

# **COMMENCEMENT OF THE HIGH COURT LEGAL YEAR 2014**

**16 TH JANUARY 2014**

## **REMARKS BY THE PROSECUTOR-GENERAL OF NAMIBIA**

My Lord Justice Petrus Damaseb, Judge President of the High Court of Namibia;

My Lords and Ladies, Judges of the High Court of Namibia;

Honourable Mr. Utoni Nujoma MP, Minister of Justice;

The Honourable, Ombudsman of Namibia;

President of the Law Society of Namibia;

President of the Namibia Law Association;

President of the Society of Advocates;

Esteemed legal practitioners present;

Esteemed State Advocates;

Esteemed Registrar of the High and Supreme Court and your  
staff;

All media practitioners here present,

Ladies and Gentlemen:

Honourable Judge President, I wish to thank you for providing me with the opportunity to make a few remarks at the commencement of the High Court Legal Year 2014. This gathering has become an important date on which different role-players in the administration of justice in our country can reflect on the previous year and look forward to new challenges.

My Lord the Judge President, let me firstly convey my heartfelt compliments to you and to this august gathering, for a prosperous 2014. It is my hope that we shall all rededicate our efforts as officers of the court towards the delivery of justice in Namibia this year.

In his New Year's message, His Excellency President Hifikepunye Pohamba said that the nation's success requires dedication and sacrifice, unity of purpose, resolve and perseverance. His Excellency urged all public office-bearers and every civil servant to make public institutions more efficient and more productive. He said, and I quote: "Let us work together to make the year 2014 a year of success in all that we do and a year of efficient service delivery, especially to our people who still live in difficult conditions."

Last year I had the privilege to address all the Magistrates during Magistracy's Retreat. At that occasion, I reminded myself and those present of the words by **Roscoe Pound** who once said that: "***Dissatisfaction with the administration of justice, is as old as the law!***" No doubt it is because we touch lives of others on a daily basis.

At the Magistracy's retreat I reiterated the importance of courts taking charge of cases before them and to, by a proper use of section 115 of the Criminal Procedure Act, 1977 ensure that we do away with leading unnecessary evidence and to limit areas of dispute in a trial. Presiding officers are required to decide

the disputes between the parties and should not have to listen to lengthy evidence on aspects which is not really in dispute. A proper use of section 115 does not require an accused to incriminate him or herself, but to properly define the areas of dispute between an accused and the State. As I have said on previous occasions, especially at the commencement of the High Court legal year 2011, that this is where presiding officers and defence counsel can greatly contribute to a speedier finalization of criminal cases.

My Lord the Judge President, as you would no doubt have realised by now, I will on this occasion attempt not to bore you with statistics and what my office considers it's accomplishments in 2013, but rather to once again highlight an aspect that I believe is the most worrying aspects in the administration of justice in Namibia and one which needs the urgent attention of everyone involved. **It is of course the growing backlog of criminal cases not finalized by our courts.**

Generally "backlog" is defined as an accumulation of uncompleted work or matters needing to be dealt with. An overwhelming number of unconcluded cases are one of the most important reasons why our courts are criticized by the general public. Even if a relatively simple matter enters into the courts, they become entangled within the court system with no foreseeable end in sight. Multiple factors contribute to backlogs. Some are a lack of manpower coupled with the huge influx of cases, lengthy adjournments, and limited court resources or organization. No doubt it is in certain instances also caused by accused persons being allowed to play the system and to ensure that matters do not proceed until witnesses and complainants lose interest in the matter. The

backlog problem is universal and experienced in courts around the globe. It a huge strain on court resources, undue delay, and adverse consequences on parties involved.

For example, Ashwani Kumar, a Law Minister of India, when taking office in 2012, said that addressing the backlog was necessary to maintain India's "constitutional democracy," to adhere to "the rule of law" and to "guarantee order and stability in society." Surely the same is true in Namibia.

My Lord the Judge President, it is in my opinion vital to come up with a case backlog reduction strategy to change the way case backlog had always been handled to one where resources – human and financial would be focused on the result rather than processes. The strategy also emphasized taking deliberate steps to stop the growth of new case backlog.

From 2-6 December 2013, senior members of my office attended the drafting of the Ministry's Strategic Plan for 2014/2015. The Strategic Plan is the foundation of a Performance Management System (PMS) and sets clear strategic objectives and allows the Ministry to manage performance in order to achieve them. It forms a basis for Performance Agreements at individual/staff level thereby translating a strategy into desired action by the entire organization. In this period the Prosecution and the Magistracy attempted to define when a case can be identified as one that forms part of the backlog of cases. It was decided as a starting point that any case that has been on the Magistrates' Court roll for

longer than six [6] months would be considered to a backlog case. In the Regional Court, any case which has been on that court's roll for longer than nine [9] months will be considered a backlog case. In the High Court, the prosecution will consider a case that has been on the High Court roll for longer than twelve [12] months, a backlog case.

During January 2014 I will meet with other role players, Deputy Prosecutors-General and all control prosecutors to inter alia develop a backlog reduction strategy and to ensure that deliberate steps are taken to prevent the growth of a new case backlog. We will also discuss and agree on an effective manner to establish exactly what factors contribute to the backlog and what measures should be put in place to prevent a reoccurrence of the present problem. All prosecutors will be expected to spend the maximum hours possible in court to ensure that the maximum possible cases are finalized during each court day. As we all know that the justice system consists a number of components which complement each other to ensure the effectiveness of the system, all these components needs to come up with strategies to address these problems relating to the backlog of cases.

As a young prosecutor, I was taught that one always gives preference to the oldest cases on one's daily roll. Secondly the cases in which the accused are in custody should be dealt with. Today I see why that basic approach was necessary. The older a case gets, the more witnesses forget and some might even lose interest. I personally believe, and I have stated this before, that there is a

progressive disillusionment of the public with the enforcement of the law and the system of justice as applied in the lower courts in Namibia. The biggest complaint of the public relates to the inordinate delays in finalizing criminal matters in the lower courts of law in Namibia. One of the main reasons is the huge backlog that clogs our court rolls. It is thus vital that we effectively deal with the backlog first to ensure that new cases eventually will be dealt with more speedily. I therefore call up the accounting officer of our Ministry to ensure that sufficient financial resources is allocated to the institutions that deal with the backlog of cases for the High Court of Namibia, Mr. Judge President, I appeal to you to consider the creation of continuation of criminal court and allocation of more judges to deal with criminal cases.

Further, Mr Judge President, that is why we in the Office of the Prosecutor-General believe, and I have said this before, is that our presiding officers and private legal practitioners have to accept at least some responsibility for the congested court rolls when they continue to prolong the finalization matters by not limiting trials to the real areas of dispute. We would once again urge them to consider making their contribution by ensuring that criminal trials are limited to the real areas of dispute. On our office's side, we will work tirelessly to ensure that the Bill on amendment of the Criminal Procedure Act is concluded this year to make the way of Plea Bargaining in certain criminal matters in Namibia.

Two additional matters that I wish to bring to the attention of this august meeting. The first is that our victim friendly courts here in the High Court and also in Oshakati and the one at the Regional Court in Mungunda Street is not operating properly due to technical problems. Our Regional Courts countrywide also need these facilities. It severely hampers the prosecution of cases involving young children and vulnerable witnesses. I will during this year approach different role players to assist in this regard. Secondly I also wish to point out that enormous problems are experienced with maintenance investigation. There is a compelling and urgent need for maintenance investigators to be appointed in terms of section 8 of the Maintenance Act 9 of 2003. This will ensure that those liable to pay maintenance will no longer be able to mislead the Court as to their ability to pay maintenance.

To conclude, I once again invite anyone who has a valid complaint against any prosecutor which involves improper conduct or anyone who does not use all available court time to finalize cases, and who are lax or indolent in the performance of their duties, to report such unacceptable conduct to me.

Mr. Judge President, I can assure all those present that I, in my capacity as the Prosecutor-General and all members of my office are committed to make the year 2014 a successful High Court legal year. But this year, the Office of the Prosecutor-General has decided that we will specifically do anything within our power to finalize as many as possible of the backlog in this Court, and the lower courts.

I thank you.