MINISTRY OF JUSTICE

ANNUAL REPORT
FINANCIAL YEAR | 2016/2017
MANDATE
TO PROVIDE LEGAL SERVICES AND ACCESS TO JUSTICE

MISSION
TO DELIVER QUALITY LEGAL SERVICES AND JUSTICE FOR ALL

VISION
TO BE A MODEL PROVIDER OF LEGAL SERVICES AND JUSTICE FOR ALL
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FOREWORD

BY HON. DR. ALBERT KAWANA, MP.
MINISTER OF JUSTICE

It is my honour and privilege to present to you the Ministry of Justice's Annual Report for the 2016/17 financial year in an effort to keep the Nation informed of the Ministry's performance.

The period under review was characterized by a number of activities for me as Minister and the Deputy Minister, as well as all officials in the Ministry of Justice. This happened at a time when our National economy operated under serious economic pressure derived from an unfavourable global economic situation which consequently limited the Ministry's ability to deliver effective services to the Namibian people as per its mandate. Notwithstanding economic challenges, the Ministry has strived to bring its services closer to the people by adopting a principle of doing more with less. There is positive progress in the development and implementation of an Integrated Case Management System at the Directorate: Master of the High Court. This will usher in the automation of the operations at Master of the High Court.

I am proud to report that the Ministry is committed to improving and providing the necessary infrastructure aimed at addressing the delays and frustrations in the judicial system such as a backlog of cases, which is one of the challenges faced by the new Office of the Judiciary. With regard to this, the Ministry has made efforts in providing temporary court structures at Rehoboth Magistrate's Court in the Hardap Region and Helao Nafidi in the Ohangwena Region. A Magistrates Court is being constructed at Katima Mulilo in the Zambezi Region and alterations and additions are also being carried out at the High Court in Windhoek.

Despite the acute shortage of skilled legislative drafters, in line with the policy of updating and enacting a number of laws for the betterment of our people, a number of Bills were drafted and were passed into laws.

The Ministry still continues to fulfill its constitutional mandate of providing legal assistance to all persons in Namibia by offering free legal aid to all qualifying persons. In this connection, a total of nine thousand seven hundred and seven (9707) applications were received during the reporting period. The Ministry managed to assist six thousand three hundred and forty-four (6344) applicants.

I am pleased to reaffirm that the Ministry will work harder to implement our set targets in our strategic plan, spearhead the realization of vision 2030 and implement the Harambee Prosperity Plan so that we can enhance the socio-economic development of our country. As we strive to remain true to our Vision and Mission, the Ministry will continue to promote and maintain effective administration of justice and enhance transparency, accountability and good governance. The reader is encouraged to read the report in order to appreciate the achievements and challenges faced by the Ministry and offer solutions where possible.

INTRODUCTORY NOTE

BY MR. I.V.K. NDJOZE
PERMANENT SECRETARY MINISTRY OF JUSTICE

This report covers the implementation of various programs which the Ministry is mandated to carry out in terms of the overall national development targets of the government and as further elaborated in the Strategic Plan and Annual Plan for the period under review. The Ministry has an exclusive mandate which it derives from the Namibian Constitution, the specific enacting laws promulgated to govern the functions of various institutions which the Ministry is responsible to provide logistical and administrative support to as well as those which directly resort under the Ministry to perform specific functions which the Ministry is mandated to carry out.

Due to a rampage of functions the Ministry has to carry out directly and indirectly, the reach of its responsibility is extensive and goes beyond the ordinary understanding of how the role of the Ministry has until now been understood to be. It is important to point out that until 2014/15 the functions of the courts resorted under the Ministry of Justice. However following the enactment of the Judiciary Act, 2015, a separate Office of the Judiciary has been established and is now operational for about two years. However the Ministry remains responsible for the direct administration of the infrastructural requirements of the Judiciary. The Permanent Secretary also doubles as Accounting Officer for the Office of the Attorney-General and administers its recurrent and development budget including providing enabling support to its day to day operations.

As you will note from an analysis of the staff complement, the Ministry only operates on a capacity of just over 50 % of the structure as about 43 % of the posts have no funds. The shortage of funds has negatively affected the implementation of critical policy implementation which the Ministry had identified as necessary to enhance service delivery especially in those important areas identified in the Harambee Prosperity Plan.
ABBREVIATIONS

MOJ  Ministry of Justice
AG  Attorney-General
OOJ  Office of the Judiciary
OB  Office Bearers
NIPAM  Namibia Institute of Public Administration and Management
NUST  Namibia University of Science and Technology
UNAM  University of Namibia
IUM  International University of Management
ICT  Information Communication Technology
ICMS  Integrated Case Management System
IT  Information Technology
OPM  Office of the Prime Minister
DV  Divorce
OCM  Other Civil Matters
APP  Appeals
LRDC  Law Reform Development Commission
SADC  South African Development Community
NEEEF  New Equitable Economic Empowerment Framework
BEE  Black Economic Empowerment
PDP  Previously Disadvantaged People
NamibiLRII  Namibia Legal Resources and Information Institute
FALM  Free Access to Law Movement
KNCLR  Kenya National Council for Law Reporting
SAGA  Semi – Autonomous State Agency
SaFLII  Southern Africa Legal Information Institute
AfricanLII  African Legal Information Institute
DGRU  Democratic Governance and Rights Unit
WorldLII  World Legal Information Institute
CCL  Cabinet Committee on Legislation
WHO  World Health Organisation
NRSC  National Road Safety Council
PMS  Performance Management System
MLA  Mutual Legal Assistance
LPQE  Legal Practitioners Qualifying Examination
ICCR  International Covenant on Civil and Political Rights
ICESCR  International Covenant on Economic, Social, and Cultural Rights
ICERD  International Convention on Elimination of all forms of Racial Discrimination

OFFICE OF THE MINISTER

Terms of Reference

In executing his/her functions as Minister, and to ensure delivery, the following non-negotiable principles must be adhered to: strong, honest and principled leadership;

- Transparent procurement with a focus on empowerment of Namibians, particularly youth and women, and job-creation but not at the expense of value for money;
- Driving a performance culture within your ministry through leading by example and applying a hands-on approach;
- Focus on timely interventions and implementation of policy decisions;
- Reviewing any law, policy, regulations or institution which hampers the effective delivery of judicial services to the citizens;
- Ensure maximum output within the context of limited financial resources;
- Ensuring coordination with Offices, Ministries and Agencies, especially those which are closely related to your line functions;
- Engaging and listening to the voices of civil society; particularly grassroots organizations, with the understanding that the ultimate goal is to improve the living standards of all Namibians;
- Continuous monitoring, evaluation and reporting on progress being made in your Ministry.

Functions

- The Minister is the chairperson of the Cabinet Committee on Legislation (CCL)
- The Minister is also responsible and accountable for the activities of the Ministry to the President, Cabinet and Parliament.

Responsibilities

- To motivate the annual budget of the Ministry in Parliament

The Hon. Minister consulted with Traditional Authorities in the North and North-East of the country to discuss challenges in the administration of the Community Courts in terms of the Community Court Act, 2003. These consultation commenced during the 2015/16 financial year where the Minister started familiarizing himself with the operations of these courts. During the consultations requests were made for additional support to the courts especially an increase in allowances.

Overview

Successes

- Assistance rendered to Office of the Judiciary for the recruitment of 48 staff members to enable a smooth transition and setting up the new Office;
- Creation of the Maintenance Investigation Unit under the Directorate Legal Services;
- Reduction in recruitment cycle time for promotion posts from 107 days to 83 days; and
- Certificate of Affirmative Compliance granted by the Employment Equity Commission.

Challenges

- Freezing of vacancies due to budget cuts;
- Attracting and retaining of expertise due to better remuneration packages offered in the private sector;
- Lack of specialized skills for Legislative Drafters; and
- Lack of automation of key HR processes.
Functions of the Deputy Minister
During the year under review, as per her delegated functions by the Minister, the Deputy Minister executed the following Ministerial strategic objectives:
- Review of outdated laws;
- Expedite legal aid to indigent persons;
- Reduce cycle time of registration and winding up of deceased estates; and
- Effective governance and improved service delivery.

DIRECTORATE: CENTRAL ADMINISTRATION

Mandate
The Directorate Central Administration is mandated to provide various administrative support services to the rest of the Ministry of Justice and to the Office of the Attorney-General in terms of its strategic objective: “To ensure an enabling environment and high performance culture”.

Overview of activities
The activities of the Directorate: Central Administration, which spans across four divisions, includes the following:
- Facilitate strategic planning and management interventions;
- Facilitate budgeting and resource management;
- Administer financial transactions;
- Manage and administer human capital, policies and procedures;
- Facilitate training and development interventions;
- Render Fleet management services;
- Provide access to information technology, and
- Manage and maintain fixed assets.

DIVISION: FINANCE AND BUDGETING

Breakdown of budget and utilization 2016/2017
Expenditure execution of Operational and Development Budget:

![Budget allocation in N$]

<table>
<thead>
<tr>
<th>Division</th>
<th>Actual Expenditure</th>
<th>Execution Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration of Justice</td>
<td>N$72,183,266</td>
<td>98%</td>
</tr>
<tr>
<td>Promotion of Good Governance</td>
<td>N$43,587,863</td>
<td>99%</td>
</tr>
<tr>
<td>Supervision &amp; Support Services</td>
<td>N$18,241,522</td>
<td>99%</td>
</tr>
</tbody>
</table>

| Total                           | N$145,134,675      | 99%            |
STAFFING STATUS MOJ, A-G & OMBUDSMAN BY 31 MARCH 2017

<table>
<thead>
<tr>
<th>Category</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Office Bearer</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Management</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Legal Officers</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Administrative Staff</td>
<td>227</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL: MEN</strong></td>
<td>126</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL: WOMEN</strong></td>
<td>187</td>
<td></td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td>313</td>
<td></td>
</tr>
</tbody>
</table>

Training

Training statistics for 2016/17 Financial Year

DIVISION: INFORMATION TECHNOLOGY

Objectives

Provision of accessible and reliable ICT Infrastructure and services to the Ministry of Justice country wide.

Overview of Activities

- Integrated Case Management Systems (ICMS) for the Master of the High Court
- The Ministry entered into an agreement with a Chinese software development company called Beijing CS&S-CA Software Technology Ltd, who is in the process of developing and implementing an Integrated Case Management System at the Directorate: Master of the High Court. The envisaged go-live date was end of 2016 but has been extended to July 2017. The IT Division is responsible for the infrastructure readiness and implementation and will be the first line support for all applications.
- Installation of System Infrastructure
- Installation of the System Infrastructure is successfully completed at MOJ Head Office Data Centre.
- IP/MPLS VPN Solution

Successes

- Use of the Master’s online System from outside the office;
- The implementation of the Exchange e-mail system with OPM is successful;
- Successfully facilitated the handing over of IT operations to the Office of the Judiciary; and
- The migration of users to the MOJ Domain/Active Directory was successfully conducted.

DIVISION: DEVELOPMENT PLANS AND FIXED ASSET MANAGEMENT

Objective

The Division is responsible for maintaining and developing infrastructures for the Ministry of Justice, Attorney-General and the Office of the Judiciary.

Overview of Activities

The construction, upgrading and renovation of office accommodation, court buildings and assigned official accommodation, to ensure that staff members perform their activities and operate in a conducive working environment, while ensuring that members of the public are served in accessible and user friendly offices.

Successes

- New prefabricated court structures were constructed at Rehoboth Magistrate’s Court in the Hardap Region and Helao Nafidi in the Ohangwena Region;
- Construction works were commenced for the construction of a new Magistrate’s Court at Katima Mulilo in the Zambezi Region. The project is scheduled for practical completion in the 2017/2018 financial year;
- Alterations & Additions were carried out at the High Court in Windhoek (Khomas Region). The project is expected to be practically completed in December 2017; and
- The Ministry’s assigned houses were renovated at Karibib (Erongo Region), Eenhana (Ongwediva Region), Opuwo (Kunene Region), Ondangwa (Oshana Region), Oshakati (Oshana Region) and Tsumeb (Oshikoto Region).

Challenges

Budget cuts resulted in all capital projects, except the Katima Mulilo Magistrate Court and High Court project being put on hold.
**DIRECTORATE: LEGISLATIVE DRAFTING**

**Mandate**

The Directorate: Legislative Drafting is responsible for scrutinizing and drafting Bills for Parliament, Proclamations of the President, Regulations and Government Notices from Ministries, Offices and Agencies, and Regional Councils (including Regulations, Rules and General Notices from local authorities and parastatals that are subject to approval or consultation of Government functionaries).

The Directorate frequently advises Ministries, and Agencies (O/M/A’s), at their request, on the drafting of legislation and subsidiary legislation and particulars of legislation in force.

The Directorate is also responsible for the maintenance and management of a legal library which serves not only the Ministry but also provides information services to all O/M/A’s.

**Overview of activities**

**Drafting and Scrutiny of Bills, Proclamations, Regulations and General Notices**

During the 2016/2017 financial year the Directorate scrutinised, drafted and finalised bills for Parliament, Proclamations for the President, Regulations and Government Notices (Administrative Acts) for Ministries, Offices, Agencies, and Regional Councils and General Notices (mostly rules and regulations for local authorities) as classified in the table below:

<table>
<thead>
<tr>
<th>LEGISLATION AND ADMINISTRATIVE NOTICES</th>
<th>RECEIVED</th>
<th>COMPLETED</th>
<th>COMPLETED ON TIME AS PER PERFORMANCE STANDARD</th>
<th>PENDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills</td>
<td>42</td>
<td>25</td>
<td>16</td>
<td>20</td>
</tr>
<tr>
<td>Proclamations</td>
<td>13</td>
<td>13</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Regulations</td>
<td>60</td>
<td>47</td>
<td>34</td>
<td>13</td>
</tr>
<tr>
<td>General Notices</td>
<td>11</td>
<td>10</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Government Notices</td>
<td>173</td>
<td>163</td>
<td>129</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>299</strong></td>
<td><strong>258</strong></td>
<td><strong>197</strong></td>
<td><strong>44</strong></td>
</tr>
</tbody>
</table>

**COMPLETED**

| Anti-Corruption Amendment Bill        | Agronomic Industry Bill |
| Appropriation Bill                    | Arms and Ammunition Amendment Bill |
| Appropriation Amendment Bill          | Child Justice Bill |
| Business and Intellectual Property Authority Bill | Combating of Abuse of Drugs Bill |
| Controlled Wildlife Products and Trade Amendment Bill | Control of the Importation and Exportation of Dairy Products and Dairy Products Substitutes Amendment Bill |
| Controlled Wildlife Products and Trade Amendment Bill | Education Bill |
| Credit Amendment Bill                 | Electronic Transactions Bill |
| Customs and Excise Amendment Bill     | Extradition Amendment Bill |

**PENDING**

- Magistrates’ Courts Amendment Bill
- Namibia Revenue Agency Bill
- Namibia Industrial Development Agency Bill
- One-Stop Border Post Control Bill
- Namibia Time Bill
- Plant Breeders’ and Farmers’ Rights Bill
- Namibian Special Risk Association Bill
- Seed and Seed Varieties Bill
- National Fishing Corporation of Namibia Amendment Bill
- Trafficking in Persons Bill
- Nature Conservation Amendment Bill
- Medical Aid Funds Amendment Bill
- Property Valuers’ Profession Amendment Bill
- Public Private Partnership Draft Bill
- Regional Council Amendment Bill
- Short-term Insurance Amendment Bill
- Unit Trusts Control Amendment Bill
- Urban and Regional Planning Bill
- Usury Amendment Bill

**Challenges**

- The **Directorate faces a severe shortage of experienced and skilled legislative drafters. Currently only four (4) out of sixteen (16) legislative drafters can draft independently without supervision.**
- **Inadequate incentives to attract and retain experienced and skilled legislative drafters.** We have repeatedly advertised the position of Deputy Chief: Legislative Drafting and have received no positive response from any potential applicant, both internally and externally.
- **No budget on training.** Eleven junior legislative drafters have not yet been sent for training to obtain certificates or diplomas in legislative drafting. The non-availability of an adequate training budget hampers the development and capacity building of drafters and this will negatively affect the law making process in its entirety.
Training

<table>
<thead>
<tr>
<th>TRAINING ACTIVITY ATTENDED</th>
<th>NO OF STAFF WHO ATTENDED</th>
<th>NO OF DAYS</th>
<th>TRAINING ATTENDED IN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual in-house practical training</td>
<td>7</td>
<td>10</td>
<td>Otavi</td>
</tr>
<tr>
<td>Leadership training</td>
<td>4</td>
<td>5</td>
<td>Windhoek</td>
</tr>
<tr>
<td>Stakeholders Forum for State Parties in Africa on Adoption of National Implementing Legislation</td>
<td>1</td>
<td>3</td>
<td>Tanzania</td>
</tr>
<tr>
<td>Client education legislative drafting training</td>
<td>1</td>
<td>10</td>
<td>Namibia</td>
</tr>
<tr>
<td>Stock control training</td>
<td>1</td>
<td>10</td>
<td>Namibia</td>
</tr>
</tbody>
</table>

DIRECTORATE: LEGAL AID

Mandate
The Directorate Legal Aid has the responsibility of providing legal aid, i.e. legal advice and legal representation at Government expense to all eligible Namibians meeting the qualifying criteria. The regulatory framework for the provision of legal aid can be found in Articles 12 and 95 of the Namibian Constitution as well as the Legal Aid Act, 1990 (Act No. 29 of 1990), as amended. The scheme is intended to ensure access to justice by providing legal representation to persons who have insufficient means to afford the services of private legal practitioners to represent them in proceedings before the courts, in accordance with the means test threshold defined in regulations promulgated under the Legal Aid Act, 1990.

Overview of activities
The core activities of the Directorate of Legal Aid are: receiving, determining whether to grant or refuse (as per prescribed criteria) and issuing instructions to legal practitioners (private and legal aid counsel). The activities of the Directorate during the period under review also include:
- Designation of legal aid officers at all Magistrate Courts;
- Developing of performance standards for designated legal aid officers;
- Implementation of Public Defender Project; and
- Review of Legal Aid Regulations.

Successes
- The review of the Legal Aid Regulations has been completed and is now with the legislative drafters;
- Performance standards for designated legal aid officers were finalized;
- The recruitment of 13 legal aid lawyers under the Public Defender Project was completed;
- New offices were opened at Outjo, Otavi, Okahandja, Ohangwena and Aranos; and
- Additional legal aid lawyers were posted at Khorixas, Rehoboth, Gobabis, Walvis Bay, Mariental, Tsumeb, Grootfontein and Ondangwa. At these stations, there are now be two legal aid lawyers, to enable the legal officers to cope with the work load and match the ratio of Public Prosecutors/ Magistrates to legal aid lawyers. This will also result in a reduction in instructions to private legal practitioners which should save on costs on legal fees.

Statistics of applications for legal aid

![Graph showing legal aid requests by region]

**TOTAL LEGAL AID APPLICATIONS**

- **APPEALS**
  - Granted: 90
  - Refused: 83
  - Pending: 10

- **DIVORCE**
  - Granted: 120
  - Refused: 24
  - Pending: 21

- **CRIMINAL**
  - Granted: 391
  - Refused: 391
  - Pending: 299
**DIRECTORATE: MASTER OF THE HIGH COURT**

**Mandate**

- Administration of deceased estates
- Liquidations (insolvent estates)
- Registration of trusts
- Appointments of and supervision of administrators appointed as curators
- Administration of deceased estates

**Overview of Activities**

The Master supervises the administration of deceased estates to ensure an orderly winding up of the financial affairs of the deceased, and the protection of the financial interests of the rightful heirs and creditors that have claims against estates.

All liquidations and insolventcies fall under the jurisdiction of the Master of the High Court and as such the Master must ensure that the rights of creditors are protected. The administrative process supervised by the Master includes the following duties:

- advise the court by way of a report on whether or not an insolvency order will be to the advantage of the creditors;
- appointing and removing trustees and liquidators;
- advertising court orders and first meetings of creditors;
- presiding at all meetings and interrogations;
- deciding on the validity of creditor’s claims;
- issuing orders for payment of contribution by the insolvent;
- approving trustee’s/liquidator’s liquidation and distribution account; and
- advise the court by way of a report on whether or not the applicant should be rehabilitated.

All inter vivos trusts must be registered to the Master of the High Court. The Master must ensure that trusts are administered in terms of the provisions of the Trust Deed and the Trust Money Protection Act, 1934 (Act No. 34 of 1934).

The Master of the High Court administers the Guardian Fund, which is created for funds which are paid to the Master on behalf of various persons known or unknown, such as minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a usufructuary or fideicommissary nature. Funds may be claimed by guardians of minors for maintenance and education of such minors. Funds not needed for the needs of minors must be invested and earn interest.

The functions of the Guardian’s Fund are as follows:

- To receive and disburse funds;
- to invest funds and calculate interest thereon;
- to safe keep and control hypothecation and security deeds for money accruing to minors;
- to compile and publish annual lists of unclaimed sums exceeding N$500,000.

**Successes**

The primary achievement of the Directorate is the finalization of the Integrated Financial and Case Management System. Phase one of the system was completed during the 2017/2018 financial year.

The Guardian’s Fund investments showed a growth of Funds by 5.67% despite very volatile markets.

**Statistics**

During the 2016/2017 financial year, 2,270 estates were reported to the Master of the High Court offices in Windhoek while 823 estates were reported to the office in Oshakati.

![Deceased Estates Reported During 2016/17](image)

Insolvencies and liquidations that were reported during 2016/17 and Trusts registered during 2016/17:

![Insolvencies and Liquidations, and Trusts](image)
Activities of the Guardian’s Fund during 2016/17:

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>2016/2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>% 6</td>
</tr>
<tr>
<td>New accounts opened for beneficiaries</td>
<td>6,876</td>
</tr>
<tr>
<td>Monies paid to beneficiaries</td>
<td>N$101,275,587.85</td>
</tr>
<tr>
<td>Value of the Fund</td>
<td>N$1,436,468,678.32</td>
</tr>
</tbody>
</table>

**DIRECTORATE: LAW REFORM**

**Mandate**


- Repeal of obsolete or unnecessary enactments
- Making the law more readily accessible
- Integration or harmonization of the customary law with the common and statutory law
- Procedures for the administration of the law and the dispensing of justice
- Ensure compliance with international legal obligations
- Enactment of laws to enhance respect for human rights
- Procedures for the administration of the law and the dispensing of justice
- Ensure compliance with international legal obligations
- Enactment of laws to enhance respect for human rights

**Successes**

**Capacity Building:**

The Directorate Law Reform received formal endorsement of the proposed structure for the Directorate. As a result Law Reform was able to appoint five new staff members under the Directorate. The additional staff increased momentum of progress on meeting operational objectives.

**Stakeholder Assistance:**

The Directorate of Law Reform serves on numerous committees providing technical assistance to various stakeholders, in particular projects that require legislative and policy reform. Law Reform has also facilitated the finalization and success of certain projects, such as, the transition of The Polytechnic of Namibia into Namibia University of Science and Technology.

**Challenges**

Law reform is a very slow process because it inherently involves in-depth and extensive consultation with stakeholders and can take a long time before projects are finalized.

**Overview of Activities**

The Commission has been working on the following projects:

**INSOLVENCY ACT, 1936**

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

The power of the trustee to decide whether to abide by some transactions and to refuse from abiding by others under sections 35 and 46 of the Insolvency Act, 1936 is detrimental to a third party, who can then only sue the insolvent estate as a concurrent creditor for any damages which such third party can prove to have suffered. At present, the average recovery rate for secured creditors in Namibia upon insolvency stands at 34.9 cents on the dollar, which often means that concurrent creditors obtain a negligible return in the event of insolvency.

The Bank of Namibia then proposed that Namibia should adopt an approach similar to that of South Africa’s Insolvency Amendment Act, 1995 (Act No. 32 of 1995), which would define certain “agreements” entered into with a financial or banking institution which cannot be set aside by the trustee. However, apart from sections 35 and 46 of the Insolvency Act, 1936, the Commission sought to review the adequacy of the antiquated Insolvency Act, 1936 as a whole in order to determine whether or not its current provisions, which have been in force for over 70 years, still play a relevant role in the facilitation of credit and particularly, with Namibia’s international trade obligations under international law.

**NEW EQUITABLE ECONOMIC EMPOWERMENT FRAMEWORK (NEEEF) BILL**

The first BEE policy in Namibia was developed in 2008 called the Transformation Economic and Social Empowerment Framework (TSEEF). The document was then submitted to the Prime Minister’s Office who in 2011 replaced it with the New Equitable Economic Empowerment Framework (NEEEF). NEEEF thus has its origins in BEE and TSEEF.

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

The justification of the NEEEF project is to facilitate the passing into law of the National Equitable Economic Empowerment Framework. Once the NEEEF is passed into law, it will serve as the official national programme for economic transformation and empowerment, economic empowerment standards and transformation charters. The quintessential justification for this project is to distribute wealth across a broad spectrum of previously disadvantaged Namibians.
In pursuance of its legislative mandate to ensure that the populace has access to laws, state enactments, judgments, international agreements, conventions and treaties, to which Namibia is party, the LRDC submitted a Concept Note and Proposal for the establishment of a Section 21 registered company under the name of Namibia Legal Resources and Information Institute (NaLRII) to the Cabinet of the Republic of Namibia.

The Namibian Legal Resources and Information (NaLRII) was subsequently established through a Cabinet Action Letter which established it as the country’s foremost Free Access to Law and Open Justice initiative.

The establishment of NaLRII falls within the ambit of the objects of the LRDC under the provisions of the Law Reform and Development Act, 1991 (Act No. 29 of 1991) which mandates the LRDC to undertake research in connection with all branches of the law of Namibia and to make recommendations for the reform and development thereof. Section 6(b) in particular, directs the Commission to “consolidate or codify any branch of the law and introduce measures aimed at making the law more readily accessible”.

The establishment of an e-laws portal providing Free Access to Law is therefore and initiative which speaks directly to the statutory responsibility the LRDC is tasked with in making laws more readily accessible.

During the research process, the LRDC identified certain shortcomings in the administration of the provisions of section 17(6) of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928), which adversely affects certain marriages due to the operation of the law.

It became evident over the years that marriage officers or parties were not correctly informed as to the applicable laws and no clarity exists as to the format of the signed declaration required when parties intend to be married in community of property. Some of the standard marriage certificates issued by the Ministry of Home Affairs do not refer to the section 17 (6) declaration or options applicable to married couples outside of the Police Zone. The effect is such that couples married outside of the Police Zone who intended and believed to be married in community of property. Therefore, all marriages by virtue of the above proclamation apply the default 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. This proclamation discriminates against persons who intend to get married based on their race and geographical location, thus justifying the need for legislative reform.

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

The current law on divorce applicable in Namibia is archaic and not conversant with the everyday social realities of the Namibian people. 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 fact that the last major statutory reform of the law on divorce took place nearly a century ago, (Divorce Laws Amendment Ordinance dated 1935) indicates that these laws require our attention. In this regard then, the reform of the Namibian law on divorce remains a matter that is long overdue.

Such reform is necessary to ensure that the divorce law is in line with the constitutional right to freedom of association and disassociation, which is inclusive of the right to enter and terminate a marriage. It is therefore, contrary to public policy for a spouse to remain in a marriage that detrimental to their well-being.

Namibia’s development agenda is set out in the following development policy framework:

(a) Vision 2030;
(b) National Development Plans (NDP 4);
(c) Harambee Prosperity Plan

In the context of Namibia, development finds its definition and meaning in the country’s development policy framework as laid down below.

The National Road Safety Council was tasked with the road safety management pillar of the Namibian plan of action. A study was thereafter undertaken by the National Roads Safety Council to assess both legislative and institutional setups of roads safety management in the country as well as the existing management capacity. The study revealed serious shortcomings in the current road safety management system hence the Road Safety Management Bill which is the focus of this project.
DOMESTICATION OF THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

Namibia ratified the UNCAT on 28 November 1994. The UNCAT universally bans the death penalty and any other forms of torture and cruel, inhuman and degrading treatment.

The United Nation's Committee on Torture Reports reflect negatively with regard to Namibia's compliance under the Convention against Torture. Article 2 and 4 of the UNCAT requires Namibia to implement and enforce legislative, judicial and administrative measures in purport of preventing abusive conduct that amounts to torture or cruel, inhuman and degrading treatment. The UNCAT further provides for specific criminalisation of torture into domestic legislation, the necessity to exclude evidence obtained by the use of torture or other forms of cruel, inhuman and degrading treatment in all proceedings and to enact legislation for the investigation of any substantiated allegations of torture inter alia.

REPEAL OF OBSOLETE LAWS PROJECT

The Chairperson of the LRDC, Mr. Sakeus Shanghala, acted in terms of the powers vested by Section 6 (a) of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) by initiating this project aiming to identify those laws potentially obsolete and redundant. The current Chairperson and the Project Commissioner reformed the methodology and transformed it into a programme with a ministerial approach. After the programme will be finalised, a report together with a Draft Bill will then be submitted to the Minister of Justice, who will table it for Parliament consideration.

The LRDC consulted widely before finalizing its repeal proposals. The purpose of consulting is to secure as wide a range of views on the proposals as is practicable from all categories of persons who may be affected by the proposals.

In adopting a ministerial approach the LRDC dealt with every ministry individually. After consulting the Namibian statute books and giving consideration to the content of the statute as a determinate, the LRDC drew up lists of statutes under each ministry that are potentially obsolete. These laws were assessed and collected in one database per ministry. These lists of laws were circulated to the concerned ministries.

After being consulted the ministries provided input on the laws identified and made recommendations on their obsoleteness or redundancy, if any. Otherwise they gave examples on their necessity, as well as identified laws which were not on the list. These recommendations were made in the form of written submissions to the LRDC.

The LRDC will prepare a Draft Bill for the repeal or amendment of the recommended obsolete law, according to their powers in section 7 (4) of the LRDC Act. The 1st edition will deal with the laws administered by the Ministry of Agriculture, Water and Forestry.

Training, Workshops and Consultations

<table>
<thead>
<tr>
<th>MONTH</th>
<th>EVENTS</th>
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<tbody>
<tr>
<td>APRIL</td>
<td>• Oshakati&lt;br&gt;• Governors and Councillors Training Workshop&lt;br&gt;• Accra, Ghana&lt;br&gt;• Convention against Torture</td>
</tr>
<tr>
<td>MAY</td>
<td>• New York&lt;br&gt;• Unictral Working Group 49th Session&lt;br&gt;• Geneva&lt;br&gt;• Racial Discrimination</td>
</tr>
<tr>
<td>JUNE</td>
<td>• Dar-Es-Salamm, Tanzania&lt;br&gt;• Regional Meeting of Experts and stakeholders on albinism</td>
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<tr>
<td>JULY</td>
<td>• Grootfontein, Otjiwarongo, Rundu, Ongwediva&lt;br&gt;• NEEEB consultations</td>
</tr>
<tr>
<td>AUGUST</td>
<td>• Mariental, Keetmanshoop&lt;br&gt;• NEEEB consultations</td>
</tr>
<tr>
<td>SEPTEMBER</td>
<td>• Swakopmund&lt;br&gt;• 2nd review of Annual Plan</td>
</tr>
<tr>
<td>OCTOBER</td>
<td>• Swakopmund&lt;br&gt;• ALRAESA&lt;br&gt;• LRDC 25th Anniversary Conference and launch of NamibLII</td>
</tr>
<tr>
<td>NOVEMBER</td>
<td>• Johannesburg&lt;br&gt;• Conference On Advancing The Rights Of Persons With Albinism</td>
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</table>
**Mandate**

**Successes**

- Completed the submission and presentation of all human rights reports which are under the mandate of the Ministry of Justice. Therefore there are no outstanding human rights reports for which the Ministry of Justice is responsible for.
- A long standing request for extradition from the United States of America for the return of Kobi Alexander was completed after the said fugitive voluntarily agreed to return to the United States of America to face charges agreed upon.
- Hosted a Workshop on UNCAC Review, together with the Anti-Corruption Commission.
- Hosted the International Red Cross regional peer to peer review regional meeting. The meeting was attended by chairpersons and other key stakeholders from Botswana, Malawi, Namibia, South Africa, and Zimbabwe.
- Various staff members attended key training interventions which are important for the execution of the Directorate’s mandate: Training of Trainers, The right to Development, Indigenous people’s rights, and training workshop for the National IHL Committee.
- Draft amendments on the Extradition Act and the International Cooperation in Criminal Matters Act were completed and submitted to the Legislative Drafting during the period under review.
- Published two (2) booklets which contains recommendations made to Namibia in respect of the following reports: booklet 1 -Universal Periodic Report; and booklet 2 -International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social & Cultural Rights (ICESCR), and International Convention on Elimination of All Forms of Racial Discrimination (ICERD). These booklets were distributed to various stakeholders and IMC members.
DIVISION: COMMUNITY COURTS

<table>
<thead>
<tr>
<th>DATE</th>
<th>COMMUNITY COURTS</th>
<th>OFFICIALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 February – 04 March 2016</td>
<td>Ukvangali Community Court, Ukwambi Community Court, Oukwanyama Community Court, Ombalantu Community Court, Aodaman Community Court, Mbunza Community Court, Ovambenderu Community Court, Gciriku Community Court, Khowesem Community Court, Shambyu Community Court, Tsodaman Community Court, Zeraua Community Court</td>
<td>Ms. J. Simvula Mr. J. Ndjuwu</td>
</tr>
<tr>
<td>Inspection &amp; Delivery of Recording Machines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 – 24 June 2016</td>
<td>Clerks and Messenger Ukvangali Community Court, Kxoo Community Court, Tsodaman Community Court, Mayeyi Community Court, Ovambnderu Community Court, Gaio daman Community Court, Ovambenderu Community Court, Oegan Community Court, Vita Royal Community Court</td>
<td>Ms. K. Loch</td>
</tr>
<tr>
<td>Otjiwarongo, Training for Clerks, Justices &amp; Assessors of Community Courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 – 24 June 2016</td>
<td>Justices &amp; Assessors Daure Daman Community Court, Gaio Daman Community Court, King Morwe Community Court, Kambazembi Community Court, Maharero Community Court, Ovambnderu Community Court, Oegan Community Court, Kxoo Community Court</td>
<td>Ms. L. Sambi Mr. J. Ndjuwu</td>
</tr>
<tr>
<td>Otjiwarongo, Training for Clerks, Justices &amp; Assessors of Community Courts</td>
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**Issuing of Apostilles**

The Directorate issues Apostille for and on behalf of the Ministry of Justice, in terms of the Apostille Convention. The Directorate takes three (3) working days to issue an Apostille. The following are the total number of Apostille issued by the Directorate during the reporting period:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NUMBER OF APOSTILLE ISSUED</th>
</tr>
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<tbody>
<tr>
<td>April 2016 – 31 December 2016</td>
<td>584</td>
</tr>
<tr>
<td>1 January 2017- 16 March 2017</td>
<td>312</td>
</tr>
<tr>
<td>TOTAL</td>
<td>896</td>
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**Human Rights**

During the reporting period, no human rights reports were submitted to any treaty body. However, staff members of the Directorate: Legal Services participated in the presentation and defending of the following reports:

- African Charter on Human and Peoples’ Rights
- International Convention on Civil and Political Rights
- International Convention on Economic Social and Cultural Rights
- International Convention on the Elimination of all Forms of Racial Discrimination
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The following responses on concluding observations or recommendations were submitted to the relevant treaty bodies:

- Universal Periodic Report
- African Charter on Human and Peoples’ Rights

**Disciplinary Committee for Legal Practitioners**

The current members of the Legal Practitioners Disciplinary Committee were appointed in terms of section 34 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995) for the period 22 January 2015 until and 22 January 2017. The Members are Mrs. Eldorette Harmse, Mr. Andreas Vaatz, Mr. Nixon Marcus, Ms. Mada Opperman and Mr. Silvanus Nepunda.
Board for Legal Education

Statutory Provisions
The Board for Legal Education is established in terms of Section 8 of the Legal Practitioners Act, No. 15 of 1995. The administrative work pertaining to the functions of the Board or a committee of the Board shall be performed by officers in the Ministry of Justice made available for that purpose by the Permanent Secretary: Justice. The Permanent Secretary: Justice may designate an officer in the Ministry of Justice to act as secretary of the Board or of any committee of the Board.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
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<tbody>
<tr>
<td>New Applicants</td>
<td>60 candidates</td>
<td>110 candidates</td>
<td>120 candidates</td>
</tr>
<tr>
<td>Repeaters</td>
<td>20 repeaters</td>
<td>40 repeaters</td>
<td>40 repeaters</td>
</tr>
<tr>
<td>Total</td>
<td>80 candidates</td>
<td>150 candidates</td>
<td>160 candidates</td>
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</table>

*Please take note that 210 new applicants were accepted into the JTC programme of 2017 and an estimated 70 repeaters from the previous years. Registration only commences from 22-24 March 2017 for new applicants and repeaters may register from 03 April 2017.