7th NATIONAL ASSEMBLY

Parliamentary Standing Committee on Constitutional and Legal Affairs

REPORT

ON THE

WORKSHOP WITH STAKEHOLDERS OF THE JUSTICE CLUSTER

(15-19 MAY 2023)

SWAKOPMUND PLAZA HOTEL AND CONFERENCE CENTRE

SWAKOPMUND

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ABBREVIATIONS/ACRONYMS

ACC	Anti-Corruption Commission
AG	Attorney-General
CCL	Cabinet Committee on Legislation
ECN	Electoral Commission of Namibia
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
GANHRI	Global Alliance of National Human Rights Institutions
IAP	International Association of Prosecutors
LRDC	Law Reform and Development Commission
LSN	Law Society of Namibia
MoF	Ministry of Finance
MoHC	Master of the High Court
MoHE	Ministry of Higher Education
MoJ	Ministry of Justice
MP	Member of Parliament
NACSAP	National Anti-Corruption Strategy and Action Plan 2021-2025
Namcis	Namibian Court Information System
NamibLII	Namibia Legal Information Institute
NAMPOL	Namibian Police
NDP	National Development Plan
NHRI	National Human Rights Institution
NUST	Namibia University of Science and Technology
O/M/A	Office, Ministry, Agency
OoJ	Office of the Judiciary
OPG	Office of the Prosecutor-General
OPM	Office of the Prime Minister
PG	Prosecutor-General
UNAM	University of Namibia

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EXECUTIVE SUMMARY

From **15 to 19 May 2023**, the Parliamentary Standing Committee on Constitutional and Legal Affairs (the Committee) held a second Stakeholders Workshop of the Justice Cluster in Swakopmund.

This report focuses on:
(i) Implementation and execution of the recommendations made at the 2021 Tsumeb Stakeholders Workshop;
(ii) Projects, strategies and past achievements of Offices, Ministries and Agencies in the Justice Cluster notwithstanding, current challenges and shortcomings experienced by some Offices, Ministries and Agencies in the Justice Cluster; and
(iii) Make recommendations to the National Assembly.

Some of the observations and findings of the Standing Committee on Constitutional and Legal Affairs are summarised as follows:

- The past achievements of some Offices, Ministries and Agencies in the Justice and Legal Cluster with regards the execution, implementation and discharge of their constitutional mandate, including the implementation of programmes, projects, activities amongst others, public service delivery and access to justice; are well noted and commended by the Committee.

- O/M/As in the Justice Cluster are still confronted with innumerable challenges and shortcomings that are replicated on an annual basis. This may compromise the administration of justice, therefore, requiring urgent attention and action of Government.

- There was little progress with regards the execution and implementation of recommendations made in the Committee's report of the 2021 Tsumeb [Justice Cluster] Stakeholder Workshop.

- The Ministry of Justice, Office of the Judiciary, Office of the Attorney General, Office of the Government Attorney, Office of the Master of the High Court, Office of the Ombudsman and the Law Reform and Development Commission bemoaned the following challenges recurring on an annual basis: Inadequate budget and funds; Lack of infrastructure, Inadequate tools of trade, Inadequate staff establishment, Lack of specialised staff; including specialised research capacities to provide robust, efficient and effective administration of justice services to the country and its people.

- 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 more in the prevention and combating of crime.

- In a country where the rule of law is observed, there is always bound to be peace, stability and development. The Office of the Prosecutor-General is the channel to

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the Criminal Justice System and is expected to show 'punch' and legal insight as well as a healthy 'fighting spirit'. Such can only be done when there is political will to give sufficient and substantive Financial Assistance, Fund Human Resources, Technical Assistance, Infrastructure and accord autonomy to the Office of the Prosecutor General.

- Once again, the real and perceived cost of justice appears to deny (might deny) many citizens access to justice

- The Committee once again 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 with bill summaries, thereby facilitating their comprehension and speedy processing of bills in Parliament.

- Lack of proper regional infrastructure still prevails and makes it difficult for the Electoral Commission of Namibia to carry out its regional operations on a continuous basis.

- Political Party Funding Compliance remains a challenge for the ECN as some registered political parties and organisations/associations continuously fail to comply with the provisions of the Electoral Act.

- Regional Voter Education Officers could only carry out a Civic Education for a certain period due to limited resources in the institution, instead of continuous voter education throughout the year.

- Progress of work at the Anti-Corruption Commission is hampered by lack of: investigators and specialised skills, infrastructure, and adequate funding.

- The Office of the Master of the High Court is still faced with lack of organisational resources, over centralization of the services of Master's office, compounded by an inadequate case management system and outdated legislation.

- Efforts by the Master's office to review and replace outdated and impractical ordinances, proclamations and laws that are still on the statute books, with a single all-inclusive legislation are challenged and delayed by: Work schedules already overloaded; not many specialists in the occupational fields and limited resources to consult with stakeholders and members of public.

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1 INTRODUCTION

The Standing Committee on Constitutional and Legal Affairs of the National Assembly organised and embarked on a second Stakeholder Workshop of the Justice Cluster from 15 to19 May 2023 in Swakopmund at the Swakopmund Plaza Hotel and Conference Centre.

The first Stakeholder workshop was held in May 2021 in Tsumeb.

1.1 Workshop objectives

The objectives of the workshop are as follows:

(a) Meet key stakeholders in the Judiciary/Justice Cluster to receive progress on the implementation of recommendations in the Report of the Stakeholders Workshop held Tsumeb in May 2021, which was tabled and adopted in National Assembly;
(b) Receive reports from the line Ministry, Offices and Agencies on infrastructure development, finances and budget allocation, staffing and the implementation of programmes and activities;
(c) Determine progress on law reform and development in the country;
(d) Determine progress on the reform of the Legal Aid;
(e) Receive updates on Progress regarding new bills, amendments to Bills from the various stakeholders;
(f) Receive update on Progress made in repealing of obsolete laws;
(g) Receive a Report from the ECN on efforts to enable citizens in remote places to participate in the electoral process; and
(h) Any other matters within the mandate of the Standing Committee.

1.2 Workshop participants

Members and Secretariat in attendance:

Hon. Kletus Karondo – Chairperson
Hon. Paula Kooper – Deputy Chairperson
Hon. Apius !Auchab
Hon. Edson Edmund Isaaks
Hon. Herlinde Tjiveze
Hon. Kaviao Hengari
Hon. Modestus Amutse

Secretariat
Mr. W.H. Isaak - Deputy Director
Ms. C. Esterhuizen - Chief Legal Officer
Mr I. Skrywer - Parliamentary Clerk
Ms T. Dimba - Parliamentary Clerk

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1.3 Representatives from O/M/As

The workshop was attended by the Executive Directors, Ombudsman, Prosecutor-General, Deputy Prosecutor-General, Deputy Director-General, Director of Elections and senior officials of the following Offices, Ministries and organisation:

(i) Ministry of Justice;
(ii) Office of the Judiciary;
(iii) Office of the Ombudsman;
(iv) Office of the Master of the High Court;
(v) Office of the Attorney – General;
(vi) Office of the Prosecutor – General;
(vii) Law Reform and Development Commission;
(viii) Electoral Commission of Namibia;
(ix) Anti-Corruption Commission; and
(x) Law Society of Namibia

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 METHODOLOGY

Representatives of the ten (10) Offices, Ministries and Agencies listed above, made their presentations followed by questions, points of clarifications, frank and robust discussions.

The proposals advanced by the stakeholders were also discussed and received endorsement of the Members of the Standing Committee.

4 OBSERVATIONS AND FINDINGS

4.1 RESPONSES AND COMMENTS ON THE RECOMMENDATIONS FROM THE 2021 TSUMEB STAKEHOLDER WORKSHOP

Below is the consensus on the update provided by the O/M/As on each of the recommendations in the report on the previous stakeholder workshop held in Tsumeb.

4.1.1 Ministry of Justice

Recommendation: 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 have access to services of lawyers.

Comments/Update on Implementation:

(i) The moratorium on divorce cases was lifted;

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(ii) A civil unit was set up in the Directorate: Legal Aid to assist clients with civil claims; and
(iii) A case management system was developed and implemented to speed up processing of applications.

Recommendation: Government (through MoJ) and Parliament should support the on-going projects on National Equitable Economic Empowerment Framework, 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.

Comments/Update on Implementation:
The status table is provided under NamibLII (www.namiblii.org)

Recommendation: The MoJ, OPM and MoF should support the recruitment of experienced legal practitioners to support the work of the LRDC. The Committee recommended that the MoHE, UNAM and NUST 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.

Comments/Update on Implementation:
(i) The LRDC has not been appointed [constituted] yet since the term of the previous Commission came to an end in 2022;
(ii) Some law graduates were employed to build capacity and provide exposure to the field of law reform. a
(iii) The human resource structure is under review to ensure that adequate expertise is assigned to the Commission.

Recommendation: Delay in processing of Bills: MoJ to ensure a systematic collaboration between the Directorate: Legislation Drafting and Parliament's Table Office and Legal Services Directorate to support MP's with Bill summaries.

Comments/Update on Implementation:
(i) Explanatory memorandums are compulsory for all draft Bills;
(ii) Briefing sessions held in respect of ESAAMLG Bills; and
(iii) A cabinet memorandum to accompany proposed bills.

Recommendation: MoJ, OoJ, OPM and MoF to do more in terms of funding MoJ to fund infrastructure expansion programmes and to retain services of experienced prosecutors and government attorneys.

Comments/Update on Implementation:
(i) The high turn-over rate at Directorates: Public Prosecution and Civil Litigation is attributed to work pressure, non-compatible and comparable salaries; and little incentives; and

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(ii) An internship programme and aspirant prosecutors' programmes to be implemented.

Recommendation: Stakeholders to work together for speedy adoption of the Bill to strengthen the mandate and powers of the Ombudsman.

Comments/Update on Implementation:
The Bill was adopted by CCL and due for tabling in Parliament.

Recommendation: MoJ and ACC to fast-track speedy implementation of the Whistle-Blower Act.

Comments/Update on Implementation:
(i) A budget was allocated for filling of top structure and administrative positions; office accommodation; and training; and
(ii) Anticipated to be operationalised in 3rd quarter of current financial year (FY 2023/24).

Recommendation: MoJ and LRDC to provide urgent assistance to the Master of the High Court (MoHC) to review existing and outdated legislation regulating to matters of succession and deceased estates

Comments/Update on Implementation:
(i) Report on Obsolete Laws completed in 2020 and handed over to Minister of Justice;
(ii) Repeal of Obsolete Laws Acts of 2018 and 2022; and
(iii) Report on Succession and Estates completed in 2012

Efforts by Ministry of Justice to Reduce Poverty
(i) The internship programme for law graduates is successfully implemented in the MoJ;
(ii) MoJ currently employs more than 80 law and other graduates on the internship programme; and
(iii) Legal Aid Scheme provide legal representation to indigent litigants.

Ministry of Justice collaboration with Parliament and the Standing Committee towards effective Public Service Delivery
(i) NamibLII initiative remains relevant and necessary to ensure access to laws and legal information to citizens;
(ii) Stakeholder and client education and awareness raising;
(iii) Free legal advice days to the public across the country in which members of Parliament can also participate; and
(iv) Members of Parliament were requested to provide parliamentary support to Vote 16: Ministry of Justice when tabled in the National Assembly.

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4.1.2 Office of the Judiciary

(a) Short and long term solutions

(i) Expansion of the Human Resource Structure;
(ii) Increased Budget Allocation;
(iii) Renovation budget was increased to renovate dilapidated official accommodation for Magistrates; and
(iv) Increase in the Development Budget to complement the expansion of the structure, additional courts and courtrooms would be required, hence an increase in the budget of the Ministry is needed.

(b) Collaboration with Parliament and the Standing Committee towards effective public service delivery

(i) Parliament should allocate additional funding for the Judiciary [and support the budget of the Office of the Judiciary when tabled in the National Assembly;
(ii) Review Section 9 of the Judiciary Act 2015, (Act 11 of 2015) dealing with capital projects of the Office of the Judiciary; and
(iii) Parliament should support and deepen the independence of the Judiciary

4.1.3 Office of the Ombudsman

(a) The Ombudsman Bill

The recommendation of the Standing Committee on Constitutional and Legal and approved by the National Assembly, specific to the Ombudsman was that "*all the stakeholders should work together for a speedy adoption of the Bill to strengthen the mandate and powers of the Ombudsman in order to give expression to the independence of the Ombudsman as guaranteed in the Constitution.*"

Pursuant to the recommendations of the Cabinet Committee on Legislation dated 14 August 2021 and 11 November 2022 respectively; Cabinet approved, in principle, the Ombudsman Bill on the 29th of November 2022, and directed the Minister of Justice to table the Bill in the National Assembly, once certified by the AG and Legal Drafters.

The Bill was amended in accordance with these resolutions and submitted to the AG for certification early 2023.

However, some of the additional Cabinet resolutions are worrisome because it is not in compliance with the Paris Principles for National Human Rights Institutions. The Ombudsman have raised these concerns with the Parliamentary Standing Committee on Constitutional and Legal Affairs.

(b) Achievements and Challenges faced Post 2021 Tsumeb Workshop

(i) The Ombudsman Act

Two years later [3 years at the time of tabling this report], the Office of the Ombudsman have made significant progress even though the Bill is not yet passed. The passing of the Bill means compliance with the Paris principles which means that the Global Alliance of National Human Rights Institutions (GANHRI) Bureau grants the Institution "A" status re-

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accreditation. Without it Namibia will not meet that criteria to be granted the "A" Status accreditation of Namibia is up for re-accreditation later in 2023.

(ii) Staff shortages

(a) A new Children's Advocate was appointed on the 1st October 2022 - she is the third Childrens' Advocate since the Child Care and Protection Act, Act 3 of 2015 came into operation in 2015;

(b) Other vacancies in particular the position of Deputy Director – Head of the administration division, was vacant since the retirement of the previous incumbent in 2018. Unfortunately, the position remains unfunded since then;

(c) The resignation of two staff members, retirement of one and promotion of some complaint investigators created additional vacant positions; and

(d) The filling of these vacancies invariably proves to be a lengthy and cumbersome process as the Office of the Ombudsman is at the mercy of the human resources department of the Ministry of Justice in relation to the recruitment process.

(iii) Lack of human rights and tolerance education in the formal education system

It was established that the formal education system does in fact have a Life Skills subject, a comprehensive component on human rights and tolerance education geared towards grades 4 to11 pupils. The extent to which it is being implemented is not quite certain. The Children's Advocate is in the first phase consulting with children and educators to gauge to what extent implementation is taking place and what the impediments, if any, are.

(iv) National Assembly's failure to debate and consider Ombudsman's Reports-

Reference was made to an amendment of Rule 70(3)(a) obligating the Standing Committee [on Constitutional and Legal Affairs] to consider and examine the reports of the Ombudsman.

Standing Committee comment: Rules for establishing, functioning and procedures of Committees of the National Assembly of the Namibian Parliament are currently [April 2024] on the Order Paper of the National Assembly for consideration and approval. The new rule, Rule 34 (3) states that *"With regards to the Ombudsman, the Committee on Constitutional and Legal Affairs and Petitions must examine, consider and report on the annual reports laid before the Assembly in terms of the provisions of the Ombudsman Act, 1990 (Act No. 7 of 1990) and such other reports it may require and make such recommendations it deems necessary to the Assembly."*

(v) Failure to implement the recommendations of the Ombudsman-

Recommendations by the Ombudsman are merely persuasive and not binding. Thus, if an individual or institution fails to implement the Ombudsman's recommendations, Ombudsman must compile a "special report" and submit it to the National Assembly in terms of section 6 (1) of the Ombudsman Act, Act No 7 of 1990.

Alternatively, the Ombudsman can approach a competent court for appropriate relief. More consistent compliance will perhaps be obtained with the passing of the

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Ombudsman Bill as it will provide more credibility and authority to the Ombudsman, which will enhance the Ombudsman's power of persuasion.

Principles and Collaboration with Parliament towards Effective Public Service Delivery
(vi) NHRI's (Ombudsman's) Relationship with Parliament

(a) Most NHRI's report directly to Parliament which is a positive practice that enhances the independence of the NHRI; and ensures that its recommendations, advice and reports receive a hearing;
(b) Parliament is responsible to the people – by reporting to Parliament, the NHRI reports to the people;
(c) Ombudsman should develop relations with Parliament, parliamentary bodies and parliamentarians to influence policy and programme decisions; and
(d) Regular appearance before parliamentary standing committees is an important way of ensuring that human rights are heard.

The Abuja Guidelines of 2004 and Belgrade Principles of 2012 clearly set out the relationship between Parliaments, parliamentarians and National Human Rights Institutions.

4.1.4 Electoral Commission of Namibia

Challenges - Post 2021 Tsumeb Workshop

(a) Lack of proper regional infrastructure still prevails which makes it difficult for the ECN to carry out its regional operations on a continuous basis;
(b) [Alleged] theft of one hundred and seventeen (117) laptops tainted the image and reputation of the institution. Two (2) staff members were suspended and disciplinary action is on-going;
(c) Political Party Funding Compliance – remains a challenge as registered political parties and organisation/associations continuously fail to comply with the provisions of the Electoral Act;
(d) ECN lacks capacity within the internal audit section to analyse the audited statements from political parties/organisation/associations;
(e) ECN continues to execute deliberate interventions to educate the political parties/associations/organizations on their obligations through various written reminders;
(f) A deliberate intervention by the Commission is envisaged to take place where all registered political parties/associations/organizations will have one-on-one meetings with ECN. ECN tried to accommodate political parties and organisations by proposing amendments to the Electoral Act to enable them to use accountants instead of auditors and even to submit affidavits regarding financial difficulties with compliance; and
(g) The Regional Voter Education Officers could only carry out a Civic Education for a certain period due to limited resources in the institution. It is the desire of the

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Commission to conduct continuous civic education in the regions in preparations for the 2024 Presidential and National Assembly elections and related voter registration activities among others.

4.1.5 Anti-Corruption Commission

Collaboration with Parliamentary Standing Committees
The meeting was informed that the Standing Committee on Legal and Constitutional Affairs is responsible for oversight of the NACSAP.

There are various actions required for implementation by Parliament under Strategic Objective:

- Specific Objective 1.1: Increasing the transparency of political party financing.
- Specific Objective 1.2: Strengthening the integrity and transparency of Parliament.
- NACSAP should facilitate periodic seminars and public debates to disseminate best practices on integrity amongst Members of Parliament and to discuss topical issues related to integrity [ethics] and corruption.
- Parliament also has the responsible to strengthen the financial capacity of the ACC to enable the organization to carry out its mandate efficiently and effectively.

4.2 LEGAL FRAMEWORK, SYSTEMS AND PROCESSES

Office of the Prosecutor General
Prosecution of crime reduces poverty in the country. Many people will desist from committing offences if crimes like corruption, financial crimes and other serious crimes having an adverse impact on the economy of the country are prosecuted speedily. Furthermore, speedy prosecution of crime will deter would-be offenders, when they are deprived to benefit from their unlawful/illicit activities and the Courts pass deterrent sentences coupled with removing the proceeds of crime from them.

Therefore, the Office of the Prosecutor-General called upon Parliament and the Parliamentary Standing Committee to assist them (with the resources) to prosecute crime without fear, favour and prejudice.

There is no legislation, specifically dedicated to the establishment of the National Prosecution Authority.

NDP 5 has also brought about an additional responsibility to the Prosecution, by adopting the concept of Prosecution Guided Investigations, whereby knowledgeable and experienced prosecutors are required to guide the investigations being carried out by the law enforcement agencies, during the early stages of any criminal case.

The Office of the Prosecutor-General has no website where the public can access the information about the Office. The case Management System has not been implemented even though a lot of work and effort were put into that project.

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The **Office of the Attorney-General** is also faced with a myriad of shortcomings:

(a) Parties not reaching consensus on agreements and other negotiated matters;
(b) An increase in complex and urgent files, resulting in limited time to attend to backlog files;
(c) Increased demands for legal representation as Namibians are becoming more litigious; and
(d) High legal costs for instructed lawyers impacting adversely on the budget.

The delay in the implementation of the Whistle-Blower Protection Act, 2017 (Act. No. 10 of 2017) is an impediment to public confidence that whistle-blowers will be afforded the necessary protection.

There is a need to amend the Anti-Corruption Act, 2003 (Act No. 8 of 2003) amongst others, to address any shortcomings.

Office of the Master of High Court

The Master's Office is faced with challenges and shortcomings listed as follows:

- Outdated laws and regulations.
- An Inadequate case management system.

The foregoing notwithstanding, the Office is still in the process of reviewing all legislation regulating succession matters; and to provide for a legislative framework that makes provision for sufficient resources.

The review process is also aimed to include all succession and inheritance matters under one law and will include a new legal framework and administration process.

The following challenges hamper and delay review and drafting of the new legislation:

- Work schedules already overloaded;
- Not many specialists in relevant fields; and
- Limited resources for consultation with stakeholders and members of public.

4.3 FINANCIAL AND BUDGET CONSTRAINTS

Ministry of Justice, Office of the Judiciary, Office of the Government Attorney, Office of the Attorney General, and the **Law Reform and Development Commission** raised concern about the inadequate budget allocation that keeps on recurring every year.

The **Office of the Government Attorney** is experiencing a high number of recurring claims [against the State] and [there seems to be] no clear plan on avoidance of such claims. This results in the unsustainable high legal costs budget and inadequate allocation of funds to Vote 16: Ministry of Justice.

The **Office of the Prosecutor-General** has no 'specific or stand-alone' budget, although the Government Budget Book makes provision for Main Division 05: Public Prosecution in Vote 16: Ministry of Justice. This budget is mainly for salaries of personnel and subsistence and travel allowances.

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The budget for witness fees is inadequate.

The Anti-Corruption Commission is faced with inadequate resources including financial and human resources which continue to hinder the ACC in the execution its statutory mandate.

It was also recommended in the ESAAMLG country mutual evaluation report that Namibia should provide adequate operational capacity (financial, human and technical resources) to law enforcement agencies, inclusive of the ACC and NAMPOL.

The Master of the High Court is also faced with financial, human and organizational resource challenges.

4.4 LACK OF STAFF AND EXPERTISE IN THE JUSTICE CLUSTER

The current personnel structure of the **Office of the Prosecutor-General** is inadequate, outdated and does not cater for the needs of the Office.

The International Association of Prosecutors of which the Office of the Prosecutor-General is a member, sets an internationally accepted best practice ratio for the efficient and effective administration of criminal justice to be two (2) prosecutors for every one (1) magistrate court room. With the current structure of the Office of the Prosecutor General, this ratio cannot be achieved, which means the Office does not comply with an internationally accepted best practice ratio.

Having two prosecutors per Magistrate court room, will ensure that whilst one is in court the other will prepare for next day court session, consult with witnesses for his/her court sitting as well as carry out the administrative duties of the office. This will provide for better service delivery and more victim-friendly courts.

The Magistracy's establishment has now been reconsidered twice and also under consideration for a third time; and the number of magistrates will continue to increase; whereas none of these solutions are applied in the Prosecution.

Furthermore, the Prosecutor-General has no personal assistant and the Office has no public relations officer, no legal researchers, research assistants or paralegals.

Human resources demand on the E-justice and Case Management System

The High Court of Namibia has introduced an E-justice System which requires that all legal process/documents are filed electronically. The Office of the Prosecutor-General, however, still operates manually and does not have an internal case management system available.

On the other hand, the Namcis System which is a Case Management system for the Lower Courts, has been rolled out to all Magistrates Courts with the exception of approximately seven (7) Magistrates Courts.

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The Office of the Prosecutor-General is expected to investigate the Case Management system from its counterparts, hence the need to streamline efforts and processes to be on par with the developments in both the High and Lower Courts.

This initiative also adds a huge burden on the Office of the Prosecutor-General and it requires more personnel to prepare for the investigation, transition and implementation from manual to electronic case management system.

In terms of the Constitution, public prosecutors perform their duties through delegated power from the PG. However, the PG has no power to discipline civil servants. This is done through the Executive Director.

The proclamation of new magisterial districts and creation of permanent courts in various magisterial districts that were previously served as periodical court, is a factor that motivates the need for employment of more prosecutors.

Periodical courts are currently being served by resident prosecutors from permanent courts, whilst magistrates are now being appointed for these courts, which require prosecutors to be present at the stations.

The proposed expansion structure of the Magistrates Commission creates additional magisterial divisions and districts; and ultimately additional posts for magistrates. This in turn will result in the need for more prosecutors to complement the Magistracy structure. However, it should also be noted that prosecutors do not only serve magistrates' courts but the High Court and Supreme Court.

The Office of the Prosecutor General lost a number of prosecutors over the past couple of years, which is a cause of grave concern. Not only does the country lose prosecutors, but with it, the experience that cannot be replaced immediately by appointing new prosecutors. Especially, noting the fact that it takes on average three (3) years to train an incoming law graduate to operate at satisfactory level, with the least required prosecutorial competencies to discharge the basic mandate of the OPG.

This exodus of competent and experienced prosecutors can be attributed to a number of reasons:

(a) Severe shortage of prosecutors;
(b) Prosecutors are overworked and underpaid;
(c) Demanding duties with limited working environment and conditions of employment;
(d) Lack of personal security;
(e) Lack of transport and official accommodation; and
(f) Increasing work demands that cause physical health and mental health illnesses; and impacting negatively on the wellbeing of staff.

Office of the Attorney-General

(a) There is a high demand by O/M/As for legal officers to serve on various committees and boards that entails negotiations, investigations and the

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attendance of several meetings. This is a challenge, considering the demand and number of legal officers on the establishment of the Directorate.

(b) Due to a lack of funds, no legal officers were appointed despite the existence of vacant positions on the establishment. Serving the O/M/As becomes a challenge in this regard, due to limited legal staff.

(c) Lack of training for staff members - the Office was unable to train staff to develop their skills due to financial constraints. To address this the Office will make use of sponsored training and online training opportunities.

Office of the Government-Attorney
There are too many cases being considered and processed by the office, having an adverse impact on the limited skilled and expert professional staff on the staff structure of the office. This state of affairs is further aggravated by the complexity of the cases.

Anti-Corruption Commission
ACC needs to attract, recruit and retain skilled staff; and experienced financial investigators to continue providing specialized training to its staff, in particular with regard to complex financial investigations.

The absence of a dedicated unit to serve as secretariat for NACSAP places a strain on the already limited human resources capacity of the ACC (the secretariat is currently functioning on an ad hoc basis).

Office of the Master of High Court
The Master of the High Court is still faced with human resource challenges.

4.5 INFRASTRUCTURE

There is no Head Office Building for the **Office of the Prosecutor-General.** The current rented offices are simply inadequate. The Office space is too small and deprived of many facilities expected in modern day prosecution offices. Further, the drainage and sewer systems are faulty and subject to constant blockages.

The **Anti-Corruption Commission** is faced with a lack of representation in many regions due to the absence of regional offices; and lack of functional and specialized courts in the regions.

Lack of proper regional infrastructure still prevails and makes it difficult for the **Electoral Commission of Namibia** to carry out its regional operations on a continuous basis.

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4.6 DECENTRALISATION OF SERVICE DELIVERY

Government's decentralization policy seeks to bring services closer to the people. In line with this policy Government has established the High Court Northern division, in Oshakati.

This High Court has provision for only three permanent judges and three court rooms. However, judges in acting capacities are sent to Oshakati, from time to time, to handle the escalating workload that this Court is experiencing.

As a result, additional state advocates are required to assist the permanent advocates stationed there, whilst there is currently a shortage of prosecutors.

Consequently, state advocates are faced with strenuous workloads, resulting in fatigue and burn out, which could impact negatively on the quality of work output.

It is also envisaged that more circuit courts of the High Court jurisdiction should be considered in future in some parts of the country such as Swakopmund, Otjiwarongo, Keetmanshoop, Rundu and Katima Mulilo.

Office of the Master of High Court
Decentralization of services of the Master's office is required as the services of the Master's office are overcentralized in Windhoek.

4.7 NON-ESTABLISHMENT OF COMMISSION IN THE LAW REFORM AND DEVELOPMENT COMMISSION

At the time of the workshop in May 2023, the commissioners for the Law Reform and Development Commission have not been appointed since the tenure of the previous Commission lapsed.

This situation delays the production and finalising of reports for submission to the Minister of Justice, for consideration and culmination into legislation.

While preparing and finalising this report, the Committee learned that the Commission was duly constituted.

4.8 CHALLENGES OF THE LAW SOCIETY

Aligning its statutory objectives in terms of Section 41 of the Legal Practitioners Act, 15 of 1995, with the present-day needs and challenges faced by the legal fraternity, is high on the priority list for the LSN Council. As a result- the LSN has embarked on the process to draft its first-ever Strategic Plan.

The LSN continues to play a pivotal role in protecting monies entrusted to legal practitioners in private practice by members of the public, through ensuring compliance with the rules and regulations regarding trust monies.

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In doing so, it tries to minimize the risk posed against the Legal Practitioners Fidelity Fund.

However, the Law Society is faced with the following challenges and shortcomings:

(a) Outdated Legal Practitioners Act, 15 of 1995 and the delays in getting a new or amendment Bill to Parliament;
(b) Financial Constraints (funded by its members and receives no stipends, donations, or subsidies);
(c) Increase in the number of complaints concerning alleged improprieties and alleged misappropriation of trust funds;
(d) Balancing the promotion of access to justice with the right of legal practitioners to practice their trade (the question of the legal practitioners' charge for their services); and
(e) Limited capacity building for members in line with the changes and development of the law in various areas.

How the Standing Committee can assist the LSN?

(a) Collaborate on public education and public awareness;
(b) Collaborate on access to justice campaigns;
(c) Assisting or guiding on the process of receiving the Legal Practitioners Bill passed in Parliament and gazetted into law; and
(d) Collaborate in awareness campaigns against bogus "legal advisors" who "prey'' on vulnerable members of the public.

5. CONCLUSION

The workshop aimed to facilitate productive and professional discussions on significant issues related to the Justice Cluster including access to justice, public services for fair and credible elections, protection of human rights and combatting of corruption.

It spanned over five (5) days and was intended to serve as a prime forum for Members of the Committee and Government officials including the Law Society, in the Justice Cluster involved in finding solutions to improve and strengthen the State machinery responsible for the administration of justice, access to justice, fair and credible elections, protection of human rights and combatting of corruption.

6. RECOMMENDATIONS

6.1 Legal Framework, systems and processes

6.1.1 Parliament should continuously support, strengthen and deepen the independence of the Judiciary through, amongst others, supporting this report and implementation of the recommendations.

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6.1.2 The Ministry of Justice and Office of the Judiciary should:

(a) Strengthen and enforce its internal policies and processes;
(b) Review Section 9 of the Judiciary Act 2015, (Act 11 of 2015) dealing with capital projects of the Office of the Judiciary;
(c) Create public education and awareness about the mandate, legal framework, procedures and processes of Ministry of Justice and Office of the Judiciary; and all its constitutional and statutory offices and agencies;
(d) Develop a Risk Framework and associated risk-based audits for the Ministry of Justice and Office of the Judiciary as well as all the statutory and constitutional offices within the sphere of the Ministry.
(e) Strengthen public and stakeholder awareness, client education on the NamibLII initiative [project] because it remains relevant and necessary to ensure access to laws and legal information to citizens and members of the public;
(f) Initiate free legal advice days across the country in which the public and citizenry can participate; and
(g) Create awareness and strengthen client education on the mandate, functions and duties of the Attorney-General and Prosecutor General.

6.1.3 Ministry of Justice should ensure systematic collaboration between the Directorate Legal Drafting in the Ministry, Parliament's Table Office and Parliament's Legal Services Directorates (both Houses) to support Members of Parliament with bill summaries that will facilitate their comprehension and speedy processing of bills in Parliament.

6.1.4 The Ministry of Justice and the Anti-Corruption Commission must fast-track the speedy implementation and operationalisation of the Whistle-Blowers Protection Act, 2017 in order to protect members of the public who report and give evidence on cases of corruption.

6.1.5 The Office of the President, Office of the Prime Minister in collaboration with the Ministry of Justice, Ministry of Finance and Public Enterprises should jointly assist the ACC as follows:

(a) Call upon regional governors to take ownership of the NACSAP Regional Forums and drive the initiative;
(b) That the implementing institutions under the NACSAP Strategy take ownership of the Strategy and timeously report on progress made with the implementation of the actions resorting under their strategic objectives.
(c) Amend and harmonize the Anti-Corruption Act, 2003 with other legal instruments to effectively fight corruption.
(d) Make legislative amendments to cater for plea-bargaining.

6.1.6 The Minister of Justice should table in Parliament the Ombudsman Bill, approved by Cabinet on the 29th of November 2022.

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6.2 Financial and budget constraints

6.2.1 The Ministry of Finance and Public Enterprises, Ministry of Justice, Office of the Judiciary and National Assembly should review and increase Budget Vote 16-Ministry of Justice and Vote 21-Office of the Judiciary in the 2024/25 or 2025/26 Financial Year, Midterm Budget Review or the Medium Term Expenditure Framework, to strengthen all the programmes, projects and activities of these important offices responsible for administration of justice.

6.2.2 The Ministry of Finance and Public Enterprises and Ministry of Justice should ensure that the increase in the annual budget allocations are reallocated to the Office of the Ombudsman, Office of the Attorney-General, Office of the Prosecutor-General, Office of the Master of the High Court, Office of the Government-Attorney and Law Reform and Development Commission.

6.2.3 The Ministry of Finance and Public Enterprises and National Assembly should also increase the annual budget allocations of the Anti-Corruption Commission and the Electoral Commission of Namibia to carry out their mandate, functions and duties efficiently and effectively.

6.2.4 Ministry of Justice, Office of the Attorney General and the Law Reform and Development Commission should find ways and means to mitigate the high number of [legal] claims [against the State] through a clear plan of action on avoidance of such claims. The legal claims result in unsustainably high legal costs to the State impacting adversely on Vote 16: Ministry of Justice.

6.3 Lack of staff and expertise in the Justice Cluster

6,3.1 The Office of the Prime Minister and Ministry of Finance and Public Enterprises should do more in terms of funding to the Ministry of Justice and Office of the Judiciary in order to review the entire staffing structures of the Ministry of Justice, Office of the Judiciary and their statutory offices; and agencies such as: the Office of the Attorney- General, Office of the Government Attorney, Office of the Prosecutor General, the Magistracy, Law Reform and Development Commission, Office of the Ombudsman and Office of the Master of the High Court.

6.3.2 The services of experienced public prosecutors, government attorneys, government legal officers, senior and chief legal officers, legal advisers and legal clerks, in the Ministry of Justice and Office of the Judiciary should be retained through human resource development initiatives and incentives, thereby boosting the morale of professional and administrative staff.

6.3.3 The Ministry of Justice and Office of the Judiciary in collaboration with the Office of the Prime Minister should introduce new positions and employ qualified legal researchers, paralegal officers and legal clerks to assist public prosecutors, government attorneys and government legal officers with functions and duties.

6.3.5 The Ministry of Higher Education, Science and Technology, University of Namibia and Namibia University of Science and Technology in collaboration with the

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Ministry of Justice and Office of the Judiciary should invest in the expansion of the law faculties in Namibia to support legal education and turnout of more law professionals, arbitrators/mediators and paralegals to support all segments of the justice system.

6.3.6 Ministry of Finance and Public Enterprises, Office of the Prime Minister and Anti-Corruption Commission in collaboration with key stakeholder institutions such as the Office of the Prosecutor-General and Bank of Namibia should revisit the organisational human resource structure of the ACC and develop and implement a recruitment and retention policy to curb high staff turnover and subsequently the loss of skilled personnel.

6.4 Infrastructure and Resources

6.4.1 The Ministry of Justice and the Office of the Judiciary must continue to conduct a critical review of the distribution of courts in the country and the plan to set up new magistrate courts must be expedited to take administration of justice closer to the people.

6.4.2 The Ministry of Justice, Ministry of Finance and Public Enterprises and Ministry of Works and Transport should, as a matter of urgency, allocate funds for construction of the Office of the Prosecutor-General at the piece of land already identified for that purpose.

6.4.3 Ministry of Justice and the Office of the Judiciary in collaboration with the Anti-Corruption Commission, should establish special courts to expedite the finalisation of corruption cases.

6.4.4 Ministry of Urban and Rural Development, Ministry of Finance and Public Enterprises, Electoral Commission, National Planning Commission and Ministry of Works and Transport should investigate and find solutions to the lack of proper regional infrastructure at the Electoral Commission of Namibia in order to facilitate its regional operations on a continuous basis. Attempts should be made to carry out this assignment before the November 2024 Presidential and National Assembly elections and related voter registration; and education activities.

6.5 National prosecution

6.5.1 Ministry of Justice, Office of the Attorney-General and the Office of the Prime Minister should (jointly within their mandate) and in collaboration with the Office of the Prosecutor-General and Ministry of Finance and Public Enterprises, implement the followings recommendations:

(a) Fast track the National Prosecution Authority Bill which is currently with the Office of the Attorney-General for tabling in Parliament;
(b) Recruit more prosecutors to address the severe shortage of [public] prosecutors in Namibia and reduce the high staff turnover rate, through the retention of prosecutors;

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(c) Review the conditions of employment of public prosecutors and provide conducive working environments, in order to stop the mass exodus through resignations;
(d) Establish an aspirant prosecutor's programme where aspirant prosecutors can be appointed on renewable fixed term contracts and create additional posts for the specialised units;
(e) Appoint paralegal specialists and staff, administrative, research and clerical staff to assist prosecutors, to enable them, to have more time for court preparations.
(f) Establish and construct specialized court rooms;
(g) Allocate more funds for witness fees as the current budget is not sufficient, resulting in witnesses being stopped from attending court sittings;
(h) Establish a public relations and communication service division in the Office of the Prosecutor-General to harness transparency and public accountability in the prosecution authority of Namibia;
(i) Expand and strengthen digitalization and information technology and a localized IT Division/Department for the Office of the Prosecutor General;
(j) Reintroduce the Plea Bargaining Bill in Parliament;

6.6 Decentralisation

The Ministry of Justice should decentralise the over-centralized services of the Master's office which has been compounded by an inadequate case management system.

6.7 Legal aid

Ministry of Justice must ensure that on-going work to reform the legal aid scheme is concluded as soon as practicable to enable the vulnerable, poor and needy groups of the Namibian society, access to legal services and access to justice.

6.8 Law society

6.8.1 The Ministry of Justice, Office of the Judiciary in collaboration with the Law Society of Namibia should implement the following recommendations:
(a) Revise the outdated Legal Practitioners Act, 15 of 1995 and table the Bill in Parliament.
(b) Find solutions to the increasing allegations of improprieties, misappropriation of trust funds etcetera.
(c) Find solutions to balance and strengthen access to justice with the right of legal practitioners to practice their trade; whilst addressing the question of the legal practitioners' charge for their services.
(d) Earmark resources to support capacity building for LSN members in line with the changes and development of the law in various areas.

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SIGNATURES

Hon. Kletus Karondo
Chairperson

04. 06. 2024
Date

Hon. Paula Kooper
Deputy Chairperson

05. 06. 2024.
Date

Hon. Koviao Hengari

04 June 2024
Date

Hon. Edson Isaaks

Date

Hon. Herlinde Tjiveze

4/06/2024
Date

Hon. Apius !Auchab

Date

Hon. Tjekero Tweya

4/6/24
Date

Hon. Julieta Kavetuna

04/06/2024.
Date

Hon. Elifas Dingara — 4.6.2024 Date

Hon. Emilia I. Nuyoma-Amupewa — Date

Hon. Phillipus Katamelo — Date

Hon. Diederick Vries — Date

Hon. Patience Masua — Date

Hon. Longinus Iipumbu — 04/06/2024 Date

Hon. Josef Kauandenge — 04-06-2024 Date

Hon. Erastus Shuumbwa — 04-06-2024 Date

Hon. Bernadus Swartbooi — Date

Hon. Reginald Diergaardt

Date

Hon. Vincent Joseph Mareka

04/06/24

Date