

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

JUDICIARY BILL

(As read a First Time)

(Introduced by the Minister of Justice)

[B. 14 - 2015]

BILL

To strengthen the independence of the Judiciary in line with Article 78(5) of the Namibian Constitution; to provide for the administrative and financial matters of the Office of the Judiciary; and to provide for connected or incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

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PART 1 PRELIMINARY

Definitions

1. In this Act, unless the context indicates otherwise -

“judicial officer” means a member of the Judiciary who holds the office of -

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- (a) Chief Justice;
 - (b) Deputy Chief Justice;
 - (c) additional judge of the Supreme Court;
 - (d) Judge President of the High Court;
 - (e) Deputy Judge President of the High Court; or
 - (f) additional judge of the High Court;

appointed in terms of the Namibian Constitution, and a magistrate appointed in terms of the Magistrates Act;

“Judiciary” means the Supreme Court and the High Court referred to in Article 78(1)(a) and (b) of the Namibian Constitution and magistrates’ courts established in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“Magistrates Commission” means the Magistrates Commission established in terms of section 2 of the Magistrates Act;

“Minister” means the Minister responsible for Justice;

“Office” means the Office of the Judiciary established by section 3;

“Permanent Secretary” means the Permanent Secretary of the Office referred to in Article 78(6) of the Namibian Constitution and appointed in terms of section 4, and includes a person acting temporarily as such under this Act;

“prescribed” means prescribed by regulation made under this Act;

“remuneration” means the total value of all payments sounding in money payable to judicial officers and staff members;

“staff member” means a person defined as such in section 1 of the Public Service Act and who is or deemed to be a staff member under this Act;

“the Labour Act” means the Labour Act, 2007 (Act No. 11 of 2007);

“the Magistrates Act” means the Magistrates Act, 2003 (Act No. 3 of 2003);

“the Public Service Act” means the Public Service Act, 1995 (Act No. 13 of 1995);

“the State Finance Act” means the State Finance Act, 1991 (Act No. 31 of 1991); and

“this Act” includes regulations or directives made or issued under this Act.

Application of Public Service Act

2. The Public Service Act and the regulations and directives made thereunder apply in respect of the administration of the Office and to staff members only in so far as such provisions, regulations and directives are not inconsistent with the provisions of this Act, and such provisions, regulations and directives may not derogate

from any power, duty or function conferred upon or entrusted to the Office, the Chief Justice or the Permanent Secretary by or under this Act.

PART 2 ADMINISTRATION OF OFFICE

Establishment of Office

3. (1) There is established in the public service, an office to be known as the Office of the Judiciary.

(2) The Office is the administrative component of the Judiciary responsible for handling all the administrative and financial matters of the Judiciary and related matters, with such powers, functions and duties as are provided for in this Act or any other law.

(3) The Office consists of judicial officers and staff members.

Appointment of staff members

4. (1) The Prime Minister must, subject to subsection (2), in accordance with the Public Service Act but subject to such terms and conditions as may be agreed between the Prime Minister and the Chief Justice, appoint the Permanent Secretary and other staff members as may be required for the proper performance of the functions of the Office.

(2) Despite section 5(1) of the Public Service Act or a provision in any other law, an appointment made in terms of subsection (1) is made on the recommendation of the Chief Justice.

Delegation of powers and functions

5. When performing the functions contemplated in Article 78(7) of the Namibian Constitution or exercising any power or performing any function under this Act, the Chief Justice may, subject to any law, delegate any of his or her powers or functions to any judicial officer, the Permanent Secretary or any other staff member, except the power conferred by section 17.

Powers and functions of Permanent Secretary

6. The Permanent Secretary -

(a) is the accounting officer of the Office as contemplated in section 8 of the State Finance Act; and

(b) subject to the directions of the Chief Justice -

(i) is responsible for -

(aa) the day-to-day administration of the Office, including the discipline, promotion and transfer of staff members in terms of the Public Service Act or any other law;

(bb) providing secretarial services to the Judicial Service

Commission and the Magistrates Commission and for the implementation of decisions of the Judicial Service Commission and Magistrates Commission; and

- (ii) may do anything else in relation to the day-to-day administration of the Office which he or she is required or authorised to do under this Act or any other law or which is necessary or expedient for him or her to do for achieving the purposes of this Act.

(2) The Permanent Secretary may, with the approval of the Chief Justice, delegate or assign any of his or her powers and functions to any other staff member.

Administrative directives

7. The Permanent Secretary may issue administrative directives, not inconsistent with this Act, the Public Service Act or the Labour Act –

- (a) on the general control, training, duties and responsibilities of staff members; and
- (b) on such other matters as may be necessary and reasonable for the good administration of the Office and for ensuring the efficient and effective functioning of the Office.

Funds of Office

8. (1) The funds of the Office consist of such moneys as may be -

- (a) appropriated by Parliament for the purposes of the Office; and
- (b) given to the Office by way of grants from whatever source in Namibia or outside Namibia, which the Permanent Secretary may, with the approval of the Chief Justice and the Minister responsible for Finance, accept.

(2) Subject to subsection (1)(b), the Permanent Secretary may accept grants that are for the benefit of projects, activities or functions of the Office.

(3) There must be paid out of the funds of the Office -

- (a) remuneration of judicial officers, staff members and any other persons that have been engaged to do remunerative work for the Office;
- (b) travelling, transport and subsistence allowances for judicial officers and staff members, as determined by any law; and
- (c) other costs incurred by the Office .

Capital projects of Office

9. The Ministry responsible for the administration of Justice is responsible for the capital projects of the Office, except that the Minister must consult the Chief Justice regarding the construction or renovation of courthouses and other buildings that are to be used or are being used by the Office.

Financial year of Office

10. The financial year of the Office is the financial year as defined in section 1 of the State Finance Act.

Accounts of Office

11. The Permanent Secretary must keep proper accounts of the funds of the Office in accordance with the State Finance Act.

Annual report of Office

12. As soon as practicable, but not more than three months after the end of the financial year, the Permanent Secretary must submit to both the Chief Justice and the Minister a report concerning the activities of the Office during that financial year, including information on the financial affairs of the Office.

PART 3
GENERAL PROVISIONS

Representation of Office

13. The Minister represents the Office -
- (a) in the Cabinet; and
 - (b) in the National Assembly.

Funding of Office pending passing of appropriation Act

14. Until such time that the financial requirements of the Office are provided for in an appropriation Act contemplated in section 1 of the State Finance Act, the financial requirements of the Office must be met from the sources that exist before the coming into operation of this Act.

Establishment of committees

15. (1) The Chief Justice may establish one or more committees, consisting of judicial officers and staff members, judicial officers only or staff members only for the purpose of investigating and making proposals in connection with the operations of the Office, including budgeting, organisational excellence of the courts, conditions of service of judicial officers, ways and means of improving on judicial work and output and relations with the other organs of state.

(2) A member of a committee holds office on such terms as the Chief Justice may determine.

- (3) A committee may determine the procedure at its meetings.

Legal proceedings where Office is party

16. (1) In any action or other proceedings instituted against the Office, the Permanent Secretary is the person to be cited as nominal defendant, respondent or other party as may be appropriate.

(2) In any action or other proceedings instituted by the Office, the Permanent Secretary is the nominal plaintiff, applicant or other party as may be appropriate.

(3) Despite any provision in any law relating to proceedings in any court, the Permanent Secretary is responsible for signing, and has the power to sign, any process required or necessary in such proceedings.

Regulations

17. (1) The Chief Justice may in the exercise of his or her powers and in the performance of his or her functions under this Act, make regulations not inconsistent with the Magistrates' Court Act, High Court Act, 1990 (Act No. 16 of 1990), Labour Act, Public Service Act and the Supreme Court Act, 1990 (Act No. 15 of 1990), in relation to any matter -

- (a) required or permitted to be prescribed by this Act;
- (b) that may be necessary or expedient in order to carry out, or give effect to, this Act.

(2) Without derogating from the generality of subsection (1) regulations under this section may be made in relation to -

- (a) continuous education of judicial officers; and
- (b) training of staff members.

Transitional arrangements in respect of judicial officers and staff members

18. A person who, immediately before the coming into operation of this Act -

- (a) held the office of Chief Justice, Deputy-Chief Justice, additional Judge of the Supreme Court, Judge-President of the High Court, Deputy Judge-President of the High Court, additional Judge of the High Court, magistrate is deemed, on the coming into operation of this Act, to be a judicial officer under this Act; and
- (b) was employed in the Ministry of Justice as a staff member, whether on the permanent and pensionable establishment or as a temporary employee, in connection with the operations and administration of the Supreme Court, the High Court or a magistrates' court is deemed, on the coming into operation of this Act, to be a staff member under this Act.

Short title and commencement

19. (1) This Act is called the Judiciary Act, 2015, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (1).
