



REPUBLIC OF NAMIBIA

## OFFICE OF THE JUDICIARY

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### MEDIA STATEMENT

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#### **JUDICIARY SPEAKS OUT ON RECENT ATTACKS AGAINST THE COURTS AND JUDICIAL OFFICERS.**

**Windhoek**, Namibia – In the aftermath of the 2019 Presidential and National Assembly elections, there emerged a disturbing phenomenon in which members of the Judiciary were and are being targeted, both on social media and, regrettably, in the mainstream media.

The attacks are generally intended to portray the Judiciary and certain of its members, as either being biased in favour of or being beholden to the governing party, or being incapable of bringing to bear independent and impartial judgements on cases that come before court. This emerging trend has very serious consequences for Namibia's democracy, the rule of law and the independence of the Judiciary.

It is not customary for the Judiciary to make public statements in defence of itself. It is preferable that it is done by civil society and other organs of the State, whose responsibility it is to protect and safeguard the dignity and effectiveness of the courts.

These attacks are however becoming all the more persistent and insidious and may create the impression that the Judiciary's silence amounts to an acceptance, or indeed justification, of these sentiments. It has therefore become imperative for the Judiciary to reply to these allegation and attacks.

The Namibian Constitution recognises that those who assume judicial office, are not without past political affiliations. In fact, it is disingenuous for anyone to suggest that persons should

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only become judges if they have no known political affiliations at the time they assume judicial office. What the Constitution demands though is that once appointed, judicial officers cast aside political affiliations and take the oath to uphold the Constitution and the laws of Namibia and to do justice to all, regardless of who they are and what they represent. In fact, once appointed, a judge must cease being a member of a political party and not promote the cause of any political party. Anyone who has reason to believe that a judge is conflicted on any ground recognised in law, has the right to seek the recusal of such a judge.

Attacks against the judiciary are particularly regrettable if done by those who occupy public office or by those who have the responsibility to be balanced and fair and to inform and educate the public.

It is thus most regrettable that an elected legislator was recently quoted in the media as having accused judges of Namibia of being biased in favour of the ruling party based on a decision he does not like. Regrettably too, a female judge's appointment as a judge was questioned because she is the spouse of the head of the Judiciary. All judges in Namibia are appointed on merits, taking into account their qualifications and experience and on the recommendation of the Judicial Service Commission (JSC).

The Constitution lays the framework for the appointment of judges. It does not differ materially from the practices in most democratic societies. The suggestion that the fact that the head of state appoints judges compromises their independence, has no basis either in reality or generally accepted international practice. In similar vein, the heads of the three organs of state have the obligation to be civil towards each other while respecting the boundaries that define their relationship. The Chief Justice's association with the President of the Republic of Namibia at an official/ceremonial function such as the opening of the legal year is to be seen in that light.

To suggest as was done in a daily newspaper that the presence of the head of state at the official launch of the legal year shows that the President is the "boss" of the Chief Justice, is not only demeaning and denigrating of the Chief Justice's office, but it ignores the reality that those

constitutional functionaries must accord each other's functions appropriate respect in the public interest without trespassing onto the other's Constitutional mandate.

The members of Namibia's Judiciary, bound as they are to uphold and protect the Constitution, owe their loyalties only to that Constitution and the Law. They are not subordinate or subservient to those who wield executive power in the State. They remain above the political controversies of the day and will in the discharge of their functions, not be influenced by any improper influence – whether from the executive or the members of the public.

The Namibian Judiciary prides itself in its independence and impartiality as demonstrated by its track record since independence. It is especially in times of intense political discord and contestation within society, that the obligation is the greatest on the nation's body politic to insulate the Judiciary from the controversies of the day and to avoid the temptation to cast aspersions on judges, either individually or as a collective, lest it erode public confidence in an institution whose reason for existence is to do justice to all with impartiality and integrity.

People's political preferences should never become the impulse for delegitimising the Judiciary on account of particular judicial outcomes as that might provide fodder to adversaries to do the same if similarly situated. However tempting, fashionable or popular it might be at a particular moment in time to attack the Judiciary, it is worth cautioning that once public confidence in the Judiciary is eroded, it might be impossible to reverse the damage.

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**About Office of the Judiciary:** ([www.judiciary.na](http://www.judiciary.na))

In line with Article 78 (5) of the Namibian Constitution, Namibia has made the monumental move to establish an independent body of the Judiciary that separates it from the Ministry of Justice, named the 'Office of the Judiciary', a juristic body by virtue of the Judiciary Act, 2015 (Act No. 11 of 2015) which is administratively and financially independent. The Office of the Judiciary is the administrative arm for the Judiciary, which includes the Supreme Court, High Court and Lower Courts (Regional and District) within Namibia.

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