

**Keynote Address by the Deputy Minister of Justice and Constitutional  
Development,  
the Hon JH Jeffery, MP  
at the SALRC's Ismail Mahomed Law Reform Essay Competition Award  
Ceremony,  
held at Royal Elephant Hotel & Conference Centre,  
Centurion,  
22 February 2019**

Programme Director, Adv Platt (SC)  
Chairperson of the SALRC, Judge Kollapen, and members of the SALRC,  
Members of the Mahomed family,  
Ms Chetty and Mr Staples from Juta,  
Ladies and gentlemen, friends

It is always an honour to attend an event that honours the legacy of Ismail Mahomed.

For nearly 35 years as advocate and later judge, Prof Ismail Mahomed fought for change in South Africa's legal and human rights' landscape.

Through commitment and a deep love for justice, this jurist became the first black person to take silk in the 70's.

A patriot, and child of the continent, Justice Mahomed served on the bench in Namibia and Botswana, as judge of the Appeal Court Division in Swaziland and, later as President of the Lesotho Court of Appeal.

He played a seminal role in the development of the ground-breaking Constitution of the Republic of Namibia.

Because of his reputation for impartiality and fairness, he was accepted as co-chairperson of the multi-party constitutional negotiations at CODESA.

In 1991, after returning home to South Africa, he broke new ground by becoming the first black person to serve in the highly esteemed and powerful position of permanent Supreme Court judge and he later served as South Africa's Chief Justice.

He had an indelible impact on South Africa and was awarded National Orders - the Order of the Baobab in Gold - for his exceptional service in the areas of law, constitutional jurisprudence and human rights.

As you know, the Ismail Mahomed Law Reform Essay Competition is a joint venture between the South African Law Reform Commission and Juta.

The aim of the competition is to encourage critical legal writing by students, whilst also generating new ideas for law reform.

The initiative seeks to encourage legal scholarship and public dialogue on the link between law reform, human rights and the rule of law and all LLB and LLM students, registered at any South African university, are eligible to enter the competition.

The 2017 cycle of the competition began in February 2017 and closed on 31 January 2018.

This cycle marked the fourteenth year of this competition.

A total of 29 essays were received, 24 essays were for the LLB category and 5 essays were for the LLM category of the competition.

The essays were submitted by students registered at 13 different universities. Of the universities represented, UCT had the most entrants with 6, following by Unisa with 5 and North West with 4.

The adjudication panel - consisting of Judge Jody Kollapen, Professor Vinodh Jaichand, Professor Marita Carnelley, Dr Ademola Jegede and Professor Dorothy Farisani - was appointed in March 2018 to evaluate the essays and identify the winners and runners-up.

Having read through the essays, what impresses one is the range of topics and areas of law that were covered.

In the LLB category, the essays covered discrimination, prescription, class actions, transformative constitutionalism and reform in basic education, the powers of the President in appointing institutions which strengthen constitutional democracy, customary law, speciesism, human rights awareness, indigenous African languages as mediums of instruction, social justice and women in mining, constitutional flaws on land title, a hetero-normative health system, accused and detained persons, illegal mining, illegal drugs such as nyaope/whoonga and our big five animals.

The winner of the LLB category, Ms Natasha Salant from the University of Cape Town, submitted two essays entitled *“A new answer to an old problem: Could the facilitation of an active civil society be an effective strategy to enhance the Consumer Protection Act’s effectiveness?”* and *“Beyond the (class)room: What education could be in South Africa”*.

Ms Janey Daniels from the University of Stellenbosch is the runner-up in the LLB category for her essay entitled *“The status of the stepchild in the law of intestate succession: A legal comparative and critical analysis.”*

In the LLM category, the essays covered topics such as the indigent female’s right to access basic education in South Africa, a legal analysis of the impact and consequences of illegal mining ventures and also food security and intellectual property development (patents for plants).

Ms Motlalepula Rakubu from the University of Limpopo won in this category for her essay entitled *“Virginity testing in South Africa: The human rights perspective”*.

As an aside, at the end of last year, I headed the South African delegation to Geneva where we appeared before the UN Committee on Economic, Social

and Cultural Rights which monitors a country's implementation of the International Covenant on Economic, Social and Cultural Rights. One of the first questions posed to our delegation was on virginity testing.

Motlalepula's essay would have explained it perfectly to the Committee, as she writes:

*"The revival of tradition, culture and customs is part of the new national international identity. However, this revival must be rooted in a way of life based on human rights, democracy and equality for all. Culture, tradition and customs have to be balanced with social and legal context of the constitutional dispensation."*

Ms Navilla Somaru from North West University is the runner-up in the LLM category for her essay entitled *"The lok adalat as an ADR instrument in South African Criminal Law"*.

For those not familiar with the lok adalat, lok means "people" and adalat means "court" - it's one of the components of alternative dispute resolution systems in India and it uses a blend of arbitration, mediation and conciliation to resolve disputes.

I want to sincerely congratulate the winners and the runners-up for very well-researched and well-drafted essays. I have no doubt whatsoever that you all have very promising legal careers ahead of you.

I also want to congratulate their supervisors and their families – as a parent myself, one knows the many hours of hard work and dedication that they put in as well as the sacrifices that families make for our children to be successful.

So why do we undertake competitions such as this one?

Because, apart from the benefits to the students who get an opportunity to showcase their research, analytical and writing skills, it also benefits the country as a whole.

We need critical thinking in a developmental state and whatever research is done must be aimed at keeping the law abreast of developments in society and in tune with the needs of South Africa's diverse population and national policy priorities.

The law is not static, it is dynamic – it adapts, and must continue to adapt, to meet the needs of society. Therefore the modernisation, improvement, development and reform of the law is something that we do continuously.

The SALRC investigates the state of South African law and makes proposals for its reform.

To give you an idea of the important work being done by the SALRC, one just has to look at some of the more recent investigations undertaken by the SALRC, which include the custody of and access to minor children, a review of aspects of matrimonial property law, Hindu marriages, a review of the law of maintenance, the topic of adult prostitution, also pornography and children and a review of witchcraft legislation.

Our Department – the Department of Justice and Constitutional Development – prepares the new laws, known as Bills. Once the Bills are approved by Cabinet, they are introduced into Parliament, where they are then deliberated upon and passed.

Some of the more recent examples include a Bill to deal with cybercrime and then the Prevention and Combating of Hate Crimes and Hate Speech Bill which is currently being deliberated on in the Parliamentary Portfolio Committee.

Parliament can decide to accept the Bill as drafted, or it can amend it. Parliament also publishes Bills for public comment and they can decide to hold public hearings and ask the public for comments on new legislation, if the topic of the Bill is contentious or in the public interest.

I want to commend the SALRC for the initiative it has taken with this competition and also Juta's for their generous assistance.

We are, of course, also very excited about the next round of the competition.

The closing date for entries was 31 January and it was decided to use this competition as a vehicle to honour various legal luminaries who have dedicated their lives to the advancement of our constitutional democracy, therefore the 2018 season is dedicated to the memory of the late Chief Justice Pius Langa.

I want to congratulate **all** the entrants, their supervisors and their universities. We know that legal research and legal writing are not always easy. It takes courage and confidence to take an idea, to research it fully and to then put it on paper for others to critically evaluate – in this case, to be evaluated by some of the sharpest legal minds around.

All the entrants can be very proud of what they achieved and we shall be watching their legal careers with keen interest.

All of us, here this evening, are in some way or another involved in making the law better.

Some of us teach the law, some of us help to draft the law, some of us pass the laws and others interpret the laws.

But we also do more than that - we work to develop the law, to make justice accessible and to make the justice system work.

So I want to leave you all with a line from Natasha's essay, where she writes:

*“For it is not enough for legislation to be legally flawless; it is also important for its beneficiaries to be able to understand, participate in, and ultimately profit from its intended impact.”*

I thank you.