

**REPUBLIC OF NAMIBIA**

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**LAW REFORM AND DEVELOPMENT COMMISSION**

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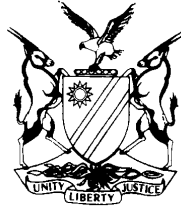
**ANNUAL REPORT – 2004**

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**Windhoek, Namibia  
March 2005**

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**PUBLICATIONS OF LRDC:**

**ANNUAL REPORTS (ISSN 1026-8391)\***

- First Annual Report – 1992 (ISBN 0-86976-382-2)\*
- Second Annual Report – 1993 (ISBN 0-86976-383-0)\*
- Report on Activities from 1994 to 2002 (ISBN 0-86976-604-X)
- Annual Report – 2003 (ISBN 0-86976-643-0)
- Annual Report – 2004 (ISBN 0-86976-667-8)

**OTHER PUBLICATIONS (ISSN 1026-8405)\***

- LRDC 1\* - Aspects of Family Law: The Abolition of Marital Power and Equalization of Rights between Spouses (ISBN 0-86976-384-9)\*
- LRDC 2 - The Ascertainment of Customary Law and the Methodological Aspects of Research into Customary Law: Proceedings of Workshop, February/ March 1995 (ISBN 0-86976-385-7)
- LRDC 3 - T.W. Bennett, Customary Law and the Constitution, October 1996 (ISBN 0-86976-397-0)
- LRDC 4 - Report on the Law pertaining to Rape (ISBN 0-86976-406-3)
- LRDC 5 - Report on Maintenance (ISBN 0-86976-407-1)
- LRDC 6 - Report on Small Claims Courts (ISBN 0-86976-412-8)
- LRDC 7 - Violence against and Abuse of Women and Children Project: Formal Addresses made at the National Hearing-May 1997 (ISBN 0-86976-412-6)
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- LRDC 10 - Report on Domestic Violence (ISBN 0-86976-555-8)
- 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 99916-63-57-6)
- LRDC 12 – Report on Customary Law Marriages (ISBN 0-86976-651-1)
- LRDC 13 – Report on Divorce (ISBN 0-86976-654-6)

**\*Number of publication and ISSN and ISBN numbers not printed on all copies.**

**LAW REFORM AND DEVELOPMENT COMMISSION OF NAMIBIA**

**To: THE HONOURABLE MINISTER OF JUSTICE**

I have the honour to submit to you, in terms of section 9(1) of the Law Reform and Development Commission Act, 1991 (Act 29 of 1991), the Commission's Annual Report for 2004.

.....  
U D NUJOMA  
CHAIRPERSON: LRDC  
2005-03-18 #

# With effect from 15 July 2004, a new LRDC, with six new members was appointed.

## **LAW REFORM AND DEVELOPMENT COMMISSION OF NAMIBIA**

The LRDC was established by the Law Reform and Development Commission Act, 1991 (Act 29 of 1991) which came into operation on 15 July 1992.

The members of the LRDC on 14 July 2004 were (see# on page (iii)):

Mr U D Nujoma (Chairperson : Full time)  
Adv. J R Walters (appointed Ombudsman from 1 July 2004)  
Adv. D Sauls (nominated by the Law Society of Namibia)  
Mr G M Mutwa (Deputy Chief : Legislative Drafting in the Ministry of Justice)  
Mr A Vaatz (Legal Practitioner)  
Mr G N Ndauendapo (Legal Practitioner)  
There were two vacancies.

The members of the LRDC on 31 March 2005 are:

Mr U D Nujoma ( Chairperson : Full time)  
Mr J R Walters (Ombudsman)  
Ms L Conradie (nominated by the Law Society of Namibia)  
Ms N N Shivute (Deputy Chief : Lower Courts in the Ministry of Justice)  
Mr S K Amoo (Lecturer at Law Faculty of University of Namibia, nominated by the Vice Chancellor of the University of Namibia)  
Mr A Vaatz (Legal Practitioner)  
Mr T Kamuhanga-Hoveka (Legal Practitioner)  
Ms M Samson (Legal Adviser in Office of the Attorney-General).

The Secretariat of the Commission (Directorate Law Reform) is housed in the Ministry of Justice, Independence Avenue, Windhoek.

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WINDHOEK  
Republic of Namibia

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E-mail: [lawreform@moj.gov.na](mailto:lawreform@moj.gov.na)

## **MEMBERS OF THE COMMISSION**

Chairman	Mr U D Nujoma
Members	Adv. J R Walters (Ombudsman) Adv. L Conradie Ms N N Shivute Mr S K Amoo Mr A Vaatz Mr T Kamuhanga – Hoveka Adv. M Samson

## **SECRETARIAT**

Secretary	Mr W J Potgieter
Legal Officers	Mr E I Luanda (Deputy Chief) Mr Z B Wantenaar Mr M K Siambango

The Commission is housed on the First floor, Ministry of Justice, Justitia Building, Independence Avenue, Windhoek, Republic of Namibia.

The postal address is Private Bag 13302, Windhoek, Namibia

E-mail address : [lawreform@moj.gov.na](mailto:lawreform@moj.gov.na)

Internet address: <http://www.lawreform.gov.na>

## FOREWORD

The objects of the Commission shall be to undertake research in connection with and examine all branches of the of the law of Namibia and to make recommendations for the reform and development thereof, including (but not limited to) –

the repeal of obsolete or unnecessary enactments;  
the consolidation or codification of any branch of the law or the 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;  
new or more effective procedures for the administration of the law and the dispensing of justice;  
to advise the Minister (of justice) in regard to any matter which the Minister may refer to it.  
(Section 6 of the Law Reform and Development Commission Act (LRDC), 1991 (Act, 29 of 1991 as amended).

During the period under review the Commission embarked on a number of projects, some of which have been finalized or are nearing finalization. These are reported elsewhere in this annual report. I have also undertaken various trips inside and outside Africa in my capacity as Chairman of Commission. What usually transpire during these visitations is the fact most of the law reform agencies in other jurisdictions are well resourced both in terms of finance and capacity.

Section 6 of the LRDC Act, places a huge responsibility on the Commission, but without the necessary resources, those ideals will remain an impossible dream. It is a fact that 'Law reform is a lengthy, slow process, sometimes moving at snail's pace if not well resourced and financed to promote access to justice. I will continue with determination to eliminate all obsolete laws on our statute books in order to conform to the development objectives of National Development Plan two, (NDP2) and Vision 2030, in the sense that many government programs require a legal framework, to be successfully implemented. As mentioned, without the necessary resources and coordination with the responsible Ministry, such realization remains but an idealistic dream to be realized in the future.

I should also mention here that the generous funding which the Commission had enjoyed from the GTZ, has finally come to an end, hence the need to find other additional sources of funding for the Commission's various projects, both for now and the future. Unless the human and funding capacity is reviewed, the

Commission despite a clear mandate will not successfully tackle the challenges ahead.

Notwithstanding the various impediments, the Commission is now a member of the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA), of which Namibia represented by myself is the current Chairperson. In addition, the Commonwealth Association of Law Reform Agencies (CALRAs), become operational in 2004, where I serve as an Executive Committee member. Tremendous benefits are gained from membership of such an organization, because law reform commissions in Africa and the world over are faced with almost identical issues.

Law reform must be an interactive process. There is a need to consult with our audience in the first place to identify appropriate projects, and thereafter obtain feedback on issues and proposals.

Therefore the quality of our product is related to our ability to recognize the needs of our audience and provide sensitive responses to them. The question at this point in time is that do we as a law reform agency have the necessary ability given our strained resources?

In conclusion, I take this opportunity to personally thank the current Secretariat of the LRDC and welcome the new Commissioners.

.....

**U D Nujoma**

Chairman

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## **Chapter 1**

### **INTRODUCTION**

1. The Commission is, in terms of section 9(2) of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) (hereinafter referred to as the "LRDC Act"); required to submit before the end of February each year an annual report of its activities to the Minister of Justice who must table it in the National Assembly.
2. The Commission concentrated during 2004 to make significant progress on some of its Projects that are long overdue. Such progress was indeed made, as will be reflected below. The Commission did finalize some major projects and is also confident that a few projects will indeed be finalized in 2005. The Commission is proud to report that two reports were published during the year under review.

## **Chapter 2**

### IMPEDIMENTS

1. In its previous Report the Commission elaborated on several factors that seriously hampered its success. However some issues have once again been highlighted in the Chairman's foreword.
2. Members:
  - 2.1 Despite the two vacancies, Members of the LRDC on the 31 March 2004, were the following:

Mr U D Nujoma (Chairman – Full time)

Mr A Vaatz (Legal Practitioner)

Adv D Sauls (Legal Practitioner)

Mr G M Mutwa (Deputy Chief: Legislative Drafting – Ministry of Justice)

Mr G N Ndauendapo (Legal Practitioner)

The Honourable Judge S V Mtambanangwe was acting Ombudsman and an *ex-officio* member of the Commission.

3. Staff:
  - 3.1 As far as turnover and vacancies are concerned, the Secretariat of the Commission probably experienced its best year since its establishment in 1992. (See *Chapter 4; paragraph 2 below.*) The value of the continuity gained by that will most definitely be experienced in due course.
  - 3.2 Staff used by Ministry of Justice for other work: The Chairperson has during the year covered by this Report resisted as far as possible requests that staff members of the Directorate Law Reform be utilized for other activities of the Ministry of Justice. There seems to be an improvement, but the following still needs to be mentioned:
    - 3.2.1 The Directorate Law Reform still handles the Secretariat of the Cabinet Committee on Legislation (CCL). This makes heavy inroads on the time of the Secretary of the Commission, Mr W J Potgieter, the Deputy Chief: Law Reform, as well as administrative staff. There were 12 meetings of the CCL during 2004.
    - 3.2.2 The full-time Chairperson of the Commission, Mr U D Nujoma, is also the Chairperson of the Inter-Ministerial Committee on Human Rights and International Humanitarian Law, which obviously takes much of his time.
  - 3.3 As mentioned in the previous Report, the Ministry of Justice is in the process of restructuring the Ministry and apart from requesting more posts for the Directorate Law Reform, the Ministry has also requested more professional posts for other components in the Ministry to handle the other work that is now so regularly given to staff of the Directorate Law Reform. Unfortunately not much progress was made with this restructuring in 2004 (See chapter 4: Secretariat).

## **Chapter 3**

### ESTABLISHMENT AND COMPOSITION OF COMMISSION

1. The Law Reform and Development Commission of Namibia was established by the LRDC Act that came into operation on 15 July 1992.
2. The Commission consists, in terms of section 3 of the LRDC Act, of the following members:
  - 2.1 A Chairperson, appointed by the President after consultation with the Minister.
  - 2.2 The Ombudsman.

- 2.3 A legal practitioner appointed by the President after consultation with the Law Society of Namibia.
- 2.4 A staff member of the Ministry of Justice nominated by the Minister and appointed by the President.
- 2.5 Up to three other persons, appointed by the President.
3. The Commission proposed some changes to the LRDC Act with regard to the constitution of the Commission. A bill to give effect to such proposals was introduced in the National Assembly during 2004 and an amendment was effected to the principal Act. This Act is the 'Law Reform and Development Commission Amendment Act, 2004 (Act No.2 of 2004).
4. Only one change occurred in the composition of the Commission during 2004. Advocate J R Walters who was appointed as Ombudsman of the Republic of Namibia on the 1<sup>st</sup> July 2004, replaced the then Acting Ombudsman, the Honourable Judge S V Mtambanengwe, who served on the Commission after having replaced Advocate Bience Gawanas.
5. The composition of the Commission as in March 2005 is therefore as follows:

Mr U D Nujoma (Chairperson)

Adv. J R Walters (Ombudsman)

Adv. L Conradie (by the Law Society of Namibia)

Ms N N Shivute (Deputy Chief: Lower Courts in the Ministry of Justice, nominated by the Minister of Justice)

Mr S K Amoo (Lecturer in the Faculty of Law at the University of Namibia)

Mr A Vaatz (Legal Practitioner)

Mr T Kamuhanga-Hoveka (Legal Practitioner)

Adv. M Samson (Legal Officer in the Office of the Attorney-General)

## Chapter 4

### **SECRETARIAT**

1. The Directorate of Law Reform, which is an organizational component in the Ministry of Justice, serves as Secretariat of the Commission.
2. There were changes in the Directorate during 2004, namely Mr M K Siambango was transferred from the Directorate of Legal Aid to the Law Reform Directorate and Ms M N Nuujoma was transferred, from the Directorate Law Reform with effect from 1 July 2004. The Deputy Chief, Mr H Awaseb also resigned on the 1<sup>st</sup> August 2004 and the post has now been filled by Mr E I Luanda with effect from 01 March 2005. The present establishment of the Directorate is as follows, with the present incumbents, as on 31 December 2004 as indicated:

[The designation of the posts are given as they were before 1996; the present "Wascom" gradings are given in brackets.]

1 X Chief: Law Reform (Grade 5B\*); Mr W J Potgieter  
1 X Deputy Chief: Law Reform (Grade 5A \*); Mr E I Luanda;  
2 X Principal Legal Officers (Grade 4A; Level 1) Mr Z B Wantenaar; Mr M K Siambango  
1 X Chief Legal Clerk (Grade 3A;Level 1) Ms E V Kandji;  
1 X Legal Clerk (Grade 1C; Level 1); Ms O N Mafale.

[\*Mr. E I Luanda was appointed with effect from 1<sup>st</sup> March 2005, while Mr. W J Potgieter will retire on the 1<sup>st</sup> April 2005.]

The Directorate further has the services of (1) (one) Senior Private Secretary (Grade 2B; Level 3), Ms A R Bezuidenhout, for the Chief and Deputy Chief and for the Chairman, Ms P N Amadhila (Grade 2B Level 3) has been appointed on contract with effect from 19<sup>th</sup> January 2005, until the end of the term of the Chairman. These posts are centralized in the Ministry. As a result of the restructuring exercise more posts were approved, but no funding has been made available for this purpose.

Once funding is available the approved structure of the Directorate: Law Reform will consist of 14 staff members designated as follows:

1XChief: Law Reform; 1XDeputy Chief: Law Reform; 3XChief: Legal Officers; 2XPrincipal Legal Officers; 1XSenior Legal Officer; 1XLegal Officer; 1XControl Legal Clerk; 1XPrincipal Legal Clerk; 1XLegal Clerk; 2XPrivate Secretaries (Grade2B;Level 3)

3. The Minister of Justice has, in terms of section 11 (1) of the LRDC Act, designated Mr. W J Potgieter as Secretary of the Commission since its establishment. Mr W J Potgieter will be retiring on the 1<sup>st</sup> April 2005.

## **Chapter 5**

### COMMITTEES

1. Section 10 of the LRDC Act provides for Committees of the LRDC. The Commission appoints such Committees, but needs the approval of the Minister if persons who are not members of the Commission are appointed. This is of course necessary as it may have financial implications.
2. The section provides that a Working Committee may be appointed, but such a Committee has not been appointed and since the Chairperson serves in a full- time capacity this seems not to be

necessary anymore. [Further information on Committees is reflected under the various projects below.]

## Chapter 6

### PROJECTS OF THE COMMISSION

#### A. Past Projects:

Below is only a very brief reference to past projects finalized by the Commission. The Commission would like to do, as a law reform agency should, some monitoring of how the laws emanating from its reports are applied in practice and to identify shortcomings, etc. The Commission will however not be able to do much in this regard if its capacity is not increased.

- 1.1 The Abolition of Marital Power and Equalization of Rights between Spouses (Project 1). This project culminated in the Married Persons Equality Act, 1996 (Act No.1 of 1996).
- 1.2 Law pertaining to Rape (Project 2): This project culminated in the Combating of Rape Act, 2000 (Act No.8 of 2000) and the Combating of Immoral Practices Amendment Act, 2000 (Act No.7 of 2000).
- 1.3 Domestic Violence (Project 3): The Combating of Domestic Violence Act, 2003 (Act No.4 of 2003) was passed in 2003 and put into operation on 17 November 2003.
- 1.4 Vulnerable Witnesses. This project was taken over by the Ministry of Justice. A bill, the Criminal Procedure Amendment Bill, was introduced in the National Assembly in November 2003 and has since been passed as the Criminal Procedure Amendment Act, 2003 (Act 24 of 2003)
- 1.5 Maintenance (Project 4): The new Maintenance Act, 2003 (Act No.9 of 2003), prepared by the Ministry of Justice, with inclusion of recommendations made by the Commission, was passed in 2003 and put into operation on 17 November 2003.
  
- 1.6 Small Claims Courts (Project 5): The Commission submitted its Report on Small Claims Courts to the Minister of Justice in December 1997. It is still with the Ministry of Justice and it is hoped that the bill will be tabled in Parliament in 2005.

- 1.7 Criminal Defamation (Project 13)

- 1.7.1 The Commission submitted a report in this regard, to the Minister of Justice in June 2003. It is not published yet.

## B. Present Projects:

The Commission has the following projects on its programme:

1. Succession and Estates (Project 6) (This project was also sometimes referred to in the past as the "Inheritance Project".)
  - 1.1.1 The main issue to be handled under this project is the repeal of what is without doubt the most notorious piece of legislation still on Namibia's statute book that is at variance with the provisions of the Namibian Constitution on equality and non-discrimination, namely the remaining sections of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928) (hereinafter referred to as "the NAP"). The remaining provisions of this statute have the total unacceptable result that black persons from the northern part of Namibia are still subject to a different regime as far as matrimonial property matters are concerned and that the estates of black persons who die intestate are still not handled in terms of the Administration of Estates Act, 1965 (Act No. 66 of 1965). Unfortunately the solutions appear not to be so easy (in this regard it can be pointed out that South Africa too has yet to solve problems that are to some extent similar to that of Namibia).
  - 1.1.2 A major event in 2003 related to this project was the judgment given by the High Court in the "Berendt" case (Case No. (P) A 105/2003). The High Court declared the said sections of the NAP to be in conflict with the Namibian Constitution. It shall however be deemed to be still valid and Parliament is required to remedy the defect by 30 June 2005. The High Court further ordered that some interim arrangements be made, mainly that the Master of the High Court can be requested to administer any estate that would otherwise have been administered by a magistrate.
  - 1.1.3 The Commission submitted a Report on Uniform Default Matrimonial Property Consequences of Common Law Marriages (Repeal of section 17(6) of Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928) to the Minister of Justice in July 2003. This Report is not yet published. The Report recommended a "fast-track" approach for this one aspect. The indications are however that the Honourable Minister of Justice deems it advisable to rather not separate any particular aspect from the broader issue.
  - 1.1.4 The Commission approved during November 2003 an extensive document prepared by the Secretariat for further consultation with stakeholders. Suggested changes by the stakeholders were incorporated in the document. The Ministry has however taken over this project.
2. Customary Law Marriages (Project 7)

(This project also deals with the divorce aspect of these marriages.)

During the last three (3) years the Chairperson of the Commission embarked on extensive consultations with traditional leaders, on the basis of a draft bill prepared by a Project Committee and approved for the purposes of such consultation by the Commission. The project report was published during October 2004.
3. Divorce (Project 8)
  - 3.1 The main issue to be considered under this project is to bring Namibia's law on divorce in line with the latest developments in the world, in particular to replace divorce based on fault with divorce based on irretrievable breakdown, and to simplify the divorce process.

## 3.2

### A Project Committee made its recommendations that were considered by the

**Commission for further consultations. During 2003 the changes required by the Commission were further researched and discussed with members of the Project Committee. Certain stakeholders were also consulted. The report was published during November 2004.**

#### 4. Publications (Project 9)

4.1 This project relates to pornography or other objectionable material in its various manifestations, including lately as on the Internet. It will pay special attention to, in particular, the Publications Act, 1974 (Act No. 42 of 1974), but also to the Indecent or Obscene Photographic Matter Act, 1967 (Act No. 37 of 1967) and parts of the Combating of Immoral Practices Act, 1980 (Act No. 21 of 1980). The Minister of Justice referred this matter to the Commission in October 1995.

4.2 The Secretariat has received valuable advice from the Films and Publications Board of South Africa (RSA FPB) and it is expected that progress will be made during 2005 and finalize the project. In the meantime it is envisaged to hold a Workshop, by bringing in experts from the FPB, in South Africa.

#### 5. Public Gatherings (Project 10)

The Minister of Justice on recommendation of the then Attorney General referred this issue to the Commission during October 1997. The draft framework of this project is now ready and a report will soon be prepared for the Commission by the Secretariat for discussion. The Secretariat intends to conduct workshops with members of the Namibian Police and various Local Authorities during the course of the year. The delay in the finalisation of this project was as a result of resignations of previous project officers. A new project officer was assigned to the project.

#### 6. Codification of the Criminal Law (Project 11)

6.1 The Commission made some progress during 2003 with the preparation of a Draft (General Principles) Criminal Code.

A second workshop has already been organized with Judges, University of Namibia academics and staff members of the Office of the Prosecutor – General. The next steps will be finalized during the course of the year.

#### 7. Compensation to Victims of Crime (Project 12)

7.1 The Commission could not give any significant attention to this project and merely collected material on the issue, The Commission is also aware that the Ministry of Justice has made good progress with a new Criminal Procedure Bill which of course will, as the existing Criminal Procedure Act, 1977 (Act No. 51 of 1977), include provisions on compensation. The Bill has now been passed as the Criminal Procedure Act, 2004 (Act No. 25 of 2004). In reality the Commission has abandoned this project, to avoid a duplication of work.

#### 8. Obsolete Statutes (Project 14)

8.1 This is not a project in the sense of the other projects of the Commission. The Commission envisages looking at all the laws that are still on Namibia' s statute book, to categorize them under different line Ministries and then, in consultation with those Ministries, to address those which should be repealed or replaced. Line Ministries are of course continuously doing such work themselves, but this project rather refers to the real "dead wood" that may be overlooked.

8.2 Up till now only a list on the statutes to be administered by the Ministry of Agriculture, Water and Rural Development was prepared. It seems that the Commission will struggle to make the intended progress with this project as a result of other priorities and insufficient staff. Further progress on this project will depend on available funding.

## 9. Consumer Issues (Project 15)

9.1 It is quite common for law reform agencies to be involved in projects dealing with consumer issues. The Commission has been aware of a need in Namibia for law reform on consumer issues for some time, but could not initiate anything in view of other urgent priorities and the Commission's very limited resources. The Commission was also aware that the Ministry of Trade and Industry envisaged tackling some issues in this regard.

9.2 After initial discussions with that Ministry, the Commission decided in April 2002 to embark on such a project. The Minister of Justice consulted the Ministry of Trade and Industry and the Commission could include this project in its programme during October 2002.

9.3 The Commission has accepted the following, as broad terms of reference that must still be refined: The Commission will look, *inter alia*, at the following areas:

- unfair stipulations in contracts;
- merchantable quality and warranties;
- product's liability;
- business practices;
- credit agreements.

9.4 The Commission appointed some of the members of a Project Committee for this project in November 2003, but must still finalize the appointment of some other members. A second meeting of the Committee will held very soon.

## C. New Projects

### 1. Matrimonial Property Regime

A new project on Matrimonial Property has been approved and work will start in April 2005. In view of the finalization of some of the projects mentioned above, the LRDC will identify other new projects.

## **Chapter 7**

### OFFICE ACCOMMODATION AND BUDGET

1. The Commission has unfortunately to report that no progress was made with finding the Commission more suitable office accommodation. The Chairperson and Secretariat of the Commission are still accommodated in the head office building of the Ministry of Justice in the central business district of Windhoek. The accommodation is not at all enough and is also in a poor condition. The Commission hopes that with the current renovations to the building, more space will be made available.

2. The funds for the Commission's activities are budgeted under the Main Division for "Law Reform" (previously 09; 04 from 2004/5) of Vote 16 (Ministry of Justice). The details thereof are therefore reflected in the Government's Estimates of Expenditure, the Auditor-General's Reports, etc and are not repeated in this Report.
3. In general it must be pointed out that the Commission has very limited funding for its operational activities. About 80% of the Directorate Law Reform's budget goes for conditions of service of the full-time Chairperson and staff members. The provision for travel and subsistence allowances must also cover the expenditure of the Chairperson for his responsibilities in respect of human rights (See Chapter 2; paragraph 3.2.) and of the staff members for other activities of the Ministry of Justice.
4. The extensive assistance rendered by the GTZ, under the Legal Capacity Building Project, to the LRDC since 1992 came to an end at the end of July 2004. The Directorate's budget (Vote 16 (Justice); Main Division 04 (Law Reform) has not yet been increased as requested to compensate for this loss and that has, and will, affect the capacity of the Directorate. This will severely hamper the work of the Commission, as there is very little funding for Experts and Consultants who are very much needed for a Law Reform Agency.

## **Chapter 8**

### PUBLICATIONS

The Commission has published two reports:

1. Report on Customary Law Marriages (Project 7 – October 2004)
2. Report on Divorce (Project 8 – November 2004)

## **Chapter 9**

### (a) CONTACT WITH OTHER LAW REFORM AGENCIES: ASSOCIATIONS:

1. The Commission has made contact with the law reform agencies of the Commonwealth as well as with some of other countries. The Commission has also received the publications of those agencies, on a reciprocal basis, and has therefore build up a sizable library in which all kinds of other law reform material are stored. Lately however such publications are not always so readily available in hard copy since they are usually available on the Internet.
- 1.2 As reported in the Commission's report, about initiatives to establish a body of law reform agencies for regional cooperation. The Commission can report that the Association for Law Reform Agencies for Eastern and Southern Africa (ALRAESA) was launched in Windhoek in August 2003.
- 1.3 The founding members of ALRAESA are the law reform agencies of Kenya, Lesotho, Malawi, Namibia, South Africa, Tanzania, Uganda, Zambia and Zimbabwe. Membership is however open,

upon application to be made to the Executive Committee, to all law reform agencies (including other agents and government departments that undertake law reform activities) in Africa.

- 1.4 The Chairperson of the Law Reform and Development Commission of Namibia (LRDC), Mr. U.D. Nujoma, is the Chairperson of the Association;
- 1.5 The Commission is also a member of the Commonwealth Association of Law Reform Agencies (CALRA).

(b) Attendance of Conferences; Workshops etc.

1. During 2004 the Chairperson and staff members of the Secretariat made the following trips and attended the following conferences, workshops, seminars, in / outside Namibia:
  - 1.1 It should be mentioned that the Chairperson often travels to attend to matters relating to human rights (see Chapter 2; paragraph 3.2.4) and obviously then sometimes combine law reform activities with such visits.
  - 1.2 The Chairperson and Mr H L Awaseb attended a meeting of Australian Law Reform Agencies on the theme " Access to Justice: Rhetoric or Reality" in Wellington – Australia during April 2004.
  - 1.3 The Secretary, Mr Potgieter, attended a seminar on 'Property Inheritance right, Gender and Livelihood Strategies in Namibia in the context of the HIV/AIDS pandemic' in Ondangwa during June 2004.
  - 1.4 Mr M K Siambango was invited to participate in a Stakeholders' Meeting organized by the Ministry of Women Affairs and Child Welfare, in reviewing the 'Implementation of the Beijing Platform of Action', during September 2004 at Safari Hotel in Windhoek.
  - 1.5 Mr. E. I. Luanda attended a course on Legal Writing in Cape Town, South Africa during October 2004.
- 1.6 The Chairperson and the Secretary, Mr W J Potgieter, attended an ALRAESA Executive Committee meeting in Pretoria, South Africa during November 2004.

## Chapter 10

### WHO'S WHO AT THE COMMISSION (LRDC)

#### **Mr Utoni David Nujoma**

Mr U D Nujoma is the current Chairman of the Commission. He has been the full time Chairman since 1<sup>st</sup> October 1997, and is currently in his third term of office. He holds the degrees LLB Honours from Warwick University in the United Kingdom. He further holds an LLM (Masters in Law) degree, in International Law from the University of Lund in Sweden. Mr. Nujoma also attended a Legal Practitioner's Qualifying Course at the University of Namibia, and is a holder of a Certificate in Legal Practice. Prior to being appointed Chairman, Mr Nujoma has occupied the position of Deputy Permanent Secretary in the Ministry of Justice. In addition to being the Chairman, he is also the Chairperson of the Inter-Ministerial Committee on Human Rights and International Humanitarian Law. He is the current Chairperson of ALRAESA.

### **Advocate John Robert Walters**

Advocate Walters is the current Ombudsman of the Republic of Namibia and an *ex officio* member of the Commission. Prior to his appointment on 1<sup>st</sup> July 2004, Advocate Walters served in various positions both in the Public Service and private sector. He rose from the rank of Public Prosecutor in 1981 to Deputy Prosecutor General, until his resignation in March 1996. Thereafter he practiced as a Legal Practitioner, with the firm J C Van Wyk Attorneys. From December 2002 until December 2003, he was Acting Prosecutor-General of the Republic of Namibia. He also acted as Special Advisor to the Prosecution Team in the Caprivi High Treason trial, until his appointment as Ombudsman on 1<sup>st</sup> July 2004. Advocate Walters holds the degrees B.A; LLB from the University of the Western Cape, South Africa

### **Advocate Lynita Conradie**

Advocate Conradie is the representative of the Law Society of Namibia on the Commission. She is currently employed as an Editor of the Namibian Law Reports at the Legal Assistance Centre, she holds B.A. LLB degrees from the University of Cape Town (RSA). Advocate Conradie, despite being blind, has been practicing as an Advocate since July 1984 to date. It is her first term as member of the Commission.

### **Ms Naomi Ndilimeke Shivute**

Ms N N Shivute is the current Deputy Chief: Lower Courts in the Ministry of Justice. She holds Diplomas in Law from the United Nations Institute for Namibia in conjunction with the University of Zambia and from National Institute for Public Administration, Lusaka, Zambia. Prior to her appointment as Deputy Chief of Lower Courts, she has been a Magistrate in Choma, Zambia from 1987 until 1989 and as Regional Court Magistrate from 1991 to 1999, when she was transferred on promotion as Deputy Chief: Lower Courts. She is serving her first term as a member of the Commission. She is currently doing her final LLB examination through the University of South Africa (Unisa).

### **Mr S K Amoo**

Mr S K Amoo is the current Deputy Dean of the Law Faculty at the University of Namibia. He holds the degrees B.A LLB LLM from various Universities, with more than twenty-five (25) years lecturing experience. Mr Amoo has lectured in Zambia, Zimbabwe, Nigeria and Namibia and is an Advocate of the Supreme Court of Zambia and the High Court of Namibia. It is his first term as a member of the Commission.

### **Mr. Andreas Vaatz**

Mr Vaatz is one of the longest serving members of the Commission (since its inception in 1992). He is a senior partner in a local legal firm – Andreas Vaatz and Partners. He holds the degrees BA LLB degree from the University of Cape Town (RSA). He has been in private practice since 1968.

### **Mr T Kamuhanga-Hoveka**

Mr Kamuhanga-Hoveka is a legal practitioner and Managing Director of the Legal firm - Kauta,

Basson & Kamuhanga Incorporated. He is on the Commission as a representative of the Namibia Law Association (NLA), an organization representing previous disadvantaged legal practitioners in Namibia. Mr Kamuhanga holds the degree of LLB from the University of Natal in the Republic of South Africa. He is serving his first term as a member of the Commission.

### **Advocate Mandi E Samson**

Adv. Samson is currently a Principal Legal Officer in the Office of the Attorney General. She holds the degrees Biuris LLB LLM from the Universities of Namibia; Cape Town and Leiden, respectively. It is Adv. Samson's first term as a member of the Commission. She is an admitted Advocate of the High Court of Namibia and also serves as an Advisor to the United Nations Commission for Africa UNECA).

## **Chapter 12**

### **ACKNOWLEDGMENTS**

The Commission sincerely acknowledges the generous support from the GTZ, which unfortunately came to an end at the end of July 2004.

#### **FORMER MEMBERS OF THE LRDC.**

(indicating the periods they served on the Commission)

Mr Justice Harold Levy who was the first Chairman since 7<sup>th</sup> July 1992 until 31<sup>st</sup> July 1994 when he retired as a Judge.

Mr Hartmut F Ruppel (Attorney-General)	15 –07-92 to 28-02-95
Adv. F J Kozonguizi (late) (Ombudsman)	15 – 07-92 to 29-02-95
Adv. D F Smuts	07 – 07-92 to 13-07-95
Ms M C Greef	07 – 07-92 to 18-07-97
Dr A Kawana	04 – 03-92 to ...-07-95
Adv. B Gawanas	04 – 03-92 to 13-09-03
Late Judge J P Karuaihe	04 – 03-92 to 31-12-97
Mr A Vaatz	04 – 03-92 to date
Adv. E P Kasuto	** – **-95 to **-12 –96

(\* Information not available at the time of printing this Report)

Mr Nujoma was appointed to the Commission on the 2<sup>nd</sup> August 1995, when he replaced Dr A Kawana. He became the full time (current) Chairperson since 1<sup>st</sup> October 1997.

02 – 08-95 to date

Adv. V E YA Toivo 02 – 08-95 to 14-07-00

Adv. E I Scheepers	03 – 10-97 to 31-08-99
Prof. W A Kamba	14 – 04-99 to 30-03-00
Adv. D Sauls	15 – 07-00 to 14-07-04
Mr G M Mutwa	15 – 07-00 to 14-07-04
Mr G N Ndauendapo	04 – 12-00 to 14-07-04
Mr Justice S V Mtambanangwe	15 – 09 –03 to 30-06-04

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