



REPUBLIC OF NAMIBIA

“Justice and Investment: Challenges and Stakes”[∞]

Your Excellencies, Honourable Minister and senior officials present here, ladies and gentlemen,

I wish to express my heartfelt appreciation to the Kingdom of Morocco for the invitation extended to me and my delegation to participate in this esteemed conference. Since our arrival, the hospitality has been nothing but outstanding, and we are grateful for that.

The theme of this conference is apropos and timely, in a time when there is a need for global judicial systems to be more responsive to providing a conducive and trusted environment within which they can operate. This type of judicial security will inevitably improve investment and development and will enhance global economic transformation, which is much needed in light of the increasing prominence of information technology and alternative dispute resolution mechanisms.

I concur that our judicial systems should be geared towards moving at the same speed as the international business and investments and it should be in line with the contemporary demands involving technology, the Internet, and alternative dispute settlement mechanisms. Thus, both regulatory quality and efficiency is needed.

Improving our judicial systems thereby enhancing investment and developmental growth contributes greatly to the realization of our common goals to transform our world by 2030 through sustainable development.¹ It is a fact that where there is peace and stability, where the rule of law prevails, and where the judiciary is impartial and operating well – there, one will also find prosperous economic performance and a favourable business and investment climate, which promotes competition.

[∞] Statement made by Mr. Sakeus E. T. Shanghala, MP, Minister of Justice of the Republic of Namibia at Marrakech, Kingdom of Morocco on October 21, 2019 at the International Justice Conference, 2019.

¹ Agenda 2030 better articulates this vision. See <https://www.un.org/sustainabledevelopment/development-agenda/> last visited on October 20, 2019.

The inefficient execution of court orders and a lack of confidence in a judicial system is not encouraging to investors and leads to under development in already struggling economies.

There is therefore a close link to justice and development that cannot be ignored, but which should rather be dissected to find the best possible avenues in which our stakeholders, and we as States, can ensure the solidification of this link. There is also a need for states to introduce adequate monitoring and evaluation tools to keep track of the mechanisms employed to improve the judicial systems.

Namibia is ranked 107 among 190 economies in the ease of doing business, according to the latest World Bank² annual ratings. As this rating is not desirable for a thriving business sector, we have decided to aim our efforts at simpler and friendlier regulations for business, also in the field of our judicial system. In our hierarchy of courts, we have Magistrate's Courts, Regional Courts, High Court (with two regional seats) and our Supreme Court, which is the highest court of appeal. As part of our High Court, we have recently introduced a commercial court component, which will deal with commercial disputes only.

The presiding officers who will be tasked to preside over these cases will be appointed based on specialized expertise in commercial law and trade law in the domestic, regional and international setting. The purpose of creating a commercial arm within the high court system is to provide a process that is cognizant of the time-sensitive nature of commercial disputes and allow for their expedient resolution. In this regard, we have also implemented very successful arbitration and mediation mechanisms within our high court seats at pre-trial stage. These mechanisms provide litigants with alternative dispute mechanisms compatible with the need to avoid lengthy and costly court cases.

In addition to having a sufficient and efficient judicial system in order to attract investment and business development, we as States need to recognise the importance of having a working recovery framework, for when businesses fail or become insolvent.

² Available at <https://tradingeconomics.com/namibia/ease-of-doing-business> last accessed on October 20, 2019.

A legal framework providing fair and just accommodations for creditors and debtors when economies fail or businesses go bust is important, and currently most legal frameworks on the continent have not provided recovery opportunities through insolvency legislation.

In this regard, we are in the process of reforming our insolvency legal framework in an effort to ensure that the liquidation and dissolution of insolvent entities will be dealt with speedily and efficiently, and that the process is regulated and those that operate within the regulatory framework are also regulated in order to provide a sense of security in the process.

The new legislation will also be inclusive of international best practices especially in the area of cross-border insolvency, which is relevant in jurisdictions like ours where most multi-state businesses operate and are a large part of the economy. This new legislation will be tabled in Parliament during early period of 2020. In the meantime, Namibia will be hosting the INSOL/World Bank African Roundtable on Insolvency during November 21 – 22, 2019, and I urge you colleagues, to visit the INSOL website and sign up to attend and register.³

Namibia has recently deposited its ratification instrument for accession to the Hague Conference and will continue to explore options for accession to instruments that will enable us to enhance our business operations and relations. The Cabinet of the Government of the Republic of Namibia has also approved Namibia's signature and ratification of the recently launched Singapore Convention on Mediation.⁴ This will further enhance our mediation processes and we look forward to become a member to that prestigious instrument.

According to a World Bank Group Flagship Report⁵ of 2019, the Sub-Saharan Africa has been the region with the highest number of reforms each year since 2012. This year, *Doing Business* captured a record 107 reforms across 40 economies in Sub-Saharan Africa, and the region's private sector is feeling the impact of these improvements.

³ INSOL website: <https://www.insol.org/ART/>.

⁴ The full name is United Nations Convention on International Settlement Agreements Resulting from Mediation available at <https://www.singaporeconvention.org/convention-text.html> last accessed on October 20, 2019.

⁵ Available at https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf last accessed on October 20, 2019.

The average time and cost to register a business, for example, has declined from 59 days and 192% of income *per capita* in 2006 to 23 days and 40% of income *per capita* today.

The World Bank also reports that the average paid-in minimum capital⁶ has fallen from 212% of income per capita to 11% of income *per capita* during that same period.

It is also my humble view that we have a greater responsibility as States to enhance access to remedy for business-related human rights violations. It is our duty as states to protect the rights of our people through adequate policy and legislative framework to operate side by side with investment-related policy objectives. Whilst investment remains an inevitable component of our economic development, economic objectives should not ignore human rights. It is important to put human rights safeguards in place, which would address the potential of trade and investment activities which would exploit and undermine the wellbeing of the most vulnerable in our societies.

As States, we are gatekeepers in the promotion of trade and for providing a conducive trade environment, including monitoring the compliance with human rights due diligence by all business entities, both national and transnational. Such due diligence should not be seen as a barrier to trade opportunities, but instead, it should serve as motivation to businesses to become leaders in this field. Corporate abuse of human rights by transnational corporations & other business enterprises has prompted an evolution in International Human Rights Law, especially in relation to systemic issues such as parent company liability, duty of care and human rights due diligence, hence the need for action.⁷

⁶ The paid-in minimum capital requirement reflects the amount that the entrepreneur needs to deposit in a bank or with a notary before registration and up to 3 months following in-corporation and is recorded as a percentage of the country's income per capita. The amount is typically specified in the commercial code or the company law. Many countries have a minimum capital requirement but allow businesses to pay only a part of it before registration, with the rest to be paid after the first year of operation. For more information, visit <http://www.doingbusiness.org/MethodologySurveys/>.

⁷ HRC Resolution 26/9 - Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. The LBI is intended to concretize our commitment towards fulfilling our obligations to human rights in the context of business activities and most importantly, the instrument seeks to provide a legal framework for access to justice and remedies for victims of human rights violations emanating from business activities. The aim is to provide these protections to our people and give them an opportunity to seek redress when those protections fall short or violations happen anyway. Namibia has had experience with human rights violations in the context of business activities following the Ramatex case and we are committed to making sure we are better prepared in terms of setting safeguards in place to protect human rights of all those affected and having mechanisms in place that allow real access to justice and remedy for victims should future investment and business activities pose similar

As States, we ought to fully participate in this conversation and finalise the draft Legally Binding Instrument. As newly elected member of the Human Rights Council, Namibia will continue to advocate for respect for human rights from businesses operating transnationally.

In conclusion, in our discussions surrounding justice and investments, we should not only emphasise the importance of having a truly independent judicial system that is competent and efficient, but we should also insist on a wholesome consideration of necessary legal and policy frameworks which demand from potential investors and businesses alike the due respect to the rule of law and international human rights obligations.

I thank you.

End.