards ensuring that we speedily address the backlog of criminal cases.

It, however, gives me great pleasure to inform this august House that three mobile court units have been acquired to address the shortage of courtrooms which, along with insufficient office accommodation, is one of the major factors in the delay of the finalization of criminal cases.

Perhaps a less-known factor negatively impacting on the performance of the judicial function by Magistrates is the fact that Lower Courts are also tasked with the responsibility of rendering agency services for certain Offices, Ministries and Agencies country-wide.

As already mentioned, the performing of the increasing volume of agency service work is another contributing factor hampering the performance at the Magistrate's courts. Among the agency services performed at Magistrate's courts are the collection of taxes for the Ministry of Finance, the granting and issuing of liquor licenses on behalf of the Ministry of Trade and Industry as well as the conducting of marriages on behalf of the Ministry of Home Affairs.

While it is not realistic to expect the complete cessation of rendering of agency services by magistrates courts given the vastness of our country and the competing demands that may hamper the representation by every office, ministry and agency in each Region, there is an urgent need for those institutions that are represented in towns and villages where agency work is performed on their behalf to take over those functions to allow magistrates to fully deploy their resources at dealing with their core business.

Honourable Chairperson,

Honourable Members,

On a positive note, the Magistrates Courts celebrate the achievement of the installation of digital recording systems at 22 Magistrates Courts countrywide. This development will go a long way in addressing the speedy preparation of especially those cases that must be sent to the High Court on appeal or review.

I wish to record that a total amount of N\$ **9, 453, 887.35 (Nine Million Four Hundred and Fifty Three Thousand Eight Hundred and Eighty Seven Namibian Dollars and Thirty Five Cents)** were paid out in witness fees, which illustrates that our courts are functional and serious efforts are being made to finalise criminal cases.

It is, however, important to pause at this juncture and to explain that the finalisation of criminal cases is dependent on a number of role players in the criminal justice system. The judicial officer is the last actor in this cycle, and can only adjudicate on a case which is presented by the prosecutor, based on a thoroughly investigated and properly recorded case docket, prepared in turn by the investigating officer who is a police officer.

If it appears at any stage during this relationship that either party is challenged with either human- or fiscal resources, one can expect a disconnect between the ideal and the actual performance or output.

Close scrutiny has revealed that adequate resource allocation must be a priority to the collective of the role players in the criminal justice system to ensure that our people are provided with a fair and speedy trial as envisaged in the Namibian Constitution. It goes without saying that the allocation of adequate resources goes hand in hand with the high performance culture and new work ethics that the Office of the Judiciary will endeavour to inculcate in its members.

Honourable Chairperson,

Honourable Members,

Too often emphasis is only placed on the rights of the transgressor when we have regard to the provisions of Article 12 of our Constitution, but may I underline that the rights of the victim is equally affected and the meek and vulnerable are also deserving of a fair finalisation of their matters within a reasonable time. Thus, it is perhaps time that we change gears and follow a collective approach when considering the allocation of resources for the actors in the criminal justice system.

Turning to the High- and Supreme Court, it gives me great pleasure to announce that on 23 September 2015, the Regulations Relating to Conditions of Service of Judges were gazetted as Proclamation 28/2015.

These Regulations, amongst other things, provide that all judges, in both the High and the Supreme Courts, are entitled to judges' clerks or research assistants who will provide the much needed research assistance to the judges.

The Office of the Judiciary is currently in the process of recruiting suitably qualified candidates for these coveted and most responsible positions as a preferred career option amongst young law graduates. I must, however, emphasise that only N\$5 million was allotted for this purpose, which is inadequate and will not fully address this critical function.

I am furthermore pleased to inform the august House that eJustice, which is an exciting initiative in the life of the Judiciary, will see its implementation on 13 June 2016.

eJustice is a web-based electronic filing and case management system developed according to the Namibian Civil Procedure, meeting Namibian requirements and standards.

The Namibian eJustice system stands in contrast to other electronic case management systems implemented in the courts of neighbouring countries, in that it is web based, thereby providing access to court files by practitioners and litigants anywhere and at any time. It is a hybrid between form and document upload.

The introduction of this electronic filing system of court documents will result in a marked change in the justice delivery system of Namibia. For too long now, our courts have been mired by interminable delays occasioned by the 19th century manual documentation systems and procedures which have proved inadequate to cope with modern-day litigation. We are fortunate to enjoy an enviable reputation on the African continent and beyond for our judicial standards. But when cases take a few years to be resolved, such standards can be seriously compromised.

The Supreme Court of Namibia, our highest court in the land, has recorded a total of **28 (twenty eight)** judgments which were delivered during the 2015 legal year, whilst thirty six **36 (thirty six)** appeal matters were enrolled during the same period of which **32 (thirty two)** were finalised.

The High Court of Namibia finalised **28 (twenty eight)** Criminal trial matters, **175 (one hundred and seventy five)** criminal appeals and **2092 (Two Thousand and Ninety Two)** criminal reviews during the 2015 legal year.

The total number of civil actions finalised in 2015 was 4 470 while civil applications in the same year amounted to 509.

It goes without saying that the inclusion of court-connected mediation as part of the civil litigation procedure in the High Court is a major contributor to the success story of the Office of the Judiciary.

Court Accredited Mediation as an option for alternative dispute resolution was introduced in the High Court of Namibia with the coming into operation of the High Court Rules, published on 16 April 2014.

The aim of alternative dispute resolution in the High Court is two-fold, namely:

It creates an opportunity to litigants to reduce litigation costs in a controlled environment; and it frees up judicial time for the hearing of only those matters which are not susceptible to amicable resolution.

The average litigation costs in respect of the trial only, in defended High Court actions amounts to approximately N\$50 000 – N\$100 000 per litigant, if represented.

With at least two parties in every defended trial, it would thus be a fair assumption to say that the total trial fees to be paid in respect of the average defended High Court action will amount to approximately N\$100 000 – N\$200 000.

During the 2015 legal year, a total number of 1102 court connected mediations took place of which 649 (59%) were successful.

The 649 successful mediations amounts to a minimum saving in the hands of the public (litigants) of approximately **N\$64 900 000 (Sixty Four Million, Nine Hundred Thousand Namibian Dollars).**

The revenue expenditure incurred by the State to conduct 1102 court-connected mediations during the period January – December 2015 amounted to **N\$2 119 882 (Two Million, One Hundred and Nineteen Thousand, Eight Hundred and Eighty Two Namibian Dollars).**

The average High Court action needs approximately 3 court days of trial. It is thus a fair assumption further to say that the 649 successful mediations in the High Court saved at least 1 947 trial days.

In addition to the trial days saved, a considerable amount of court time is saved which would otherwise have been taken up by judicial case management hearings, general court administration, preparation, research and judgment writing.

What does this mean? What does 1947 trial days mean? Each year has approximately 185 court days, 1947 means 10 years, 5 months for one judge and 185 court days per year; or 195 trial days for each of our ten trial judges per 1 year.

We may, therefore, conclude that court connected mediation is successful in respect of both aims, in that during the past year, it amounted to an approximate saving to litigants in the amount of **N\$64 900 000 (Sixty Four Million, Nine Hundred Thousand Namibia Dollars)** and it provided at least 1 947 trial days to other cases not being susceptible to amicable resolution.

Honourable Chairperson,

Honourable Members,

I turn now to deal with **Programme 02: - Supervision, Coordination and Support services**

This Programme has been allocated an amount of N\$76 719 000 (**Seventy six million seven hundred and nineteen thousand Namibia Dollars**).

The objectives of this Programme is to ensure an enabling environment and high performance culture, to provide administrative, technical and technological support to the programmes of the Office of the Judiciary and to ensure proper financial management, gender mainstreaming, capacity building as well as an equitable distribution and effective utilization of resources.

The organisational structure for the Office of the Judiciary was approved on 18 January 2016. The process of recruitment has started and an overwhelming number of close to **15 000 (fifteen thousand)** applications were received for 81 positions advertised. As this is a new Office, with only one administrative officer i.e. the Permanent Secretary, at this stage, it is rather a challenging task to render the much needed support to the Judiciary.

In addition, only partial funding of the structure was forth coming in the 2016/17 financial year, and we remain hopeful that treasury will come to our aid.

Honourable Chairperson,

Honourable Members,

Our Judiciary, which is one of the branches of the State, is charged with carrying out important national functions assigned to it by the Namibian Constitution, various Acts of Parliament, the common law and customary law. In order to discharge these duties successfully and thereby keep our country on the path of progress, development, prosperity, peace and stability, I urge all Honourable Members of this House to give our Judiciary and the support staff, the means to do so.

Honourable Chairperson, Honourable Members. I now seek the indulgence of this august House to approve the allocation totaling N\$278 481 000 (**Two hundred and seventy eight million, four hundred and eighty one thousand Namibia Dollars**).

I thank you.