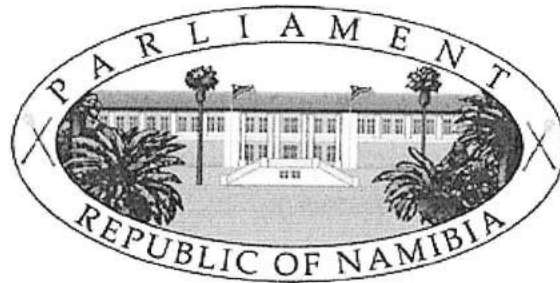


7th NATIONAL ASSEMBLY



Parliamentary Standing Committee on Constitutional and Legal Affairs

REPORT

ON THE

**STAKEHOLDER CONSULTATION
WORKSHOP**

(24-28 MAY 2021)

**OXFORD HOTEL,
TSUMEB**

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EXECUTIVE SUMMARY

The Parliamentary Standing Committee on Constitutional and Legal Affairs (the Committee) conducted a **stakeholder consultation workshop** from **24 to 28 May 2021** in Tsumeb.

The following Offices, Ministries and Agencies (O/M/As) attended the workshop and made presentations: Ministry of Justice (virtual presentation); Office of the Ombudsman; Office of the Judiciary; Law Reform and Development Commission; Anti-Corruption Commission; Electoral Commission; Office of the Attorney General (virtual presentation) and Office of the Master of the High Court

The projects, strategies and past achievements of Offices, Ministries and Agencies notwithstanding, O/M/As highlighted challenges that require urgent and immediate attention of Government. Therefore, the report mainly reflects on these challenges, as follows:

- Lack of proper infrastructure, inadequate staff establishment and inadequate funding have been observed across all OMAs.
- The real and perceived cost of justice appears to deny (might deny) many citizens access to justice. This is explained as due to a combination of factors including, the pressure of case load on the courts which makes dispensation of justice rather slow, absence of courts in some regions, the perceived cost of hiring lawyers, the possible ineffectiveness of the Legal Aid regime, understaffing in the Ministry of Justice and the Attorney General's office among others.
- Ministry of Justice, also bemoaned lack of staff and funding as some of the major challenges impeding the execution of justice. The challenges and costs associated with the administration of justice, particularly in the area of criminal jurisprudence will be greatly alleviated if Government can invest a little bit more in the prevention and combating of crime.
- The matter of obsolete laws on the books of Namibia is of grave concern and may lead to the miscarriage of justice. Regular efforts of the Law Reform and Development Commission and the Minister of Justice on the Repeal of Obsolete laws, notwithstanding the staffing constraints and limited budgetary allocation, is commendable and begs for support.
- On the delay in the processing of Bills, the Committee encourages the Ministry of Justice to ensure a systematic collaboration between the Directorate Legal Drafting in the Ministry and Parliament's Table Office and Legal Services Directorate to support Members of Parliament (MPs) with bill summaries that will facilitate their comprehension and speedy processing of bills in Parliament.

- It was generally agreed that the Ombudsman Act is outdated and needs replacement and that the Standing Rules and Orders of the National Assembly be reviewed to make it mandatory for the Standing Committee to examine and report on the reports of the Ombudsman.
- Progress of work at the Anti-Corruption Commission (ACC) is hampered by lack of investigators, infrastructure, and adequate funding. The need to expedite action on the implementation of the Whistle Blowers Protection Act to protect people that report and give evidence on cases of corruption was also underscored. The Committee also urges the ACC to intensify the nationwide consultative engagements on the National Anti-Corruption Strategy and Action Plan 2021/2025 and produce a timely road map for effective implementation of relevant legislation.
- Following the Supreme Court judgement in 2020 preventing the conduct of elections with EVMs without simultaneous use of a voter verified paper audit trail (VVPAT), ECN has been engaging stakeholders on the mode of voting for future elections. The Committee acknowledged the importance of ensuring that all stakeholders have full confidence in the electoral system to avoid any future conflicts arising of political misunderstanding.
- The Committee agreed that the main challenges of the Master of the High Court including the lack of resources and the over centralization of the services of Master's office have been compounded by inadequate case management system and outdated legislation, hence, the need to repeal all the old, outdated and impractical ordinances, proclamations and laws; and replace them with a single all-inclusive legislation.

1 INTRODUCTION

The Parliamentary Standing Committee on Constitutional and Legal Affairs was established in terms of Article 59 of the Constitution of the Republic of Namibia.

The Standing Committee has a mandate to exercise parliamentary oversight on activities and programmes of Offices, Ministries and Agencies responsible for justice, law reform, combating corruption, election and human rights. Committee is also mandated to ensure that the justice system is accessible to the majority of the population and to support the efforts of the Anti-Corruption Commission.

With the inauguration of the 7th Parliament in March 2020 and due to the outbreak of the COVID-19 pandemic, the Standing Committee could only be constituted in October 2020 and started with its meetings in February 2021. It is in this regard that an interactive session was conducted with stakeholders in the constitutional and legal sector, in particular O/M/As within the Committee's category of affairs.

The interface sessions provided understanding into the legal framework, operations, financial and human resource management, achievements and challenges faced in delivering much-needed services to the public and the country at large, especially public services to ensure that the justice system is accessible and affordable to the Namibian people and that speaks to poverty alleviation. The sessions also served as a platform for various stakeholders to interact and identify pertinent areas and issues of collaboration and assistance.

The presentations focussed on the following areas:

- Constitutional and legislative mandate of the Ministry, Vision and Mission
- Policies and programmes of the Ministry
- Financial and human resource management
- Achievements and challenges or constraints
- Short-term and long term solutions
- Collaboration with Parliament and the Standing Committee; and assistance needed from Parliament and the Standing Committee

The following O/M/As attended the workshop:

- Ministry of Justice (virtual presentation)
- Office of the Ombudsman
- Office of the Judiciary
- Law Reform and Development Commission
- Anti-Corruption Commission
- Electoral Commission
- Office of the Attorney General (virtual presentation)
- Master of the High Court

The workshop was informative for the Honourable Members in attendance which improved their knowledge with regards to their duties and functions, thereby equipping them with appropriate skills to execute their parliamentary duties.

The presentations made by senior officials and representatives of respective Ministries and Agencies highlighted aspects of success and those requiring attention as outlined in the report.

Furthermore, the workshop gave a platform to those in attendance to share ideas for the improvement of their respective Ministries and Agencies.

2 PURPOSE

The purpose of the report is to inform the National Assembly about the workshop and to submit the Standing Committee's findings, observations and recommendations for consideration and adoption by the National Assembly.

3 MEMBERS AND SECRETARIAT IN ATTENDANCE

Hon. Kletus Karondo – Chairperson
Hon. Paula Kooper – Deputy Chairperson
Hon. Tjekero Tweya
Hon. Julieta Kavetuna
Hon. Elifas Dingara
Hon. Emilia Nuyoma-Amupewa
Hon. Herlinde Tjiveze
Hon. Vincent Joseph Mareka

Secretariat

Mr. Willem H Isaak - Deputy Director
Ms. Agnes Mukono - Chief Parliamentary Clerk
Ms. George Sanzila - Chief Information Officer
Dr. Anthony Tsekpo - EPDN Programme Key Expert

4 PRESENTATIONS AND DISCUSSIONS

The stakeholders made their presentations followed by questions, points of clarifications and discussions by the Members in attendance. They identified their mandate in relation to policies and the legal framework under which their respective Offices/Ministries/agencies operate. They also shared information on the successes and challenges of their Ministries. The proposals and recommendations advanced by the stakeholders were discussed and received the endorsement of the Members of the Standing Committee.

The projects, strategies and past achievements of Offices, Ministries and Agencies notwithstanding, OMAs highlighted challenges that require urgent and immediate attention of Government. The report will mainly focus on these challenges.

4.1 MINISTRY OF JUSTICE

4.1.1 Mandate, Functions and Duties

The mandate of the **Ministry of Justice** is to provide legal services and access to justice with a vision to be a leading provider of legal services and its mission is to deliver quality, timely and accessible legal services. The Ministry has various directorates and divisions that perform important functions and duties within the mandate of the Ministry. These directorates and divisions and its key functions are as follows:

Directorate Legal Services

This directorate is responsible for the administration and execution of legal processes on national, regional and international level – relating to mutual legal assistance in civil and criminal matters, extraditions, human rights and humanitarian law, bilateral and multilateral legal matters, issuing of apostilles, maintenance and community courts.

Directorate Legal Services also coordinate the functions of all Government O/M/A's to enable Namibia to comply with her international obligations on human rights and humanitarian law.

Directorate Legislative Drafting

The directorate is responsible for scrutinizing and drafting of Bills for tabling in Parliament, Proclamations of the President, Regulations and Government Notices from O/M/A's, Rules of the Supreme, High and Magistrate's Courts.

The directorate also advises O/M/A's in their legislative capacity, publishes legislation and Administrative Notices in the Government Gazette, bind Gazettes and distribute to clients.

Directorate Law Reform

This directorate renders support to the Law Reform and Development Commission by conducting research in connection with projects approved by the Commission. Directorate Law Reform also conduct research and examine all branches of the Namibian law to enable the Law Reform and Development Commission to make recommendations for reform and development of the laws.

It also hosts the NAMIBLII platform, which makes the law accessible.

As an additional function, the directorate is now also responsible for the legislation and policy mandate of the Ministry of Justice.

Directorate Master of the High Court

Directorate Master of the High Court has a statutory mandate to supervise the administration of deceased estates, liquidation and insolvencies of legal entities and natural persons. It is further responsible for the registration of trusts and the administration of the Guardian's Fund.

Directorate Legal Aid

This directorate is responsible for providing legal aid, i.e. legal advice and legal representation at State expense to all Namibians who qualify to be granted legal aid based on an income criteria determined in regulations published by the Minister of Justice in terms of the Legal Aid Act, 1990.

Directorate Ombudsman

The Ministry of Justice only renders administrative support functions to the Office of the Ombudsman and does not have any oversight functions in respect of the Constitutional mandate of this office.

4.1.2 Challenges and Solutions

The Ministry bemoaned lack of staff and funding as some of the major challenges impeding the execution of justice. This has resulted in the current backlog of court cases.

To fulfil its mandate efficiently and effectively, adequate legal expertise including government attorneys, legal drafters, and legal aid lawyers are crucial. Unfortunately, the Ministry experiences a lack of these expertise within its staff establishment compounded by limited effective ways, strategies, policies and legal framework to retain legal expertise including prosecutors, government attorneys, lawyers and drafters.

The Ministry is further faced with inadequate infrastructure i.e. buildings, offices, facilities, court rooms and accommodation for both professional judicial and administrative staff. To mitigate these challenges maintenance and renovation works are carried out and the Ministry is considering alternative solutions to concrete buildings.

There is lack of public trust and awareness on the laws and mandate of the Ministry. The Ministry is not responsible for policy formulation in general and policies and laws with regards to land, environmental, trade and mining. Each O/M/A is responsible for its own policy formulation. Lack of public trust is being solved through transparency including timely submission of annual reports, creating of awareness on access to the law. However, more needs to be done.

4.1.3 Collaboration with Parliament and the Standing Committee

Executive Director of the Ministry of Justice pointed to previous instances of collaboration with the Parliament and emphasised the need for future collaboration also with the Standing Committee.

Laws tabled in Parliament require collaboration among Legislative Drafters, Attorney-General, Table Office and Directorate Legal Services in Parliament.

Other instances of previous collaboration between the Ministry of Justice and Parliament include the development of the legal database websites providing access to legal information (NAMIBLII)

The Ministry had consultations with the National Council on formulation of laws and the law-making process. These consultations were facilitated by the Directorate of Legislative Drafting.

The Ministry also submitted responses to reports on oversight visits conducted in July 2018 and August 2019 by the Parliamentary Standing Committee on Constitutional and Legal Affairs. The responses focused on the challenges in implementing the Community Courts Act, the need for civic education on the law and administration of justice, need to amend and/or repeal the Criminal Procedures Act and various challenges at the Office of the Ombudsman.

The Executive Director underscored the need for collaboration between the Directorate of Legal Drafting in the Ministry of Justice and Parliament's Table Office and Legal Services Directorate. She called for teamwork and criteria to be set for the two institutions through a Memorandum of Understanding (MOU) to work together and be able to summarise some of the Bills that appear to be technical for Members of Parliament; and to look at managing Bills coming to Parliament; including the quality of bills.

4.1.4 OBSERVATIONS

Reforms on legal aid will be announced soon as the Ministry is experiencing challenges with regards the provision of legal aid in accordance with the current Legal Aid Act of 1990, in particular legal aid on civil matters. Currently, a moratorium has been placed on legal aid for certain cases due to financial constraints experienced by the Ministry. Concern was also raised that some legal aid lawyers do not consult speedily with trial-awaiting inmates, thereby delaying the process of adjudication and worsening overcrowding in police holding cells.

Coherence in the tabling of legislation in Parliament is fundamental for an effective law-making process and passing of efficacious legislation, hence all O/M/As should work together and adopt a more coherent approach.

Inmates in holding cells are subjected to severe conditions such as illness without medical attention and sometimes no food at holdings cells. Thus, the Ministry should consider bail in minor cases to avoid overcrowding in police holding cells.

Maintaining a criminal justice system is an expensive function of the State, hence the focus should be on the prevention and combating of crime in the country. Prevention and combating of crime are the functions and duties of many different Offices, Ministries and Agencies across the country.

Need for a memorandum of understanding between Ministry of Justice (Directorate Legal Drafting) and National Assembly Table Office and Directorate of Legal Services to strengthen communication and collaboration; and manage Bills that will be brought to the National Assembly. Laws can be 'extremely' technical and sometimes voluminous making it difficult for MPs to understand. Such collaboration will help with simplifying bills for effective comprehension of MPs who are not part of the legal fraternity.

Mindful of the current economic and financial situation in the country, it is crucial that Bills submitted should be accompanied with an economic, social and environment impact assessment as is done in countries such as Finland.

Ministry of Justice should look at plea-bargaining and plea-bail mechanisms to avoid the overcrowding in holding cells and thereby subjecting inmates to worse conditions

Ministries should be responsible for their own policy formulation, policy implementation and policy evaluation. The Ministry of Justice is not responsible for policies and laws regarding land, the environment, trade and mining. The Ministry's website provides guidelines on policy setting and formulation

Participants were in agreement that the high turnover of prosecutors and government attorneys is a major challenge facing the Ministry.

The Ombudsman Bill was submitted to Cabinet in April 2021 and pending Cabinet approval.

Although, approximately eleven (11) maintenance investigators were appointed, it is not enough for the entire country.

4.2 OFFICE OF THE OMBUDSMAN

4.2.1 Mandate, Functions and Duties

The Constitution, in Article 89, establishes the Ombudsman who shall have the powers and functions set out in the Constitution. The Constitution further provides that the powers and functions of the Ombudsman shall be defined and prescribed by an Act of Parliament; and includes those functions and powers set out in Article 91 and 92.

The enabling Act of Parliament which defines and prescribes the functions and powers of the Ombudsman, is the Ombudsman Act, No. 7 of 1990. It requires of the Ombudsman to:

- Receive and conduct investigations into complaints relating to administrative actions by ministries, offices, agencies and their officials from individuals, groups or organizations. This includes investigations into complaints against state owned enterprises, local and regional councils and their employees;
- Conduct investigations into alleged violations of fundamental rights and freedoms, by the state, public and private persons and private enterprises upon receipt of a complaint by individuals, groups or organizations;
- Receive and investigate all matters or instances of alleged misappropriation of public moneys or misuse of public property by officials; and
- Protect the environment by enquiring into or investigating any request or complaint concerning the over-utilization of living resources, the irrational exploitation of non-renewable resources and the destruction of ecosystems, etc.

4.2.2 Challenges and shortcomings

The **Ombudsman Act** is outdated and needs replacement. In 2015 the Ombudsman appointed a consultant to draft amendments to the Act. The suggested amendments were too many and it was decided to draft a new bill for the Ombudsman. Speedy adoption of the Bill will not only strengthen the mandate and powers of the Ombudsman, but will give expression to the independence of the Ombudsman, guaranteed in our Constitution. This is important because the expectations of citizens point to many things the Ombudsman cannot perform on its own accord as shown in paragraphs below.

The Ombudsman is a creature of statute and accordingly, his or her powers are limited to those conferred by the statute; his jurisdiction is established in the statute. The Ombudsman cannot exercise powers which are not expressly stated in the Ombudsman Act or the Constitution.

Office of the Ombudsman do not have an expressed legislative duty or power to promote human rights. The definition of fundamental human rights and freedoms in the Act, limits the Ombudsman's power of investigation to complaints relating to violations of fundamental rights and freedoms, as set out in Chapter 3 of our Constitution.

Furthermore, the Ombudsman does not have the expressed duty or power to promote and protect economic, social and cultural rights, neither the duty nor power to monitor the implementation of these rights at a domestic level.

Office of the Ombudsman also does not have the duty or power to investigate any matter or instance out of its own motion and does not have the right or power to visit places of detention unannounced.

Ombudsman also does not have an expressed duty or power to establish regional offices. The Office of the Ombudsman is also challenged with a number of issues including the following:

4.2.2.1 Shortage Staff

The Ombudsman Act, Act 7 of 1990 provides that the Ombudsman shall in the performances of his/her functions under the Act be assisted by officers in the public service made available for such purposes. The organizational structure makes provision for the number and positions of staff which were approved by the Office of the Prime Minister as appropriate for the Ombudsman to effectively perform his functions under the Act.

Any vacancy not filled within a reasonable time, means that a staff member has to perform the duties that should have been performed by the vacant office, in addition to his or her own duties, which undermines the effectiveness of the Ombudsman.

4.2.2.2 Failure to respond to the Ombudsman enquiries – a systemic problem in the public service

The Ombudsman is of the view that some Ministers, Executive Directors and individuals make themselves guilty of this failure to respond to enquiries and informed the Committee that it has become a systemic problem in the Public Service. The turnaround time for any complaint, is 90 days; if the office does not receive any feedback from institutions or individuals within the time limit, it cannot effectively deliver on its mandate. After numerous reminders the Ombudsman have no choice but to subpoena individuals to appear before him and produce the requested information. Sometimes, it does not have the desired effect. The last resort is to approach the courts.

4.2.2.3 Lack of human rights and tolerance education in the formal education system

The Ombudsman informed Members that his office should not be seen as an isolated solution to the problem of human rights violations in Namibia. The task is too big, important and difficult; all spheres and structures of Government and civil society must be involved. An important lesson, therefore, is that the starting point in protecting citizens' rights is by sensitizing and making them aware of the existence of such rights. This should start at a tender age. Human rights education is the key to developing a culture of human rights and nowhere is this more important than in the formal education system.

In light of the ever-increasing number of gender-based violence cases in Namibia, tolerance education should be considered an urgent imperative. Its aim or purpose should be to educate caring and responsible citizens, open to other cultures, able to appreciate the value of freedom, respect for human dignity and difference; and able to prevent conflict or resolve them by non-violent means.

4.2.2.4 National Assembly's Failure to debate and consider Ombudsman reports

The Ombudsman is required under section 6 (2) of the Ombudsman Act, 1990 to report to the National Assembly and all successive Ombudsmen/persons faithfully complied with their statutory duty. The section further requires that the report must be in connection with the activities of the Ombudsman during the year under review.

The purpose of the annual report is to provide a means through which the Ombudsman is accountable to the people because the National Assembly represents the people and the people participate in the management of public affairs through the National Assembly. The Ombudsman is thus accountable to the Legislature and the people of Namibia, through a comprehensive and open annual report. Most reports contain recommendations for the purpose of a decision and enforcement of the recommendations by National Assembly. The Ombudsman commended ministries/offices/agencies and individuals who were helpful and criticized those who failed to cooperate with his office.

The Constitution and the Ombudsman Act are silent on what the National Assembly should do with the reports; however, the Ombudsman reports to the National Assembly

for the purpose of a decision on the reports and enforcement of his/her recommendations. The absence of clear and strong measures on the reports and recommendations of the Ombudsman means that there is no support system available in the National Assembly to give effect to these reports and recommendations.

Rule 70 (3) of the Standing Rules and Orders of the National Assembly gives a discretion to this Standing Committee whether or not to examine, consider and report on the annual and other reports of the Ombudsman laid before the National Assembly. This function should not be discretionary, but mandatory, i.e. that Standing Committee **must** examine, consider and report, **otherwise what would the purpose be for submitting these reports.**

4.2.2.5 Failure to implement the recommendations of the Ombudsman

The Ombudsman cannot make binding recommendations - the recommendations are only persuasive. If an individual or institution fails to implement the recommendations, he must compile a full report and submit it to the National Assembly in terms of section 6 (1) of the Ombudsman Act, Act No 7 Of 1990.

4.2.3 Previous Collaborations with Parliament and the Standing Committee

The principles relating to the status of national institutions (Paris Principles) require that the Ombudsman as a status "A" accredited national human rights institution should cooperate and advise Parliament. In fulfilment of this duty, the Ombudsman submits his annual report to the National Assembly. The annual report amongst others, outlines the cooperation of the Office of the Ombudsman with Parliament, civil society and other Ombudsperson offices amongst others.

Celebrating Constitution Day – 9 February: The Ombudsman in close cooperation with Parliament, celebrated for the very first time Constitution Day on 9 February 2006 under the theme: *"Ensuring that the Constitution remains a living document."* In 2010, twenty years of the Namibian Constitution was celebrated where the Ombudsman invited all living members of the Constituent Assembly to a special event.

The 30th Anniversary of Constitution Day (2020) was celebrated in Windhoek, Keetmanshoop, Swakopmund, Otjiwarongo, Oshakati and Katima Mulilo during the week of 10-13 February 2020 under the theme: *"The Namibian Constitution ... 30 years on – Are we the Namibia we want to be? The Honourable Speaker, Prof Katjavivi delivered the keynote address in Windhoek."*

At invitation of the Speaker of the National Assembly, the Ombudsman attended the induction programmes of Members of the National Assembly on 23 March 2015 and 24 February 2021 where he addressed them on *"Human Rights and the Namibian Constitution"* In part fulfilment of his duty to advise Parliament, the Ombudsman developed and printed a *"Compendium of International Human Rights Law for Parliamentarians"*. The Compendium was distributed to all parliamentarians on 12 November 2015 and 24 February 2021.

In a legal opinion dated January 2019, the Ombudsman advised the National Assembly that an Electoral commissioner's second term of office expires on 21 February 2019, and that he has already served two terms and is not eligible to serve as a Commissioner of the Electoral Commission in 2019 or in future. Ombudsman recommended that the persons should not be interviewed as a possible candidate. The National Assembly accepted the advice and complied with the recommendation of the Ombudsman.

Ombudsman received a report from the Secretary of the National Assembly on 17 December 2019 with a request to implement the recommendations made by the Standing Committee on Foreign Affairs, Defence and Security following their oversight visit to Osire Refugee Settlement during July to August 2019. The Ombudsman submitted his Report to the Secretary of the National Assembly on 29 January 2020, in which he reported on the complaints received from refugees and asylum seekers and how he assisted them.

The Ombudsman received a Report from the Secretary of the National Assembly on 8 May 2020 with a request to implement the recommendations made by the Standing Committee on Constitutional and Legal Affairs following their oversight visits. On 28 August 2020, he submitted his Report to the Standing Committee on challenges and shortcomings at the Osire Refugee Settlement and other ancillary matters.

4.2.4 OBSERVATIONS

Participants acknowledged the importance of the speedy tabling of the Ombudsman Bill to provide more powers to the Ombudsman.

The workshop underscored the need to review the Standing Rules and Orders of the National Assembly, in particular, the amendment of Rule 70 (3) (a) to obligate the Standing Committee to consider the reports of the Ombudsman. The Committee also noted the importance of providing adequate human and financial resources to fulfil this function.

4.3 OFFICE OF THE ATTORNEY-GENERAL

4.3.1 Mandate and Functions

The Attorney-General's constitutional mandate is provided for under Article 87 of the Namibian Constitution which includes:

- exercising the final responsibility for the Office of the Prosecutor-General;
- being the principal legal adviser to the President and Government;
- taking all action necessary for the protection and upholding of the Namibian Constitution; and
- performing all functions and duties as may be assigned to him by Act of Parliament.

The Directorate of Legal Advice forms part of the Office of the Attorney-General, which is steered by the Attorney-General appointed pursuant to Article 32 (3) (i) (ee) of the Namibian Constitution.

The directorate therefore exists to assist the Attorney-General in executing his constitutional mandate of the provision of legal advice to the President and Government.

Therefore, the Directorate provide legal advice and opinions to all OMAs, regional and local authorities as well as SOEs.

Other functions of the Directorate are to assist the Attorney-General:

- to represent the Government on National and International Forums;
- to scrutinize Bills and Proclamations before tabling in Parliament;
- to act as negotiators and representatives on National and International Forums;
- in commissions of inquiry and disciplinary hearings at O/M/A's.

The Directorate also advises O/M/As on the legal and constitutional aspects of policy issues, when so requested as well as the training, coaching and mentoring O/M/A staff as a measure to build capacity.

The Office of the Government Attorney in the Office of the Attorney-General represents the represent the State, the Government (Offices, Agencies and Ministries) in civil and labour matters and officials in criminal cases. The office act on behalf of Government and Government officials in:

- o Criminal matters
- o Labour matters and
- o Civil matters

The office also provides the following services to the Government:

- o Conveyancing
- o Debt collection
- o Render Legal Advice concerning the aforesaid

4.3.2 Human Resource Management

The structure of the Directorate Legal Advice comprises of 100 legal officer positions, twenty-nine (29) thereof are funded and seventy-one (71) are not funded.

Additionally, the Directorate has thirty-one (31) administrative positions, nineteen (19) thereof funded and twelve (12) not funded.

4.3.3 Challenges of the Directorate Legal Advice

During the previous financial year (2019/2020) the Directorate experienced an increase in requests for legal advice by O/M/As, which was partially addressed by the appointment of more lawyers. Complex and urgent files were received resulting in limited time to attend to backlog files.

A high demand by O/M/As for legal officers to serve on committees and boards (which entails negotiations, investigations and the attendance of several meetings) *vis a vis* the number of legal officers in the Directorate has overburdened legal officers in the

directorate. The problem was partially solved by the appointment of more lawyers and the filling of vacant positions on the establishment;

Demand for staff to travel is an intrinsic part of the work performed by the Directorate to serve O/M/As effectively. However, budget cuts further aggravated the already insufficient budget allocation for subsistence and travel allowance.

Lack of communication by O/M/A's regarding feedback on files, forwarding original documents without retaining copies thereof, hiring of private Lawyers and forwarding requests to the wrong office e.g. O/M/A's negotiating agreements without the involvement legal officers are some of the problems that have troubled the operations in the directorate.

Failure of clients to follow the correct procedure regarding inquiries on their matter and demanding to speak with the Attorney General instead, even after an acknowledgment letter indicating the name of the legal officer (lawyer) assigned to the matter has been sent remains an obstacle to smooth operation of the directorate.

Inadequate training of staff remains a challenge to operational efficiency in the directorate due to financial constraints. Sponsorships have in the past provided partial solution but these have proved to be insufficient.

Many legal officers (lawyers/attorneys) had to take compulsory leave due the amended Public Services Staff Rules on mandatory/compulsory vacation leave, a situation that exacerbated the shortage of staff when urgently required to perform critical assignments.

There is further pressure on management when some O/M/As submit requests for the assignment of specific legal officers to serve on committees, which may be construed as favouritism. There is also a tendency of some clients failing to read, thus seeking legal advice on trivial issues.

Furthermore, some OMAs make request for legal officers to attend negotiation forums at short notice, resulting in delayed disbursement of subsistence and travel allowances and consequently the inability of some assigned legal officers to attend such meetings. Perhaps the bigger complication with such late request is the trend whereby some OMAs proceed to discuss legal matters at such meetings without the presence of a legal officer, resulting in distorted information and legal opinions.

4.4 OFFICE OF THE JUDICIARY

4.4.1 Legal Framework, Mandate and Functions

The Office of the Judiciary was established in terms of the Judiciary Act, 2015 (Act. No. 11 of 2015) to give effect to Article 78 of the Constitution of the Republic of Namibia.

The specific mandate of the Office of the Judiciary is to enhance the independence of the Judiciary and to ensure that full functional independence, both administrative and financial, is given to the Judiciary as one of the organs of State, provided for in Article 1 (3) of the Constitution.

The main function of the courts is to administer justice by *inter alia* adjudicating on all court matters.

Programmes: To carry out its constitutional mandate and functions, the Office of the Judiciary is currently responsible for the following programmes:

- Programme 01: Supreme Court Adjudication and Administration
- Programme 02: High Court Adjudication and Administration.
- Programme 03: Lower Courts Adjudication and Administration
- Programme 04: Policy Supervision, Coordination and Support Services.

4.4.1 Challenges and shortcomings

Office of the Judiciary reported that the backlog of court cases largely due to financial and personnel constraints, remains the principal challenge of the Judiciary. Thus far, at magistracy level only over 39% of cases have been finalised. The table in **Annexure A** indicates the performance of various courts in the country. Apart from financial and personnel limitations, the low performance is also aggravated by COVID-19 restrictions.

Other challenges faced by the Office of the Judiciary are shortage of infrastructure and official accommodation for magistrates and legal staff.

4.4.2 Anticipated challenges with the revised Budget ceiling

With the revised budget ceiling for the 2021/2022 Financial Year, the Office of the Judiciary anticipates the following challenges and constraints:

- Filling of vacant posts for both judicial officers and staff members will not be possible
- There will not be provision for the salary increment for magistrates
- Suspension of periodical courts
- Serious shortfall on payment of court fees (witness fees, casual interpreters' fees, messenger fees, transcription fees and mediation fees)
- Serious shortfall on payment on the utilities accounts
- Implementation of reforms in the Lower Courts will not be materialized
- Mandatory stock taking cannot be conducted
- No financial inspection and audit inspection will be conducted
- Disciplinary hearings outside Windhoek will not be conducted
- On-site IT support will not be possible
- Service level agreement for maintenance of the E-Justice initiative will not be renewed
- There will be no provision for replacement of aged computer hardware

4.4.3 Short and long-term solutions

It is important to increase the current structure of the Magistracy from 104 to 344 positions over a period of 10 years. For more effective administration and adjudication, the Office recommends that all regions should have a Divisional Magistrate.

On a short term basis, 80 positions for district courts and 35 positions for regional courts should be filled to deal with the backlog of cases.

The renovation budget allocation for operations needs to be increased to enable renovation of dilapidated official accommodation for magistrates.

The Office will need an increase in the Development Budget, to complete the expansion of the structures, building of additional courts and courtrooms.

4.4.4 Expected collaboration with Stakeholders

The Ministry of Justice, Office of the Attorney-General and the Namibian Police are key stakeholders in the administration of Justice as such, there is a need for continuous engagement with these organizations to ensure efficient Case Flow Management and thereby reduce the number of cases on the court roll. This is one of the surest routes to reducing the backlog of cases in the courts.

Collaboration with Parliamentary Standing Committee on Constitutional and Legal Affairs is needed to assist in motivating the budget for the Office of the Judiciary by mobilizing other Members of Parliament to see the need to advocate for adequate budgetary allocation when the Budget is considered in the National Assembly. Sufficient budgetary resources for the Office is a necessary requirement for strengthening the Rule of Law through our courts.

Awareness campaigns among the public in respect of the mandates of the Office of the Judiciary and the Ministry of Justice.

4.4.5 OBSERVATIONS

Various efforts by Government since Independence, including the provision of infrastructure to make justice accessible to the people. However, since the Office of the Judiciary was separated from the Ministry of Justice in 2015, the office does not have its own fixed assets beyond the court building/rooms. This resulted in the inability of the Office to adequately house Magistrates and other court officials.

There are only 104 magistrates for a population of approximately 2.5 million and they handle approximately 35 cases [per month]. For efficient and effective administration of justice; and adjudication it is desirable that each region should have a full division. Dealing with crimes involving tourist expeditiously will reduce the amount of insurance claims on the country and create a positive image for the country's tourism and hospitality industry.

The Committee is of the view that the justice system should be in the interest of the Namibian people and must strengthen the rule of law and alleviate poverty. The Office of the Judiciary should be mindful of the socio-economic challenges of the Namibian society. It is desirable to make justice accessible, affordable and practical but not complicated for the ordinary citizens. The current perception that the poor and

vulnerable communities of the country cannot receive justice because they cannot afford justice is a major concern to the Committee.

"Justice to all" require financial and human resources and infrastructure all over the country. However, the Office of the Judiciary has consistently pointed lack of human and financial resources as the explanation for the backlog of court cases in the country. Reasons such as the prosecutor, magistrate and defence lawyer are new to the court cases on the roll, prosecutor or magistrate is on sick leave, and delayed responses from the Directorate Legal Aid taking approximately 2 to 5 months; could be attributed to inadequate human resources at the different parts of the system. The Committee was informed of a case not finalised after 10 years and a case in the magistrate's court running for 6 years, which are not desirable.

The Committee is aware that it is not the first time that access to justice and challenges with regards to financial and human resources, infrastructure challenges and the backlog of court cases have been addressed by the National Assembly. The Standing Committee on Constitutional and Legal Affairs in the 5th and 6th Parliament, conducted various oversight visits to various courts in the country and shared its findings and recommendations with the Ministry of Justice, Office of the Judiciary and some other stakeholder ministries, for implementation. It would be advisable for these two OMAs to obtain those reports for review and implementation.

The Office of the Judiciary was advised to benchmark with Finland where it only takes between 1.9 months to a maximum 4 months to finalise a criminal case or on average take approximately 3.5 months. However, we should be mindful that Finland is a developed country and Namibia a developing country.

MPs were encouraged to do more during the budget debate in parliament to make an effective case for adequate resources for the judicial arm of government and thereby ensuring that the justice system in the country can recruit the needed skilled personnel, provide the needed logistics for operations and cater for the welfare of judicial officers.

The Criminal Justice Forum consisting of the Office of the Judiciary, Prosecutor General Office, Bank of Namibia and Law Society of Namibia is tasked with the reform of the justice system. However, the work of the forum appears to take too long, hence the need to expedite the process of reform, regardless of the constraints.

In order to address some of the challenges of the Courts, traditional courts (community courts) should be empowered through the implementation of the Community Courts Act, Act No 10 of 2003 and initiatives by the Ministry of Justice to review of that Act where needed. When the Community Courts Bill was considered in 2003 the predecessor Committee of the Standing Committee on Constitutional and Legal Affairs of that Parliament conducted public hearings in most parts of the country to explain the Bill to communities and solicit input. In the 6th Parliament, the Standing Committee on Constitutional and Legal Affairs also conducted oversight visits to some community courts and shared its findings and recommendations with the Ministry of Justice for implementation.

It was observed that the Criminal Procedure Act, Act No 51 of 1977 as amended provides for compensation to the victim of a crime but most of the time, it is the State (prosecution) that allegedly fails to put such a motion to the Court. Therefore, the need for civic education in this respect.

Members were also informed that there is work in progress to link Namibia Courts Information System (Namcis) with Namibia Traffic Information System (Natis) to synchronise information on traffic case convictions as an effort to curtail dodging suspensions and issue of new or duplicate drivers' licences to traffic law offenders.

4.5 LAW REFORM AND DEVELOPMENT COMMISSION

4.5.1 Legal Framework, Mandate and Functions

In accordance with the Law Reform and Development Commission Act, Act No 29 of 1991, the core mandate of the **Law Reform and Development Commission** (LRDC) is to examine existing legislation, undertake research both domestically and in comparable jurisdictions and to make recommendations for the review, reform and development of such laws if and when necessary. The Commission also has the mandate and functions to:

- Repeal obsolete and unnecessary enactments;
- Consolidate or codify any branch of law with common and statutory law;
- Harmonise customary law with common law and statute law;
- Enact laws to enhance respect for human rights as enshrined in the Namibian Constitution to ensure compliance with international law obligations; and
- Make law accessible.

4.5.2 Commission and the Secretariat

- The Chairperson of Commission serves in fulltime capacity;
- Other Commissioners do not serve in a full-time capacity but engage in law reform business mainly during Commission meetings and Project Committee meetings;
 - The Minister of Justice designates an officer in the Public Service as Secretary to the Commission;
 - The Secretary, with the administrative and research staff of the Directorate of Law Reform, constitute the Secretariat to the Commission;
 - The Secretariat is mandated to assist the Commission in the exercise of its powers and the performance of its duties and functions;
 - The Secretariat contributes to the success of the Commission's work, which is judged based on the projects it undertakes, the outcome of the project work and the overall impact on the lives of the citizens of Namibia.

4.5.3 Current projects approved for 2020/2021

Members of the Committee were informed that the Commission is busy with various law reform and development projects including the following:

- National Equitable Economic Empowerment Framework (NEEEF)

- Administrative Justice (enhancement of Article 18 of the Namibian Constitution)
- Review of the Insolvency Act, 1936
- Impeding Development
 - Obsolete laws project
 - Disability Rights
 - Road Safety
 - Locus standi (The right to bring an action or challenge some decision)
 - Customary law marriages
 - Sodomy law
 - Electoral Act: Limitation of public servants for candidature at National Assembly elections

4.5.4 Challenges and Obstacles

The assumed total independence of the Commission could be compromised as the Commission reports to Minister of Justice, making law reform and development projects and recommendations subject to the Minister's priorities and approval.

The Commission, in addition is dependent on resources i.e. financial and human resources from the Ministry of Justice. While the staff establishment provides for 67 staff including professional staff, only 15 staff members are currently employed and the budget is incorporated in the budget of the Ministry.

Loss of experienced researchers, political influence, public perceptions and limited budgetary allocation are some of the factors hampering the effectiveness of the Law Reform and Development Commission.

Many a times the enactment of laws are delayed from the initiation process, making the work of the Commission seem inefficient. This is tied to limited resources available to the Commission which manifests in lack of consultations and thorough sensitization of Members of Parliament as part of the process towards speedy enactment of laws.

Other challenges are as follows:

- Limitations of upward mobility for support staff;
- Political influence (expediency, public perceptions etc.);
- Unclear policy directions;
- Limited budget allocation (budget cuts due to national austerity measures);
- LRDC projects are not always the Minister's priority (subject to his/her Performance Agreement); and
- Negative publicity and the perception of self-interest

4.5.5 Collaboration with Parliament and the Standing Committee

LRDC is always ready to meet and consult the Standing Committee on Constitutional and Legal affairs in particular and Parliament in general out of the conviction that a well-informed Parliament will articulate and support a law reform and development agenda that will strengthen the legislative processes in order to advance the notions of constitutionalism, rule of law and democratic governance.

4.5.6 OBSERVATIONS

The Committee is of the view that the laws of Namibia should be in the interest of the Namibian people and must promote the rule of law and alleviate poverty. Law reform and development projects and programmes in the country should always strive for an accessible, affordable and practical system of justice. Justice should be accessible, affordable and practical; and not complicated.

What is crucial in our country at the moment amidst the impact of the COVID-19, is that the Commission should focus on law reform and development projects and programmes that will assist Government and the country to revive and recover the economy and empower the Namibian people and to alleviate and/or reduce poverty in the country. Law reform and development should focus on social and economic justice and to push back poverty.

The importance of oversight was highlighted and the Committee committed to consider the annual report of the Commission tabled recently in the National Assembly and to invite officials of the Commission.

Lack of and/or vague policy decisions of OMAs usually cause delays. Currently there is a new law on cybercrime and pornography but policy decisions on this legislation are not clear. It is important for O/M/As to understand the nature of public policy. Public policy includes the complexity of policy making, approaches to policy making, components of public policy making, including problem identification and deciding on the agenda, policy formulation and implementation and policy evaluation (Odendaal, Naidoo et al 2010, UNISA). O/M/As should therefore work in a more coherent manner, in particular on public policy making.

Although not raised in the workshop, consideration should be given to an Impact Assessment on Bills before Parliament. Mindful of the current economic and financial situation in the country it is crucial that Bills submitted should be accompanied with an economic, social and environment impact assessment. Parliament and the Law Reform and Development Commission should collaborate in this regard.

4.6 ANTI-CORRUPTION COMMISSION

4.6.1 Legal framework, Mandate and Functions

Chapter 10A, Article 94 A of the Namibian Constitution Second Amendment Act No. 7 of 2010 made provision for the creation of the Anti-Corruption Commission (ACC)

A constitutional amendment in 2010 removed the power to investigate corruption from the functions of the Ombudsman to the Anti-Corruption Commission which had been established in terms of section 2 of the Anti-Corruption Act, 2003 (Act No. 8 of 2003).

The Anti-Corruption Act, (Act No. 8 of 2003) mandates the Commission to:

- Receive, initiate and investigate allegations of corrupt practices;
- Consider whether investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action;

- Consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorised
- Conduct inquiries or investigations in relation to corrupt practices;
- Assemble evidence obtained in the course of its functions and to furnish –
 - o to any appropriate authority contemplated in paragraph (c); or
 - o to the prosecuting authority or any other suitable authority of another country, upon a formal request, evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;
- Investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body;
- Take measures for the prevention of corruption in public bodies and private bodies, including measures for:
 - o examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;
 - o advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;
 - o educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences;
 - o enlisting and fostering public confidence and support in combating corruption;
- Disseminate information to the public about the functions of the Commission;and
- Do anything else that the Commission is required or authorised to do under the Anti-Corruption Act or any other law or which is necessary or expedient to do for achieving the purpose of the Act.

4.6.2 Challenges

The Commission is not present in all 14 regions, making it difficult to deliver services to all the regions as investigators have to travel long distances to conduct investigations when required to do so.

There is an urgent demand to expedite the implementation of the Whistle Blowers Protection Act, Act No 10 of 2017 in order to protect people that report and give evidence in cases of corruption. Act No, 10 of 2017 makes provision for the establishment

of a Whistle Blowers protection office and criminalises retaliation against informers or witnesses who give evidence on improper conduct and corruption. The Act imposes a fine of N\$75 000 fine or a jail term not exceeding 15 years or both to anyone found guilty. The Whistle Blowers Protection Act was enacted in October 2017 but it has not been fully implemented due to lack of funding.

The only leverage whistle blowers and witnesses currently have is anonymity, which is easily affected by leakages of confidential information. Whistler-blowers when unprotected may suffer reprisals such as disciplinary action, or dismissal from employment, loss of opportunity for promotion, harassment, and an unwarranted lawsuit for defamation or breach of confidence or secrecy. At times, both investigators and whistle blowers are put at risk due to lack of protection.

Contrary to a generally held perception, the ACC further revealed that it has the power to initiate the investigation of cases. However, cases initiated by the ACC often progress slowly due to lack of witnesses. It is for this reason that the Commission always encourage citizens to come forward and report cases or provide the needed evidence and/ or information to the ACC to support investigations. There are many ways of reporting allegations of corruption either through toll free numbers, by writing, email; and website or telephonically.

From sixty-one (61) cases targeted for investigation in the 2019/20 financial year, twenty-five (25) were finalised while thirty-six (36) were carried over to the next financial year translating into a 41% success (completion) rate. Despite this success, however, there was still a backlog of three-hundred and seventy (370) cases by the end of the same year.

Lack of investigators, infrastructure and funding have been cited as some of the major impediments hampering the effectiveness of the ACC. There are not enough investigators to investigate corruption cases within the country as some of the corruption cases are of a complex nature which [could] take years for the investigation to be finalised. Pressure on the limited number of investigators meant some cases have to be put on hold in order to work on the high priority cases. Incidentally, vacant positions in the Directorate of Corruption Prevention in the ACC are becoming redundant because they cannot be filled due to the moratorium on recruitment by the Office of the Prime Minister.

A National Anti-Corruption Strategy and Action Plan 2021/2025 that will ensure the effective implementation of relevant legislation, is currently being developed through nationwide regional consultative engagements. However, the Commission is apprehensive of its usefulness as the implementation of the NASC will be adversely affected if the current manpower shortage is not addressed.

4.7 ELECTORAL COMMISSION OF NAMIBIA

4.7.1 Legal Framework, Mandate and Functions

The Constitution of the Republic of Namibia in Article 94B states that, *"There shall be an Electoral Commission of Namibia, which shall be the exclusive body to direct, supervise,*

manage and control the conduct of elections and referenda. The Electoral Commission of Namibia shall be an independent, transparent and impartial body."

Section 4 of the Electoral Act, 2014 (Act No. 5 of 2014) amplify this by stating that the Electoral Commission shall be: *"the exclusive authority to direct, supervise, manage and control in a fair and impartial manner and without fear, favour or prejudice any elections and referenda...and must exercise and perform its powers and functions...independent of any direction or interference by any other authority or any person."*

The functions of the ECN include the following:

- Supervise, direct and control the registration of voters for the purposes of any election or referendum;
- Supervise the preparation, publication and maintenance of a national voters' register and local authority voters' register;
- Supervise, direct and control the registration of political parties and organisations;
- Supervise, direct, control and promote voter and civic education in respect of elections and referenda, supervise, direct and control electoral observers; and
- Create its own organisational structure, to allow its leadership to take full control of all its operations to strengthen areas where operational effectiveness is lacking.

4.7.2 Challenges with Institutional capacity

Despite efforts to provide the services contemplated in the Constitution and the Electoral Act, the ECN face a myriad of challenges which include the following:

- The lack of proper regional infrastructure; the absence of a network of regional offices makes it difficult for the organization to carry out its regional operations on a continuous basis
- Current staff establishment and organizational structure of the ECN are not responsive to its mandate. ECN currently employs approximately fifty-two (52) permanent staff based at the head office in Windhoek, eighty (80) regional voter education officers on fixed term contractual basis across the country and forty-nine (49) staff also on fixed-term contracts based in Windhoek. There is the tendency of contract staff to move on to jobs that promise them permanent employment, regardless of the investment made in these staff in the form of training.
- ECN experiences insufficient cooperation from O/M/As in particular with regards the provision of government vehicles during election times
- Government moratorium on the appointment of more experienced civil servants as temporary electoral (returning) officers during elections and subsequent recruitment of inexperienced unemployed youth adversely impacted operational efficiency in the last regional and local elections.

4.7.3 Process to amend the Electoral Act

The ECN is in the process to propose the following amendments on the existing Electoral Act:

- An insertion to clearly stipulate the Commission's independence in line with the independence created by the Namibian Constitution;
- To make provision for certain additions to the sections dealing with registration of voters, i.e. to include addresses of seasonal or migrant workers, to include trial awaiting prisoners to be registered for regional council and local authority elections, and to provide for the registration of voters for all elections during a supplementary registration of voters as well as an amendment to the time period when the provisional voters register should be displayed for inspection;
- The removal of the requirement that members of the Namibian Police, Namibian Defence Force and Namibia Correctional Service can vote at an earlier date;
- An insertion to provide for the publication of party lists in the election for the National Assembly in two daily newspapers;
- An insertion to provide for the withdrawal of a candidate for the Presidential and Regional Councils elections after nomination, but before the poll.
- The removal of the section requiring five (5) additional names for the nomination of candidates for the local authority elections; and
- An insertion to enable the Commission to extend the voting hours on polling day should the need arise.

4.7.4 Other specific initiatives of the ECN

The following specific initiatives of the ECN are work in progress:

- Assessment of selected electoral processes and procedures towards the conduct of Business Process Re-engineering (BPR) e.g. polling, voters' registration and results tabulation, collation and announcement;
- The development of a new organizational structure; and
- Consultation with relevant stakeholders including the Standing Committee on Constitutional and Legal Affairs regarding the operationalization of the ECN's independence including the formulation of an Electoral Management Body (EMB) specific governance framework.

As a practice, the Electoral Commission has commenced preparatory work towards compilation of a new General Voters Register in 2024 and the Presidential & National Assembly Elections as well as the Regional Council Elections & Local Authority Elections in 2024 and 2025 respectively.

4.7.5 OBSERVATIONS

Given the Supreme Court hearing and judgement in 2020, preventing the conduct of elections with Electronic Voting Machines (EVMs) without simultaneous use of a voter verified paper audit trail (VVPAT); ECN informed the Committee that they have been engaging stakeholders on the mode of voting for future elections. Before and during the 2020 Presidential and National Assembly elections and at the time of the Supreme Court

adjudication, VVPAT technology was not in existence in India which is the manufacturing country. However, ECN has been informed that a new model, EVM M3 version is now available in India.

Chief Electoral and Referenda Officer explained that if stakeholders reach a consensus on the need for VVPAT and EVMs (EVM M3) as a necessary condition for the deployment of the EVMs, then the ECN will have no choice but to plan towards the procurement of the VVPAT technology. However, funding such a project in the current financial and economic situation could be a daunting task as the cost of procuring the VVPAT system is currently estimated at approximately N\$100 million.

The Covid-19 pandemic also affected the way elections are conducted. ECN with collaboration from the Ministry of Health and Social Services and the Namibian Police, have been enforcing Covid-19 health regulations such as the wearing of masks, sanitising and provision of shields to help stop the further spread of the virus. The situation has placed additional financial burden on the limited budget of the ECN as it strives to provide sanitisers and shields for the use of staff and voters and polling stations around the country.

Some of the challenges facing ECN include lack of proper regional infrastructure and funding, lack of cooperation from O/M/As to provide transport during elections, government moratorium on the appointment of more experienced civil servants in the electoral process amongst others.

Efforts are made by the ECN to address and find solutions to the current staff establishment and organizational structure that are not responsive to its mandate. ECN currently employs approximately fifty-two (52) permanent staff based at the head office in Windhoek, eighty (80) regional voter education officers on fixed term contractual basis and forty-nine (49) staff also on fixed-term contracts. Thus, temporary staff are three times more than permanent staff which is not a 'sound' labour situation. ECN will explore possible ways to appoint the staff on permanent basis.

During election time approximately 1,000 vehicles are needed but O/M/As are not very cooperative in the allocation of Government vehicles to the ECN during this period. Alternative arrangements of hiring from private garages did work well for the Commission but has implications of additional cost as the unit cost of hiring from the private sector is higher than mobilising vehicles from O/M/As.

The Committee was informed that as a result of the Government moratorium on the deployment of civil servants on election duties, ECN recruited inexperienced youth for polling duties. This led to administrative and technical errors at the villages of Aroab and Koës in the //Kharas Region, during the November 2020 regional and local authority elections. The cost of training approximately 14, 000 youth many of whom were inattentive within a few weeks before an election, was enormous and challenging. To provide a pool of right calibre staff of the ECN going into the future, it was proposed that the ECN should collaborate with tertiary institutions like UNAM and NUST for the development of a curriculum on electoral administration and management for a career in elections.

Voter education is crucial and should be the collective responsibility of the ECN and political parties. ECN in line with its mandate and functions provide regular voter education in the 14 regions of the country, however, voter apathy is still a big challenge in the country. There is an urgent need for research on voter apathy in order to finding solutions to a problem that can cast doubt on the significance of election outcomes in any democracy.

Sanctity of the Electoral roll is pertinent to free and fair election. Thus, ensuring that the Voters' Register is not bloated is one of the key operational activities of the ECN. Accordingly, to purge the voters' register of the names of deceased individuals there is an on-going collaboration between the Electoral Commission and Ministry of Home Affairs and Immigration to verify the national voters register with the national death register.

It is a matter of concern that political parties do not have clear policies and systems or mechanisms in place, to nominate candidates to stand for election as members of the National Assembly, regional and local authority councillors.

It was proposed that the 50/50 gender representation on the election list of political parties be enacted in the Electoral Act. However, it is not clear if there will be any constitutional challenges to such a proposal.

The Electoral Act should be strengthened to specify that only a candidate residing in a particular constituency or local authority can stand as candidate for a regional council or local authority election in that specific constituency or local authority where he/she is domiciled. It does not make sense to have person from another region or constituency who does not understand the needs and aspirations and sometimes cultures and languages of that constituency and local authority, to stand for election in the locality or vote to elect representatives for that locality;

Another question that require clarity, is when does a candidate become a member of the National Assembly, for example – is at nomination or at the swearing-in of a member?

In the absence of adequate regional offices, it was proposed that ECN collaborate with Namibia Post Limited (NAMPOST) for continuous registration of voters in areas where there are no Election offices.

4.8 MASTER OF THE HIGH COURT

4.8.1 Legal framework, mandate and functions

The mandate and functions of the Master of the High Court are as follows:

- To supervise the administration of deceased estates;
- To supervise the administration of liquidations (insolvent estates);
- To register *inter vivos* and testamentary trusts;
- To supervise the administration of tutorships and curatorships; and
- To administer the Guardian Fund in respect of minors and mentally challenged persons.

Annexures B, C and D of the report illustrates Deceased Estates Case Reports from 2017 to 2020, Insolvency Cases Report from 2017 to 2020 and Guardians Fund Cases Report from 2017 to 2020.

4.8.2 Challenges and obstacles

The Master of the High Court is faced with numerous challenges which include the following:

- Lack of resources and inadequate decentralization of services of the Master's office. The Office has limited presence in the 14 regions of the country, making it difficult for citizens to access its services. However, this situation cannot be readily redressed due to the limited budget.
- Efforts to render efficient service to citizens regardless of the limited presence in the regions, is further hampered by the limited case management system of the office which was designed using the ingenuity of over-worked staff. The Office will require additional resources including the services of an IT expert to establish an adequate, effective and efficient case management system to serve the public without disruption.
- The current succession and deceased estate regime in Namibia are not accessible and affordable for the ordinary citizen, the destitute and vulnerable. The complaint process is not adequate and accessible as a complainant should lodge their complaint with the High Court which is an expensive exercise; it takes too long to finalize an estate leaving the dependents of the deceased in financial hardship; and many a times legal attachment of immovable property (primary houses) from the remaining dependents.
- An objective assessment of the current laws on estates point to the fact that they do not adequately cater for Namibian lifestyle and customary practices. Therefore, the Office of the Master of the High Court is in the process to review existing and outdated legislation regulating Succession matters and Deceased Estates in order to repeal all the old, outdated, impractical ordinances, proclamations and laws and thereby replace them with a single legislation, namely the Succession Bill.
- The Succession Bill is aimed to include all inheritance matters under one law and will include a new legal framework, administration process, Testate and Intestate succession, Wills, Guardian's Fund and Curatorships.
- The Guardians Fund: Financial institutions charge excessive fees for administering the fund or investing the monies from the fund. Despite accruing excessive interests from the monies invested by the Guardian Funds, these interests are not declared and orphaned children do not benefit from these interests. Furthermore, the investment of monies from the Guardians Fund is not properly regulated either in existing legislation or financial legislation. Thus, the need to review the Guardians

Fund and to properly regulate the Fund within the context of existing challenges and obstacles, in particular accessibility and affordability.

- Inadequate or non-regulation of estate practitioners is a matters of concern not only to the Office of the Master of the High Court but also to the Standing Committee, thus the Succession Bill should include regulation of estate practitioners.
- Notwithstanding, the challenges faced by the Master of the High Court and the Ministry of Justice e.g. overloaded work schedule of staff and inadequate specialists in the areas of inheritance and estate administration and allied fields, the completion of the Succession Bill is essential for the Namibian citizens to ensure an accessible and affordable deceased estate services. Incidentally, consultation with stakeholders and members of public on the bill is also hampered by limited resource. However, the speedy tabling of the Bill in Parliament is called upon by the Committee as a way to avert the current undesirable conditions in the management of the sector.

The Office is in the process to review existing and outdated legislation regulating Succession matters and Deceased Estates in order to repeal all the old, outdated and impractical ordinances, proclamations and laws with one legislation which is referred to as the Succession Bill. Some of these ordinances and proclamations date back to the year 1580.

5 CONCLUSION

- An important conclusion from the deliberations is the real and perceived cost of justice which appears to deny many citizens access to justice. This is explained as due to a combination of factors including, the pressure of case load on the courts which makes dispensation of justice rather slow, absence of courts in some regions, the perceived cost of hiring lawyers, the ineffectiveness of the Legal aid regime, understaffing in the Ministry of Justice and the Attorney General's office among others.
- Ministry of Justice bemoaned lack of staff and funding as some of the major challenges impeding the execution of justice. This has resulted in the current backlog of court cases.
- Obsolete and discriminatory laws on the statute books of Namibia are of concern and may sometimes lead to the miscarriage of justice. The efforts of the Law Reform and Development Commission and the Ministry of Justice on the Repeal of Obsolete laws relating to such areas as Mental Health and Common Law Offences of Sodomy and Unnatural Sexual Offences among others is commendable.
- Furthermore, the deliberations recognized staffing constraints on the performance of the Law Reform and Development Commission just as in the other areas of the administration of justice e.g. Ministry of Justice and Office of the Judiciary. Lack of

consultations and thorough sensitization of lawmakers were also identified as some of the stumbling blocks.

- The challenges and costs associated with the administration of justice particularly in the area of criminal jurisprudence will be greatly alleviated if Government (Ministry of Safety and Security) can invest a little bit more in the prevention and combating of crime and urge the Government to do so to save some funds for the Nation.
- It was generally agreed that The Ombudsman Act is outdated and needs replacement. Efforts by the Ombudsman to amend the law in 2015 failed because a review of the law showed that the needs of the country will be better served by drafting a completely new legislation.
- Progress of work at the Anti-Corruption Commission (ACC) is hampered by lack of investigators, infrastructure, and adequate funding. Thus, contrary to a generally held perception that the ACC is slow and shielding culprits, the Commission revealed that investigating corruption cases is a painstaking process that require highly skilled and experienced investigators and the few that are available are on assignments that sometimes a long time to unravel the needed evidence for prosecution. Furthermore, anti-corruption cases progress slowly due to the reluctance of witnesses to come forward or the lack of witnesses required.
- ECN reported that following the Supreme Court judgement in 2020 preventing the conduct of elections with EVMs without simultaneous use of a voter verified paper audit trail, ECN has been engaging stakeholders on the mode of voting for future elections. The Committee acknowledged the importance of ensuring that all stakeholders have full confidence in the electoral system to avoid any future conflicts arising of political misunderstanding.
- The Committee agreed that the main challenges of the Master of the High Court including the lack of resources and the over centralization of the services of Master's office have been compounded by an inadequate case management system and outdated legislation.

6 RECOMMENDATIONS

- 6.1 The Ministry of Justice should conduct a critical review of the distribution of courts in the country be undertaken and the plan to set up new Magistrate Courts be expedited to take administration of justice nearer to the citizens.
- 6.2 Ministry of Justice should ensure that on-going work to reform the legal aid scheme must be concluded as soon as practicable to enable the poor and needy groups of the Namibian society, access to services of lawyers.
- 6.3 Government (through Ministry of Justice) and Parliament should support the on-going projects on National Equitable Economic Empowerment Framework (NEEEF), Administrative Justice (to enhance Article 18 of the Constitution), Review of Insolvency Act, 1936, Review of Disability Rights, Road Safety, Locus standi,

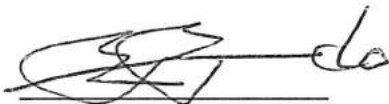
Customary law marriages, and the Electoral Law on the limitations on candidature to the National Assembly for Public Servants, with the needed resources to bring legislation to speedy conclusion and passage of new progressive laws to replace those not helpful.

- 6.4 The Ministry of Justice, Office of the Prime Minister and the Ministry of Finance should support the recruitment of experienced legal practitioners to support the work of the Law Reform and Development Commission. More generally, the Committee recommends that the Ministry of Higher Education, University of Namibia and Namibia University of Science and Technology invest in the expansion of the law faculties in Namibia to support legal education and turnout more law professionals to support all segments of the justice system.
- 6.5 On the delay in the processing of Bills, the Committee recommends that the Ministry of Justice ensure a systematic collaboration between the Directorate Legal Drafting in the Ministry and Parliament's Table Office and Legal Services Directorate to support MPs with bill summaries that will facilitate their comprehension and speedy processing of bills in Parliament.
- 6.6 The Committee recommends that the Ministry of Justice, Office of the Judiciary, Office of the Prime Minister and Ministry of Finance do more in terms of funding to the Ministry of Justice to fund infrastructure expansion programmes but more importantly to assist the Ministry retain the services of experienced prosecutors and government attorneys.
- 6.7 All the stakeholders should work together for a speedy adoption of the Bill to strengthen the mandate and powers of the Ombudsman. The new bill will also give expression to the independence of the Ombudsman, guaranteed in our Constitution.
- 6.8 The Ministry of Justice and the Anti-Corruption Commission should fast-track the speedy implementation of the Whistle Blowers Protection Act in order to protect people that report and give evidence on cases of corruption.
- 6.9 Anti-Corruption Commission should conduct more public education on the many ways of reporting allegations of corruption either through toll free number, by writing, email; and website or telephonically to the Commission.
- 6.10 Electoral Commission should engage as many stakeholders as possible towards achieving reasonable solutions to effective election outcomes, taking into account the current precarious financial situation of the country.
- 6.11 Anti-Corruption Commission should intensify the nationwide consultative engagements on the National Anti-Corruption Strategy and Action Plan 2021/2025 and produce a timely road map for effective implementation of relevant legislation.
- 6.12 Office of the Prime Minister and Electoral Commission should improve the staffing situation at the Electoral Commission and Commission should explore other

innovative ways such as collaborating with NamPost Limited to reach some of the remote places.

- 6.13 Ministry of Justice and the Law Reform and Development Commission should provide urgent assistance to the Master of the High Court to review existing and outdated legislation regulating Succession matters and Deceased Estates in order to repeal all the old, outdated and impractical ordinances, proclamations and laws with one all-inclusive legislation. It is further recommended that the new legislation must include a legal framework for the administration process, Testate and Intestate succession, Wills, Regulation of the Guardian's Fund and Curatorship and other relevant matters. The Committee will want to see such a Bill in Parliament as soon as practicable.

SIGNATURES



Hon. Kletus Karondo
Chairperson

16.11.2021
Date



Hon. Paula Kooper
Deputy Chairperson

25.11.2021
Date



Hon. Tjekero Tweya

17/11/21
Date



Hon. Julieta Kavetuna

17/11/2021
Date



Hon. Elifas Dirigara

16.11.2021
Date




Hon. Emilia Nuyoma-Amupewa

Date



Hon. Herlinde Tjiveze

17 Nov. 2021
Date



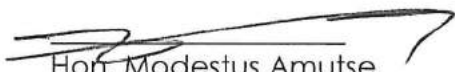
Hon. Vincent Joseph Mareka

30/11/2021
Date



Hon. Evelyn Nawases-Taeyele

16/11/21
Date



Hon. Modestus Amutse

16/11/2021
Date



Hon. Phillipus Katamelo

02/12/2021
Date



Hon. Kovio Hengari

25.11.2021
Date

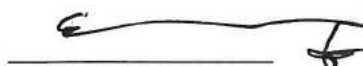


Hon. Patience Masua

17/11/21
Date


Hon. Vipuakue Muharukua

Date



Hon. Edson Isaacks

16/11/21
Date



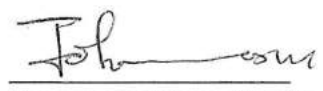
Hon. Longinus lipumbu

16/11/2021
Date




Hon. Diedrick Vries

17/11/2021
Date



Hon. Johannes Martin

16/11/2021
Date



Hon. Timotheus Shihumbu

Date

PARLIAMENT BUILDING, WINDHOEK

ANNEXURE A – Court Performance Indicators

Court Performance Indicators – 1 April 2020 to 31 March 2021

DIVISION	CASES BROUGHT FORWARD	NEW CASES REGISTERED	TOTAL NUMBER OF CASES HANDLED	TOTAL NUMBER OF CASES FINALISED	% OF CASES FINALISED	CASES CARRIED FORWARD
Windhoek Central	3954	4714	8668	3975	45,86%	4693
Windhoek Rural	3756	4501	8257	4257	51,56%	4000
Keetmanshoop	2505	4044	6549	3730	56,96%	2819
Oshakati	11891	5576	17467	3477	19,91%	13990
Rundu	3814	3026	6840	3094	45,23%	3746
Otjiwarongo	2446	2373	4819	2443	50,70%	2376
Total	28366	24234	52600	20976	39,88%	31624

ANNEXURE B – DECEASED ESTATE CASE REPORT

DECEASED ESTATES CASE REPORT

Case Type	2017/2018	2018/2019	2019/2020
Deceased estates	2657	2781	2212

ANNEXURE C – INSOLVENCY CASE REPORT

INSOLVENCY CASE REPORT

Case Type	2017/2018	2018/2019	2019/2020
Trust	508	432	542
Insolvency	28	29	45

ANNEXURE D – GUARDIANS FUND CASE REPORT

GUARDIAN FUND CASE REPORT

DESCRIPTION	2017/2018	2018/2019	2019/2020
Interest rate	5%	6.5%	6.5%
Monies paid to beneficiaries	139,886,630.59	144,654,428.86	154,600,498.89
Value of the fund	1,540,130,772.98	1,674,072,035.91	1,858,792,115.97

