REMARKS BY YVONNE DAUSAB, CHAIRPERSON OF THE LAW REFORM AND DEVELOPMENT COMMISSION AT THE GALA DINNER OF THE SOUTHERN AFRICAN LAW TEACHERS CONFERENCE, 20 JANUARY 2017, SWAKOPMUND, NAMIBIA.

------------------------------------------------------------------------------------------------------------

Director of Ceremonies,

The Mayor of Swakopmund, Dean of the Faculty of Law, the new elected and outgone President of the Society of Law Teachers in Southern Africa, respectively, senior government officials from both Namibia and South Africa present, teachers of law from various universities in Southern Africa, distinguished scholars in various fields, ladies, gentlemen and members of the media present, **good evening.**

As I was reflecting on how to impress scholars of your calibre and thinking about how to sound academic and highly intelligent, I was reminded that a gathering of this nature is an opportunity for honest conversation and sharing of thoughts and reflections.

And so whilst perusing the brochure that announced this event on the website of the faculty of law, I noticed that there was a promise that this is a platform for exchange of sound academic research and the integration of legal academic community with institutions like the law reform and development commission *(my emphasis).*

*Dean of Faculty,*

*President of Law Teachers,*

When asked to speak at this event, *albeit* at short notice, I did not want to miss the opportunity to share the work of the Law Reform and Development Commission of Namibia, who recently started their celebratory activities of 25 years since the Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991) was promulgated. Over the years the Commission has undergone significant changes both structurally but also substantively as an institution. And as part of the broad conversations on law reform I hope to pause and talk about our work although not in too much detail.

You may not know this until about 15 years ago, the position of the chairperson was not full-time, and so the work of the commission was undertaken by imminent persons of note that did this part-time. But what is significant about that time, is the fact that many of the commissioners were activists and some of the earlier work of the Commission was happening at the backdrop of independence, and a country that needed to put certain governance structures and systems in place that would ensure a smooth transition from a country reeling from the atrocities of a divided country along racial lines, to a country that needed to move pass that and make it work. This is evident from some of the earlier and probably most notable work of the Commission.

The passing of the Married Persons Equality Act, 1996 (Act No. 1 of 1996), Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003), Combating of Rape Act, 2000(Act No 8 of 2000) and the Maintenance Act, 2003 (Act No. 9 of 2003) to name a few. The issues addressed through these pieces of legislation drives the point that we were a nation that needed to be responsive to the needs of our people particularly those that were disproportionately affected by the effects of the apartheid regime. Issues of women rights, equality, access to employment opportunities and equal access to education were at the forefront of the debates that in part informed the programme of the Commission at the time.

Over the years, the LRDC published over 30 reports, which in the eyes of the public may be considered too few for a Commission that has been in existence for 25 years. In fact mathematically it translates into one report *per annum.* But if one takes into account the various processes that the LRDC has to undergo to ensure that the report and the work that it does is credible and acceptable and worth mentioning in judgements, and academic writings, then producing one or at the most two reports with attendant draft laws is not too bad. The bigger question of course, given that we are not law makers and we only act in an advisory capacity to the Minister of Justice and the Attorney General, is whether we should do more to see more of our reports presented to Parliament and that more laws be passed and that more lives be changed as a result.

We are happy to report that of the 25 reports and draft laws, at least 10 of them have led to enactments into various laws.

Since the new Commission took office in August 2015 (this Commission’s term ends on 2 August 2018, and that of the Chairperson in April 2020) there has been an attempt to have three pieces of legislation pass into law during the first 18 months of the Commission’s work and these are Prevention and Combating of Torture bill, Uniform Matrimonial Property Regime bill (i.e Redline Marriages), Laws Impeding or Prohibiting Development and the Divorce bill.

**Director of ceremonies, law teachers,**

There is a higher burden of responsibility on you as you are expected to produce a caliber of student/graduate that will be self- aware and very conscious of the societal burden we all carry. I say this, as I found myself about a year ago still as a teacher of the law and therefore understand the pedagogical responsibility that we have been endowed with.

I acutely understand the relationship that a law reform agency such as ours should have with law teachers in particular and academia in general. It has become trite practice that all policy and legislative reform should be informed by research and data. So much so that we are constantly reminded of the need for evidence based reform. As an academic myself, I could not argue against it. Because such a proposition will simply enhance my philosophical foundations and provide the much needed scope for justifying or explaining the reasons and thinking behind an amendment, development or reform of a particular piece of legislation.

**Director of proceedings,** when we are asked to formulate our role as a law reform and development agency, the difficulty is often, whether in addition to all the other institutions that are agents of legislative and policy reform such as the judiciary and the legislator, whether you role is of particular importance.

Also it makes you really question why you reform and for who? And you ask yourself what sets you apart? Of course I am happy to announce that we have always known that our public consultation process before a draft law is developed makes us unique. Although the Commission is not a law maker, our role is to recommend the review of law, based on the needs of the societies we serve and this is why it’s is imperative that we hear what the people have to say.

**Director of proceedings,** it is because in many instances and at least at a conceptual level, law reform as a concept remains fluid. This is so because it is often widely considered as proposals of change to the law with the hope that such change will be beneficial to the broader public.

In a more narrow sense it could simply refer to the processes that we have set out for ourselves in order to bring change to the text of the law. But for us and over the years, law reform meant undoing the damage of the past at least on the statute books and bringing about law that is responsive to the changes that are taking place in the society.

**Director of proceedings, the overall theme of land reform: lessons for law, good governance and legal education** is appropriate for the kinds of challenges, we face in Southern Africa, particularly as it pertains to drought, high levels of poverty and uncomfortable levels of income disparities and inequalities.

I am certain during the course of this week, a number of hypothesis underlined the importance of land distribution and its relationship with wealth creation. And I am hopeful that the findings supported the intended consequence of raising the profile of our people in respect of amenities of life, human dignity and the pursuit of happiness.

**Director of proceedings, Dean Baloro**, any finding short of leading us to this consequence, would be a travesty of equity and justice. I am aware that these concepts have often been loosely used to mean many things in various contexts, but what remains sacrosanct about these two very important ideas is the conception that they are required to be transformative in their outcome.

We can no longer continue to talk about the greatness of our constitutional provisions and the elaborate catalogue of rights our people have when they struggle to access water, sanitation, affordable health care, quality education, decent employment opportunities and continue to suffer stigma and discrimination because of their disability.

It is commendable what our government is doing through for example Vision 2030, the National Development Plans and the more recent Harambee Prosperity Plan but there is no harm in stepping up the pace of delivering services to the people. And there is a role we and the law should play.

At the opening of the legal year in 2016, the President of the Republic, Dr Hage Geingob was the key note speaker, and during his address he said the following and I quote

“The role of law must change if not already. Contributing to socio- economic development cannot only be a purview for political, economic and social scientists. Law that has the backing of a much acclaimed constitution, like ours, must be transformative. The people of this country must come to lawyers not only to seek justice for individual matters but must come to lawyers to change the landscape of their socio-economic conditions”. End of quote.

Law teachers are the pivotal role players of transformation. It is not enough to teach our students the text of the law. We can theorise and understand the letter of our law. We will spend countless hours in the halls of our courts to argue the rule of law. There is no doubt that we have great scholars with great ability to interpret the law and to recount their understanding of common law principles. In fact law teachers and their products called lawyers spent enormous time describing what the law or rule is and what the prescriptions of it is, in other words how it should be complied with. And that is all good and well.

**But the President** in the above quote like many other scholars of note, is questioning the continued state of our societies, and is lamenting that a powerful weapon such as law does not do enough to change the *status quo* and it is likely to beg the question what is the point of it all? Corruption is rife while we have a good set of rules and institutions to reverse it. The socio –economic conditions of our people deteriorates, whilst we publish good papers on the transformative nature of our constitution. We need to do more. We need to reaffirm the character of our law.

**In other words,**

Does our law, have continuity, or is it informed by some moral code. For instance what is the meaning and effect of an overwhelmingly Christian nation in a constitutionally secular state? What kind of beliefs and values do we hold as Namibians?

Is our law pragmatic, or based on a single legal theory? Is it logical or do we consider our experiences? Do we adhere or at least remember the other characteristics of our law, namely, all persons are equal before the law, everyone is presumed innocent until proven guilty and justice in open court to name a few. Again, the point is really to think about the character of our law and how it responds to the kind of society we live in today and how if at all we need to make it better.

Over the past 12 months the Commission has been working on reforms that we thought are likely to change the landscape of torture, archaic laws and economic empowerment and these were in the form of the so called Redline Marriages bill, the Prevention and Combating of Torture, National Equitable Economic Empowerment Framework and Laws Prohibiting Development to name a few.

Director of ceremonies, law reform agencies, by their very nature consist largely of a set of lawyers, and it requires that through thematic working groups we import skills, knowledge and expertise on the range of issues that require law reform at any given time. This is so because we do not always have the knowledge and expertise in the various law reform project we are expected to develop and reform.

This is where academics i.e you the law teacher could play an important role. We need to see more of your interaction with us not only as paid consultants but also as concerned citizens. It is one thing to criticize the work of the Commission, and this is always welcome, but it is quite another to volunteer your services for free to be part of the various working committees of the Commission.

Director of ceremonies, this is a call to action. We need your support to participate in the various public consultations, to contribute to debates and to publish and raise awareness around the published works. More importantly, it is our wish that there will be an increase in the research of areas that is covered by the law reform and development commission.

As it is with any public institution, challenges of capacity and financial resources remains at our doorstep but it is not insurmountable should we receive the required support from faculties on research and the provision of continued legal education of our staff.

Director of ceremonies, law is a reflection of the type of society we live in and we may want to sit back and reconsider whether we want to be associated with the law that does not invoke a sense of unity, equity, solidarity and friendship that mirrors our sense of belonging as a collective. The review, development and reform of law is an important part in the broad scheme of things but it requires a change in the way we do things. Because in the end, rights only makes sense if we have a law that supports it. And the law will only make sense, if there is a remedy available. But a remedy will remain nugatory if there is no implementation. There must be systems, structures, strategies and institutions that will ensure enforcement and compliance. This requires all of us to play our part. This is a call to action.

*Thank you.*

**References consulted and referred to:**

Constitution of the Republic of Namibia, 1990

Curzon LB (1978) ‘Basic Law’

Bennion F (2001) ‘Understanding Common Law Legislation’

Opeskin B & Weisbrot D (2005) ‘The Promise of Law Reform’

Horn N & Bosl A (2008) ‘Human Rights and the Rule of Law’

Open Society Foundation (2013) ‘From Rights to Remedies’

Vilhena *et al* (2013) Transformative Constitutionalism: Comparing the apex courts of Brazil, India and South Africa.