

SALC BULLETIN

Newsletter of the South African Law Commission

Accomplishments and challenges faced

One criterion for measuring service delivery in the law reform field is the percentage of a law reform agency's recommendations that is implemented by the government of the day in the form of legislation passed by the elected representatives of the people sitting in Parliament. Since the Commission's inception there has been an above average implementation of the recommendations contained in its reports.

Another criterion for measuring success is the regard in which a law reform agency's work is held, even where such work does not result in legislation. A reputation for integrity, quality, and fair and impartial research is an enviable one, enabling a law reform agency to advise the government of the day to the best of its ability regardless of the popularity of such advice. We are working towards maintaining the standard of excellence on which such reputations are based.

As far as the newly constituted Commission is concerned, the greatest success in 24 months of operation has been the achievement of a measure of openness, inclusiveness and accessibility. The Commission's policy of outreach and wide consultation is beginning to bear fruit: more individuals and organisations than ever are willing to participate in its work.

The primary challenge faced by the Commission is the establishment of

a firm base of legitimacy. This is a slow, arduous and costly task. The project committee approach enables the Commission to draw on a wide range of South African expertise, but it also entails costs in terms of airfares, hotel accommodation, etc when these committees have their meetings. Similarly, hearings, meetings and workshops around the country have their own financial implications. Finding the right balance between the need to encourage public participation in the Commission's programmes, and the constraints of the budget, will be a major challenge in the future.

The job of law reform itself is becoming as challenging in these times of transformation as it never was before. For a long time in our history there has been a major discrepancy between the content of the law and the ideal of justice. The Commission serves at a crucial time where it needs to rise to the challenge of reviewing the past, reforming the present and anticipating the future.

Legislation

The following Bills emanating from Law Commission reports were approved by Parliament:

Debt collecting: Magistrates' Courts Amendment Bill, 1997 passed as Act 81 of 1997.

The rights of a father in respect of his illegitimate child: Natural Fathers of Children Born out of Wedlock Bill, 1997 passed as Act 86 of 1997.

Speculative and contingency fees:

Contingency Fees Bill, 1997 passed as Act 66 of 1997.

International Workshop on Juvenile Justice

A very successful international workshop on drafting juvenile justice legislation was held in Gordon's Bay from 4 - 6 November 1997. The following papers were delivered by foreign experts:

Legislation for the inclusion of principles in juvenile justice legislation: Ms Geraldine van Bueren (UK).

Legislation for the best interest of the child: Ms Kimberley Gamble Payne (Kenya).

Legislating for restorative justice: Mr Dan van Ness (USA).

Prosecutorial discretion: Ms Mary Anne Kirvan (Canada).

Discretion of the presiding officer: Ms Estelle Appiah (Ghana).

Juvenile courts: Judge Michael Corriero (USA).

Effective legal presentation: Ms Bernadine Dohrn (USA).

Legislative measures to involve children, families and communities: Ms Allison Morris (New Zealand).

Legislating to ensure equal application of juvenile justice legislation in rural and urban areas: Mr Patrick Kakama (Uganda).

Legislating for juvenile justice in developing countries: Mr Gopolan Balagopal (Bangladesh).

Sentencing and alternative sentencing: Judge Renate Winter (Austria).

Review of the Marriage Act

An investigation into the review of the Marriage Act has been included in the Commission's programme. The investigation will focus mainly on whether the provisions contained in the Marriage Act 25 of 1961 are adequate or whether they should be amended and, in that event, the way in which such amendments should be effected.

The Commission wishes to draw attention to two of its investigations which have a direct bearing on this project, namely *Customary Marriages* and *Islamic Marriages*. The investigation into *Customary Marriages* has already resulted in an issue paper and a discussion paper containing preliminary recommendations, whereas the investigation into *Islamic Marriages* is still in its planning stage.

The Commission invites the comments of all parties who feel that they have an interest in the topic concerned or may be affected by the type of measures set out in the Marriage Act. Based on the outcome of these comments a discussion paper setting out the issues and containing preliminary recommendations and draft legislation will be prepared and distributed for general information and comment. Finally, on the basis of these comments and discussions, a report containing the Commission's final recommendations will be prepared and presented to the Minister of Justice.

Commissioner Zubeda Seedat attended the 9th International Symposium on Victimology, Amsterdam, 25-29 August, with the

It would be appreciated if written comments or suggestions could reach the Commission by 20 February 1998 at the address given on page 3.

Members of the Commission

The Chairperson is Chief Justice Ismail Mahomed, former Vice-President of the Constitutional Court. The Vice-Chairperson is Judge Pierre Olivier, a Judge of the Appeal Court. The full time member is Professor Thandabantu Nhlapo. The other members are Judge Yvonne Mokgoro, a judge of the Constitutional Court, Advocate Jeremy Gauntlett SC from the Cape Bar, Ms Zubeda Seedat, an attorney practising in Durban, and Mr Phineas Mojapelo, an attorney practising in Nelspruit.

Programme of the Commission

The following projects on the Commission's programme are currently receiving attention:

- 47 Unreasonable stipulations in contracts and the rectification of contracts
- 59 Islamic marriages and related matters
- 63 Review of the law of insolvency
- 73 The simplification of criminal procedure
- 82 Sentencing
- 85 Aspects of the law relating to AIDS

theme "Caring for Victims". She attended the presentations on family victims and the justice system, domestic violence and violence

- 86 Euthanasia and the artificial preservation of life
- 88 The recognition of a class action in South African law
- 90 Harmonisation of the common law and indigenous law
- 94 Arbitration
- 96 The Apportionment of Damages Act, 1956
- 100 Family law and the law of persons:
 - * Maintenance
 - * Domestic violence
- 101 The application of the Bill of Rights on the criminal law, criminal procedure and sentencing
- 105 Security legislation
- 106 Juvenile Justice
- 107 Sexual offences by and against children
- 108 Computer related crimes
- 109 Review of the Marriage Act
- 110 Review of the Child Care Act
- 111 Jurisdiction of Magistrates' Courts in constitutional matters
- 112 Sharing of pension benefits

Participation in Conferences

against children. At the discussion groups she informed participants of the South African law on the topics under discussion, the work of the

Law Commission and the trends in law reform that are taking place in South Africa. Some useful contacts were made.

Ms Seedat also visited the Law Commissions of England, Scotland and Ireland. In Ireland she met with Dr Gerard Quinn, Director of the Law Reform Commission, and the Secretary, Mr John Quirk.

In Scotland Ms Seedat was received by Lord Brian Gill, Chairman of the Scottish Law Commission and Judge of the High Court in Edinburgh, as well as Commissioners Whitty and Reed and the Secretary, Mr Maclean.

At the English Law Commission Ms Seedat met with Commissioners Diana Faber (specialising in Company and Commercial Law) and Stephen Silber QC as well as team managers Mr David Symes (Common Law) and Mr Jonathan Holbrook (Property and Trust Law).

Time was spent discussing the working methods and projects of the SA Law Commission and the abovementioned law reform agencies and constructive links were established.

Invitation

Interested parties are invited to submit proposals for law reform and information in respect of projects to the Commission.

The Commission's offices are situated at 228 Visagie Street, Pretoria.

The postal address is Private Bag X668, Pretoria 0001.

Tel: (012) 322-6440

Fax: (012) 320-0936

E-mail: lawcom@salawcom.org.za

The Commission's office hours are from 07:15 to 15:45 on Mondays to Fridays.

Internet

Some of the Commission's documents are also available on the Internet. The site address is:

<http://www.law.wits.ac.za/salc/salc.html>

Subscribe to listserv on the site address to be notified by email whenever there are new SA Law Commission publications. (Note that this is not a discussion group.)

Send e-mail to

majordomo@sunsite.wits.ac.za.

Leave the Subject line **blank**, and type in **subscribe salcnotify** in the body of the message. Type **end** on a **new line**, then send the message.

You will soon receive a welcome message from the listserv.

During 1997 a substantial number of persons and institutions responded to specific or general invitations by the Commission to comment on particular matters or to assist with its activities in some respect or other. The Commission wishes to express its sincere thanks to all concerned and to wish them a happy and prosperous year ahead - without their goodwill and assistance the Commission would not be able to perform its duty satisfactorily.