



Republic of Namibia

MINISTERIAL MOTIVATION

ON THE

LAW REFORM AND DEVELOPMENT COMMISSION REPORT

AND

BILL

ON THE REPEAL OF OBSOLETE LAWS: PHASE 2

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

MS. YVONNE DAUSAB, MP

13 OCTOBER 2022

– To be checked against delivery –

Honourable Speaker,
Honourable Members,
Members of the Public,

1. The Law Reform and Development Commission (LRDC) is established in terms of section 2 of the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) (“LRDC Act”) to perform a number of objects listed under section 6 of the LRDC Act. These are to more generally undertake research, review and examine Namibian law in order to make recommendations for reform and development, in an effort to improve the lives of our people.
2. More specifically and as part of the mandate to repeal obsolete or unnecessary enactments under section 6(a) of the LRDC Act, the Commission commenced with Phase 1 of the Obsolete Laws Project in 2013. This culminated in the promulgation of the Repeal of Obsolete Laws Act 21 of 2018. The Repeal of Obsolete Laws Act of 2018 repealed and amended a total 143 proclamations, ordinances and Acts when it was operationalized on 1 March 2019.
3. In 2019, the LRDC initiated phase 2 of the Repeal of Obsolete Laws project, and identified for repeal an additional 71 discriminatory and outdated legislative pieces, which included amendments to the principle obsolete statutes.
4. It was and continues to be evident that the accumulation of such discriminatory and in many instances problematic laws has hampered our nation from moving forward, and the consequences of their application are no longer beneficial and in line with the letter, spirit and values of our current Constitutional dispensation.
5. As a government we further recognise that public perception is that we are not doing enough to rid our legal landscape of outdated or obsolete laws. Whilst we accept this criticism, we can assure the public that there are ongoing reform projects to improve this situation. But law reform is long and tedious and requires public support and understanding. In fact, we encourage the public to assist with

identifying and informing us of laws they encounter and which are no longer beneficial in a Namibian society.

6. The term “obsolete laws”, for the purposes for instance of the Obsolete Laws Project refers to laws that are no longer relevant in Namibia for a number of reasons, such as:
 - 6.1 The law is superseded by more recent legislation covering the same subject matter;
 - 6.2 The law was enacted to serve a specific purpose that has already been concluded;
 - 6.3 The law is a patently unconstitutional relic of the apartheid system; or
 - 6.4 The law is clearly irrelevant in an independent Namibia.

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Honourable Members,
Members of the Public,

7. Whilst this criteria is helpful, we must recognize the consequences of simply repealing or reforming laws by virtue of being laws that were proposed or used during apartheid.
8. Article 140 of the Namibian Constitution addresses laws in force at the date of independence. This provision was designed to prevent a *lacuna* in the law by providing that all laws in force immediately before the date of Independence would remain in force until repealed or amended by an Act of Parliament, or until declared unconstitutional by a competent Court.
9. The review and reform of these are ongoing, as some pieces of legislation were also superseded by other laws or overtaken by historical developments, and this repeal bill intends to do just that.

10. During the review process the public was informed through newspaper adverts and social media explaining the background and listing the laws initially identified for scrutiny. Letters were also sent out to individual Ministries and other Government agencies soliciting their comments on potential obsolete laws administered by them.
11. As a result, the second phase of the Repeal of the Obsolete Laws Project was reinforced by the submission of proposals by various organisations, ministries, agencies and civil societies in Namibia in accordance with section 7(2) of the LRDC Act which empowers the Commission to “invite and receive any suggestions relating to its objects from any person or body”. In particular, I want to single out the Legal Assistance Centre (LAC) for their role in identifying some obsolete laws and assisting with some research.
12. The consultation process is of critical importance to avoid simply repealing laws that still have some benefit given the political, administrative and legal history of Namibian laws. Admittedly some Namibian statute books are in a state of flux and requires constant review, revision and reform in our effort to ensure relevance and responsiveness of our laws.
13. We further found that there is some confusion as to whether a particular statute does or does not find application in Namibia. The Namlex resource maintained and with regular updates by the LAC is valuable in this regard, as it provides information that clarifies the correct position. It is therefore important that various stakeholders were consulted who deal with the laws on a daily basis to provide insight in the practical implications and usefulness as well as to make recommendations for any repeal or amendment, as they deem appropriate.
14. It is as a result of that consultative process, the LRDC prepared and finalised the report and draft Bill on the Repeal of Obsolete Laws: Phase 2.
15. This submission was done in accordance with the provisions of section 9(1) of the LRDC Act that requires the Commission to prepare a full report of any matter

examined by it to submit such report together with draft legislation to the Minister of Justice for consideration.

16. The lay man's draft bill on the Repeal of Obsolete laws was then submitted to the legislative drafters for finalization and thorough verification to ensure that the list of laws to be repealed by the bill not leave a *lacuna* in the law or cause any prejudice to the general public and institutions administering such laws.

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Honourable Members,

Members of the Public,

17. The Repeal of Obsolete laws bill will provide for the repeal of certain obsolete laws, many of which are discriminatory on the grounds of gender, race, colour, ethnic origin, religion, creed as well as social and economic status.
18. For instance among these obsolete statutes are the Natives Minimum Wage Proclamation of 1944 (Proclamation No. 1 of 1944) and the Cultural Promotion Ordinance of 1980 (Ordinance No.9 of 1980).
19. The LRDC stated in its report that the Natives Minimum Wage Proclamation of 1944 provided for the payment of minimum wages to "natives". It defined a native as any person other than a European.
20. The Natives Minimum Wage Proclamation of 1944 is clearly discriminatory on the basis of race, as it only regulates the wages of "natives" and excludes other races. It is also a violation of the guarantees of non-discrimination and equality before the law in Article 10 of the Namibian Constitution, as well being a vestige of the oppressive contract labour system, which was a defining feature of the pre-Independence era.

21. A comprehensive, non-discriminatory scheme for setting minimum wages is now provided for by section 13 of the Labour Act, 2007 (Act No. 11 of 2007).
22. Another obsolete law is the Cultural Promotion Ordinance of 1980, which gave prominence to the promotion of the culture of the white population group in South West Africa. It also provided for the funding of cultural organisations, among others. This Ordinance has since independence been replaced by Article 19 of the Constitution, which guarantees the right to culture irrespective of race.¹
23. These are just a couple of examples of the numerous obsolete laws that are covered by the proposed bill. In total the bill is proposing to repeal or amend laws on various issues covering procurement, railway and harbour matters, trespassing and concerted financing for farmland, to name a few.
24. Therefore, with this bill, we are speeding up the large-scale process of cleaning up and modernising the Namibian statute books, and in so doing making the law simpler and more accessible to all Namibians.

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Members of the Public,

25. I would therefore like to encourage this August House to support the LRDC Report and accompanying bill on the *Repeal of Obsolete Laws: Phase 2* and to keep in mind that the LRDC performs an important function that encourages ordinary men and women on the streets of our communities to influence Government policy through consultations to enable participation in the law-making process.
26. This consultation and participation in the law-making process is important because it confirms that the power of the State indeed vests with the Namibian people, and

¹ Report on the Repeal of Obsolete Laws: phase 2. p. 30.

it is this power that forms the fundamental cornerstone of our constitutional democracy. There is no doubt that we need to do more, and we are committed to do just that, as we commit to start the next phase on repealing obsolete, outdated laws, and encourage the public, political parties, social movements, private sector actors, and various institutions to continue with helping us identify outdated laws they encounter to be considered for repeal or amendment.

I thank you and so submit.