# PUBLICATIONS OF THE LRDC

## ANNUAL REPORTS (ISSN 1026-8391)*

<table>
<thead>
<tr>
<th>Publication</th>
<th>Year</th>
<th>ISBN</th>
</tr>
</thead>
</table>

## OTHER PUBLICATIONS (ISSN 1026-8405)*

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

*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 examine existing legislation, undertake research both domestically and in comparable jurisdictions 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)(b);  
Mrs. Adrie Van der Merwe, appointed in terms of section 3(1)(c).  
Mrs. Felicity !Owoses - /Goagoseb, appointed in terms of section 3(1)(d);  
Ms. Lineekela Usebiu, appointed in terms of section 3(1)(e);  
Adv. Dennis Khama, appointed in terms of section 3(1)(f);  
Adv. Unanisa Hengari, appointed in terms of section 3(1)(f); and  
Mr. Silas Shakumu, appointed in terms of section 3(1)(f);

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 to consider the profile of Commissioners to be appointed base on the projects of the Commission. The full Commission commenced duties in August 2015.

The Secretary to the Commission is Mr. W Oosthuizen, who is the Acting Chief of 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 4th Floor, Gutenberg Plaza Building, Werner List Street, 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

The Commission met on a number of occasions to discuss various Projects of the LRDC during the period under review.
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 2017/18, 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.

Yours faithfully,

YVONNE BRUSAB (Ms.)
CHAIRPERSON
We look forward to the new-year with renewed strength to collectively serve the interest of our people.

**TABLE OF CONTENTS**

Foreword ...................................................................................................................................................... 8

**CHAPTER 1: COMMISSION IN PERSPECTIVE .............................. 9**

The Law Reform Process................................................................................................................................. 10

Report by the Secretariat ................................................................................................................................. 13

Assistance to stakeholders ............................................................................................................................... 19

**CHAPTER 2: LRDC 2017/2018 PROJECTS AND PROGRESS REPORT .................................................. 20**

- The Review of the Insolvency Act, 1936 (Act No. 24 of 1936) ................................................................. 20
- Disability Rights ........................................................................................................................................ 21
- Road Safety Management ............................................................................................................................. 22
- Namibia Legal Information Institute (NamibLII) .......................................................................................... 23
- National Equitable Economic Empowerment Framework (NEEEF) ......................................................... 25
- Security Over Movable Assets .................................................................................................................... 27
- Administrative Justice ................................................................................................................................. 28
- Divorce Law .............................................................................................................................................. 28
- Uniform Default Matrimonial Property Law ............................................................................................... 30
- Public Finance Management Bill ............................................................................................................... 31
- Laws Impeding Development .................................................................................................................... 31
- Customary Law Marriages ........................................................................................................................... 33
- Locus Standi ........................................................................................................................................... 33

**CHAPTER 3: PARTNERS: LOCAL, REGIONAL AND INTERNATIONAL ......................................................... 35**

- Our Local Partners ................................................................................................................................... 35
- Our Regional Partners ................................................................................................................................. 35
- ASSOCIATION OF LAW REFORM AGENCIES OF EASTERN AND SOUTHERN AFRICA (“ALRAESA”) .......... 35
- Our International Partners ........................................................................................................................... 37
- COMMONWEALTH ASSOCIATION OF LAW REFORM AGENCIES (“CALRA’S”)................................. 37
FOREWORD

Our annual report for the year under review is in part, reflective. This is so because the Law Reform and Development Commission (LRDC) does want to be associated with a plan that is impact driven and realistic.

This despite, the realization that the law review, reform and development space, dictates the pace of time. Meeting set targets of delivery without compromising the quality of work. Ensure that any recommendations for law review and reform we make enhances socio-economic justice can be challenging but not insurmountable to achieve.

Our philosophy of ensuring a quality product (i.e reports and bills) and undertaking obligatory public consultations dictate our pace of work and depth of our research. With each passing year, we strive to improve in the area of data analysis and using of empirical evidence to inform our propositions for law reform. There is currently quite a heavy reliance on information gathered during public consultations and benchmarking comparable jurisdictions on issues similar to what we are grappling with and while important it may not always be enough. The LRDC employs research methodologies that are tried and tested for law reform agencies which makes our findings and recommendations acceptable for public consumption and useful for academic discourse on a particular subject matter.

We are sharing our challenges candidly. We celebrate our achievements with our stakeholders and interested parties and hope that with each passing year there is appreciation for the value of our work and the processes we go through to produce discussions papers, workshop reports, final reports and bills.

There is no doubt that the LRDC is an important role player in the overall policy debate and legislative reform space and our annual report, which is peremptory under our enabling statute, is our way of sharing with everyone, that may not have the benefit of our projects and the stakeholders we work with so closely. Review and examination of existing laws, often places us in an advisory capacity and the recommendations we make for reform are subject to much needed scrutiny, debate and consultations.

Our continued interactions with stakeholders is the back bone of our work. The political leadership of the Minister of Justice, the support of the Attorney General and guidance from legislative drafters is invaluable. We also sincerely acknowledge the support and guidance we received from Presidential Advisors, the University of Namibia, Faculty of Law, Office of the Judiciary, Parliament and all key stakeholders that attend our consultations (sometimes at short notice). Your contribution to our work is reflected in this report and we look forward to more work and increased support and understanding as we journey through a national landscape of much anticipation.

YVONNE DAUSAB (Ms)
CHAIRPERSON
CHAPTER 1: COMMISSION IN PERSPECTIVE

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 period 1 April 2017 - 31 March 2018.

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 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:

1. LRDC initiates Project or Project is referred to the LRDC and approved by the Minister of Justice
2. LRDC initiates Project or Project is referred to the LRDC and approved by the Minister of Justice
3. Drafting the Project Initiation Document (PID)
5. Consultation on the Issue Paper
7. Consultation on the Working Paper and Proposed Draft Bill, if any
8. Drafting the Final Report with Proposed Draft Bill, if any.
9. Submit Final Report with Attended Final Draft Bill, if any to the Minister of Justice
Summary of law reform steps:

**Adoption of LRDC Projects**

The LRDC prepares a programme from time to time containing projects it intends to undertake and which may be in order of priority in terms of section 7(1) of the Law Reform and Development Commission Act, 1991 for submission to the Minister of Justice for his/her approval. The projects for consideration may be identified by the LRDC by own initiation or after having invited or received proposals from any person or body in terms of section 7(2) of the Law Reform and Development Commission Act, 1991. The LRDC may also undertake projects which have been referred to it by the Minister of Justice in terms of section 6(e) of the Law Reform and Development Commission Act, 1991. The LRDC also takes up projects through requests by OMA’s when they are reviewing or reforming the laws that they administer.

**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.

**Consultation on the Issue Paper**

In order to share with stakeholders the issues identified in the Issue Paper and also to identify additional issues which may be proposed by various stakeholders, the LRDC would usually undertake consultations on the Issue Paper.

**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.

**Consultation on the Working Paper and Proposed Draft Bill, if any**

The LRDC may undertake an additional consultation process on a proposed draft Bill when necessary. This process is important because it ensures that a proposed draft Bill is adequately consulted on before the Minister of Justice presents it to the Cabinet Committee on Legislation (CCL). The experience has been that CCL may refer a proposed draft Bill back to the LRDC for further consultation if it is found that additional consultation on the Bill is required prior to the CCL process.
Drafting the Final Report

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

Submit Final Report with Attended Final Draft Bill if any to the Minister of Justice

In terms of section 9(1) of the Law Reform and Development Commission Act, 1991, the LRDC must submit a final report in respect of projects it undertook to the Minister of Justice for his/her consideration. Sub-section (3) requires a report submitted to the Minister of Justice in terms of sub-section (1) to be laid upon the Table of the National Assembly by the Minister of Justice within one month after receipt of the report from the LRDC.

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

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.

The stages of the Law Reform process outlined above is the standard that all projects undertaken by the LRDC must meet with very few exceptions. The element of consultation with relevant and various stakeholders is embedded in this process because one of the main value propositions of the LRDC which set it apart from other law reform processes undertaken by other institutions.
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 entire staff of the Directorate, form the Secretariat to the Commission.

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 previous financial period and the new structure makes provision for a total of 67 (‘sixty seven’) posts.

Despite the approval of a new structure however, the Directorate was only able to fill 01 (‘one’) additional position during the period under review, owing due to budgetary constraints. The new positions filled was that of:

- 1x Messenger/Driver

During the same period however, three positions from the existing staff compliment became vacant, these are:

- 1x Senior Legal Officer;
- 1x Control Clerk;
- 1x Cleaner.

The positions of Control Clerk and Cleaner which became vacant were filled within the same period under review. The position of Senior Legal Officer could not be filled due to budgetary constraints.

During the period under review, one of the existing staff members, (legal Researcher) was translated to a higher rank of:

- Senior Legal Officer;

The Deputy Chief, Mr Willie Oosthuizen was appointed in an acting capacity of the position of Chief Law Reform which became vacant during the 2015 – 2016 financial year.

Also during the period under review, the Directorate received an additional staff member with the position of Chief Legal Officer, on the basis of a transfer from the Office of the Attorney General.

The current staff compliment of the Directorate stands at a total of 16 (‘sixteen’) staff members. These include 9 (‘nine’) researchers and 7 (‘seven’) administrative staff.

- 1x Deputy Chief;
- 3x Chief Legal Officers;
- 4x Senior Legal Officers;
- 1x Legal Officers;
The members of staff occupying these positions during the period under review are as follows:

- Mr. W P Oosthuizen, Deputy Chief: Law Reform;
- Mr. C Uugwanga, Chief Legal Officer;
- Ms. R N Ntinda, Chief Legal Officer;
- Mr O R Nangolo, Chief Legal Officer;
- Ms. C Okafor, Senior Legal Officer;
- Ms. V Weyulu, Senior Legal Officer;
- Ms. M L Mulwa, Senior Legal Officer;
- Mr. K Koujo, Legal Officer;
- Mr. S Niigungo, Legal Officer;
- Mrs L Mubonenwa, Chief Legal Clerk;
- Mr. C Jossob, Senior Legal Clerk;
- Mr. R Spiegel, Legal Clerk;
- Ms. F Bock-Kakombo, Senior Private Secretary;
- Mrs. A Bezuidenhout, Senior Private Secretary.
- Mr A Sabuta, Messenger/Driver; and
- Ms J Nanyemba, Cleaner

Furthermore, the staff establishment is complimented by student interns who serve the Secretariat on a voluntary basis. The students served the Secretariat on a pro bono basis due to budgetary constraints, which means that no funds were available to pay an allowance to the student interns during the period under review. The students nonetheless consider this as an opportunity to expand their knowledge and skill and often agree to participate in the programme despite the lack of financial incentives.

Local Interns

During the period under review, the Directorate was assisted by the following local interns over a period of three months from March 2017 to July 2017:

Ms. Paula Hairwa
Ms. Lovisa Isak
Ms. Hendrina Hamukwaya

The Interns were exposed to a number of projects which the LRDC was engaged with during the period under review and the exposure provided valuable capacity building and experience, to the interns, on the various research topics.

The Local Internship Programme of the Directorate is therefore an important avenue for us to contribute towards capacity building and on the job training for our law graduates. This is in order to prepare them for the working environment. The Directorate would like to thank the interns for being part of this programme despite not receiving any financial incentive due to the unavailability of funds, for this purpose, during the period under review.

The LRDC together with the Directorate will however continue to source funding for our Local Internship Programme and there is already an indication from the Ministry of Justice that funding for this purpose will be available in the next Financial Year.
International Interns

Internships in their nature and design create an opportunity for the intern to gain some work experience, albeit limited and to provide the host organisation with some fresh intellectual and human resource capacity. It is meant to be reciprocal. Internships and voluntary work is gaining momentum in Namibia and the Law Reform and Development Commission (LRDC) has become a platform for this much needed interaction between professionals and mostly students.

One such opportunity is the continuing internship exchange we have with McGill University in Canada. It remains to be one of our premier flagship programs on our annual calendar. The interaction is laced with blogs from the students on their experiences at the office and outside. It is intended to expose the interns to the LRDC projects, bills considered at Cabinet Committee on Legislation and various interaction with our external stakeholders. These interns attend various meetings, conferences, including meetings with Senior Government Officials, the legislature and the Executive. The blog posts is an opportunity to showcase our work but also their skills, knowledge and expertise.

In 2018, Eleanor Dennis was our intern. She showed courage in the manner she responded to socio-economic development issues in the country. She used those experiences and the conversations she had with ordinary Namibians as eye openers not to make assumptions about life issues. She was clearly a top performing student and this showed in the manner she engaged with often difficult legal review, reform and development questions of law and related matters of concern. She was placed in the Office of the Chairperson but interacted quite comfortably with the researchers. She was exposed to working on administrative justice, constitutional law (right to free speech, which was published as a newspaper article), maritime law, cybercrime and Information, Communication and Technology (ICT) and Policy on Policy Making. She also edited most reports and made very valuable comments and provided useful feedback to particularly the researchers. She has superior research and editorial skills which proved very useful for the writing and review of our reports and bills.

For the first time the LRDC also had two interns, Colleen Devine and Emily Hu, from the Michigan Law School, Michigan, United State of America (USA). Ms Devine because of her undergraduate exposure to writings and studies related to women’s right, assisted us with research on abortion, disability and family related projects such as the Divorce and customary marriages. She had a quick wit and a good grasp of rights issues. Ms Hu, read economics and political science. This she showed in the write ups and research she undertook as part of the National Equitable Economic Empowerment Framework (NEEEF). She engaged with the materials well, and had a very good understanding of economic principles, which she used critically to interrogate potential implementation problems we could envisaged. Her contribution in this area was insightful. The place of interns in any organisation particularly a research institution such as the LRDC is invaluable. We need interns and providing a platform for International Interns is important for growth, integration and sharing of experiences.
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
- Talk of the Nation
- Social Media: LRDC Official Facebook page

Workshops

The LRDC participated at a number of important workshops and meetings during the year under review, which were relevant to the projects that the LRDC was engaged with. In some cases, the LRDC was invited to participate at these workshops and meeting in order to give stakeholder perspective and technical expertise on relevant topics.

<table>
<thead>
<tr>
<th>Workshop</th>
<th>Place</th>
<th>Date</th>
<th>No. of Staff</th>
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<tbody>
<tr>
<td>Stakeholders consultative workshop on the draft national competition policy</td>
<td>Windhoek</td>
<td>14 June</td>
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<tr>
<td>IP, Tourism and Culture Project Field visits and seminar by the business and intellectual property authority.</td>
<td>Kamanjab, Opuwo, Gobabis</td>
<td>19-23 June</td>
<td>1</td>
</tr>
<tr>
<td>4th Commonwealth National Committees Meeting on International Humanitarian Law</td>
<td>Swakopmund</td>
<td>12-16 June</td>
<td>1</td>
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<tr>
<td>Economic Association of Namibia’s third Annual Conference</td>
<td>Windhoek</td>
<td>12 July</td>
<td>1</td>
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<tr>
<td>Minerals Policy of Namibia Review</td>
<td>Windhoek</td>
<td>31 January</td>
<td>1</td>
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<tr>
<td>BIPA: Intellectual Property tools in the Tourism sector</td>
<td>Windhoek</td>
<td>14-15 February</td>
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<td>Workshop to review draft revised Environmental Impact Assessment Regulations and draft new Strategic Environmental Assessment regulations</td>
<td>Hilton Hotel, Windhoek</td>
<td>21-23 February</td>
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<tr>
<td>Chief Justice Task Force on Criminal Justice Reform in Namibia</td>
<td>Okahandja</td>
<td>8-11 February</td>
<td>3</td>
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<tr>
<td>Inter-Ministerial Committee Meeting on Human Rights</td>
<td>Windhoek</td>
<td>14 February</td>
<td>1</td>
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<td>Cabinet Workshop on NEEEF</td>
<td>Windhoek</td>
<td>27 February</td>
<td>3</td>
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<tr>
<td>Revision of Guideline on the Assessment of Degree of Disability</td>
<td>Windhoek</td>
<td>6-7 September</td>
<td>2</td>
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<tr>
<td>Workshop on Projects Divorce and Redline Marriages</td>
<td>Windhoek</td>
<td>20 September</td>
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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.

<table>
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<tr>
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<th>Place</th>
<th>Date</th>
<th>No. of staff</th>
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<tr>
<td>Procurement</td>
<td>Windhoek</td>
<td>17 May</td>
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<td>Training: PMS Refresher Training</td>
<td>Windhoek</td>
<td>13 June</td>
<td>1</td>
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<tr>
<td>Legislative Drafting Training</td>
<td>Windhoek</td>
<td>17–21 July</td>
<td>2</td>
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<tr>
<td>Procurement Training</td>
<td>Windhoek</td>
<td>3–7 July</td>
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<tr>
<td>Affirmative Action</td>
<td>Windhoek</td>
<td>1–2 August</td>
<td>2</td>
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<tr>
<td>Training of Trainers on Treaty Body Reporting - United Nations Office</td>
<td>Windhoek</td>
<td>18 – 21 September</td>
<td>2</td>
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<tr>
<td>of the High Commissioner for Human Rights</td>
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<tr>
<td>Management and Leadership Development Programme. SBS</td>
<td>Windhoek</td>
<td>11 February</td>
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<tr>
<td><strong>REGIONAL</strong></td>
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<tr>
<td>UNDESA training on the implementation of the CRPD</td>
<td>Windhoek</td>
<td>15 December</td>
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<td>NamibLII</td>
<td>Cape Town</td>
<td>15–17 May</td>
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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$ 3 487 000.00. At the end of the 2017/2018 financial year, the Directorate had spend N$ 3 487 000.00, therefore achieving a 100% expenditure of the total budget received.

Staff Achievements

The Directorate wishes to congratulate the following staff members for outstanding work and personal achievements during the period under review.

Ms Victoria Weyulu

Ms. Weyulu was admitted as a Legal Practitioner of the High Court of Namibia on 21 April 2017.

She was also nominated to form part of the Wider Organising Committee for the ninth Insol Africa Roundtable and is invited to be a panellist at the Africa INSOL Roundtable that will take place from 25 – 26 October 2018. The round table provides an opportunity to the participants to discuss the creation and development of suitable legal and regulatory environment and framework for the development of the insolvency and turnaround profession and how INSOL International and other global institutional bodies may be of assistance to the policy makers and practitioners in African countries.

Ms Weyulu was also nominated to form part of the Course Committee that provides direction in terms of content of the Foundation Certificate Course in International Insolvency Law that will be offered by Insol International. The Course Committee consists of eight people, namely a Chair, an INSOL International Board member, and five additional members who are representatives from each of the five regions covered, namely the Americas, Offshore, Europe, Africa / Middle East and Asia / Pacific Rim. The researcher represents the Africa/Middle East region.

The researcher further participated in the annual International Insolvency Studies competition hosted by the International Insolvency Institute. Her submission is titled “A Critical Examination of Namibia’s Insolvency Procedures for the Sequestration, alternatively, Liquidation and Winding-up of MSMEs” This paper examines the effectiveness of existing insolvency procedures in Namibia relating to the sequestration of the estates of natural persons and partnerships on the one hand, and on the other hand, the procedures for liquidating and winding-up juristic persons in order to provide some input to UNCITRAL and the World Bank for the manner in which MSME insolvency may be addressed in the context of a developing country.

Ms. Ruusa Ntinda

Ms Ntinda successfully completed the Management and Leadership Development Programme at the Southern Business School during March 2017 and was awarded with a certificate.

Mrs Mutindi Jacobs

Mrs Jacobs was translated into the rank of Senior Legal Officer during May 2017 following three years of continuous services for the Directorate of Law Reform in the rank of Legal Officer.
LAW REFORM AND DEVELOPMENT COMMISSION and the SECRETARIAT has served on the following external committees for technical support.

<table>
<thead>
<tr>
<th>S/N</th>
<th>Committee Name</th>
<th>Purpose</th>
<th>Number of Staff from LRDC</th>
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</thead>
<tbody>
<tr>
<td>01</td>
<td>Working Committee for the Review of the Insolvency Act, 1936 Project</td>
<td>To finalise the draft Insolvency Bill and to submit the Bill to the Minister of Justice after exhaustive consultations with stakeholders and industry.</td>
<td>1</td>
</tr>
<tr>
<td>02</td>
<td>Course Committee: Foundation Certificate Course in International Insolvency Law, INSOL International.</td>
<td>The Course Committee that provides direction in terms of content of the Foundation Certificate Course in International Insolvency Law that will be offered by INSOL International. The Course Committee consists of eight people, namely a Chair, an INSOL International Board member, and five additional members who are representatives from each of the five regions covered, namely the Americas, Offshore, Europe, Africa/Middle East and Asia/Pacific Rim. The researcher represents the Africa/Middle East region.</td>
<td>1</td>
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<tr>
<td>03</td>
<td>Wider Organising Committee for the ninth INSOL Africa Roundtable session 2018</td>
<td>The organising committee worked with a small core committee, that included the World Bank Group, INSOL International and Mozambique, to ensure the efficient planning of the ninth session that incorporates insolvency ideas from other African countries.</td>
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<tr>
<td>04</td>
<td>Inter-Ministerial Cluster on Gender Based Violence and Human Rights</td>
<td>Discuss and Coordinate issues of gender based violence and human rights in terms of the National Plan of Action against Gender Based Violence.</td>
<td>1</td>
</tr>
<tr>
<td>05</td>
<td>Chief Justice’s Task Force on Criminal Justice Reform: Sub Committee Finance and Infrastructures.</td>
<td>Responsible for financing, budgeting and making alternative planning measures for the criminal justice task force.</td>
<td>3</td>
</tr>
<tr>
<td>06</td>
<td>Preparatory Committee Meeting for the National Disability Conference:</td>
<td>Responsible for planning and undertaking the national disability workshop since the last one in 1999.</td>
<td>1</td>
</tr>
<tr>
<td>07</td>
<td>Advisory Committee for the proposed Disability Services at the University of Namibia.</td>
<td>Planning and implementing measures on how to address disability issues among staff and students with disabilities in the University of Namibia. This also includes fundraising to set up a disability center for the university.</td>
<td>1</td>
</tr>
<tr>
<td>08</td>
<td>Working Committee on the Reviewing of Guidelines on the Assessment of Degree of Disability for the Ministry of Health and Social Services</td>
<td>Responsible for the review and updating of the assessment of disability guidelines used in the social grants allocation system</td>
<td>1</td>
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CHAPTER 2: LRDC 2017/2018 PROJECTS AND PROGRESS REPORT

Project 1: THE REVIEW OF THE INSOLVENCY ACT 1936 (ACT NO. 24 OF 1936)

Project Officer: Ms Victoria Weyulu, Senior Legal Officer

1. STATEMENT OF THE PROBLEM

The LRDC began the review of the Insolvency Act, 1936 in 2013 following a proposal by the Bank of Namibia to consider the amendment of sections 35 and 46. Apart from those sections, there was a need to undertake a holistic review of the Insolvency Act, 1936 in order to determine the efficacy of provisions that have been in force for over 70 years.

The efficacy of these provisions is considered in light of compliance to best international standards. The LRDC has identified a number of best international standards that are outlined by international institutions such as the World Bank, the International Monetary Fund (IMF) and the United Nations Commission on International Trade Law (UNCITRAL), of which Namibia is a member.

Although the Insolvency Act, 1936 was amended by the Insolvency Amendment Act, 2005 (Act No. 12 of 2005), there has been no substantial review to the Insolvency Act, 1936 to respond to some of the relevant issues and developments that have arisen worldwide.
2. **RESPONSE TO THE PROBLEM**

A draft Insolvency Bill was developed in October 2016 and revised in December 2017. This Bill addresses the following issues, with a view to addressing the proposal by the Bank of Namibia and more importantly, to ensure compliance with identified best international standards:

- Prevention of the improper use of the insolvency system through the regulation of the insolvency practitioners.
- Establishment of a framework for cross-border insolvency with a clear and speedy process for obtaining recognition of foreign insolvency representatives and of foreign insolvency proceedings.
- Legal enforcement of set-off provisions in master agreements upon insolvency.

3. **PROGRESS REPORT FOR 2017/2018**

The LRDC has submitted a revised Insolvency Bill together with an explanatory memorandum of the Bill to the Minister of Justice, the Attorney-General, the Bank of Namibia and the Master of the High Court for their input and feedback on various policy issues.

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

- High Level Committee consultative meeting: Minister of Justice, the Attorney-General as well as the Master of the High Court.
- Targeted Stakeholder Consultations on the certified Draft Bill.

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**Project 2: DISABILITY RIGHTS**

**Project Officer: Ms Ruusa Ntinda, Chief Legal Officer**

1. **STATEMENT OF THE PROBLEM**

In terms of the Namibian Statistics Agency 2016 Inter-censal Demographic Survey, Namibia has a total population of 2,324,388, of which 108,992 are persons with disabilities. This amounts to about 4.7% of the total population. The proportion of persons with disabilities was higher in rural areas (6%) than in urban areas (3.3%). 63.6% of persons with disabilities (PWDs) above the age of 15 have difficulty engaging in any economic activity, while 52.2% above the age of 4 have difficulties engaging in learning and educational activities. Namibia’s legal disability framework is outdated, fragmented and lacks adequate safeguards to protect persons with disabilities. This results in the further exclusion of persons with disabilities from society and constant violations and discrimination of their rights. This project will undertake an audit of the current national disability legal, policy and institutional framework. This is intended to identify possible gaps and areas of improvement in order to provide better protection safeguards in compliance with the constitution and the Convention on the Rights of Persons with Disabilities.

2. **RESPONSE TO THE PROBLEM**

In collaboration with the Department of Disability Affairs in the Office of the Vice President, the Law Reform and Development Commission undertakes to first conduct a critical analysis of the current national disability legal framework in order to identify possible gaps and areas of improvement. This audit will assist in determining the extent to which the national disability legal, policy and institutional framework is lacking, how to better make provision for persons with disabilities and to determine how Namibia can fulfil its obligations enshrined under the Convention on the Rights of Persons with Disabilities (CRPD).
3. **PROGRESS REPORT FOR 2017/2018**

The Project was put on hold for the second half of 2017 until April 2018 due to financial constraints. Nevertheless, during the period under review, the Commission approved the methodology and proposed outline of an audit of the country’s legal, policy and institutional framework on the inclusion and mainstreaming of disability issues in Namibia.

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

Final Report to the Deputy Minister: Disability Affairs, Office of the Vice President.

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**Project 3: ROAD SAFETY MANAGEMENT**

**Project Officer: Ms Ruusa Ntinda, Chief Legal Officer**

1. **STATEMENT OF THE PROBLEM**

Road safety is a serious issue in Namibia. The high incidents of road fatalities and injuries are creating large social and legal cost on the system. The Road Safety Management Bill intends to setup road safety institutions such as the Road Safety Agency, the Integrated Road Safety Plan and System in an effort to reduce the number of injuries and fatalities on the roads each year but also to synchronise the management of road safety and related matters.

Each year over 600 people are killed and more than 5000 people are injured on our roads. Each crash incurs a cost on the courts, the legal system and on the victims in addition to the social cost of pain, grief and suffering of families of the victims.
2. RESPONSE TO THE PROBLEM

The Road Safety Management Bill as the proposed law will be used to establish the Road Safety Agency. The Agency will assist with the implementation of a National Road Safety Management Plan and an Integrated Roads Safety Management System. The Bill will also provide for the continued existence of the Central Road Safety Fund; the repeal of the National Road Safety Act 9 of 1972 and to provide for any other matter that may be relevant. The Road Safety Management Bill is intended to enable change by putting up institutions to ensure that road safety is efficiently planned and managed. The aim of the Bill is to bring about measures to limit the number of persons that perish on roads every year.

3. PROGRESS REPORT FOR 2017/2018

- Discussion Paper produced
- Draft Final report finalised

4. NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT

- Final Report to NRSC

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Project 4: NAMIBIA LEGAL INFORMATION INSTITUTE (NAMIBLII)

Project Officer: Mr Willie Oosthuizen, Deputy Chief

1. STATEMENT OF THE PROBLEM

After almost 28 years of Independence, Namibian laws were still fragmented with no evidence of a principal platform that houses consistent and updated public legal information. This function has been left to foreign institutions, some of which charge a fee for the use of Namibian collated legal information.

Although concrete attempts have previously been made with NaLRII to develop an e-laws portal that would host all such public legal information, Namibia was for a significant time inept when it came to fulfilling its obligations as a signatory to the Declaration on Free Access to Law which it signed at the WorldLII conference in 2007. Upon signing the Declaration on Free Access to Law in 2007, Namibia agreed that public legal information is part of the common heritage of humanity and that maximizing access to this information promotes justice and the rule of law.
For quite sometime therefore, the Namibian public relied on platforms such as SAFLII, the LAC website which has been very resourceful and the Supreme and High Court websites in order to access legal information and there was a need to complement and eventually consolidate the efforts of providing free access to legal information in Namibia.

2. RESPONSE TO THE PROBLEM

The Namibian Legal Resources and Information (NaLRII) was established on 16 January 2013, under the auspices of the LRDC, through a Cabinet Action Letter. This initiative was undertaken in order to create and promote platforms for Free Access to Law.

The Project is placed under the LRDC because it falls within the objects of its enabling statute; the Law Reform and Development Act, 1991 (Act No. 29 of 1991), in particular section 6(b), which directs the Commission to introduce measures aimed at making the law more readily accessible.

The e-laws portal was later renamed to The Namibian Legal Information (NamibLII) and successfully launched on 26 October 2016.

In terms of its resourcefulness, NamibLII is targeted towards legal scholars, researchers, students, legal practitioners, policy makers, academics and the international community. In addition to this, the broader public is also considered to be a primary stakeholder of the NamibLII project. NamibLII is therefore meant to provide access to valuable legal information, facilitate legal research, and promote the development of legal knowledge and to create greater awareness of ones rights and obligations in society.

The Website contains information on Supreme Court, High Court and Labour Court Judgements, Namibian legislations, Government Gazettes and LRDC Reports.

3. PROGRESS REPORT FOR 2017/2018

The NamibLII website is currently fully functional after it was launched on 26 October 2016 in Swakopmund at the LRDC 25th Anniversary celebrations.

The website now hosts all Namibian legal information including gazettes, case law, legislation and LRDC Reports and can be viewed on http://namiblii.org/.

4. NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT

- The additional training of staff members to enhance and work on NamibLII will be equally important for the continued success of this project.
- Continue uploading High and Supreme Court Judgments, LRDC Reports, Legislation and Government Gazettes when received and to reduce the backlog.
1. STATEMENT OF THE PROBLEM

Twenty eight years after independence there remains anxiety about continuing income disparities, skewed ownership of productive assets; low levels of participation in business by previously disadvantaged persons; lack of socio-economic transformation in traditional communities; high levels of unemployment; continuing racial imbalances in the management and control of private sector enterprises. The economic status of particularly racially disadvantaged women, youth and persons with disabilities in addition to the slow development of rural areas is of equal concern.

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

2. RESPONSE TO THE PROBLEM

NEEEF has been designed to promote transformation in business through the following six empowerment pillars (which all require a positive NEEEF compliance, subject to scoring):

- Ownership Pillar to promote ownership of productive resources by previously disadvantaged Namibians;
- Management Control and Employment Equity Pillar to ensure that the management of enterprises and labour force reflect the demographic, gender and employment equity requirement and that the labour force more accurately reflects the demographics of the Namibian population;
- Human Resources and Skills Development Pillar to promote staff development in respective enterprises and provide scholarships in the areas of scarce skills;
- Entrepreneurship Development and Marketing Pillar to promote growth of new enterprises especially those owned by previously disadvantaged Namibians;
- Corporate Social Responsibility Pillar to encourage corporate social investment in communities; and
- Value Addition, Technology and Innovation Pillar to encourage local processing of natural resources, innovation, invention and technology in the Namibian business sector.

Financing of the transformation which looks at financial institutions to open windows of opportunities to fund empowerment schemes and transform enterprises to develop funding solutions.

Once the NEEEF is passed into law, it will require positive NEEEF compliance for government procurement. It shall be obligatory to all enterprises that want to do business with government. Government shall use all resource, and market mechanisms at its disposal to ensure compliance. These will include, among others, Government procurement of goods and services, work permits, access to rights to natural resources, e.g. fishing, mining, hunting and tourism concessions, etc.
3. **PROGRESS REPORT FOR 2017/2018**

- The NEEEF technical team undertook a bench marking exercise to the Department of Trade and Industry (DTI) in Pretoria South Africa, during August 2017.
- Upon their return, a revised report which will inform changes to the Bill, was submitted to the OPM and presented to Cabinet for further comments and approval.
- A Cabinet Workshop was held on 27 February 2018 to present the revised recommendations to Cabinet. The workshop was attended by the Head of State, Vice President, the Prime Minister, Cabinet Ministers and Deputy Ministers, Presidential Advisors and Permanent Secretaries, as well as technical staff members (from OPM and LRDC).

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

- Following the Cabinet workshop, Cabinet Decision no: 6th/22.05.18/002 was passed to approve the proposals made which will now inform the final revision of the draft bill.
- Undertake internal consultations to consider approaches for further consultations and implementation strategies.
- Develop empowerment standards and a scorecard with the assistance of the South African DTI
- Produce a revised NEEEF Bill, draft the NEEEF final report, conduct public consultations, handing over of Bill to Cabinet and Cabinet Committee on Legislation.

_Bench marking visits by the LRDC and OPM staff to the Department of Trade and Industry (DTI) in Pretoria South Africa, during August 2017_
1. STATEMENT OF THE PROBLEM

The issue of security over movable assets is considered in light of the ranking of creditors’ claims against an insolvent estate provided in sections 95 to 103 of the Insolvency Act, 1936 Act No. 24 of 1936). The Insolvency Act, 1936 distinguishes between secured, preferent and non-preferent (concurrent) creditors. Although special notarial bonds are similar to a pledge (when delivery of the movable asset has taken place), in terms of which a pledgee is considered a secured creditor under the Insolvency Act, 1936, the problem here is that special notarial bondholders are not considered secured creditors in terms of the ranking provided by the Insolvency Act, 1936.

In terms of this law, these special notarial bondholders obtain a real right upon the registration of the notarial bond with the Deeds Registry and only after taking possession of the property. This means that if the holder of a security interest over movable property is not in possession of the specified movable asset, then such a holder cannot be regarded as a secured creditor under the provisions of the Insolvency Act, 1936.

The Namibian High Court correctly reflected this position in the case of Commercial Bank of Namibia Limited v Rossing Stone Crushers Case No. A 40/93 heard by Frank J in the High Court of Namibia on 10 March 1993 as follows:

Applicant as bondholder is not a secured creditor in the event of the insolvency of the respondent, and is entitled only to a preference over the concurrent creditors of the respondent with respect to the proceeds of assets subject to the bond in so far as they fall into the free residue of the estate. Should applicant however be able to take possession of the bonded property prior to the insolvency of the respondent it will have a secured claim as it then holds the property subject to a pledge.

Frank J remarked in this case that “the fact that the bondholder over specific movables may be in an even a worse position is not relevant to this judgment, but does point to a need for law reform in this area”.

2. RESPONSE TO THE PROBLEM

This project will develop a Bill on Security Over Movable Assets that will propose the abolishment of the common-law requirement for possession over movable property in the event of insolvency in order to enable special notarial bondholders to become secured creditors in the event where possession is not possible.

3. PROGRESS REPORT FOR 2017/2018

Draft Bill has been produced

4. NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT

- Finalization of the Issue Paper
- Request for written inputs from stakeholders on the Issue Paper
- Consultations and/or workshop on draft Bill
- Submission of Final Report to the Minister of Justice
Project 7: ADMINISTRATIVE JUSTICE

Project Officer: Mr Samm Nilingungo, Legal Officer

1. STATEMENT OF THE PROBLEM

Article 18 of the Namibian Constitution provides for administrative justice as a fundamental right. This constitutional provision is, however rather abstract and requires better clarity through legislation.

Due to a lack of a statute (law) that amplifies the provisions of Article 18, there has been a lack of set standards to provide guidance to administrators when taking administrative decisions or actions. In addition, the High Court proceedings are costly due to prohibitive legal fees and many Namibians cannot afford to seek redress against unfair administrative actions or decisions as a result. Associated to the cost factor is access to justice and inaccessibility of the court system.

2. RESPONSE TO THE PROBLEM

The proposed Administrative Justice Bill will primarily seek to confirm and give greater detail in respect of the rights to administrative justice accorded to all by the Constitution. Apart from an application for judicial review by the High Court as is currently the case, the proposed law will also widen access to administrative justice by providing for the establishment of alternative platforms for seeking review of administrative decisions or action.

3. PROGRESS REPORT FOR 2017/2018

The draft Bill, Discussion paper, memorandum to the Bill and the final report have been finalized.

4. NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT

- Consideration of final draft report & Bill by the Commission
- Final Report to the Minister of Justice

Project 8: DIVORCE LAW

Project Officer: Ms Chisom Okafor, Senior Legal Officer

1. STATEMENT OF THE PROBLEM

Namibia’s current divorce law is based on the Roman Dutch common law which provides for divorce based on fault. This means that to obtain a divorce, one spouse must prove that the other spouse committed a matrimonial offence.

The divorce process is both formal and complicated with the result that a party seeking a divorce must invariably do so through a lawyer, mostly at a very exorbitant cost. In addition, matters pertaining to divorce are only heard by the High Court based in Windhoek, which results in this forum becoming inaccessible to people living in the remote areas.
The last major statutory reform of the law on divorce took place nearly a century ago, for instance, the Divorce Laws Amendment Ordinance dated 1935, which indicates that these laws are archaic and require our attention. In this regard then, the reform of the Namibian law on divorce remains a matter that is long overdue.

2. **RESPONSE TO THE PROBLEM**

   The LRDC is currently in the process of finalising a Divorce Bill which seeks to replace the Roman-Dutch Common Law grounds for divorce based on fault, with irretrievable breakdown of marriage.

   The introduction of irretrievable breakdown of marriage as grounds for divorce is aimed at simplifying the procedures of a divorce; eliminating the current strict approach of marital property regimes and rules on forfeiture of benefits.

   The Bill will allow for spouses to jointly apply for divorce. If both spouses allege that the marriage has irretrievably broken down, the court will make a finding and only consider ancillary arrangements such as maintenance issues and or the division of the estate, where the parties do not agree.

   Currently only the High Court has the jurisdiction to determine issues pertaining to the status of a person. The new law seeks to confer civil jurisdiction on the regional courts to preside over unopposed divorce proceedings i.e. where both parties agree that the marriage has irretrievably broken down and the spouses further agree to all ancillary issues such as the division of their estate as well as the custody of their minor children, where applicable.

3. **PROGRESS REPORT FOR 2017/2018**

   - Draft Final Report was produced
   - Consultative workshop with targeted Stakeholders was held during December 2017
   - CCL consideration of the Draft Bill was made
   - AG certification of the Draft Bill was obtained

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

   Final Divorce Report to the Minister of Justice

   ![Commission in session discussing Family Law Projects](image-url)
1. STATEMENT OF THE PROBLEM

During the research process, the LRDC identified certain shortcomings in the administration of the provisions of section 17(6) of the Native Administration Proclamation 15 of 1928, which adversely affects certain marriages due to the operation of the law.

For historical reasons, the common law default matrimonial property regime of in community of property and profit and loss was made applicable only to the central and southern parts of Namibia. By virtue of Proclamation (No. 15 of 1928), the matrimonial property regime of marriages solemnised outside of the police zone remained subject to a default matrimonial property regime that did not have the common law effects of marriage in community of property.

Therefore, all marriages by virtue of the above proclamation apply the default marital regime of out of community of property. This proclamation discriminates against persons who intend to get married based on their race and geographical location, thus justifying the need for legislative reform.

2. RESPONSE TO THE PROBLEM

The LRDC is currently in the process of finalising a Matrimonial Property Bill. The objective is to create a uniform matrimonial property regime for the whole country.

Once the Uniform Default Matrimonial Property Bill is promulgated, it would repeal the discriminatory provisions of section 17(6) of the Native Administration Proclamation 15 of 1928. Therefore, black people married outside of the police zone will no longer be required by the said provision to sign a declaration within 30 days of solemnizing their marriage as proof of their intention to marry in community of property.

After the date of commencement of the Act, the matrimonial property regime of community of property and profit and loss shall be applied as the uniform default regime for all future civil marriages solemnised in Namibia.

The Act will also provide for remedies to persons who entered into marriages in terms of section 17(6) of the Native Proclamation Administration 15 of 1928 and who were adversely affected by the administration of that provision. The affected parties will be given an opportunity within a reasonable time to change their matrimonial property regime either to in or out of community of property and to be issued with a new marriage certificate in substitution of any existing marriage certificate emanating from the north.

3. PROGRESS REPORT FOR 2017/2018

- Draft Final Report was produced
- Consultative workshop with targeted Stakeholders was held during December 2017
- CCL consideration of the Draft Bill was made
- AG certification of the Draft Bill was obtained
4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

Final Report to the Minister of Home Affairs and Immigration

**Project 10: PUBLIC FINANCE MANAGEMENT BILL**

*Project Officer: Ms Victoria Weyulu, Senior Legal Officer*

1. **STATEMENT OF THE PROBLEM**

To assist the Ministry of Finance, Department: Expenditure and Financial Regulation to finalize the draft Public Finance Management Bill to ensure that the new legislation guards against wasteful expenditure, mismanagement of public funds and corruption by including contemporary public finance management practices.

2. **RESPONSE TO THE PROBLEM**

The Ministry of Finance is in the process of amending the State Finance Act, 1991 (Act No. 31 of 1991) which is outdated in many respects. It has produced a 2018 draft Public Finance Management Bill that will address issues of wasteful expenditure, mismanagement of public funds and hold accounting officers accountable for any wilful or negligent misconduct.

3. **PROGRESS REPORT FOR 2017/2018**

The LRDC completed the review of the current draft of the Public Finance Management Bill.

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

- Internal Consultations (OMA’s)
- External Consultations
- Final draft Bill to Minister of Finance

**Project 11: LAWS IMPEDING DEVELOPMENT**

*Project Officer: Mr Charles Uugwanga, Chief Legal Officer*

1. **STATEMENT OF THE PROBLEM**

The relationship between the legal framework and the policy framework should be one that is complementary. The legal framework is superior to the policy framework and therefore, where there is a contradiction, the legal framework precedes.

It is possible that administrative efficiency may be hampered by unnecessary legal provisions and hence there is a need to identify and undertake corrective legal reform to enhance efficiency.

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1 Government has made the following commitment under Pillar 1 Effective Governance, HPP01 Goal: “A comprehensive review of existing legislation that may hamper the achievements of national objectives will be undertaken and appropriate legislative amendments prioritised” Pg. 18 HPP.
2. **RESPONSE TO THE PROBLEM**

The Head of State has instructed the Minister of Justice to undertake an analysis of the Namibian laws in order to identify legal impediments which hamper development.

The LRDC is therefore undertaking research looking at the country’s legal framework and juxtaposing it against the national development policy framework with an aim to identify laws prohibiting development. This process will culminate into a report that identifies legal impediments that hamper development and proposing legislation or amendments in that regard.¹

As part of the process of analysing the legal framework, the LRDC engaged all O/M/A’s with a view to collect and analyse data on the laws administered or that affect their mandate and functions, in order to determine whether such laws or provisions impede and or retard development.

This process will culminate into a report on phase one of the project.

Phase two of the project will take a general approach to laws that impede development from a public opinion perspective (general public perspective).

3. **PROGRESS REPORT FOR 2017/2018**

The consultation and information collection process with the various OMA’s was undertaken. There are however few OMA’s which have not provided feedback.

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

- Finalisation of report for phase 1
- Consideration by the commission
- Phase 1 Report to Minister of Justice
- A final report will then be submitted to the Office of the President. Once the report is considered by the Office of the President, it is envisaged that priority laws will be considered for repeal and amendments.

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¹ Commission in session discussing the Project on Laws Impeding Development
1. **STATEMENT OF THE PROBLEM**

Customary marriages in Namibia do not have the same legal standing as civil marriages. This results in unfair and unequal treatment of customary marriages as the marriages are not registered thus providing inadequate protection in respect of inheritance and proprietary disputes during separation or death of a spouse. The Customary Law Marriages Bill aims to address these concerns.

2. **RESPONSE TO THE PROBLEM**

The LRDC is working towards developing a position paper to synthesize the issues. Further policy guidance may be needed from the Minister of Justice, to whom the LRDC has written in this regard.

3. **PROGRESS REPORT FOR 2017/2018**

An internal consultative meeting was held with the Minister and Deputy Ministers of Justice, the Permanent Secretary of Ministry of Justice in attendance and Officials from the Directorate of Legal Services and that of Legal Advice from the Ministry of Justice.

4. **NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT**

- LRDC position paper on customary law marriages Bill.
- Possibility of final Consultations
- Final report to the Minister

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**Project 13: LOCUS STANDI**

**Project Officer: Mr Kay Koujo, Senior Legal Officer**

1. **STATEMENT OF THE PROBLEM**

Requirements for legal standing on who is legally entitled to bring issues before Court (*locus standi*) in Namibia is governed by common law principles and the Constitution, which are restrictive. Thus, the LRDC has decided to undertake law reform on the issue of *locus standi*. This is a fundamental issue, as the rules regarding standing directly affect the ability of individuals and groups to approach the courts to vindicate their substantive and procedural rights, including those protected by the Namibian Constitution.

The ultimate objective is to give meaning to the letter and spirit of the law. If citizens are unable to litigate on public interest matters, where not only one person can show a substantial and real connection, then we are unable to give meaning to the content of the law, specifically but more generally to the protective safeguards in the constitution.
2. RESPONSE TO THE PROBLEM

The Law Reform and Development Commission welcomes the judicial development of an expanded approach to standing in constitutional cases and believes that such an approach is consistent with the language and overall framework of the Namibian Constitution.

3. PROGRESS REPORT FOR 2017/2018

- A number of consultative meetings were held with the LAC
- A draft discussion paper was finalised

4. NEXT ANTICIPATED STAGE OF THE LRDC PROCESS, ACTIONS AND OUTPUT

- Invite stakeholders for written input on the discussion paper and Draft Bill.
- Workshop of Discussion Paper
CHAPTER 3: PARTNERS: LOCAL, REGIONAL AND INTERNATIONAL

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.
- NANGOF

Our Regional Partners:

ASSOCIATION OF LAW REFORM AGENCIES OF EASTERN AND SOUTHERN AFRICA ("ALRAESA")

Introduction:

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 Kenya, Lesotho, Malawi, Namibia, South Africa, Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe.

ALRAESA was subsequently formally established in Windhoek, Namibia, in August 2003, at which occasion a draft Constitution for the Association was also approved. 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. The ALRAESA membership has since expanded and currently includes the following new member countries:

- Botswana
- Mauritius
- South Sudan
However, there are efforts been made to further expand the membership and engage with Swaziland, Rwanda and Zambia on their participation in ALRAESA activities.

The value of ALRAESA lies in the continued engagement on issues of mutual interest among member agencies and at the last few EXCO meetings decisions were taken to develop activities in the following areas: website, revision of laws, model electoral law, training of staff across countries to develop capacity, exchange of staff among member agencies. There is currently a firm engagement between the Namibian Law Reform Development Commission and the UNAM faculty of law, to possibly, develop a certificate course in the law reform and development area.

The purpose of ALRAESA, is set out in article 3 of the approved Constitution, and is to:

- 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).

**ALRAESA Project Activities 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 member state that will host the event annually. In November, 2017, Kenya was the host country. The Chairperson, Ms Yvonne Dausab and the project leader on the project, Ms. Chisom Okafor, attended this meeting in Nairobi, Kenya.

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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:

1. **The Model Electoral Laws Project**

The ALRAESA member agencies concurred in a General Meeting held in Nairobi, Kenya on 28 November 2017, that the idea of developing a model law had been overtaken by events as most members had already reformed, or were already in the process of reforming, their electoral laws.

Therefore, the ALRAESA resolved to abandon the electoral laws projects and proceed with the idea of an annual peer-reviewed publication. The scope of the publication could include articles based on programs or projects being handled by member countries; themes; papers presented at ALRAESA conferences; and any other matter related to law reform and legislative drafting.
2. Development of ALRAESA Supported Training Guidelines

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. It was reported by one of the member states that the training guidelines will be tabled at the next meeting of EXCO in 2018.

Elections

It was resolved at the General Meeting that the members of EXCO had served and completed their two-year term hence the need for elections to usher in new office bearers.

The newly elected Executive Committee Members were as follows:

<table>
<thead>
<tr>
<th>Position</th>
<th>New Office Bearer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Malawi</td>
</tr>
<tr>
<td>Vice Chairperson</td>
<td>Mauritius</td>
</tr>
<tr>
<td>Secretary General</td>
<td>Kenya</td>
</tr>
<tr>
<td>Treasurer General</td>
<td>South Africa</td>
</tr>
<tr>
<td>Committee Member</td>
<td>Lesotho</td>
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<tr>
<td>Committee Member</td>
<td>Zanzibar</td>
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</table>

Conclusion:

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 current national economic climate, it is imperative for the LRDC to maximise the participation in ALRAESA activities in fulfilling its mandate.

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 LRDC participated at the; ALRAESA Conference, Annual General Meeting and Executive Committee Meeting which were held in Nairobi, Kenya, 26 - 29 November 2017.
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”).

The LRDC and the Directorate: Law Reform were unable to participate in the activities of CALRA’s during the period under review because of budgetary constraints, however the annual membership fees have been paid and is up to date.

*The Zambian Law Reform Commission, which is also a member of ALRAESA and CALRA’s paid a courtesy visit to the LRDC*