



REPORT

PARLIAMENTARY STANDING COMMITTEE ON CONSTITUTIONAL AND LEGAL AFFAIRS

ON THE

OVERSIGHT VISITS OF COMMUNITY COURTS AND MAGISTRATES COURTS IN

KUNENE, OHANGWENA, OMUSATI, OSHANA, ZAMBEZI AND OTJOZONDJUPA REGIONS

MAY TO AUGUST 2022

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1. EXECUTIVE SUMMARY

The report provides an account of the implementation of the Community Courts Act, Act 10 of 2003.

It also reveals the achievements, constraints and challenges faced by Traditional Authorities regarding the implementation of the Community Courts Act. The report further reveals the following teething problems that the Ministry of Justice (Division Community Courts), traditional authorities and community court officials are faced with:

- Most community courts are gradually achieving their mandate because the communities they serve are satisfied with the operations of the courts and they make optimal use of these courts. In some areas, it is the preferred dispute resolution mechanism because there is some form of compensation for the plaintiff.
- In some areas, it is the preferred dispute resolution mechanism as the complainant could be rewarded in kind, for damages or harm caused.
- Community courts serve an important function and role in the country, similar to the common law courts and statutory bodies in government. Furthermore, community courts have an important national function to encourage peaceful communities through reducing crime. While performing such duties and functions and facing the same economic hardships, condition of service of community court officials and allowances to justices and assessors, are downgraded compared to other statutory bodies in the country, thereby infringing on administrative justice as contemplated in Article 18 of the Constitution.
- There are some sections in the Community Courts Act that hamper the efficient and effective operations of the community courts, hence the need to review the following sections 5, 6, 8 (a) - (d), 20 and 23.
- Insufficient budget allocations to community courts, inadequate community courts in a particular geographical area, size of the population in the community court area, long distances amongst others; are matters of serious concern.
- The perception that the powers and functions of Traditional Authorities were abdicated by the Community Courts Act is real and a matter of concern to the Standing Committee.
- Minor disputes and petty cases should be arbitrated at village level by headmen to resolve unnecessary cost on travelling, subsistence and accommodation cost by community members.
- The submission of enforcement orders to the Division Community Courts of the Ministry of Justice in Windhoek for administrative reasons, is a serious challenge. Hence, the need to refer enforcement orders to the particular magistrate's court in accordance with the Act for speedy action from magistrates' courts

as in all localities the magistrates' courts and other offices are not far from each other.

- Other weaknesses, shortcomings and challenges identified are as follows:
 - o Lack of support and assistance from the Namibian Police Force and security risks at community courts
 - o Inadequate awareness of the community court system
 - o Lack of communication and coordination between the Community Court and Magistrate Court
 - o Overworked judicial officers and court officials at Magistrates Courts

2. INTRODUCTION AND BACKGROUND

The predecessor committee of this Standing Committee on Constitutional and Legal Affairs conducted extensive public hearings on the Community Courts Bill [B.10-2001] in the country from July to September 2002 and tabled its report in the National Assembly in April 2003, which led to the passing of the Bill by Parliament. The Community Courts Act was signed by the President of the Republic on 31st July 2003.

The community courts system in Namibia was established through the Community Courts Act, Act 10 of 2003. The objective of the Act is to provide for the application of customary law by the community courts; to provide jurisdiction and procedures to be adopted by community courts; to provide for appeals from community courts to other courts; and to provide for connected and incidental matters.

It is a well-known fact that in Namibia, in addition to the general courts of law (Magistrate's Court, High Court and Supreme Court) there also existed and continue to exist from the beginning of time, courts within communities in Namibia. These courts were generally referred to as the Traditional Courts.

Since the introduction of the general or common law courts in Namibia, the perception was then, that traditional courts received "secondary legal status".

The intent of the Community Courts Act was also to bring traditional courts within the ambit of the administration of justice contemplated in the Constitution. The Act also aims to address the challenges of enforcing decisions that existed in traditional courts.

A community court can decide any issue under customary law when the issue in question arose in the community covered by the community court or whether the persons involved are closely connected with the customary law of the area in question.¹

In terms of the Community Courts Act 10 of 2003, community courts should consist of justices, assessors, clerks and messengers of court.

It is against this backdrop, that the Standing Committee undertook oversight visits to Community Courts in the following regions: **Kunene, Ohangwena, Omusati, Oshana, Zambezi and Otjozondjupa Regions** during the period May to August 2022. The oversight visit programmes are attached as **Annexure A**. The Committee also visited some Magistrates Courts in the above captioned regions. The committee visited the following community courts and magistrate's courts:

Kunene region

Vita Royal Community Court
Opuwo Magistrates Court
/Gaio-Daman Community Court (Anker)
#Aodaman Community Court: Khorixas
Swarlbool Community Court

¹ Legal Assistance Centre

Omusati region

Uukulonkadhi Community Court at Onesi
Uukwaluudhi Community Court at Tsandi
Ongandjera Community Court at Okahao
Ombadja Community Court at Okalango

Oshana Region

Oukwanyama Community Court

Oshana region

Ondonga Community Court
Oshakati Magistrates Court

Zambezi Region

Masubia Community Court
Chinchimane Community Court
Mayeyi Community Court
Mashi Community Court
Katima Mulilo Magistrates Court

Otjozondjupa Region

Okakarara Magistrates Court
Otjiwarongo Magistrates Court

There are currently forty-two (42) gazetted community courts in the country and thirty-two (32) are operational.

The main objective of the oversight visits was to enquire into the implementation of the Community Court Act, Act No 10 of 2003 and the effectiveness of Community Courts. The parliamentary committee oversight also focused on the achievements as well as the constraints and challenges faced by traditional authorities in the implementation of the Community Courts Act, Act No 10 of 2003.

Visits to the magistrates' courts focused on the coordination between community courts and the magistrate courts and general achievements and challenges faced at the latter courts.

The delegation included the following Members and officials:

Hon. Kletus Karondo (Chairperson)
Hon. Paula Kooper (Deputy Chairperson)
Hon., Elifas Dingara,
Hon., Tjekero Tweya,
Hon. Diederik Vries
Hon. Ina Hengari
Hon. Herlinde Tjiveze
Hon. Reginald Diergaardt

Mr. Willem Isaak, Deputy Director: Committee Services
Ms. Amalia Nathaniel Maxulili, Deputy Director Division Community Courts, Ministry of Justice,
Ms Agnes N. Mukono, Chief Parliamentary Clerk

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Mr. Ivan Skrywer, Parliamentary Clerk
Ms Theresia Dimba, Parliamentary Clerk
Ms Noreen Sitali (RIPES)
Mr Geoffrey Muhinda, Parliamentary Clerk

3. METHODOLOGY

Prior to the oversight visits, the Committee notified the leadership of the identified traditional authorities and community court officials about the Committee's visit, to be prepared, receive and brief the Honourable Members accordingly.

Traditional leaders, traditional authority councillors, community court justices, assessors, community court clerks and messengers attended the consultations. The Committee also consulted judicial officers and staff of magistrates' courts. Courtesy calls were also made to some governors of the regions.

At the meetings, Members of the Committee briefed participants on the purpose of their oversight visit, participants presented their achievements, shortcomings and matters related to the efficiency and effectiveness of the community court system. The proceedings included questions, answer sessions and site inspections.

Findings and observations at the community courts and magistrates' courts visited are based on briefings from traditional leaders, justices, assessors, clerks of community courts, magistrates, clerks of the courts, prosecutors, court officials and NAMPOL; physical inspection of the sites and facilities and installations.

4. OBSERVATIONS, FINDINGS AND DISCUSSION

The observations and findings in this report cover all the Community Courts visited, hence the report comprises of the issues identified for all regions because of its similarities.

Observations and findings are based on briefings from traditional leaders, justices, assessors, clerks of community courts, messengers, magistrates, clerks of the courts, prosecutors and other court officials; physical inspection of the sites and facilities and installations.

4.1 ADVANTAGES AND ACHIEVEMENTS OF COMMUNITY COURTS

There was general satisfaction from the participants with regards the community court system. Some community court officials and traditional authorities expressed the sentiments that community members in their jurisdictions are satisfied with this type of court system, in comparison to the magistrates' courts. One of the reasons is that cases are resolved speedier and community members are compensated for their losses, while at the magistrate court; there is no compensation to the complainant and victim.

However, the majority do not appreciate travelling long distances to appear for small cases.

Some community members registering their cases at community courts.

Many cases are resolved amicably at community courts compared to the previous traditional courts.

It is the view of some participants that comparing between community courts and magistrate courts, community courts are the best because those people fined, set good examples to others.

Some community court officials were of the view that community courts contributed significantly to the reduction of the crime and workload at Magistrate Courts by shifting some minor cases from the Magistrate Courts to the Community Courts.

In some communities, charges are dealt with based on customary law. When children misbehave, their parents are being fined e.g. by way of paying a goat, sheep or cattle. The consequence of this practice is that some parents started disciplining their children.

Minor cases such as swearing and fighting decreased in some communities, except stock theft. In addition, again in some communities there is a good working relationship between the Community Courts, Magistrate Court and Police.

At the **Swarbbool Community Court**, two court stands were purchased by the Ministry of Justice and a courtroom was constructed by a mining company. Restorative justice is applied i.e. if an accused person fails to pay the fine issued by the court due to financial difficulties, such person will clean the premises for a period of three months.

Some Community court officials expressed appreciation for various trainings conducted by the Ministry of Justice, through the Community Court Division as well as the provision of office equipment and access to internet. They further suggested that, refresher courses should be conducted after every six months or annually.

At some community courts, there are two types of fines i.e. the court fines (paid to the Court) and the compensation fines, which is paid to the complainant. Paying of fines by offenders was a challenge in the past but with the implementation of the Act, payment of fines has now improved.

Since the inception of the community court system, discipline and good behaviour are experienced during court proceedings.

The Act has significantly contributed to job creation by establishing positions such as court clerks, court messengers and court assessors as most of them come from the local communities.

Before the promulgation of the Act, in the old traditional court dispensation, payment was required when opening a case at the former traditional court. However, this practice does not apply at the community courts.

Proceedings in Community Courts are well organised and based on Fair Trial contemplated in Article 12 of the Namibian Constitution. Proceedings are also

conducted in line with the provisions of the Act and Customary Law. Transparency and fairness are being observed, compared to old traditional court system.

There is good working relationship between community court officials and community members who approach the court.

In the previous traditional court system, fines were very exorbitant in such a way that the fine could not be paid fully, but with the implementation of the Act, hefty fines are not issued.

At some community courts, the relationship with Police is satisfactory and whenever the Community Court request assistance, the Namibian Police avail themselves but at some community courts, the Namibian Police do not cooperate.

Upon the implementation of the Act, when a person is charged with an offence, he/she will fear to commit the same offence.

Justices and assessors managed to issue orders in accordance with the Act and after having received training, they implement accordingly. When an order is made by the court to the accused person/respondent, there is a certain amount of the fine deposited into the community court account.

Justices and assessors administer an oath to the complainant and accused person before court proceedings.

Complainants and defendants are free to appeal to the magistrate's court when not satisfied with the community court decision.

The community court usually works according to time without delays.

If the defendant was summoned, he/she can only be proved guilty or innocent once the case has been heard.

Compensation to the complainant can be paid in kind and not necessary only money. For example, if the defendant is fined with N\$3000, he/she can pay goats equivalent to N\$3000.

Defendants/complainants are free to use the language of their choice and interpretation is provided.

Once a complainant lays a charge, both the complainant and the defendant are allowed to bring lawyers to defend them.

Since the implementation of the Act, clerks and justices started to create awareness on the operations of the Act.

At some community courts there are few people who report cases to the Namibian Police for adjudication at the Magistrate Court, except cases of murder, rape and land disputes. Therefore, there is general appreciation from the communities following awareness campaigns conducted in the past two years.

4.2 WEAKNESSES, SHORTCOMINGS AND CHALLENGES IN COMMUNITY COURTS

4.2.1 LEGISLATIVE AND LEGAL FRAMEWORK WEAKNESSES AND CHALLENGES

4.2.1.1 Some Provisions in the Act

There are weaknesses and shortcomings in the legislation mainly the following sections in the Act:

Section 5 (Financial assistance)

Budget allocation for Community Courts must be amended from current allocation of N\$120,000.00 per financial year, taking into consideration **the population size, geographical size of the area of jurisdiction, number of justices, assessors, clerks and messengers.**

Section 6 (Revenue account of community court)

Opening of Revenue Account dealing with court fines. Community court officials propose that the two funds have separate accounts i.e. one for court fines and the other for funds from the Ministry of Justice in respect of salaries, allowances, office equipment and other office related matters.

Section 8 (a) – (d) Appointment of justices

The section was questioned by those serving the courts as it is deemed to be discriminatory as a person who is serving on the Community Court may not be a political leader. Reference as a comparison was made to members in Parliament who are political leaders but serve all Namibians.

Section 20 (Summoning of persons)

There is a need for the harmonization of existing laws especially the Police Act, Act 19 of 1990 to make specific provision for the presence and assistance of the Namibian Police Force at community courts.

Section 33 (Repeal of laws)

Section 33 of the Act does not explicitly state the role and function of the headman in the village. This function is abolished or the Act has diminished the power of the headman and render him or her non-relevant in the community they are supposed to serve, which might be in violation of Article 66 of the Constitution.

The implementation of the Act of 2003 in 2010 further exacerbated to the situation.

4.2.1.2 Legal issues flagged by Oshakati Magistrate Court

Outapi Magistrate Court only had a problem with the warrant of execution.

In some instances, cases that could be handled by community courts are also on the role of the magistrate's court, as communities are allowed to pursue civil action at community courts.

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It was alleged that community court clerks are currently hired and fired by some chiefs very often which might render training of staff ineffective. In this regard, it was proposed that the clerks and messengers should be employed by Government on a permanent basis to avoid hiring and firing by chiefs; and to make community courts more efficient and effective.

(a) The Criminal Justice System

The magistrate informed the Committee that community members appear to show faith in the criminal justice system as evident by the number of cases opened and dealt with by the magistrate courts.

(b) Process to amend or repeal Community Courts Act

The Committee was informed by the senior official accompanying the delegation that the Ministry of Justice is currently in the process of reviewing and amending the Community Courts Act 10 of 2003.

4.2.1.3 Proposals for amendments to the Act

Participants requested for amendments of the Community Courts Act in that only cases that cannot be dealt with at the village level, be heard at community courts. The advantage is that this would render the village headmen relevant and important; and keep them busy in their villages. It will also allow low-income groups to reach out and seek justice at village level.

Furthermore, the majority of the villages are less privileged and cannot afford to travel long distances to the community courts as this is very costly. It is proposed that community courts should only adjudicate cases that cannot be solved at village level.

The time limitation to register cases should be considered as the current Act does not provide for such.

Clerk of the Community Court should have an assistant to address the delays in court proceedings, whenever the clerk is sick or on leave.

4.2.1.4 Hiskia Judgement

The biggest challenge Oshakati Magistrate's court experience is the enforcement orders and warrant of execution due the High Court Judgement which declared the warrant of sale in execution for immovable property, in particular section 66 of the Magistrates' Courts Act, Act 32 of 1944 as unconstitutional, hence the sale in execution of immovable property cannot be implemented. *(Title of the Case: Hiskia and Another v Body Corporate of Urban Space and Others (HC-MD-CIV-MOT-GEN 143 of 2017) [2018] NAHCMD 279 (31 August 2018))*.

Community courts can still enforce orders and summons with the exception of the warrant of execution, which was found by the High Court to be unconstitutional. The Cabinet Committee on Legislation is still reviewing the judgement to come up with a solution.

4.2.1.5 Enforcement of community court orders and serving of court documents

The current practice is that enforcement orders are transmitted to the Division Community Courts in Windhoek for administrative reasons and onward submission to the local magistrate where the offence was committed. It is exactly during this process that delays are experienced. Although some community court clerks do follow up with the Division Community Courts in Windhoek, it is alleged that no or sporadic feedback is provided to the particular community court.

The current provision in the Act is one of the reasons why there is a lack of enforcement of orders, including payment of fines by 'accused persons'. As a result, the authority and power of community courts are weakened and disregarded by some community members who are on the wrong side of the law.

Some community court officials were of the view that the Act does also not provide any recourse or punitive measure, in the event that an accused person fails to honour an enforcement order issued by the community court. If an accused person is convicted at the Magistrates Court, there is an option of a fine or imprisonment or both.

Moreover, the procedure to submit enforcement orders to the Division Community Courts is just an administrative arrangement.

The Community Court officials under the **Mashi Traditional Authority** informed the Committee that most of the people in the community are still reporting their cases at the Police stations, including minor cases. In addition, the Sub-Khutas are not referring cases to the Community Courts even if they are unable to resolve such cases.

Some community members refuse to sign receipt of summons if they are summoned at **Mayuni Community Court**, claiming that they do not belong to such community but to different community courts hence, they reside in the area (dispute between Linyanti and Mayuni Community Courts).

When they summon community members who reside within Mayuni they will still report their cases at Linyanti and they are not referred back to Mayuni Community Court. They do not have a representative at Ngweze Sub-Khuta and only the Mayeyi and Masubias have representatives.

The Mafwe community do not have the area of jurisdiction with the Linyanti. On the issue of jurisdiction, the Deputy Director for Community Courts said, such matter is determined by Section 12 (a) and (b) of the Community Court Act, 10 of 2003 dealing with jurisdiction.

The Ngweze Sub-Khuta matter should be resolved by Ministry of Justice because Traditional Courts were repealed by the Community Court Act, 10 of 2003.

The situation captioned above resulted in the registering of only two (2) cases in 2021 and five (5) cases until August 2022.

It was shared with the delegation that in the Omaheke region, the community of Otjinene also had the same problem regarding the enforcement orders at that

particular community court. In this regard, community court clerks were trained in the administration of enforcement orders, as well as warrant of arrest and summons.

4.2.1.6 Dual reporting of Cases at Magistrates and Community Courts

At Vital Royal Community Court, same offences were reported at both Magistrates and Community Courts.

4.2.1.7 Powers duties of Traditional Leaders and Headmen are diminished by Community Courts Act

Some community court officials were of the view that with the introduction of community court system in Namibia, headmen and chiefs could be regarded as 'window-dressing' because they do not have the customary and traditional powers and functions they had before the promulgation of the Community Courts Act. It appears that there is an indirect abolishment of the powers and functions of traditional leaders which is in violation of Article 66 of the Namibian Constitution dealing with customary law.

Most traditional authority leaders and councillors in **Ohangwena, Omusati and Oshana** regions were of the view that the powers of the chiefs and headmen have now been diminished by the establishment of community courts and the powers and functions of traditional authorities are further weakened in terms of section 26 of the Community Courts Act, which provides for lodging of appeals within 30 days to the magistrate only and not the traditional authority.

Before the introduction of the community courts system, minor incidences and disputes among rural communities were handled by the headmen but the enactment of the Community Courts Act diminished the functions and powers of headmen. Therefore, in the northern parts of the country, most traditional leaders are not happy with the law prohibiting traditional councillors to arbitrate over petty cases in their communities; hence, they feel stripped from the powers.

Section 33 of the Act has diminished the role of the headman in the village and "rendered him or her irrelevant in the community they are supposed to serve". "Headmen are no longer respected as it used to be in the past and they have nothing worthwhile to do with their time."

It was the view of traditional leaders and community court members of above captioned regions that the function of allocation and cancellation of communal land was taken away from the traditional authority in term of the Communal Land Reform Act of 2005 but, when land disputes do happen in the villages, the same traditional authority is approached for redress.

4.2.1.8 Appeals from Community Courts

The current administrative procedure in the Act placing the responsibility of ensuring that an appeal is filed correctly, on the appellant, at his or her own cost is not fair and in the interest of administrative justice. It would be proper if the Clerk of the Community Court provide administrative assistance to the appellant in this regard as done in a criminal case.

Community court records written in the native language (depending on the ethnic group) should be translated before it is submitted to the Magistrate for review.

If the final court orders are transmitted to Windhoek and then send back to the District Magistrate, the court proceedings should then be translated into the official language in Windhoek at the cost of the Community Court budget allocation (using sworn in translator) other than making it difficult for the most marginalized citizen of this district.

Community court records are vague and magistrates often cannot make out facts, issues and direct answers and questions from all parties in a hearing. It was advised that community court records should be compiled as follows: separate questions and answers, then order and differentiate evidence from more than one person. The record should not appear as a story line, as this would sound like hearsay evidence, which is not permissible in a court of law, except in exceptional conditions provided by the law.

4.2.1.9 Warrants of Arrest

Some magistrate court officials needed clarification on the following matters regarding community courts:

- On what basis should a district court magistrate issue a warrant of arrest of an accused who failed to appear at a community court without a return of service attached?
- Why should a district court magistrate issue a warrant of arrest for an accused person at the community court and then the default enquiry is being dealt with at the community court?
- Why are the Justices at community courts fully empowered to issue and cancel the warrant of arrest issued at community court if the powers are enacted in the Act?
- It was claimed that some accused persons are summoned via radio to come to the community court, speaking under correction, if such accused person fails to come, on what basis should a warrant of arrest be issued if there was no proper service?

4.2.1.10 Fixed address for the community court, transcription of records and appeals

It is important that clerks at community courts explain the provisions of the compensation order, in terms of Section 22 of the Act, to all parties involved.

4.2.2 ADMINISTRATIVE AND OPERATIONAL WEAKNESSES AND CHALLENGES

4.2.2.1 Awareness and education

Although there is slight community awareness of community courts, there appears to be a general lack of information on the Community Court Act, 10 of 2003. Hence, the Ministry of Justice was requested to initiate awareness programmes to educate communities accordingly. Information sharing and awareness to the public through the radio in various language services should be strengthened.

The Ministry of Justice in collaboration with key stakeholders including civil society organizations need to create awareness and provide education on the community court system to communities in all jurisdictions. This would result in a better comprehension of the new system and the increase of cases because of the likelihood of complainants, compensated for stolen property.

Furthermore, continuous awareness creation on the mandate, functions, duties and the advantages of community courts may result in the reduction of crime that is rampant in many communities of our country.

4.2.2.2 Inadequate budget allocation, shortage of infrastructure and office equipment

The annual budget allocation of N\$120 000 to all community courts regardless of the number of justices, assessors, clerks and messengers serving the court, is simply not adequate for community courts to perform their functions promulgated in the Act.

N\$120, 000.00 per annum is simply not sufficient to cover office equipment, water and electricity payment as well as allowances and salaries. Hence, the need to review and amend the allocation from time to time.

Community court officials proposed that some criteria should be set in the allocation of funds i.e. size of the area under which community court operates, size of the population in relation with the number of people serving at that particular community court.

At Anker, concerns were raised about the lack of funds affected the appointment of justices. During the committee's visit, four (4) justice positions were advertised in the Government gazette but no funds were available. As a result, most cases have to be re-scheduled.

Again at Anker, there is lack of office space and the board room was converted into court room, hence the need to construct a court room.

The **Swartbooi Community Court** officials identified the need for court benches to be used inside the court as well as sound recording system because people sometimes deny what they are testifying in court.

The court room at **Masubia Community Court** is too small, not suitable, convenient and conducive, hence it need to conform to courtroom standards. There no court plaintiff or defendant boxes and both complainants and offenders make use of traditional mats. The same room is used as meeting room and court room.

At **Mayuni Community Court**, the Clerk's office and court room are too small. A request was made to the Ministry of Justice to build their own building for the clerk to have her own office as well as a big courtroom. Currently, the community court operates from the traditional authority's office.

At **Mashi Community Court**, the Community Court office is shared with the traditional authorities. There are no tables, chairs and all chairs are borrowed the traditional authorities.

The Clerk at Mayuni Community Court is using an old and outdated computer and in most instances, she uses the computer from the Traditional Authority office, causing some delays in the completion of her work and sometimes; she has to go to Mayuni to utilize such services.

4.2.2.3 Conditions of service

The Ministry of Justice did not have proper consultation and consideration on the conditions of employment for community court clerks, messengers, cleaners, justices and assessors. The perception at the time was that the community court system is an independent structure from the government and traditional authorities and community courts should determine their own conditions of service and not government.

The conditions of employment are not conducive for all working at the community courts as they are paid very low allowances, sitting and travel allowances. The clerks of the court do not know who they are working for as they are paid by the Ministry of Justice but are employed by the Community Court. They request for permanent employment, the same as legal clerks in the Ministry, with benefits such as pension fund, medical aid and social security in the public service.

Participants in **Ohangwena, Omusati and Oshana regions** advanced that the laws of Namibia must be applied equally and fairly to all the people of the country.

By implication, many community court officials were of the view that community courts serve an important function and role in the country, similar to the common law courts and other statutory boards in government Offices, Ministries, Agencies and State-Owned Enterprises. While performing similar duties and functions and facing the same economic hardships, conditions of employment of community court officials including justices and assessors, are downgraded if compared with other statutory bodies in the country, thereby infringing on administrative justice as contemplated in Article 18 of the Constitution.

Considering the important national duty of community courts to encourage peaceful communities through reducing crime, the allowances are very meager and does not commensurate with the duties performed by community court officials.

Messengers at almost all Community Courts informed the Committee that they travel with their own transport to deliver summons and regard it as doing voluntary work. The meagre allowance for kilometers travelled is used for fuel, tyres and maintenance of the car. A community court messenger raised concern regarding the wear and tear of his car and requested for official vehicles to be allocated to each community court, as they are all in the similar predicament.

Community court officials also do not have tools of trade including computers and proper office furniture.

As community courts are not assigned with GRN vehicles, at some community courts, documents have to be delivered on foot or via bicycle. Community court officials were promised a motorcycle but that has not been delivered yet.

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Understaffing at community courts is a matter of grave concern as only one (1) community court clerk, one (1) cleaner and sometimes one (1) driver are appointed per community court. Only one clerk serving a community court is not adequate and community courts should have fulltime staff just like legal clerks and chief legal clerks at the Ministry of Justice and Office of the Judiciary.

The current situation under which community court clerks are employed, is in violation of the Labour Act, Act 7 of 2011, as they are not issued with pay slips, there is no employment contract, no pension fund, no social security deductions, no medical aid and no transport allowance etcetera. Clerks are not sure whether they work for the Ministry of Justice, Community Courts or the Traditional Authorities.

Accommodation and food and other daily needs, are not catered for during community courts sittings.

Clerk of the court and messenger at **Swaribool Community Court** requested to be provided with pay-slips and their salaries to be paid on a fixed monthly date such as end of the month and through the Bank. The concern was also shared at the meeting with **Masubia Community Court** officials at Bukalo, where the messenger claimed that the life of the clerk is mostly in danger due to collecting money from the bank at Katima Mulilo.

Although training is provided to those who administer community courts, there were some concerns regarding the lack of investigative knowledge, where cases involve more than one accused person/respondent. In this regard, they need further capacity building to be more effective in their work.

Some participants claimed that training was lacking since the inception of the courts because adjudication procedures and processes in the previous traditional court setup are not the same as that in community courts.

At some community courts no cleaners are appointed, hence it is implored on the Ministry of Justice to appoint cleaners.

Participants requested that training certificates be issued when community court officials are trained by the Ministry of Justice or any other organization.

4.2.2.4 Allowances for justices, assessors, clerks and messengers

Justices and assessors ventilated their frustration regarding the meagre sitting allowances of N\$20.00 per session since the inception of the community court system, which is simply not adequate.

The kilometer rate of N\$4.00 per kilometer paid to justices and assessors is insufficient compared to the current fuel price; as well as the wear and tear of the vehicles. Participants proposed a revised fixed travel allowance to be paid on a monthly basis that is commensurate with today's economic realities. They further restated that justices and assessors should be remunerated fairly and reasonably, mindful of the important community work they perform in the country.

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Some justices and assessors have to overnight after a court hearing but they are not paid any subsistence allowance.

It was proposed that justices, assessors, clerks and messengers become full time judicial officers and judicial staff being servants in the lower hierarchy of Namibia's administration of justice system, who should be remunerated fixed salaries other than sitting allowances.

It was further mentioned that some justices travel far distances i.e. more than 50km and their transport can only be paid after one week. The kilometer rate/transport allowances paid to community court officials are simply not economical. Participants requested for an increase in the kilometer rate/transport allowance in the event where transport cannot be provided.

Delay in payments of sitting allowances for Community Court officials was also experienced, in the sense that, it can take up to two months without them receiving their allowances.

The structure for justices and assessors does not make a distinction who should be senior to who, as this is important for supervision and control; as well as the chain of command.

Allowances for community court clerks and messengers needs to be reviewed.

Current payment structure:

Rank	Allowance
Community Court Clerk	N\$1800.00 per month
Messenger	N\$1200.00 per month
Justice	N\$30.00 per hour
Assessors	N\$20.00 per hour
Cleaner	N\$700.00 pm

4.2.2.5 Collaboration with Namibian Police and Magistrates Courts

The Committee was informed that collaboration with the Namibian Police is in existence but only on an *ad hoc* basis. What is needed is the presence of a police officer at each and every sitting of community courts in all jurisdictions. This is important for law and order, safety and security purposes as some members of the community appear at courts with weapons and firearms without declaring them even though they are well informed.

Although there is some form of cooperation between some community courts and the Namibian Police, such cooperation is not formalized.

It was alleged that the Namibian Police at some police stations, do not want to assist community court officials at all.

The safety of clerks is at risk when withdrawing cash from commercial banks and during cash payouts to plaintiffs at community courts. The banks also raised this safety

concern of their clients and proposed that they use cell phone payments and online banking payment methods.

/Aio-Daman Community Court officials claimed that the Namibian Police are invited to attend community court hearing but they never show up.

At **Chinchimane Community Court**, relationship with Namibian Police is not good at all, as the police do not provide police assistance or support to the community court.

Mashi/Mafwe Community Court officials claimed that when the Community Court report their cases and request for assistance to the Namibian Police, they will be directed to write a letter to the Regional Commander and/or the Inspector-General.

At **Masubla Community Court**, there is no security when payments of fines are done at Court in the Clerk's Office. There is also no guard to guard the premises and sometimes, money is being kept in the Court Office.

The Committee was informed about an incident that took place during 2022, when someone stormed the Court room and grabbed books. Fortunately, they engaged the Namibian Police that came to rescue the situation. Generally, there is no security services at all community courts nor Namibian Police officers deployed at community court premises.

4.2.2.6 Late payment of justices, assessors and messengers of courts for the last five months

The committee was also informed that it could sometimes take up to five months for justices and assessors to be paid. This situation places the justices and assessors under dire need, considering the distances they have to travel to community courts from home and the general cost of living. In this regard, it was proposed that they get a fix allowance or a salary payable every month end.

4.2.2.7 Witness fee payments

At magistrate courts, witnesses are compensated for travelling and subsistence, while it is not the case at Community Courts.

As there is no provision in the Act to that effect, community court officials enquired who should be responsible for the payment of witness fees, as witnesses play a crucial role in the administration of justice and fair trial.

4.2.2.8 Location of community courts, distances and transport

Traveling distances between villages and homesteads are too far causing difficulties for complainants, accused persons and even court officials to reach some community courts. Therefore, more community courts must be established in a particular traditional jurisdiction, constituencies or magisterial district.

Due to the location of community courts mostly at the main seat of traditional authorities, in most cases very distant from remote villages, many community court

related cases are not reported at the villages. At most places visited, there is only one community court.

Furthermore, it was found that distances to and from community courts make it extremely difficult for court messengers to serve notices and summons to accused persons in communities.

Court officials of **Oukwanyama Community Court** and other community court jurisdictions are geographically vast and in these rigid terrains, 4x4 off-road vehicles are needed.

There is generally a lack of transport for messengers of community courts. Lack of transport hampers the work of community court officials, hence GRN vehicles should be provided by the Ministry of Justice and Ministry of Urban and Rural Development. Lack of transport hampers the duties of the Community Court Officials hence, there is no transport allocated to the Community Courts.

Also, in terms of transport allowance, some officials stay very far e.g. 109 kilometers from Anker and the payment from Kamanjab is N\$ 80 calculated at N\$ 2 per kilometer. Mostly, they hitchhike and there is also no provision for food while sometimes staying for one week to attend court sittings.

At the **Masubia Community Court**, concerns of long distances travelled by Messengers when delivering court summons due to lack of transport were raised. The Messenger can travel to places such as Impalila, Ikaba or Schuckmansburg which take about two days to be reached. Masubia area is so vast and the question asked was, why not employing two messengers to divide the workload.

There is also a need to reimburse the signatories who normally collect money on behalf of others and usually use their own transport.

Based on the submissions captioned above, access to justice is hindered by long distances people need to travel to reach community courts.

4.2.2.9 Accommodation facilities

Community court officials are forced/expected to overnight at their work places where there are no accommodation facilities, including when they visit sub-courts. They requested the Ministry of Justice through the Parliamentary Committee to be allocated with tents or accommodation facilities, where they can stay while attending community court sittings.

4.2.2.10 Plaintiff and defendant boxes

Community courts require plaintiff and defendant boxes at each community court.

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4.2.2.11 Fines

Although provided a specific period to pay their fines, some accused persons disappear after a hearing and do not come back to make payments or explain that they are not able to pay their fines.

4.2.2.12 Communication and coordination

There is need for improvement on the communication and cooperation between the Division Community Courts in Windhoek and community courts.

4.2.2.13 Unlimited time allocation to adjudicate cases

At **Vita Royal Court**, the time allocated when presiding over cases i.e. two weeks, is not sufficient as some cases takes long to be finalized. Cases are not supposed to be postponed to the next date but rather need to be finalized.

In some instances, people expected to appeal will fail to do so due to long distances to be travelled such as Itanga and once they fail to appeal, their cases will be removed from the court roll.

4.2.2.14 Lack of interpreters

Most people in the **#Aodaman Community Court, Khorixas** seemingly do not speak the local language and when they come to lay charges, officials have to look for someone to interpret and they normally pay N\$2 per hour for translation services.

At the **#Aiodaman Community Court in Anker**, it was alleged that information transmitted from the Division Community Courts are not received quite often because there is no fax or Internet. Mostly, they make use of their cellphones by climbing trees to have access to the network. This process was said to be too cumbersome. A quotation for improvement of the network amounting to N\$ 84 000 was obtained from Telecom Namibia.

4.3 ADMINISTRATIVE AND OPERATIONAL CHALLENGES FACED BY MAGISTRATE COURTS

4.3.1 OSHAKATI MAGISTRATE COURT

The **Oshana and Omusati** regions have a shortage of staff and a backlog of approximately 17,000 criminal cases pending, of which 3,500 cases are adjudicated by only two (2) magistrates. The separation of the Office of the Judiciary from the Ministry of Justice was hastily done and has created challenges.

4.3.2 KATIMA MULILO MAGISTRATE COURT

4.3.2.1 Staff Shortage/Understaffing and workload

Katima Mulilo Magistrate Court has only two local Magistrates and the third one alternates between Rundu and Katima. The two (2) locally Magistrates further serve Omega, which is 300km from Katima Mulilo and Ngoma periodically. In terms of human resources, only two officials work on Community Court matters and they require assistance from translators and messengers of the Court to assist with the workload.

There are only three (3) permanent Interpreters for Silozi, Subia, Khwe and Siyeyi while four (4) translators are just casual workers without contract and are paid the amount of two hundred and six Namibian dollars (N\$ 206) for two hours, without the provision of transport.

Due to staff shortage, interpreters normally do the clerical work while officials are struggling to cope with their workload due to shortage of human resources. The cashier, administer civil matters, messenger's fees and community court matters.

4.3.2.2 Inadequate office space

Lawyers working for government Legal Aid has no place to consult and neither do they have official transport. The offices are thus congested for instance the office designed for one person currently accommodates six to seven officials, including an asthmatic staff member.

There is also limited space to store files hence, there is no pigeonholes and filing cabinets. As a result, files are scattered around and being piled-up on the floor.

4.3.2.3 Lack of Security Services and accommodation facilities

Magistrates travel to attend periodical courts without the company of a security guard or police officer and they are only paid a kilometer rate calculated at N\$3.50 per kilometer, without accommodation. Nonetheless, they are forced to commute daily between Divundu and Omega. There is also no security or protection at their homes including at offices, when working late hours.

4.2.3.4 Witnesses Fees

Regular payout of cash to witnesses summoned to testify in court cases was said to be of great concern. They said, some witnesses travel long distances to all Community Courts.

4.3.2.5 Low salaries paid to Court Officials

The salaries received by Court Officials is very little compared to their work and they are also not allowed to engage in strikes. Due to the nature and sensitivity of the work as court official, they also operate under strict code of conduct such as not allowed to strike and neither to visit shebeens.

4.3.2.6 Court Infrastructure/Building

Katima Mulilo Magistrate Court still resort under Rundu Magistrates Division. During the tour of the Court building, the Committee observed the following challenges:

- Old infrastructure and dilapidated building;
- There were no chairs, neither toilets in the waiting room and family members sit on stones; and
- The office which was converted into a courtroom (B-Court) had very small space and the squirrels were running around including in the ceiling; and
- There was no electricity in the holding cells.

4.3.2.7 Structure of the court house

Judicial officers and court officials are still operating in the old building and the structure was revised in 2008. Although there is a new building constructed, an official from the Office of the Attorney-General, informed the Committee that, there is a dispute between the Ministry of Justice and the main contractor regarding the finalization/completion of the new Magistrate's Court.

The budget for the new building is approximately N\$60 million and the Ministry of Justice has engaged the Office of the Attorney General for arbitration.

4.3.2.8 Lack of training and awareness on Community Court Act, 10 of 2003

Court officials who administer community court matters are not trained and often carry out their work without the knowledge on community court matters. Their work is based on assumption. Members were equally informed that there is no good working relationship between the Community Courts and the Magistrate Courts, hence there is lack of information sharing.

4.3.3 OKAKARARA MAGISTRATE COURT

It was observed that minor cases are still decided by Magistrate Court instead of Community Courts.

There is a general lack of training and knowledge on the Community Courts Act.

4.3.3.1 Delay in translation services

In terms of the Act, if the proceedings are conducted in the local language, it should be translated and transmitted to Windhoek (Community Court Division). However, translation of community court proceedings from Otjiherero to English simply takes too long.

4.3.3.2 Legal Aid Applications

Applications for Legal Aid normally takes long for instance, a case for 2018 was still pending. At the time of the visit, there were approximately hundred and forty-five (145) pending cases on the court roll at Okakarara Magistrates Court.

4.3.3.3 Staff Compliments

In terms of the staff establishment, there are supposed to be three (3) entry positions for Legal Clerks but currently there are only two (2). The Committee was further informed that prosecutors are extremely overworked which is a matter of grave concern to the Committee.

4.3.3.4 Lack of Security Services

Members were informed that despite the good infrastructure (court building), the court officials are challenged with lack of security since they deal with sensitive matters. There is no security officer to guard the premises, especially at night neither a police officer to provide orderly services during court sittings. They have an alarm which is not linked to any security company and cameras are in place but not operational. The entrance door is also not functional.

4.3.4 OTJIWARONGO MAGISTRATE COURT

4.3.4.1 Inadequate office space

Members were informed about the sharing of offices by staff members as well as the lack of offices for interpreters and police officers.

4.3.4.2 Structure of the court house

There are no safety measures in terms of the court structure, no sitting area and the public normally roam around the premises, which makes the area unsafe.

4.3.4.3 Staff Establishment

The staff establishment is outdated and was last revised in 2010 when the population was low.

4.3.4.4 Understaffing and Workload

There is a shortage of staff resulting in one staff member doing the work of three staff. Staff members at Otjiwarongo Magistrates Court are stressed and overworked. For instance, prosecutors handle three to four trial cases per day. There are also unfilled vacancies resulting in lots of staff turnovers. Again, this situation is a matter of serious to the Committee.

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4.3.4.5 Safety and Security

There is no security at the official accommodation for staff members and the fence is low, putting their lives at risk and in danger. There is also no official transport and officials of the Magistrate court move around with case dockets. Members were equally informed that there is no CCTV camera in the cash hall, where the money is being handled. There is equally no security when prosecutors travel long distances with the accused person.

4.3.4.6 Delay in the appointment of Legal Aid Lawyers

In terms of Legal Aid, applications for the appointment of a Legal Aid lawyer takes long, up to six months. The proposal was that, Legal Aid should be decentralized for this reason, the need for the Legal Aid legislation to be amended to provide more powers to the Director to delegate or appoint Regional Chief Legal Officers to handle Legal Aid matters.

4.3.4.7 Bureaucracy in the Prosecuting process

The process and procedure of processing applications for prosecution was said to be very long and too cumbersome, therefore the need for a simplified procedure and process.

4.3.4.8 Salary difference between State Prosecutors and Magistrates

The salary difference between the prosecutors and magistrates was said to be very high and thus, needs to be adjusted in order to close the gap. Remuneration and benefits of prosecutors is very low and do not commensurate with the work they are doing, nor market related.

5. CONCLUSION

Most community courts are gradually achieving their mandate. This conclusion is justified based on the information shared by community court officers who stated that the communities they serve are satisfied with the operations of the courts and they make use of these courts. In some areas, it is the preferred dispute resolution mechanism because there is some form of compensation for the plaintiff.

Community courts serve an important function and role in the country, similar to the common law courts and other statutory boards in government Offices, Ministries, Agencies and State-Owned Enterprises. Furthermore, community courts have an important national function to encourage peaceful communities through reducing crime.

While performing such duties and functions and facing the same economic hardships, conditions of employment of community court officials including allowances to justices and assessors, are downgraded compared to other statutory bodies in the country, thereby infringing on administrative justice as contemplated in Article 18 of the Constitution.

Sections 5, 6, 8 (a) - (d), 20 and 23 of the Community Courts Act hamper the operations of the community courts, hence the need to review and amend the Act.

Furthermore, The Committee further concludes that having only a few community courts in a particular geographical area, size of the population in the community court area, long distances amongst others are matters of serious concern.

The perception and concern of traditional leaders that the powers and functions of traditional leaders including headmen were reduced by the Community Courts Act, is also a matter of concern to the Standing Committee.

Community courts are part of the formal structures in the administration of justice, hence the Committee is worried about the lack of police assistance and cooperation from the Namibian Police Force with Community Courts.

6. RECOMMENDATIONS

- 6.1 The Standing Committee recommends that the Ministry of Justice must expedite the tabling of the amended or repealed Community Courts Bill in the National Assembly. When drafting the new Bill, the Ministry should have due consideration for the inclusion of previous findings and recommendations by the predecessor Committee of the 6th National Assembly, the findings and recommendations contained in this report and the High Court judgement in the Hiskia case.
- 6.2 The Ministry of Justice must act upon the findings and observations regarding the weaknesses, shortcomings and challenges of the community court system.
- 6.3 The Community Courts Act should resort under the Ministry of Urban and Rural Development under which the Traditional Authorities also resort for effectiveness in traditional affairs. The Ministry of Justice, Ministry of Urban and Rural Development and Council of Traditional Leaders must consider the implementation of this recommendation.
- 6.4 The Committee further recommends that the Ministry of Justice must implement the following recommendations:
 - (a) Create public awareness and provide education to communities on the Community Courts Act and community court system, in collaboration with stakeholders and civil society organizations.
 - (b) Amend the current Community Courts Act 10 of 2003 in particular sections 5, 6, and 8 (a), section 20 and section 33.
 - (c) Consider lodging appeals with the head/chief of the Traditional Authority, as he/she is not part of the hearing process.
 - (d) Find solutions to the perception that the powers and functions of traditional authorities and traditional leaders; including traditional councilors and headmen are weakened by the Community Courts Act.

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- (e) Consider amending the Act to enable headmen to resolve petty disputes and minor offences at village level.
- (f) Reconsider the current practice of submitting community court enforcement orders to the Division Community Courts in Windhoek for administrative reasons.
- (g) Establish more community courts based on the geographical area of a particular community court jurisdiction and size of the population in a jurisdiction.
- (h) Review the conditions of employment/service of community court clerks and messengers in collaboration with the Office of the Prime Minister and Public Service Commission,
- (i) Review the current allowances and conditions under which justices, assessors and messengers are expected to perform their duties.
- (j) Appoint additional assistant clerks at all community courts in the country, to assist the clerk of the community court with his/her duties.
- (k) Allow community courts to open an additional bank account, strictly for the payment of fines and to keep the current bank account separate for accountability.
- (l) In collaboration with the Office of the Judiciary, act upon the findings with regards the situation at Opuwo Magistrate Court, Oshakati Magistrate Court, Katima Mulilo Magistrate Court, Okakarara Magistrate Court and Otjiwarongo Magistrate Court.


6.5 The Ministry of Home Affairs, Immigration, Safety and Security and the Ministry of Justice must review the Police Act, Act 19 of 1990 and Community Courts Act to formalize the provision of police assistance and court orderly services to community courts by the Namibian Police, the same way as it is done at magistrates' courts.

7. SIGNATURES



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Hon. Kletus Karondo
(Chairperson)

26.10.23
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Date



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Hon. Paula Kooper
(Deputy Chairperson)

31.10.23
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Date


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Hon. Tjekero Tweya

26/10/23
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Date


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Hon. Vincent Joseph Mareka:

20/10/23
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Date


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Hon. Herlinde Lucia Tjiveze


08/11/23
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Date


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Hon. Diederik Vries

26/10/2023
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Date


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Hon. Julieta Kavetuna

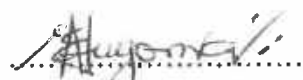
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Hon. Edson Edmund Isaacs


20/10/23
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Hon. Modestus Amutse

01-11-2023
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Hon. Emilia Nuyoma-Amupewa

08/11/2023
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Hon. Keviao Hengari

08/11/2023
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Hon. Joseph Kauandenge

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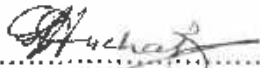
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Hon. Elifas Dingara

23.11.2023

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Hon. Reginald R. Diergaardt

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Date



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Hon. Aplus Auchab

08/11/2023

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Hon. Phillipus Katamelo

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Date



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Hon. Vipukauije Muharukua

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Date



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Hon. Erastus Shuumbwa

26/10/2023

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Date



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Hon. Longinus Lipumbu

08/11/23

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Date



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Hon. Patience Masua

31/10/23

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