# PUBLICATIONS OF THE LRDC

## ANNUAL REPORTS (ISSN 1026-8391)*

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<th>Report</th>
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## OTHER PUBLICATIONS (ISSN 1026-8405)*

| LRDC 9 Domestic Violence Cases reported to the Namibian Police – Case Characteristics and Police Responses | ISBN 0-86976-516-7 |
| LRDC 11 Report on Uniform Consequences of Common Law Marriages (Repeal of Section 17(6) of Native Administration Proclamation, 1928 (Proclamation 15 of 1928) | ISBN 999916-63-57-6 |
| LRDC 30 | Discussion Paper on the Transformation of the Polytechnic of Namibia into the Namibia University of Science and Technology (ISBN 978-99945-0-077-2) |

*Number of publication, ISSN and ISBN numbers not printed on all copies.*
The Law Reform and Development Commission of Namibia (the “LRDC” or the “Commission”) is a creature of statute established by section 2 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) and came into operation on 15 July 1992.

The core mandate of the Commission is to undertake research in connection with all branches of law and to make recommendations for the review, reform and development of such laws if and when necessary.

The current Commissioners are –

Ms. Yvonne Dausab, Chairperson, appointed in terms of section 3(1)(a);  
Adv John Walters, Ombudsman, appointed in terms of section 3(1)(c);  
Adv. Unanisa Hengari, appointed in terms of section 3(1)(d);  
Adv. Dennis Khama, appointed in terms of section 3(1)(d);  
Mrs. Felicity Owoses - /Goagoseb, appointed in terms of section 3(1)(f);  
Ms. Lineekela Usebiu, appointed in terms of section 3(1)(g);  
Mr. Silas Shakumu, appointed in terms of section 3(1)(e); and  
Mrs. Adrie Van der Merwe, appointed in terms of section 3(1)(e).

In terms of section 3 of the Law Reform and Development Commission Act, 1991, Commissioners are appointed by the President in consultation with the Minister of Justice and because the Chairperson is often appointed first, there is further consultation with the Chairperson in terms of the profile of Commissioners to be appointed. The full commission commenced duties in August 2015.

The Secretary to the Commission is Mr. J.T. Namiseb who heads the Directorate of Law Reform, an organisational component in the Ministry of Justice. The Directorate of Law Reform serves as Secretariat to the Commission, assisting the Commission in the exercise of its powers, the performance of its duties and functions under the Law Reform and Development Commission Act, 1991. The Commission and Secretariat are housed on the 1st Floor, Mutual Platz Building, Post Street Mall, Windhoek.

All correspondence to the Commission should be addressed to:

The Secretary  
Law Reform & Development Commission  
Private Bag 13302

Fax:  (+264-61) 240064  
Tel.:  (+264-61) 230008  
E-mail: lawreform@moj.gov.na
Dear Honourable Minister,

RE: STATUTORY SUBMISSION OF THE ANNUAL REPORT BY THE LAW REFORM AND DEVELOPMENT COMMISSION (“LRDC”)

Under section 9(2) of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991), as amended, the LRDC is obliged to report on its activities to the National Assembly, through the Minister of Justice, annually.

It is therefore my privilege as Chairperson of the LRDC to present to you this Annual Report for 2015/16, and in doing so, thank the previous and present Commissioners of the LRDC, stakeholders and staff involved for the work that has gone into policy, legal and institutional reform for the years under review.

We look forward to the new-year with renewed strength to collectively serve the interest of our people.
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In April 2015, the President of the Republic of Namibia appointed me as the new Chairperson of the Law Reform and Development Commission for a period of five years. I assumed office on 6 July 2015. The Commissioners were appointed in August 2015 for a period of 3 years. During the period under review, the Commission had four meetings with the intended objective of familiarising themselves with the work of the Commission but more importantly, to ensure that there was no gap left in the continued work of the Commission.

The overriding philosophy of the LRDC over the next five years, and beyond, is to be part of reform and development of the law and policy framework in a way that it will enhance social justice and entrench a human rights culture in all spheres and aspects of the lives of Namibians. It is to ensure that law and justice become synonymous with the upliftment of vulnerable communities, and to ensure that those who seek remedies for wrong doings are appropriately assisted through various institutions and role players.

Our role as LRDC is therefore to provide the required support for socio-legal research and to create platforms for dialogue and community/public/stakeholder engagement. Because of the perceived (and correctly so) importance of our mandate, we are often mistakenly viewed as making the law. But we are not law makers. In terms of article 44 of the Namibian constitution, the legislative authority lies with the National Assembly. However, we are an important support to the work of the legislature and therefore all our projects are aligned to support policy makers in their quest to deliver on their various mandates, foremost of which is to align ourselves with the aspirations of the President of the Republic of Namibia and his passion to deliver on prosperity.

Law reform is a slow process and this is deliberate. We want to be part of developing law and reforming law that has taken into account the policy considerations, the views of relevant stakeholders which includes the public, and comparative views and considerations of similarly situated jurisdictions or where it has worked. We also want to ensure that the impact of laws we recommend for review, amendment or repeal are well considered and meet the intended objectives and this means we require understanding and patience.

The public, who are our main beneficiaries and friends, members of parliament, particularly the various parliamentary committees, sector specific stakeholders, cooperating partners, various institutions and partners that support our work, thank you. A special thank you to the current Attorney General for his continued interaction with us and the Minister of Justice for his unwavering support of our work.

YVONNE DAUSAB (Ms)
CHAIRPERSON
Introduction

The annual report is an important tool to share information with members of the public, stakeholders, partners and the Namibian Parliament on our activities, challenges and successes over the past twelve months. It is an important document and the value is not only in its content and scope but is also about impact and how it can be used to advance the case for social justice and human rights. Our work currency is to reform and develop laws for the betterment of the society we live in and so, as part of our reporting obligations as set out in section 9(2) of the Law Reform and Development Act, 1991, we present the activities of the LRDC for the year 1 April 2015 - 31 March 2016.

Our Mandate

The Law Reform and Development Commission Act, 1991 establishes the Commission, which came into operation on 15 July 1992. The core mandate of the Commission is to undertake research in connection with and to examine all branches of the Namibian Law and to make recommendations for the review, reform and development of the said law. The key activities of the Commission to support this broad mandate as provided for under section 6 of the enabling legislation and include:

» The repeal of obsolete or unnecessary enactments;

» The consolidation or the codification of any branch of the law or introduction of other measures aimed at making the law more readily accessible;

» The integration or harmonization of the customary law with the common and statutory law;

» The introduction of new or more effective procedures for the administration of the law and the dispensing of justice; and

» The enactment of laws to enhance respect for human rights enshrined in the Namibian Constitution or to ensure compliance with international legal obligations.

Powers of the Commission

In achieving its statutory objectives, the Commission is vested with the following powers as set out in section 7 of the Law Reform and Development Commission Act, 1991:

» Prepare and submit, upon approval of the Minister, programmes in its opinion that are paramount for consideration;

» Offer and accept suggestions relating to its objects from any person or body and may incorporate such suggestions in any programme;

» Examine the matters appearing on their programme as approved or amended by the Minister in order of priority and may for that purpose engage in consultations with any person either by studying documents prepared by the commission or any other manner;

» If, after examining any matter, the Commission is of the opinion that legislation ought to be drafted, then it shall prepare draft legislation for that purpose;

» The Commission, in any matter relating to a subject being examined by it, is vested with the same powers as the High Court of Namibia to summon witnesses, to administer an oath or affirmation, to examine them and to call for the production of books, documents and objects; and
The Commission, subject to the approval of the Minister, and in consultation with the Minister of Finance, may employ the services of an expert on a temporary basis or for a particular matter relating to the work of the Commission, or may engage with anybody to advise or assist in the exercise of its powers or performance of its duties assigned by the Act and to remunerate the person or body for the services rendered.

The Role of the Directorate of Law Reform within the Commission

The Directorate of Law Reform is headed by the Chief: Directorate Law Reform, which during the period under review, was headed by Mr J.T. Namiseb, who also acted as the Secretary to the Commission. The Directorate is an organisational component in the Ministry of Justice and serves as Secretariat to the Commission.

The Directorate plays an important role in the success rate of the Commission’s work which is often judged on the projects it undertakes, the outcome of the project work and its impact on the lives of the citizens of this country. The Directorate is therefore enjoined to assist the Commission in the exercise of its powers and the performance of its duties and functions under the Law Reform and Development Commission Act, 1991. This is achieved through the researchers and/or staff members who are appointed within the Directorate and who undertake their work under the guidance of the Commission. The methodological approach used by the Commission is in-depth legal and socio-legal research, consultations with stakeholders as well as broader community engagement through surveys, workshop reports, drafting reports and draft Bills. The nature and scope of this work requires a team that is versatile, skilled and knowledgeable in various disciplines such as economic empowerment,
insolvency, humanitarian interventions, disability rights, road safety, administrative justice, and ICT’s to name a few. The range of issues covered in this report shows that legislative, institutional and policy reform requires a dedication to research and evidence based reporting and recommendations.

The Importance of Previous Reports as Reference Material

Over the past 25 years, the LRDC has produced significant research on a plethora of socio-economic issues. Many of these reports led to successful enactments because our law reform process is underscored by two important processes: comparative research and public consultations.

It is our single most important wish that the reports that we produce reach a stage of academic reference material and that our work can be a trusted source of information when the Namibian public needs it. All our previous reports are important base material for legal practitioners, students, judges, academics and all members of our society, regardless of status or creed. This is a public office and we want members of our society to access our information and this we intend to improve.

Ms. Ruusa Ntinda (Chief Legal Officer) and Ms. Victoria Weyulu (Senior Legal Officer)

Ms A. Bezuidenhout (Senior Private Secretary)
The Profile of our Commissioners

“The establishment of the LRDC was an acknowledgement that any meaningful change and fulfilment of our constitutional values and aspirations will have to be addressed through an institutional mechanism for changing the laws that caused the kind of divisions and inequalities that engulfed our nation for many years before 21 March in 1990.”

Yvonne Dausab

25 Years of Transforming Laws in Namibia

Current LRDC Commissioners: August 2015 - August 2018
Ms. Yvonne Dausab  
Chairperson

Ms Dausab holds a BA (Law), LLB from UWC and LLM from the University of Pretoria and is an admitted Legal Practitioner of the High Court of Namibia since 2000 and a notary public since 2015. The President of the Republic of Namibia appointed her Chairperson of the Commission for a five year period. She was previously the Deputy Dean of the Faculty of Law at the University of Namibia for a four year period.

Ms Dausab is well known for her oratory skills, and is a regular feature on national television on matters pertaining to law, justice, socio-economic and disability rights.

Ms Dausab was recognised for her work in human rights when the Law Society of Namibia awarded her the 2012 Human Rights Excellence Award. For her work in Education and Training, she was awarded the country winner for the 2015 Africa’s Most Influential Women in Business and Government through the SA based CEO Holdings. Until the end of 2014, Ms Dausab was an anchor presenter of two dynamic television current affairs programmes: Dialogue and Election Talk. She has published and has interests in the areas of access to justice, disability rights, children’s rights and constitutional and human rights law. The last publication was on “International Law Vis-a-Vis municipal law: An appraisal of article 144 of the Namibian constitution from a human rights perspective (2010).

She taught constitutional law, civil procedure, human rights law and legal aid clinics. She is passionate about human rights law and clinical education and has experience spanning over 17 years in private, public and the NGO development world. She has also served and still serves on various boards most notable of which are: Board for Legal Education, EBank Limited, the National Qualification Authority and the Desert Soul Health and Development Communication.

As the Chairperson of LRDC she is endowed with the overall management of the various projects of the Commission, participates in the Cabinet Committee on Legislation and builds and maintains relationships with various key stakeholders including but not limited to the Office of the President, Law Makers in Namibia, the Minister of Justice, the Office of the Ombudsman, Office of the Prime Minister and the Office of the Attorney General.

Adv. J. R. Walters  
Ombudsman

Prior to his appointment as Ombudsman of Namibia, Adv. Walters had been a career public prosecutor since 1981 and a Magistrate since 1985. After independence, he became a Deputy Prosecutor-General in May 1990 and in 1996 he went into private practice. In December 2002, he was appointed Acting Prosecutor-General by H.E the President and, in July 2004, he was appointed Ombudsman by H.E. the President.

The Ombudsman, in his capacity as a member of a number of regional and international organizations. In April 2010 he was elected as Regional Vice-
President (Africa) of the International Ombudsman Institute (I.O.I) and was elected First Vice-President of the I.O.I in November 2012. In October 2014 he assumed the Presidency of the I.O.I. He is also a member of the Steering Committee of the Network of African National Human Rights Institutions (NANHRI). He holds a BA (1977) and LLB (1980) degrees from the University of the Western Cape and was admitted as advocate of the Supreme Court of South Africa (SWA Division) in 1981.

He does not have any area of specialization, but the saying “an Ombudsman is a Jack of all trades”, is true; the Ombudsman is presented as the citizens’ defender, champion or protector of human rights and freedoms, guardian of law, redresser of public complaints. As Commissioner, he engaged with the Criminal Procedure Act, and Administrative Justice Act projects as well as the Gender Based Violence project.

Adv. Walter’s main functions and duties as Ombudsman remain the receiving and investigation of complaints relating to maladministration, violations of human rights and freedoms, misappropriation of public monies and misuse of government property and lastly, the overutilization of living natural resources and irrational exploitation of non-renewable resources.

Adv. Khama is a holder of a B. Juris and LLB Degree from the University of Fort Hare and the University of South Africa respectively. He was admitted as a Legal Practitioner of the High Court of Namibia on the 19th of July 2004, and in 2011, he was enrolled as an Advocate by the Society of Advocates of Namibia.

Adv. Khama started his legal professional career in State practice and worked for the Government of the Republic of Namibia for nine years. His career in State practice started as a Public Prosecutor and thereafter he exclusively practiced extradition and international criminal law for the Government of the Republic of Namibia. In 2008, Adv. Khama was appointed as the Deputy Director in the Financial Intelligence Centre of Namibia (FIC), where he was responsible for the development and enforcement of legal frameworks aimed at combating money laundering and the Financing of Terrorism (AML/CFT Legal Frameworks).

In 2015, Adv. Khama was appointed by the President as a Commissioner to the LRDC of Namibia. He is responsible for the following projects:

- Family Law Project,
- The Criminal Procedure Project;
- The Road Safety Management Bill Project.

In 2011 he went into private practice and since then, he practices law as an Advocate. He has a general litigation and advice advocacy practice with a primary focus on issues involving Administrative Law, Constitutional law, Labour law, Extradition law and International law. His chambers are at Namlex Chambers, 333 Independence Avenue, Windhoek.
Mrs. Felicity Owoses-/Goagoses is a Deputy Chief at the Directorate Legislative Drafting: Ministry of Justice, Namibia. She has 12 years of experience in drafting of legislation in areas of children and family law, town planning and environmental law, amongst others. She is also a Part Time Lecturer at Faculty of Law: University of Namibia (UNAM), lecturing Legal Research, Writing and Interpretation.

Mr Shakumu is a practicing Legal Practitioner of the High Court of Namibia for a number of years and a member of the Law Society of Namibia. He holds a Bachelor of Law Degree (LLB) from the University of the Western Cape (SA) and a Diploma in Administrative Law from Claremont (SA).

Ms. /Goagoses holds B. Juris and Bachelor of Laws (LLB) degrees from UNAM. She is currently an LLM candidate in Constitutional Law at the University of South Africa (UNISA). She is a member of the Commonwealth Association of Legislative Counsel. In 2013, she published a book titled Planning Law in Namibia which focuses on town planning and township establishment in Namibia. She also published a number of academic articles on children’s rights, family law and constitutional Law. Latest publication:Owoses-/Goagoses F. 2012. “Reading Down Words in a Statute, the Courts’ Role, and the Place of Parliament: The Approach of the Namibian Courts.” 4(1) Namibia Law Journal: 3-18. E-mail: fowoses@moj.gov.na

As a Commissioner of the LRDC Mrs. !Owoses-/Goagoses is responsible for the following projects:
- Repeal of Obsolete Laws in Namibia project; and
- The Domestication of the United Nations Convention against Torture

Mr Shakumu hails from the Desert Research Foundation of Namibia (DRFN) as an environmental activist and the Legal Assistance Centre where he worked as its Legal Education Coordinator. He then went for further studies in Cape Town where he graduated in law. He did his articles at Shikongo Law Chambers where after he moved to TransNamib and the Motor Vehicle Accident Fund (MVA Fund) as Legal Advisor until 2007 when he reverted to private practice until now.

Currently, Mr Shakumu is a practicing lawyer under the name and style of Kishi-Shakumu & Co Inc. Since 2008 he practiced law in Oshakati until 2013 when he relocated to Windhoek. He specializes in Regional and Municipal Law, Land and Environmental Law, Criminal and Civil Practice, Entertainment and Education Law.

In his free time he turns into a biker (motorcycle) and music producer.
Adv. Hengari is a member of the Johannesburg Bar and is admitted as an Advocate of the High Court of South Africa.

Adv. Hengari holds a B.Iuris LLB from the University of the Western Cape and a Masters of Laws from the University of the Witwatersrand. He holds chambers in Johannesburg and in Windhoek, practising as an Advocate. He is admitted as a legal practitioner of the High Court of Namibia. His area of practice are general civil litigation with a special interest in competition law.

In addition, Adv. Hengari teaches commercial law at the University of Namibia.

Ms. Usebiu, holds the degrees of B. Juris (University of Namibia), LLB (Hons) (University of Namibia), Master of Laws (LLM) (University of Stellenbosch).

Ms Usebiu is currently a Commissioner / Co-Commissioner on the following projects: Locus Standi, Road Safety Management Bill, and Disability Rights. She is employed as a lecturer at the University of Namibia, and is currently the Deputy Dean of the Faculty of Law where she teaches environmental law and law of intellectual property. She has also taught the following modules family law, gender law, human rights law, introduction to human rights, law of delict, environmental law and wills and estates.

Mrs. van der Merwe is a Legal Practitioner, Conveyancer and Notary Public practising with Fisher, Quarmby & Pfeifer Attorneys, the oldest Namibian Law firm.

Mrs. van der Merwe is involved mainly in the Family Law and Insolvency projects of the Commission.
CHAPTER 2

OVERVIEW OF THE LAW REFORM PROCESS

Introduction

The Commission sets itself apart because of the nature and scope of the projects it undertakes. But also, we recognise that we are not the only agents of legislative reform in the country and we need to undertake our mandate in a manner that optimally serves those that we assist in order to achieve our mandate. This is based on a methodological approach of; first, whether the issue is one of law, and not predominantly one of politics or ethics and secondly, whether it is a major problem that either “affects many people seriously or fewer people very seriously”. Our projects are our brand and how we deliver on the law reform mandate is central to the question of why we exist rather than what we exist for. It is therefore our proverbial public consultations and research based approach that makes our work unique.
The Stages in the Law Reform Process

In terms of section 7 (2) of the Law Reform and Development Commission Act, 1991, the Commission may invite and receive any suggestions relating to its objects from any person or body and may include such suggestions in any programme, which it prepares from time to time and submit to the Minister of Justice for approval. Once the approval of the Minister is received, the Commission adopt the suggested topics as projects of the Commission and assign one member as Commissioner responsible, per project.

Furthermore, the Commission, in consultation with the Chief: Law Reform Directorate, will then appoint a researcher as the project officer. The project officer will be responsible for the project, under the guidance of the assigned Commissioner, and is required to steer the project towards finality.

The following stages must be followed sequentially:

**Drafting the Project Initiation Document (PID)**

The PID is practically a project plan which will set out the way in which the project will be dealt with, the budget or expected expenditure, the impact that the project will have on people or groups as well as an elaborate timetable for the finalisation of the project.

**Development of the Issue Paper**

After the PID is approved, the researcher prepares the Issue paper which sets out the legal issues raised by the project. This Issue Paper is distributed broadly for comments and is subjected to a number of consultative meetings to discuss and solicit comments from relevant stakeholders.

**Why we consult**

The LRDC is not the only body initiating law reform in Namibia, however what sets us apart is the imperative of consultation. It is therefore important to note that the main reasons for consultation are to:

- Establish how other people view the problem(s);
- Find out what they think of the Commission’s proposed solutions;
- Alert the Commission on how the law works in practice;
- Refine the proposals of the Commission;
- Reinforce democratic values and give people the chance to be heard and to participate in the law making process; and
- Build consensus in favour of reform.
Development of the Working Paper (Discussion Paper)

With all the comments and consultative meeting reports, the researcher then develops a comprehensive Working Paper that not only poses the problems, but also provides possible solutions, that take into account the arguments for and against the proposed solutions as well as a comparative study of the problem in other jurisdictions.

Where possible, the draft Bill may be produced at this stage in accordance with section 7(4) of the Law Reform and Development Commission Act, 1991. The Commission deliberates on the draft Bill and may engage the Directorate: Legislative Drafters and other stakeholders for consultations on the draft Bill.

Where the drafting of the Bill is concerned, it is important to take cognizance of the provisions of section 7(3) of the Law Reform and Development Commission Act, 1991 that empowers the LRDC to consult any person or body, to study any document prepared by it or to assist the Commission in any other manner. The Working Paper together with the draft Bill is then used to consult more widely with stakeholders.

Drafting the Final Report

Once the workshops on the Working Paper are completed, the Commission prepares a Final Report with the attendant Bill, which is submitted to the Minister of Justice in terms of section 9(1) of the Law Reform and Development Commission Act, 1991.

As part of its commitment to provide free access to Namibia’s online legal information, the Commission publishes its Issue Papers, Working Papers (Discussion papers) and Final Reports on the NamibLII website. This website can be accessed at http://namiblii.org
CHAPTER 3  REPORT BY THE SECRETARIAT

Appointment of the Secretary

In terms of section 11(1) of the Law Reform and Development Commission Act, 1991, the Minister of Justice designates an officer in the public service as Secretary to the Commission. In practice, the Minister designates the head (Chief) of the Directorate: Law Reform in the Ministry of Justice as Secretary, and together with the Directorate administrative and research staff are the Secretariat.

The Chief Law Reform (Secretary), together with the staff members within the establishment of the Directorate of Law Reform in the Ministry of Justice, are in terms of section 11(2) of the enabling statute, 1991 mandated to assist the Commission to carry out its mandate, power and functions.

Staffing

The Directorate of Law Reform was able to successfully motivate the approval of a new structure by the Public Service Commission during the period under review. The new structure makes provision for a total of 67 (‘sixty seven’) posts.

Despite the approval of a new structure, the Directorate was only able to fill 5 (‘five’) additional positions during the period under review, due to budgetary constraints. The new positions filled were those of:

- 2x Chief Legal Officer;
- 1x Senior Legal Officer;
- 2x Legal Officer; and
- 1x Senior Private Secretary.

During the same period however, three of the existing staff (legal researchers) were translated into higher positions of:

- 2x Senior Legal Officer;
- 1x Legal Officer.

The current staff compliment of the Directorate stands at a total of 15 (‘fifteen’) staff members. These include 8 (‘eight’) researchers and 7 (‘seven’) administrative staff.

- 1x Chief;
- 1x Deputy Chief;
- 2x Chief Legal Officers;
- 3x Senior Legal Officers;
- 3x Legal Officers;
- 3x Clerks; and
- 2x Senior Private Secretaries.
The members of staff occupying these positions during the period under review are as follows:

- Mr. T J Namiseb, Chief Law Reform and Secretary to the Commission;
- Mr. W P Oosthuizen, Deputy Chief: Law Reform;
- Mr. C Uugwanga, Chief Legal Officer;
- Ms. R N Ntinda, Chief Legal Officer;
- Ms. C Okafor, Senior Legal Officer;
- Ms. V Weyulu, Senior Legal Officer;
- Ms. J J Gawachab, Senior Legal Officer;
- Ms. M L Mulwa, Legal Officer;
- Mr. K Koujo, Legal Officer;
- Mr. S Niigungo, Legal Officer;
- Mr. N Murangi, Chief Legal Clerk;
- Mr. C Jossob, Senior Legal Clerk;
- Mr. R Spiegel, Legal Clerk;
- Ms. F Bock-Kakombo, Senior Private Secretary; and
- Mrs. A Bezuidenhout, Senior Private Secretary.

Furthermore, the staff establishment is complimented by student interns who serve the Secretariat on a voluntary basis. The students serve the Secretariat on a pro bono basis as a result of budgetary constraints, which means that no funds were available to pay for the student intern allowances during the period under review. But the students consider this as an opportunity to expand their knowledge and skill and often agree to continue despite these challenges.

The Directorate will nonetheless endeavour to fill additional positions during the next and subsequent financial periods in order to address the shortage of staff, particularly research staff, as this has negative effects on the quality and frequency of the research output of the LRDC.

**International Interns**

Since 2016, the LRDC discussed and now has a Memorandum of Understanding (although not yet finalized), with McGill University in Canada, to place law interns under their international human rights internship program. Every year they send around 24 students for a 12 week Summer placement (between May and August) in Canada and around the world. Mostly they work with NGOs, tribunals and international courts. The university assumes all costs associated with the intern. The host organization is expected to provide meaningful supervised work related to any aspect of human rights plus shared office space. The expected work and outcome, falls squarely under the human rights and international law compliance mandate of the LRDC.

In May 2016, the LRDC welcomed our first International intern, Mr Zachary Shefman, who brought very good research, writing and analytical skills to the institution. He worked well with the institutions researchers and was tasked with assisting with the management of the New Equitable Economic Empowerment Framework (NEEEF). His editorial and report writing skills added immense value to the quality and content of the project which included a legal opinion on the constitutionality or not of the NEEEF. The interns engage meaningfully with the cultural and socio-economic environment of the country in which they are placed. Mr Shefman’s experience was therefore a total sum of professional and personal engagement. The LRDC is proud to be associated, with Canada’s top University and ranked 32nd in the world in a manner that it adds value to both us and the intern.
Support services

The Commission, through its Secretariat provide technical support to external stakeholders by serving on various committees. The LRDC served on the following committees during the period under review:

- Cabinet Committee on Legislation;
- Inter-Ministerial Committee on Human Rights and International Humanitarian Law;
- Mass Land Servicing Project (Legal Sub-Committee);
- Consumer Protection Technical Committee;
- E-Government Legal and Policy Working Committee;
- Committee on the Translation of the Constitution into Indigenous Languages;
- Technical Committee for the Namibian National Deaf Association; and
- Board for Legal Education.

The LRDC was engaged on the following media platforms during the period under review:

- Good Morning Namibia Show
- One on One current affairs
- Talk of the Nation
- Social Media: LRDC Official Facebook page

Workshops and Conferences

The LRDC held and participated in various workshops and conferences during the period under review. All these workshops relate to the mandate and function of the Commission, its strategic plan and to the various law reform projects currently under its consideration.

The LRDC conducted the following workshops as part of its projects:

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<td>Administrative Justice Draft Bill</td>
<td>Windhoek</td>
<td>18-19 August</td>
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<td>NEEEF Draft Bill</td>
<td>Windhoek</td>
<td>11 February</td>
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<td>Unified Matrimonial Property Regime Bill</td>
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<td>23 February</td>
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LRDC NEEEF Stakeholder Consultation in Oshakati at the Regional Council Hall, Namibia

LRDC NEEEF Stakeholder Consultation in Windhoek at the Khomas Regional Council Hall, Namibia
The Secretariat held the following internal workshops during the period under review:

<table>
<thead>
<tr>
<th>Workshop</th>
<th>Place</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic Plan Review of the Directorate</td>
<td>Swakopmund</td>
<td>February</td>
</tr>
<tr>
<td>Legal Drafting</td>
<td>Windhoek</td>
<td>March</td>
</tr>
</tbody>
</table>

The Secretariat participated in the following management workshops of the Ministry of Justice:

<table>
<thead>
<tr>
<th>Workshop</th>
<th>Place</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic Planning</td>
<td>Midgard</td>
<td>27 - 29 August</td>
</tr>
<tr>
<td>Strategic Planning 2nd review</td>
<td>Gross Barmen</td>
<td>21- 23 October</td>
</tr>
</tbody>
</table>

The LRDC was invited to attend a number of workshops as a stakeholder, partner or to present its institutional perspective on various topics:

<table>
<thead>
<tr>
<th>Workshop</th>
<th>Place</th>
<th>Date</th>
<th>No. Staff Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>International</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UN Review on Consumer Protection Guidelines</td>
<td>Geneva, Switzerland</td>
<td>30 May – 03 June</td>
<td>1</td>
</tr>
<tr>
<td>UNCITRAL Working Group</td>
<td>New York, USA</td>
<td>30 April – 08 May</td>
<td>1</td>
</tr>
<tr>
<td>Regional</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ALRAESA</td>
<td>Maseru, Lesotho</td>
<td>23 – 26 November</td>
<td>2</td>
</tr>
<tr>
<td>Regional meeting of experts and stakeholders on Albinism</td>
<td>Dar-es-Salaam, Tanzania</td>
<td>18 – 23 November</td>
<td>1</td>
</tr>
<tr>
<td>Symposium: Customary Law</td>
<td>Pretoria, SA</td>
<td>26 – 28 August</td>
<td>2</td>
</tr>
<tr>
<td>Insolvency</td>
<td>Cape Town, SA</td>
<td>12 – 14 October</td>
<td>1</td>
</tr>
<tr>
<td>SAHRC</td>
<td>Johannesburg, SA</td>
<td>3- 5 March</td>
<td>2</td>
</tr>
</tbody>
</table>
Training

Since the introduction of the Performance Management System (‘PMS’), the Secretariat has sent staff members to undertake/participate in training programmes as part of their Performance Agreement personal development objectives. The Directorate therefore places great emphasis on staff capacity building and, during the period under review, a number of staff members were allowed to undergo short and long term courses to capacitate them in order to enhance performance.

Training opportunities:

<table>
<thead>
<tr>
<th>Training</th>
<th>Place</th>
<th>Date</th>
<th>No. Staff Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative drafting</td>
<td>Otavi</td>
<td>13 – 24 July</td>
<td>1</td>
</tr>
<tr>
<td>Magistrates Training</td>
<td>Swakopmund</td>
<td>3 August</td>
<td>1</td>
</tr>
<tr>
<td>Diplomacy, Protocol</td>
<td>Swakopmund</td>
<td>10 – 21 August</td>
<td>1</td>
</tr>
<tr>
<td>Tender Adjudication</td>
<td>Windhoek</td>
<td>7 – 10 September</td>
<td>2</td>
</tr>
</tbody>
</table>

Budget

The Budget of the Directorate of Law Reform (as Secretariat) and the Commission is provided for under the overall budget of the Ministry of Justice. The Directorate and the Commission have one budget solely because the Directorate supports the functions of the Commission. During the period under review, the government has implemented serious budget cuts and as a result a number of activities planned by the Directorate and the Commission could not be carried out especially in the areas of filling vacant positions, training and allowances for student interns.

The total budget amount approved and received by the Directorate and the Commission during the financial period under review, was N$13,308,000.00. However, due to the budget cuts at the end of the 2015 calendar year, the budget was reduced to an amount of N$13,000,500.00.
CHAPTER 4

THE COMMISSION AT WORK: CURRENT AND ONGOING PROJECTS

The Commission is, from time to time, required to submit a programme of its work to the Minister of Justice for approval, in terms of section 7 (1) of the Law Reform and Development Commission Act, 1991. During 2015/2016, the Commission worked on the following projects:

- The Review of the Insolvency Act, 1936
- Namibia Legal Information Institute (NamibLII)
- Review of Administrative Justice in Namibia
- Uniform Default Matrimonial Property Consequences of Common Law Marriages
- Domestication of the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (“UNCAT”)
- Report on the Repeal of Obsolete Laws in Namibia
- Disability Rights
- The Reform of the State Finance Act, 1991
- National Equitable Economic Empowerment Framework (NEEEF)

The Commission conducted a number of consultations with stakeholders and the public on some of the projects during the period under review, as depicted below. (See also Chapter 3 for workshops held)
**Project Title:**
The Review of the Insolvency Act, 1936

**Project Officer:**
Ms. Victoria Weyulu

**Project Commissioner:**
Adv. Unanisa Hengari

**Project Committee (if any):**
None

**Consultant (if any):**
Adv. Adolph Denk

**Background of Project:**

**Date of Commencement**
23 October 2012

**Project of the LRDC or Stakeholder Assistance**
Project of the LRDC

**How Project came to LRDC**
A proposal was submitted by the Bank of Namibia to amend sections 35 and 46 of the Insolvency Act, 1936 (Act No. 24 of 1936).

**Justify Need for Reform**
The power of the trustee to decide whether to abide by some transactions and to refuse from abiding by others under sections 35 and 46 of the Insolvency Act, 1936 is detrimental to a third party, who can then only sue the insolvent estate as a concurrent creditor for any damages which such third party can prove to have suffered.

At present, the average recovery rate for secured creditors in Namibia upon insolvency stands at 34.9 cents on the dollar, which often means that concurrent creditors obtain a negligible return upon insolvency.

The Bank of Namibia then proposed that Namibia should adopt an approach similar to that of South Africa’s Insolvency Amendment Act, 1995 (Act No. 32 of 1995), which would define certain “agreements” entered into with a financial or banking institution which cannot be set aside by the trustee.

However, apart from sections 35 and 46 of the Insolvency Act, 1936, the Commission sought to review the adequacy of the antiquated Insolvency Act, 1936 as a whole in order to determine whether or not its current provisions, which have been in force for over 70 years, still play a relevant role in the facilitation of credit and particularly, with Namibia’s international trade obligations under international law.

**State whether any Benchmark Studies done or International/SADC Relations Established in Respect of Project:**

**Bank of Namibia**
The LRDC concluded a Memorandum of Understanding with the Bank of Namibia on 21 July 2015 for the review and amendment of the Insolvency Act, 1936 in terms of which the Bank of Namibia will provide financial assistance of N$495,000-00.

The object of Working Group V (Insolvency) is to prepare a comprehensive statement of key objectives and core features for strong insolvency regimes in order to further international trade and to promote commerce.
Working Group V (Insolvency) has prepared the following documents over the years which have a bearing on insolvency law:

- UNCITRAL Model Law on Cross-Border Insolvency (1997)
- UNCITRAL Legislative Guide on Insolvency Law, Part Four: Directors’ obligations in the period approaching insolvency (2013)

By preparing these instruments, Working Group V (Insolvency) seeks to harmonize and to coordinate the efforts not only of those countries who do not have efficient and effective insolvency regimes and need to develop such a regime, but also for countries who are undertaking the process of modernizing and reviewing their national systems.

Namibia is currently participating in discussions and preparatory work for a draft Model Law on Recognition and Enforcement of Insolvency-related judgments.

INSOL Africa Roundtable

The Africa Roundtable was established at a meeting organized by INSOL International in 2010 to:

- Provide for a platform for a high level dialogue with both private practitioners and public policy makers on insolvency reform in Africa.
- Set up a forum for a coordinated approach by international bodies, countries and experts by sharing experience and knowledge.
- Elevate insolvency reform on the African policy agenda.

Namibia participated in the sixth Africa Roundtable which was held in Cape Town, South Africa from 12–13 October 2015. The purpose of the sixth Africa Roundtable was to explore the role that insolvency regimes play in contributing to and maintaining financial sector stability as well as the role that insolvency plays in promoting access to credit – and therefore growth – for businesses in African countries.

**Status of Project:**
A Discussion Paper on Issues Relating to the Insolvency Act, 1936 has been compiled outlining the key issues gathered from the consultative stakeholder meetings conducted in July 2013.

However, a consultant has now been engaged to draft proposals on the issues identified.

**Way forward:**
Once draft proposals are received from the consultant, the project officer(s) will conduct further consultations, including a final workshop which would culminate in a final report from the LRDC to the Minister of Justice.

**Anticipated Workshop/Seminar and Dates:**
June 2016

**Anticipated Date of Finalisation:**
November 2016
Project Title:
Namibia Legal Information Institute (NamibLII)

Project Officer:
Mr. Willie Oosthuizen
Assisted by:
Ms. Lydia-Mutindi Mulwa
Ms. Victoria Weyulu

Project Commissioner:
Mrs. Felicity !Owoses-/Goagoses

Project Committee (if any):
None

Consultant (if any):
None

Background of Project:
Date of Commencement
16 January 2013 (Cabinet Action Letter)

Project of the LRDC or Stakeholder Assistance
Project of the LRDC

How project came to LRDC
The Ministry of Justice concluded an agreement with Namibia Legal Information Institute (NamLII) in March 2009. NamLII is a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 63 of 1973) and represented by Mr Samson Muhapi in his capacity as Executive Director. NamLII sought to develop and implement an E-Laws portal for the Ministry of Justice in order to provide free online access to Namibia’s legal information, such as: case law, legislation, government gazettes, parliament hansards and international agreements to which Namibia is a Party. However, this agreement between the NamLII and the Ministry of Justice was terminated with effect from 1 April 2011.

In order to promote the continued provision of free access to Namibia’s online legal information, the LRDC submitted a proposal to Cabinet for the establishment of another Non-Profit Association under the name of Namibia Legal Resources and Information Institute (NaLRII).

Cabinet consequently authorised the establishment of NaLRII which was duly registered on 18 February 2014 in terms of section 21 of the Companies Act, 2004 (Act No. 28 of 2004).

NaLRII was successfully renamed NamibLII and now hosts legal information pertaining to Namibia.

Justify Need for Reform:
The LRDC is mandated to undertake research in connection with all branches of the law of Namibia and to make recommendations for the reform and development thereof under the Law Reform and Development Commission Act, 1991. Section 6(b) in particular, directs the LRDC to “consolidate or codify any branch of the law and introduce measures aimed at making the law more readily accessible”.

State whether any Benchmark Studies done or International/SADC Relations established in Respect of Project:
Free Access to Law Movement (FALM)
This movement began in 1992 with the creation of the Cornell Law School Legal Information Institute in the United States of America. Currently, the movement is associated to a variety of Legal Information Institutes (LIIs) across numerous countries, which have adopted the “LII” as a means to identifying their association to the movement. These LIIs provide free online access to legal information including; case law, legislation, treaties, law reform proposals and legal scholarship.
NaLRII became a member of FALM on 3 March 2014.

The members of FALM meet annually at WorldLII Law via the Internet Conferences to discuss innovative ways through which legal information can be made readily and freely accessible.

Kenya Law (previously the Kenya National Council for Law Reporting (KNCLR))

Kenya Law is a Semi-Autonomous State Agency (SAGA) established by the Kenyan National Council for Law Reporting Act, 1994 (Act No. 11 of 1994). In terms of this Act, the principal mission of Kenya Law is “to provide access to public legal information in order to aid the administration of and access to justice, the knowledge and practice of law and the development of jurisprudence”.

Since Kenya Law is recognized as the premier resource institution in Africa that provides reliable and accessible legal information to the public, it has provided training with regard to the establishment of law reporting departments, as well as the processes required to carry out a law reporting function to various African countries including Botswana, Liberia, Malawi, Uganda and especially Namibia.

Southern African legal Information Institute (SafLII)

SafLII publishes legal information for free public access from South Africa and other jurisdictions in Southern and Eastern Africa, to promote free access to law.

At present, all legal information pertaining to Namibia on SafLII is redirected to the NamibLII website. However, SafLII still serves as a platform for Namibian legal information until the migration process is complete.

African Legal Information Institute (AfricanLII)

AfricanLII is a project of the University of Cape Town, South Africa with the main goal to promote free access to law and open justice in Africa.

It supports the establishment of new LIIs in Africa and assists existing LIIs by coordinating a collaborative resource pool for LIIs across Africa.

In support of this mandate, AfricanLII developed Namibia’s E-Laws portal in 2016, which now operates as NamibLII.

Status of the Project:

NamibLII does not follow the normal procedures for the law reform process. At present, AfricanLII has offered to provide NamibLII with a “LII – in – a – box” which has been developed to enable countries to develop their own online legal publication platforms.

This option would require a commitment from NamibLII to provide the capacity to upload the content on a regular basis, but AfricanLII will be able to provide ongoing technical support and training at no cost to NamibLII.

Once the parties have agreed, on the terms of the “LII-in-a-box”, the LRDC and AfricanLII will consider cost-effective ways to move the current Namibian data on the SafLII to a NamibLII site to avoid the duplication of legal information already online.

Way forward:

The project officer(s) will provide further details on the way forward once he/she has ascertained the scope of the “LII – in – a – box” solution.

Anticipate Workshop/Seminar and Dates:

N/A
Project Title:
Review of Administrative Justice in Namibia

Project Officer:
Mr. Charles Uugwanga

Project Commissioner:
Adv. John Walters (Ombudsman)

Project Committee (if any):
Adv J Walters (Chairperson of the ADJP Committee)
Mr C Uugwanga

Consultant (if any):
Professor Hugh Corder is a leading academic, a Professor of public law at the University of Cape Town and is acclaimed for his numerous publications in the field of public law in South Africa. He was brought on board to assist the LRDC on the Review of Administrative Justice in Namibia because of his vast experience and knowledge on the subject matter. In particular, he assisted the LRDC with developing an Administrative Justice Bill after gauging the views of various stakeholders during a protracted consultative process.

It was a pleasure for the LRDC to have worked with Professor Corder on this important project and the LRDC is particularly mindful of the skills and knowledge transfer that some of our researchers benefited from as a result of working with Professor Corder on this project.

Background of Project:

Date of Commencement
The review of Administrative Justice in Namibia project has been on the LRDC work program since 2008 and has been carried over to the Work Programs of subsequent Commissions including the current one.

Project of LRDC or Stakeholder Assistance
The Project was initiated by the LRDC

Approval by Commission
The project has been approved by the current Commission and therefore forms part of the current Commissions three year Work Program.

How Project came to LRDC
The Project was initiated by the LRDC as part of its theme on “Access to Justice” adopted back in 2008. At the time, it was realised that there was a need for establishing an administrative justice legal framework and this was recommended at a Conference on Administrative Law held in August 2008.

Justify Need for Reform:
The law aims to achieve two broad objectives:
1. To give greater detail to the requirements of article 18 of the Namibian Constitution and to extend codification of common law administrative justice principles.
2. Establish tribunals to adjudicate on administrative law cases and thereby increase access to justice.

State whether any Benchmark Studies done or International/SADC Relations Established in Respect of Project:
The law reform process for the Review of Administrative Justice Project involved comparative analysis of similar legislations in selected jurisdictions such as Australia, Germany, Denmark, Netherlands, Spain, United Kingdom, Canada, USA and South Asia. Regionally, a comparative analysis was done with reference to South Africa and Commonwealth Africa. It is important to acknowledge that a partnership was entered into by the LRDC and the Konrad Adenauer Foundation for the Review of Administrative Justice Project. The partnership was in force from 2008-2013, with the understanding that KAS fund some areas of the project. Professor C Roshmann was the Director of the KAS Sub Sahara Africa regional office in Nairobi, Kenya, at the time, and he oversaw
the funding for the project under their Rule of Law Program. This program supports initiatives that are geared towards the realisation and development of Administrative Law in Africa.

**Status of Project:**
The project is currently at the report preparation stage before submission to the Minister of Justice under section 9(1) of the Law Reform and Development Commission Act, 1991.

**Way Forward:**
Compilation of all reports and draft bill into final report.

**Workshops/Seminars/Consultations:**
During the protracted process for the review of Administrative Justice in Namibia Project, the following Workshops/seminars/consultations were attended or undertaken:

**Consultations with Stakeholders:**
1. Workshop on Draft Bill Windhoek, 18-19 August 2015
2. Regional and Town councils consultations:
   2.1 Kunene, //Karas, Omaheke Regions, 9, 11, 13 December 2013 and Hardap Region, 24 January 2014
   2.2 Windhoek and Khomas Region, 3 December 2013
2.3 Katima Mulilo and Rundu, 20-21 November 2013
2.4 Walvis Bay and Swakopmund, 28 February 2013
2.5 Otjozondjupa, Oshikoto and Oshana Regions, 3-8 June 2012
2.6 Khomas, 10-12 May 2011
3. Stakeholders brainstorming workshop, Rock Lodge, Okahandja, 19-21 June 2009

International seminars/workshops attended:
1. Stakeholders workshop on Administrative Law, Maputo, Mozambique, 1st – 4th April 2009

**Anticipated date of finalisation:**
The anticipated date of finalisation of the project is 28 February 2016.
Project Title
Uniform Default Matrimonial Property Consequences of Common Law Marriages

Project Officer:
Ms. Chisom Okafor

Project Commissioner:
Mrs. A. Van der Merwe

Project Committee:
None

Consultant:
None

Background of Project:

Date of commencement:
This Project commenced in the year 2003.

Project of LRDC or Stakeholder assistance
The project was initiated by the LRDC.

Approved by Commission:
The current project has been approved by the Commission which forms part of the Family Law three year project programme.

How Project came to LRDC
Since its establishment in 1992, the LRDC has given considerable attention to issues concerning family law and customary law and the need to repeal or amend some of these discriminatory laws.

Justify Need for reform:
The new law aims to achieve the following to:
» provide for remedies to persons who entered into marriages in terms of section 17(6) of the Native Proclamation 15 of 1928 and who are adversely affected by the administration of that provision.
» create a default matrimonial property regime for the country.

State whether any Benchmark Studies done or International/SADC Relations Established in Respect of Project:
None

Status of Project:
» Preparation of a final report on the Uniform Default Matrimonial property Consequences of Common Law Marriages
» The Commissioners assigned to the project have made comments to the Uniform Default Matrimonial Property Consequences of Common Law Marriages Bill.

Way Forward:
» Compilation of a final report incorporating the amended draft bill for submission to the Minister of Justice.

Workshops/Seminars/Consultations:
» During the process of undertaking the family law projects, the following workshops/stakeholder consultations with regard to the above issues took place in the following areas:
  1. Swakopmund
  2. Keetmanshoop
  3. Gobabis

Further consultations shall take place in the areas of Sesfontein, Gam and Tsumkwe, so as to establish whether these areas form part of North of the police zone.

Anticipated Date of Finalisation:
» 31 March 2015
Project Title
Domestication of the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (“UNCAT”)

Project Officer:

Mrs. Jessica J. Gawachab

Project Commissioner:
Mrs. Felicity Owoses-/Goagoses

Project Committee (if any):
None

Consultant (if any):
Dr. Jamil D. Mujuzi, Associate Professor, University of the Western Cape, Cape Town, South Africa. Dr. Mujuzi was consulted to draft the Prevention and Combating of Torture Bill and to draft a report. The consultant was contracted 29 June 2015 with an allocated time frame of 3 months within which to submit the final draft bill and report.

Background of Project:
The Commission received a request from the Directorate International Cooperation and Legal Services and, at a meeting on 6 December 2007, agreed in principle to consider implementing the project on torture. In April 2008, the Commission received a briefing from Barbara Olshanki from Stanford University Law School, United States, on three draft bills on the implementation of Namibia’s obligation under the Convention against torture. The LRDC approved the torture project in their official work programme premised on statutory obligations under section 6 of the Law Reform and Development Commission Act, 1991. Section 6 mandates the LRDC to make recommendations with regard to enactment of legislation that promotes and enhances respect and protection of human rights in line with the Namibian Constitution as well as the augmentation of international instruments by ensuring compliance with international obligations. The Ministry of Justice remains the primary custodian of the Prevention and Combating of Torture Bill 2016.

Article 1 (6) of the Namibian Constitution provides that the Constitution is the supreme law and all other law is subject to and must be in compliance with the Constitution. Under article 8 (2)(b) of the Namibian Constitution, it further provides that “no person shall be subjected to torture or to cruel, inhuman or degrading treatment.”

Namibia prior to independence was characterized by an apartheid administration that committed gross violation of human rights against the people of Namibia. Under the rubric of the repressive security systems enforced by colonialist forces, a number of human rights abuses amounted to acts of torture. Post-independence, the Namibian government adopted a Policy of National Reconciliation in acknowledgment and recognition of the fact that our nation has been at war with the South African Occupation Forces and consequently Namibian citizens have been on different sides of the political and military divide. This necessitated a policy that would unite the nation towards the common goal of peace, stability, liberty, dignity and development.

The constitutional dispensation adopted with Namibia’s independence demanded a criminal justice system that advanced the protection of fundamental human rights. Namibia ratified the UNCAT on 28 November 1994. In terms of article 144 of the Constitution, international agreements are binding upon Namibia unless otherwise provided by the Constitution or an Act of Parliament. UNCAT universally bans the death penalty and any other forms of torture and cruel, inhuman and degrading treatment. The United Nation’s Committee on Torture Reports reflect negatively with regard to Namibia’s compliance under the Convention against
Torture. Article 2 and 4 of the UNCAT requires Namibia to implement and enforce legislative, judicial and administrative measures in purport of preventing abusive conduct that amounts to torture or cruel, inhuman and degrading treatment. The UNCAT further provides for specific criminalisation of torture into domestic legislation, the necessity to exclude evidence obtained by the use of torture or other forms of cruel, inhuman and degrading treatment in all proceedings and to enact legislation for the investigation of any substantiated allegations of torture inter alia.

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment.”

The LRDC prepared a Draft Prevention and Combating of Torture Bill and Working Paper. The Working Paper is a comprehensive research document that informs the content of the bill. During August 2015, the LRDC hosted a stakeholder consultative workshop on these working documents to solicit comments and consensus on pertinent issues presented within the working paper. The workshop was successful in attendance as the majority of invited stakeholders were represented. The LRDC is in the process of incorporating stakeholder input into the final report, inclusive of recommendations and the draft bill. The LRDC anticipates to host regional consultations in key areas where the reports of acts of torture are more prominent.

Anticipated Date of Finalisation:
Upon final approval of the LRDC, the official handing over of the final report and draft Prevention and Combating of Torture Bill to the Minister of Justice is scheduled to take place during the course of 2016.

Project Title:
Report on the Repeal of Obsolete Laws in Namibia

Project Officer:
Mrs. Jessica J. Gawachab

Project Commissioner:
Mrs. Felicity !Owoses-/Goagoses

Project Committee (if any):
None

Consultant (if any):
None

Background of Project:
One of the objects of the LRDC is to make recommendations for the repeal of obsolete or unnecessary enactments, as per section 6 (a) of the Commission Act, 1991. This section states that the objects of the Commission shall inter alia be to undertake research in connection with, and examine all, branches of the law of the Republic of Namibia, and to make recommendations for the reform and development thereof, including the repeal of obsolete or unnecessary enactments.

Considering the above epigraph, the LRDC set out to fulfil its mandate in terms of section 6 (a) by identifying the so-called ‘dead wood’ laws and those laws that no longer find applicability in the Republic of Namibia today.

In this regard, Obsolete laws are defined as:
» “[L]aws that have become out-dated or have been replaced with new laws and hence are no longer necessary in light of the new developments that come with our contemporary law”. The term is applied to those laws, which have lost their efficacy, without being repealed.

The continued existence of these laws on our statute books has hampered the Republic of Namibia from moving forward, and the consequences of their application may not be beneficial or affordable. These laws are anachronistic, and ill-suited to the Republic of Namibia’s post-colonial era which is characterized by a constitutional dispensation. However, in the absence of a review and reform of legal instruments, they still apply. Laws become obsolete due to natural
reasons, for example; the passage of time, change of situation, over-exploitation of loopholes as well as historical permutations.

Redundant laws on the other hand are those laws that are no longer needed or useful, thus superfluous. These laws can be omitted without loss of meaning or function. Thus, the term is often used interchangeably with obsolete laws.

The LRDC is at the discussion paper phase with regards to the project. The list of potentially obsolete laws was compiled and the LRDC is now in process of researching the redundancy and applicability of these laws. The discussion document upon completion is subject to distribution amongst stakeholders. The LRDC anticipates to workshop the discussion document. The LRDC adopted the repeal of the obsolete laws in line with the poverty eradication mantra introduced by the President of Namibia, His Excellency Dr. Hage Geingob. The laws identified under the project reflect largely on the Apartheid administration of a pre-independent Namibia.

These laws thus emulate stagnation politically, socially and economically.

In purport of attempting to eradicate stains from suppressive laws that impede the development and growth of the Namibian citizens, the LRDC ambitiously embarked on this project. Laws that still represent discrimination based on race or ethnicity have gravely disadvantaged the black community and by repealing such laws would in effect remove impediments on growth by the previously disadvantaged community implemented by the colonialist forces.

Due to the complexity of the project the LRDC anticipates to complete this mammoth report by 2017.

Project Title: Disability Rights

Project Officer: Ms. Ruusa Ntinda

Project Commissioner: Ms Lineekela Usebiu

Project Committee: Still to be identified.

Consultant: Still to be identified.

Background of Project: The project came about as a result of the Commission’s self-assessment of the realities affecting Persons with Disabilities (PWDs) in Namibia. Namibia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2007 and to date no report has been submitted to the CRPD committee. Therefore selected disability related laws need to be reviewed and amended in order to bring them in conformity with the requirements of the CRPD.

The Main Objectives of this Project are to:

» Conduct a critical analyses of the current national disability legal framework;

» Focus on revision of the National Disability Council Act, 2004 (Act No. 26 of 2004);

» Consider the Disability Policy of 1997 and other relevant laws;

» Critically analyse the gaps within the national disability legal frameworks, policies, regulations and practices;
» Properly determine the extent to which the national disability legal framework is in compliance with the CRPD; and

» Bring about the required law reform to effectively protect the rights of persons with disabilities in Namibia.

The Terms of Reference are to:

» Critically analyse the current national disability legal framework to determine whether or not it is in compliance with the CRPD. This will be done by conducting a gaps analyses within the National Disability Council Act, 2004 (Act No. 26 of 2004), the Disability Policy of 1997 and any other relevant law in relation to the CRPD.

» Conduct an in-depth process which includes consultation, consolidation, conducting workshops and drafting a report and a draft bill on the Disability Policy of 1997 and any other relevant law in relation to the CRPD.

According to the Namibian Statistics Agency 2011 Census Main Report, Namibia had a population of 2,113,077. Out of the 2,113,077 total population, 98,413 are persons living with disability; 4.7% of the total population lived with disabilities. The proportion of people living with disabilities was higher in rural (5.7%) than in urban areas (3.3%) and about 42% of people with disabilities also have difficulty engaging in any learning and/or economic activity.

The proposed reviews and consolidation of fragmented laws will be done to guide the public and the private sector in ensuring that it conforms to international standards with references to disability rights related issues. The assessment will also enable Namibia as a state party to the CRPD to comply with its treaty obligations in terms of the implementation of the substantial issues of the treaty including state reporting to the CRPD committee.

Bench Marking:

Selected countries for bench-marking include Kenya and Zambia. These countries where selected based on the fact that they are both African countries who may share a cultural, historical, institutional, developmental, political, economic and social similarity. And as a result of these similarities, the resources and other measures at the disposal of that specific government to reasonably accommodate the needs of persons with disabilities are almost, if not similar.

Kenya, for instance, has moved milestones in protecting and promoting the rights of persons with disabilities. Kenya ratified the CRPD on 19 May 2008 and took a further step in the domestication and implementation of the CRPD by ensuring that the 2010 Constitution provides for the protection of the rights of persons with disabilities in line with the spirit of the CRPD following intensive consultations with persons with disabilities and DPOs.

The 2010 Kenyan Constitution in Chapter 4 part 1 article 21(3) places a duty on State organs and public officers to address the needs of and protect the rights of vulnerable groups which includes persons with disabilities. Article 27(4) further prohibits direct and indirect discrimination against any person on any ground such as disability among others. The Constitution also makes provisions for reasonable accommodation of persons with disabilities and universal designs to enhance accessibility and create a disability friendly society in terms of Article 54 by ensuring that persons with disabilities are “integrated in society by providing access to educational institutions and facilities, public transport and information; to use Sign language, Braille or other appropriate means of communication; and to access materials and devices.” Article 7(3)(b) makes it a constitutional obligation for the government to promote the development and use of Braille and other forms of communication and technologies to enable communication and access to information and the enjoyment of the freedom of speech and expression of persons with disabilities.

These constitutional provisions were put in place to fill the gaps and ensure that the existing disability framework can be interpreted in a way that enforces the ideals of the CRPD and assist the Kenyan government in fulfilling its international obligations towards persons with disabilities. This is illustrated by the fact that Kenya did not change its standing disability legislation; it merely made certain
principles of the ICRPD constitutional requirements, thus ensuring that such legislation will be interpreted in line with the Constitution as the supreme law of the land.

The approaches taken by Kenya can provide Namibia with the relevant information in the determination on how to effectively and efficiently reform our disability laws in line with the CRPD. The project officer has already talked to Alex Munyere of the Nation Council for Persons with Disabilities, Kenya for a possible learning visit. He will ensure that the project officer meets with the officials from the law reform and the human rights commission of Kenya who were some of their main stakeholders and the force that ensure the disability legal reforms in Kenya. Thus assisting and informing the LRDC disability law reform process in line with the LRDC strategic objects to increase law reform out puts, reform and development of laws particularly in relations to disability right issues.

**Progress:**

The project is still in its infancy state. The project officer is currently working in comments on the project initiation document. The issue paper is currently on hold until project initiative document comments completed. The steps that will follow includes setting up consultations with possible stakeholders; collaborating partners and possible funders. Thereafter the stages in law reform process will follow as set out in the law reform operations manual, and set out herein the preceding parts of this report.

**Project Title:**
State Finance Act Reform Project

**Project Officer:**
Ms. Lydia-Mutindi Mulwa

**Project Commissioner:**
Former Chairperson, Mr Sackeus E.T Shanghala

**Project Committee (if any):**
None

**Consultant (if any):**
Professor Benjamin Geva
Mr. Michael Klein

**Background of Project:**

**Date of Commencement**
Early 2014

**Project of the LRDC or Stakeholder Assistance:**

Project of the Ministry of Finance in collaboration with the LRDC

**How Project came to LRDC:**

The State Finance Act, 1991 (Act No. 31 of 1991) had been under review by the Ministry of Finance, which had produced a lay draft Bill which was circulated to a closed list of institutional stakeholders for comments.

The Commission resolved at a meeting that it was within its mandate to undertake the review and
reform of the State Finance Act, 1991 by virtue of section 6 of the Law Reform and Development Commission Act, 1991 which provides that the objects of the LRDC shall *inter alia* be:

“to undertake research in connection with and examine all branches of the law of Namibia and to make recommendations for the reform and development thereof....”

**Justify Need for Reform:**

The existing 22-year old State Finance Act, 1991 is out-dated in many respects and does not make provision for contemporary public finance management practices.

Since the year 2000, various attempts were made to draft a new Bill with input from consultants and relevant institutions. However, the drafts showed many weaknesses in terms of drafting, practical implementation and contextualization, mainly because additions to the Bill were made resulting in overlaps, omissions and lack of logical flow and sequencing.

Against this background, a fresh attempt was made to create a new draft bill. In doing so, a review was done of a few state finance laws of countries, such as New Zealand, Nigeria, Malta, Cyprus, Botswana, Kenya, Uganda, South Africa and other Commonwealth countries.

**State whether any Benchmark Studies done or International/SADC Relations in Respect of Project:**

Benchmarking was carried out against South Africa’s Public Finance Management Act (PFMA). South Africa’s PFMA was found very appealing as it flows logically and deals with all relevant issues, such as institutional issues, budget issues, accounting officers, public entities, borrowing, regulatory issues, and sanctions for financial misconduct. The South African PFMA has been in existence since 1999 and is being widely lauded as following a very transparent public finance management process.

**Status of Project:**

When I left for studies in March 2015, the Discussion Document had been completed and was awaiting to be issued with a LRDC and ISBN number. Further to this a Memorandum of Understanding had also been completed for signing between the Ministry of Finance and the Ministry of Justice. The finalisation of consultancy agreements with the intended consultants was a contentious issue and had not been addressed by the time of my departure.

As of April 2015, the State Finance Act Reform Project has since been taken over by the office of the Attorney General.

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**Project Title:**
National Equitable Economic Empowerment Framework (NEEEF)

**Project Officer:**
Ms. Lydia-Mutindi Mulwa

**Project Commissioners:**
Commissioner Adv. Hengari
Commissioner Mr. Shakumu

**Project Committee (if any):**
None

**Consultant (if any):**
Adv. Adolph Denk

**Background of Project:**

**Date of Commencement:**
2014

**Project of the LRDC or Stakeholder Assistance:**
Project of the Office of the Prime Minister in collaboration with the LRDC
How Project came to LRDC:

In 2014 the Office of the Prime Minister approached the then Minister of Justice, Hon. Mr Utoni Nujoma, about the passing into law of a framework that their office had developed to regulate economic equity empowerment in the country.

The framework had finally come about after several delays with previous BEE policies. The OPM pressed that it was urgent that a draft Bill be developed to echo the core sentiments of the framework, it was at this point that the project was then brought over to the LRDC to facilitate. The LRDC’s involvement is in line with its legislative mandate to undertake research in connection with and examine all branches of the law of Namibia and to make recommendations for the reform and development thereof.

Justify Need for Reform:

The justification of the NEEEF project is to facilitate the passing into law of the National Equitable Economic Empowerment Framework. Once the NEEEF is passed into law, it will serve as the official national programme for economic transformation and empowerment, economic empowerment standards and transformation charters. The quintessential justification for this project is to distribute wealth across a broad spectrum of previously disadvantaged Namibians.

The aim of the NEEEF is to provide a clear overarching policy framework into which all other policies will slot. The NEEEF will supersede all other transformation and empowerment policies of Government as well as provide the framework within which all private sector initiatives, past and future will be expected to conform to. Government will ensure its other policies are consistent and mutually reinforcing with the NEEEF.

NEEEF is based on the understanding that years of systemic colonialism and apartheid have contributed to contemporary economic woes in the country, and that government intervention can curtail the results of past racist regimes.

State whether any Benchmark Studies done or International/SADC Relations Established in Respect of Project:

No.

Status of Project:

Currently, the LRDC and Office of the Prime Minister are preparing to host a Consultative Stakeholders Workshop on Thursday, 11 February 2016. The Workshop is intended to gauge stakeholder perspectives on the NEEEF Draft Bill whilst facilitating open dialogue.

After the workshop has been completed, Stakeholders and the general public will have an opportunity to submit their comments, inputs and queries to the Bill via an online submission form on the OPM website. This facility will be made available for 14 days after the Workshop. Inputs received will then be collated and reviewed by the collaborating institutions.

Way Forward:

After consultative work-shopping the draft Bill will be forwarded to the Minister of Justice who must present it to CCL for consideration before it is taken for principal approval by Cabinet, certification by the Attorney General and then to the National Assembly.

Anticipated Workshop/Seminar and Dates:

Workshop date is 11 February 2016

Anticipate Date of Finalisation:

It is hoped that NEEEF will be finalised before the end of this financial year.
CHAPTER 5  OUR PARTNERS: LOCAL, REGIONAL AND INTERNATIONAL COOPERATION

Introduction

During the period under review, the LRDC worked with various partners at local, regional and international level in the realisation of its objects under section 6 of the Law Reform and Development Commission Act, 1991:

Our Local Partners

- The Office of the Vice-President: Department of Disability Affairs;
- The Office of the Prime Minister;
- The Office of the Attorney-General;
- The Ministry of Finance;
- The Ministry of Industrialization, Trade and SME Development;
- The Ministry of Home Affairs and Immigration;
- The National Road Safety Council;
- The Bank of Namibia; and
- AfricanLII.

Our Regional Partners:

Association of Law Reform Agencies of Eastern and Southern Africa (“ALRAESA”)

The proposed establishment of ALRAESA was decided upon at a seminar on Best Practices in Law Reform held in Dar-es-Salaam, Tanzania, in October 2000 which was attended by representatives from a number of African countries. ALRAESA was subsequently formally established in Windhoek, Namibia, in August 2003. The law reform agencies of Kenya, Lesotho, Malawi, Namibia, South Africa, Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe formed part of the Association at the time of its establishment. Evidently, ALRAESA was born out of a need for collective action across borders and was anchored on the following broad principles of purpose which are aptly set out in article 3 of the ALRAESA Constitution, namely:

- exchange and share ideas on best practices in law reform;
- exchange and share ideas on the development of law, within the countries of the member agencies in accordance with the principles of human rights, good governance and rule of law; and
- collectively contribute to the attainment of the objectives of member agencies, with regard to their individual jurisdictions. (Article 4 of the Constitution sets out the objectives).

Project Activity for Year under Review

ALRAESA hosts an annual Executive Committee Meeting as well the Annual General Meeting. The member states amongst each other agree on the venue and country that will host the event annually. In 2015 November, Lesotho was the host country. The Chairperson, Ms Yvonne Dausab and the project leader on the project, Mrs Jessica Gawachab, attended this meeting in Maseru, Lesotho. It was equally the first meeting of ALRAESA that the newly appointed Chairperson of the LRDC attended. She was introduced to the ALRAESA community and has been invaluable to its operations since joining the executive committee.

The ALRAESA is currently considering the following projects to advance the objectives of the association and to provide some scope and content to its work for the benefit of the membership.

The Model Electoral Laws Project

The ALRAESA member agencies resolved in a General Meeting held at Maseru, on 11-14 October 2015, the existence of a need to adopt a model law on elections. A committee was established to spearhead this resolution and member agencies that
served on this committee included South Africa, Botswana, Uganda, Lesotho, Kenya and Zimbabwe. It was held that elections and the free, democratic participation in elections is crucial to ensure ‘Good Governance and the Rule of Law’ with specific reference to Article 3 of the ALRAESA Constitution.

In consideration of the model electoral law it was evident that the different constitutional and other statutory limitations, as well as political influences of various member agencies would serve as a challenge. However, the objective would be to focus on common principles shared amongst member agencies as guided by:

- SADC Principles and Guidelines Governing Democratic Elections;
- OAU/AU Declaration on the Principles Governing Democratic Elections in Africa;
- AU Guidelines for African Union Electoral Observer and Monitoring Missions.

**Formal Training for Staff Members of Law Reform Agencies**

ALRAESA is currently investigating the viability of formal training for staff members of member agencies. This exercise was aimed at building the capacity of legal researchers. It is geared towards providing support that will aid in the improvement of the standard and quality of work produced by the member agencies. The training of staff members could potentially reduce the lengthy and cumbersome processes employed in the reform and development of law and the approaches adopted by the various law reform agencies. Suggestions made by member states include exchange programmes between agencies; internships or setting up of formal training programmes with institutions of higher learning the ALRAESA has since approached the University of Dar-es-Salaam as well as University of Cape Town for the possibility of introducing a postgraduate course in law reform.

**Conclusion**

ALRAESA is considering new membership in order to extend more collateral relations with new states. It had also been resolved to engage Swaziland, Botswana and Mauritius to become full members and Uganda has committed to Burundi, Rwanda and South Sudan to also become full members.

ALRAESA serves as an extension of the LRDC to a broader audience and through information sharing initiatives can aid each member agencies’ research process through sharing sources of information and best practices. The LRDC thus emphasises the importance of exhausting these avenues as we navigate through our broad mandate to research all branches of law within Namibia. In addition, operating with impediments such as a shortage of staff and the national economic environment, it is imperative for the LRDC to maximise the participation in ALRAESA activities.

*The Chairperson with other ALRAESA Executive Committee representatives.*
Our International Partners

Commonwealth Association of Law Reform Agencies (“CALRA’S”)

The Commonwealth of Nations was historically known as the British Commonwealth and forms one of the world’s largest political associations consisting of 52 member states. Most member states were under British rule as part of the British Empire. The Commonwealth was established in 1949 and its membership calls for the voluntary and free cooperation of independent countries ranging from Africa, America, Asia, and Europe to the Pacific.

The Commonwealth Secretariat primarily operates through the intergovernmental consensus of member states, whilst the Commonwealth Foundation deals with the non-governmental organisations. The latest members to join the Commonwealth were Rwanda and Mozambique.

CALRAs is an Association of Law Reform Agencies that operates under the auspices and broader framework of the Commonwealth. Member states are not legally bound to one another, but enjoy the pleasure of being united through language, history, culture and shared values, such as democracy, free speech, human rights and the rule of law as enshrined in the Commonwealth Charter.

Project Activity for Year under Review

The mandate of CALRA’s is primarily to improve law reform processes and to reduce unnecessary duplication of law reform efforts on a global front. This mandate is achieved through co-operative activities between affiliated law reform agencies for example:

- visits by Commissioners and senior staff to other agencies;
- exchange development of information databases;
- study visits by Commissioners and staff;
- Arrangement for the law reform agencies day at the Commonwealth Law Conference (“CLC”).

CALRA’s meeting held in Scotland, April 2015
Mr. Tousy Namiseb, Chief: Directorate Law Reform, had served as a member of the Executive Committee and attended the CALRA’s meeting with the support of Mr. Willie Oosthuizen, Deputy Chief and his Senior Private Secretary, Mrs. Annalise Bezuidenhout, during April 2015. The Commission benefits from CALRA’s through the various services of CALRA’s by virtue of its establishment, to foster and encourage international cooperation on law reform.

CALRA’s is currently attempting to assist capacity-building in law reform internationally, by looking into the following initiatives:

1. Organising international conferences on law reform;
2. Engaging with Commonwealth and Governments to ensure high quality law reform tailored to the specific needs of each country;
3. Providing training courses in-country, regionally and internationally;
4. Reviewing existing law reform machinery and methods in-country;
5. Developing strong relationships with many relevant organisations such as the Commonwealth Legal Forum, the Commonwealth Association of Legislative Counsel, the Rule of Law Division of Commonwealth Secretariat, the Commonwealth Legal Education Association, etc.

Conclusion

CALRA’s is an informal body. It has no paid staff and is run by volunteers. Annual membership fees have deliberately been kept low and so many of the Law Reform Agencies have become members, inclusive of both developed as well as developing countries. CALRA’s values are democracy and good governance, gender equality, sustainable economic and social development and human rights. These values serve a vital role to ensure the practical application of these values in the countries of the member states.
End.