South African Law Reform Commission

DISCUSSION PAPER 120

STATUTORY LAW REVISION

(LEGISLATION ADMINISTERED BY THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

PROJECT 25

NOVEMBER 2010

Closing date for comments:

31 March 2011

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Introduction

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act, 1973 (Act 19 of 1973).

The members of the SALRC are –

The Honourable Madam JY Mokgoro (Chairperson)
The Honourable Mr Justice WL Seriti (Vice Chairperson)
Professor C Albertyn
The Honourable Mr Justice DM Davis
Mr NT Ngcukaitobi
Advocate DB Ntsebeza SC
Professor PJ Schwikkard
Advocate M Sello

The Secretary of the SALRC is Mr Michael Palumbo. The project leader presently responsible for this investigation is Mr Tembeka Ngcukaitobi. Ms Thuli Madonsela, the then Full-time member of the Commission until her resignation on 31 October 2009 when she took up appointment as Public Protector, was project leader when this review commenced in October 2008. The Researcher assigned to this investigation is Mr Linda Mngoma. The SALRC's offices are on the 5th Floor, Die Meent Building, 266 Andries Street (corner of Andries and Schoeman Streets), Pretoria.

On 30 July 2008, Honourable Ms MS Mabandla, the then Minister of Justice and Constitutional Development, appointed the following advisory committee members who assisted the SALRC to, firstly, develop the Consultation Paper and, secondly, the Discussion Paper, namely:

Mr Mlungisi Tenza, Durban University of Technology
Mr Tshepo Madlingozi, University of Pretoria
Professor Nic Olivier, University of Pretoria
Ms Anel du Plessis, University of North-West
Ms Rolien Roos, University of North-West
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Preface

This Discussion Paper has been prepared to elicit responses and to serve as basis for the SALRC's further deliberations. It contains the SALRC's **preliminary** recommendations. The views, conclusions and recommendations which follow should not be regarded as the SALRC's final views.

The Discussion Paper (which includes a draft Bill entitled Co-operative Governance and Traditional Affairs Laws Amendment and Repeal Bill which, if enacted, will repeal redundant, obsolete and unconstitutional legislation or provisions in legislation) is published in full so as to provide persons and bodies wishing to comment with sufficient background information to enable them to place focused submissions before the SALRC. A summary of preliminary recommendations and questions for comment appear on page (v). The proposed Co-operative Governance and Traditional Affairs Laws Amendment and Repeal Bill is contained in Annexure A. Schedule 1 of the proposed Bill consists of Acts that that may be repealed as a whole; Schedule 2 of the Bill identifies specific provisions in the legislation that may be repealed; Schedule 3 consists of Acts that may be amended to the extent set out in the forth column of the Schedule. Annexure B contains list of statutes (including those recommended for repeal in this document) currently administered by the Department of Co-operative Governance and Traditional Affairs enacted between 1910 and 2005.

The SALRC will assume that respondents agree to the SALRC quoting from or referring to comments of and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the SALRC may in any event be required to release information contained in representations under the Promotion of Access to Information Act 2 of 2000.

Respondents are requested to submit written comment and representations to the SALRC by 31 March 2011 at the address appearing on the previous page. Comments can be sent by post or fax, but comments sent by e-mail in electronic format are preferable.

This Discussion Paper is available on the internet at www.salawreform.justice.gov.za/dpapers.htm Any inquiries should be addressed to the Secretary of the SALRC or the researcher allocated to the project, Mr Linda Mngoma. Contact particulars also appear on page (iii).

Preliminary recommendations and questions for comments

1. The SALRC has been mandated with the task of revising the South African statute book with a view to identifying and recommending for repeal or amendment legislation or provisions in legislation that are inconsistent with the Constitution, particularly the equality section thereof, and those that are redundant or obsolete. Pursuant to this mandate, the SALRC has established that there are 2800 Acts in the statute book. Furthermore, the SALRC has identified 57 Acts as being statutes that are administered by the Department of Co-operative Governance and Traditional Affairs ("CoGTA") (see Annexures B and C). After careful and thorough analysis of the Acts administered by CoGTA, the SALRC proposes that:

(i) The provisions of Acts set out in Schedule 1 of the proposed Co-operative Governance and Traditional Affairs Laws Amendment and Repeal Bill ("the proposed Bill"), contained in Annexure A, be repealed for the reasons set out in Chapter 2 of this Discussion Paper; and

(ii) The Acts set out in Schedule 2 of the proposed Bill contained in Annexure A referred to above, be repealed as a whole for the reasons set out in Chapter 2 of this Discussion Paper;

(iii) The provisions of Acts set out in Schedule 3 of the proposed Bill, found in the same Annexure referred to above, be repealed to the extent set out in that Schedule, for the reasons set out in Chapter 2 of this Discussion Paper;

(iv) A future statutory review process be conducted related to various general discrepancies and needs in local government legislation, generally, as is further discussed below.

2. Furthermore, it is possible that some of the statutes provisionally proposed for repeal are still useful, and thus should not be repealed. Moreover, it is also possible that there are pieces of legislation not identified for repeal in this Discussion Paper which are of no practical utility anymore and which could be repealed. These should be identified and brought to the attention of the SALRC.

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DISCUSSION PAPER

Chapter 1
Project 25: Statutory Law Revision

A INTRODUCTION

(a) The objects of the South African Law Reform Commission

1.1 The objects of the SA Law Reform Commission (the SALRC) are set out as follows in the South African Law Reform Commission Act 19 of 1973: to do research with reference to all branches of the law of the Republic and to study and to investigate all such branches of the law in order to make recommendations for the development, improvement, modernisation or reform thereof, including –

- the repeal of obsolete or unnecessary provisions;
- the removal of anomalies;
- the bringing about of uniformity in the law in force in the various parts of the Republic; and
- the consolidation or codification of any branch of the law.

1.2 In short, the SALRC is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

(b) History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC undertook a revision of all pre-Union legislation as part of its project 7 that dealt with the review of pre-Union legislation. This resulted in the repeal of approximately 1 200 ordinances and proclamations of the former Colonies and Republics. In 1981 the SALRC finalised a report on the repeal of post-Union statutes as part of its project 25 on statute law: the establishment of a permanently simplified, coherent and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act, 1981 (Act No 94 of 1981) which repealed approximately 790 post-Union statutes.

1.4. In 2003 Cabinet approved that the Minister of Justice and Constitutional Development co-ordinates and mandates the SALRC to review provisions in the legislative framework that would result in discrimination as defined by section 9 of the Constitution. This section prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

1.5 In 2004 the SALRC included in its law reform programme an investigation into statutory law revision, which entails a revision of all statutes from 1910 to date. While the emphasis in the previous investigations was to identify obsolete and redundant provisions for repeal, the emphasis in the current investigation will be on compliance with the Constitution. However, all redundant and obsolete provisions identified in the course of the current investigation will also be recommended for repeal. Furthermore, it should be stated right from the outset that the constitutional inquiry is limited to statutory provisions that blatantly violate the provisions of section 9 (the equality section) of the Constitution.

1.6 With the advent of constitutional democracy in 1994, the legislation enacted prior to that year remained in force. This has led to a situation where numerous pre1994 provisions are constitutionally non-compliant. The matter is compounded by the fact that some of these provisions were enacted to promote and sustain the policy of apartheid. A recent provisional audit, by the SALRC, of national legislation remaining on the statute book since 1910, established that there are in the region of 2 800 individual statutes, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts and partially repealed Acts. A substantial number of these Acts serve no useful purpose anymore, while many others still contain unconstitutional provisions that have already given rise to expensive and sometimes protracted litigation.

B. WHAT IS STATUTORY LAW REVISION?

1.7 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and

other people who use it.[1] Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or "live". If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.8 As is the case in other jurisdictions (and will be evident in this review), once legislation is deemed no longer to apply, the question arises whether it should remain in the statute book or be repealed.[2] Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or are presently remedied by another measure or provision.

1.9 In the context of this investigation, the statutory law revision primarily targets statutory provisions that are obviously at odds with the Constitution, particularly section 9.

1.10 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:[3]

(a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
(b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
(c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
(d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
(e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
(f) commencement provisions once the whole of an Act is in force;
(g) transitional or savings provisions that are spent;
(h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
(i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

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1 See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 1 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

2 See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 6 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

3 See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 7 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

1.11 The Law Commission of India notes that in England the terms "expired", "spent", "repealed in general terms", "virtually repealed", "superseded", and "obsolete" were defined in memoranda to Statute Law Revision Bills as follows: [4]

- Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time
- Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required
- Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate
- Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one
- Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise
- Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.12 Statutory provisions usually become redundant as time passes.[5] Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is often simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of legislation and its implementation (in some jurisdictions known as "pump-priming" provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.13 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act, 1957 (Act 33 of 1957) mirrors section 16(1) of the Interpretation Act of

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[4] Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from http://lawcommissionofindia.nic.in/51-100/Report96.pdf on 29 August 2007.

[5] *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 9 and 10 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

1978 of England and Wales.[6] Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
> (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,
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> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

1.14 The methodology adopted in this investigation is to review the statute book by Department – the SALRC identifies a Department, reviews the national legislation administered by that Department for constitutionality and redundancy, sets out the preliminary findings and proposals in a consultation paper and consults with that Department to verify the SALRC's preliminary findings and proposals. The next step that the SALRC undertakes is the development of a discussion paper in respect of the legislation of each Department, and upon its approval by the SALRC, it is published for general information and comment. Finally, the SALRC develops a report in respect of each Department that reflects the comment on the discussion paper and contains a draft Bill proposing amending legislation.

C. THE INITIAL INVESTIGATION

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALS) of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and

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6 *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 8 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008.

obsoleteness. CALS pursued four main avenues of research in their study conducted in 2001:[7]

> First, a series of role-player interviews were conducted with representatives of all three tiers of government, Chapter 9 institutions, the legal profession, academia and civil society. These interviews revealed a high level of support for the project.
>
> Second, an analysis of all Constitutional Court judgments until 2001 was undertaken. Schedules reflecting the nature and outcome of the cases, and the statutes impugned were compiled. The three most problematic categories of legislative provision were identified, and an analysis made of the Constitutional Court's jurisdiction in relation to each category. The three categories were: reverse onus provisions; discriminatory provisions; and provisions that infringe the principle of the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled in respect of each category.
>
> Third, sixteen randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. A comparison of the outcomes revealed that a targeted revision of the statute book, in accordance with the guidelines, produced surprisingly effective results.
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> Fourth, a survey of five countries (United Kingdom, Germany, Norway, Switzerland and France) was conducted. With the exception of France, all the countries have conducted or are conducting statutory revision exercises, although the motivation for and the outcomes of these exercises differ.

1.16 The SALRC finalised the following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions –

- the Recognition of Customary Marriages (August 1998);
- the Review of the Marriage Act 25 of 1961(May 2001);
- the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- Traditional Courts (January 2003);
- the Recognition of Muslim marriages (July 2003);

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7 "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law & Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand.

- the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- Customary Law of Succession (March 2004); and
- Domestic Partnerships (in March 2006)

D. SCOPE OF THE PROJECT

1.17 This investigation focuses not only on obsolescence or redundancy of provisions but also on the question of the constitutionality of provisions in statutes. In 2004 Cabinet endorsed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

1.18 The constitutional validity aspect of this project focuses on statutes or provisions in statutes that are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution. In practical terms this means that this leg of the investigation will be limited to those statutes or provisions in statutes that:

- differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose; or
- unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
- unfairly discriminate on grounds which impair or have the potential to impair a person's fundamental human dignity as a human being.

1.19 Consequently, a law or a provision in a law which appears, on the face of it, to be neutral and non-discriminatory but which has or could have discriminatory effect or consequences will be left to the judicial process.

1.20 The SALRC decided that the project should proceed by scrutinising and revising national legislation which discriminates unfairly.[8] However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the Constitution. This is necessitated by, among other considerations, time and capacity.

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[8] Cathi Albertyn prepared a 'Summary of Equality Jurisprudence and Guidelines for Assessing the SA Statute Book for Constitutionality against section 9 of the 1996 Constitution', specifically for the SALRC in February 2006.

It is not foreseen that the SALRC and government departments will have capacity in the foreseeable future to revise all national statutes or the entire legislative framework to determine whether they contain unconstitutional provisions.

E. ASSISTANCE BY GOVERNMENT DEPARTMENTS AND STAKEHOLDERS

1.21 In 2004, Cabinet endorsed the proposal that government departments should be requested to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered "inside" knowledge – of the type usually accessible within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and legislative amendment or repeal proposals. Any assistance that can be given to fill in the gaps will be much appreciated. It is important that the departments concerned take ownership over this process. This will ensure that all relevant provisions are identified and dealt with responsively and without creating unintended negative consequences.

F. CONSULTATION WITH THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

1.22 As stated above, the SALRC has reviewed a number of statutes administered by CoGTA with the assistance of its advisory committee appointed to conduct this review.[9] In July 2009 and in accordance with its policy to consult widely and to involve the Department likely to be affected by the proposals made, the SALRC developed and submitted to CoGTA a Consultation Paper explaining the background to statutory law revision, setting out the guidelines utilised by the SALRC to test the constitutionality and redundancy of statutes administered by CoGTA, and provided detailed findings and proposals for legislative reform in respect of legislation found wanting, appended a Draft Co-operative Governance Laws Amendment and Repeal Bill setting out statutes which needed to be amended and repealed,

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9 See list of advisory committee members on page ii of this discussion paper.

and the extent of such repeal. The SALRC invited CoGTA to peruse the preliminary findings, proposals and questions for comment and submit comments to the SALRC.

1.23 In October 2009, CoGTA submitted comments to the SALRC. In a nutshell, CoGTA supports the preliminary findings as contained in the Consultation Paper referred to above, save for the preliminary proposals in respect of the Traditional Leadership and Governance Framework Act, 2003 relating to the representation of women in traditional communities and traditional councils established in terms of the Act. Accordingly, the provisional proposals contained in this Discussion Paper in respect of the said Act took into consideration the comments and input received from CoGTA.

1.24 After having submitted its Consultation Paper to CoGTA for comment, the SALRC conducted additional research on the 11 Black Laws Amendment Acts and the Witpoort Adjustment Act, which on 16 March 2010 the SALRC submitted to CoGTA, the Department of Home Affairs and the Road Accident Fund for comment. The SALRC acknowledges the assistance it received from officials in the legal services section of CoGTA for confirming their responsibility for administering the erstwhile local and provincial government related legislation and for commenting on the Consultation Paper. The SALRC also acknowledges the assistance received from the Road Accident Fund by commenting on the Black Laws Amendment Act 76 of 1963.

Chapter 2
Repeal and amendment of legislation administered by the Department of Co-operative Governance and Traditional Affairs

A. Introductory summary

2.1 The Department of Co-operative Governance and Traditional Affairs' (CoGTA) mandate is derived from Chapter 3 and 7 of the Constitution of the Republic of South Africa (Act No.108 of 1996). As a national department, its function is to develop national policies and legislation with regard to provinces and local government and to monitor the implementation of the following:

- Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);
- Municipal Property Rates Act, 2004 (Act No. 6 of 2004);
- Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003);
- Traditional Leadership and Governance Framework Act, 2003, (Act No.41 of 2003);
- Disaster Management Act, 2002 (Act No.57 of 2002);
- Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000);
- Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998);
- Local Government: Municipal Demarcation Act, 1998 (Act No.27 of 1998); and
- White Paper on Local Government (1998).[10]

2.2 The CoGTA's other function is to support Provinces and Local Government in fulfilling their constitutional and legal obligations. The Department's mission is to facilitate co-operative governance and support all spheres of government, promote traditional affairs and support associated institutions through:

- Developing appropriate policies and legislation to promote integration in government's development programmes and service delivery;
- Providing strategic interventions, support and partnerships to facilitate policy implementation in the Provinces and Local Government; and

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[10] http://www.cogta.gov.za/cgta/index.php/component/content/article

- Creating enabling mechanisms for communities to participate in governance.[11]

2.3 In this Discussion Paper, the statutes provisionally proposed for repeal as a whole are the following:

- Pension Benefits for Councillors of Local Authorities Act, 1987 (Act No.105 of 1987);
- South African Olympic Hosting Act, 1997 (Act No.36 of 1997);
- Disestablishment of the Local Government Affairs Council Act, 1999 (Act No.59 of 1999);
- Black Laws Amendment Act 46 of 1937;
- Black Laws Amendment Act 79 of 1957;
- Black Laws Amendment Act 63 of 1966;
- Black Laws Amendment Act 56 of 1968;
- Second Black Laws Amendment Act 27 of 1970;
- Third Black Laws Amendment Act 49 of 1970;and
- Black Laws Amendment Act 12 of 1978.

2.4 The statutes provisionally proposed for repeal by the relevant provincial legislatures are the following:

- Civil Protection Act 67 of 1977;
- Regional Services Councils Act 109 of 1985;
- Regional Services Councils Amendment Act 78 of 1986;
- Regional Services Councils Amendment Act 49 of 1988;
- Regional Services Councils Amendment Act 75 of 1991; and
- KwaZulu-Natal Joint Services Act 84 of 1990 (section 23).

2.5 The statutes provisionally proposed for partial repeal are the following:

- Abolition of Development Bodies Act 75 of 1986;
- Black Laws Amendment Act 76 of 1963;
- Black Laws Amendment Act 42 of 1964; and
- Black Laws Amendment Act 23 of 1972.

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[11] Ibid

2.6 The statutes provisionally proposed for amendment are the following:

- Removal of Restrictions Act, 1967 [section 5] (Act No.84 of 1967);
- Abolition of Development Bodies Act, 1986 (Act No.75 of 1986);
- Fire Brigade Services Act, 1987 (Act No.99 of 1987);
- Organised Local Government Act, 1997 (Act No.52 of 1997); and
- Traditional Leadership and Framework Act 41 of 2003.

2.7 Towards the end of this chapter, an evaluation is included of a number of statutes provisionally proposed to be retained. The reasons for their inclusion in this Paper were alluded to above and are further attended to below. All of the above provisional proposals have been summarised in the proposed Co-operative Governance and Traditional Affairs Laws Amendment and Repeal Bill attached in Annexure A to this Discussion Paper.

B. Statutes administered by the Department of Co-operative Governance and Traditional Affairs

2.8 The SALRC has identified for purposes of the current review, 57 pieces of legislation as being statutes that are administered by CoGTA (see Annexures B and C to this Discussion Paper). The SALRC, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed as a result of redundancy, obsoleteness or unconstitutionality in terms of section 9 of the Constitution, has identified a number of Acts that may be repealed fully or in part and some Acts that may be otherwise amended. These Acts are contained in Schedules 1 to 3 of the proposed Bill (see Annexure A).

C. General observations

2.9 Bearing in mind local government's close operation to the people of South Africa and the inevitable impact of local government on people's rights generally, it is to be made clear that this Discussion Paper forms part of a narrowly focused and text-based statutory review process as is outlined above. Where a statute administered by CoGTA seems to be free of any provisions that contradict or violate section 9 of the Constitution, it is accordingly not to say that the execution of such statute necessarily takes place in line with the protection afforded by section 9, the equality section. Therefore, this Discussion Paper does not reflect

on any consequential and/or operational effects of the execution of powers in terms of the legislation reviewed.

2.10 Several post-1996 statutes formed part of the review for purposes of this Discussion Paper. Without exception, these statutes were found to be compliant with section 9 of the Constitution. However, although not part of the purpose of and core mandate for the current investigation, it has been observed in general that a significant number of provisions contained in several pre-1996 and post-1996 local government statutes require statutory revision in order to:

- Ensure that local government legislation is aligned with the values and provisions of the Constitution, generally;
- Ensure that local government legislation is aligned with other legal frameworks and sectoral legislation in South Africa, generally;
- Improve the statutory regulation of matters related to local government in the context of cooperative governance;
- Clarify the role and responsibilities of several local government structures including traditional authorities and the role and responsibilities of the different types of municipalities;
- Fortify legal certainty with regard to issues such as compulsory decision-making powers on the part of the MECs for local government, for example;
- Eliminate discrepancies in and overlaps between different statutes regulating local government; and
- More comprehensively regulate some local government affairs that are currently ill-defined or ambiguous.

2.11 Although this Discussion Paper focuses on matters related to the constitutional equality section alone, in light of the general observations above it is strongly recommended that an extensive statutory review process be initiated in the context of the legislation administered by CoGTA with a significantly wider scope than that of the current investigation. This review should, among others, include the following:

- Determination of the constitutionality of legislation administered by CoGTA with reference to all the other provisions of the Constitution (outside of section 9, which forms the basis of the review done for purposes of this Discussion Paper);

- Updating the list of legislation administered by CoGTA by including all the pre-1994 subordinate legislation which formed the basis for the establishment of municipal structures in the former urban areas and homelands; and
- Updating the list of pre-1994 legislation within the functional domain of CoGTA and which has not been either allocated to CoGTA or listed in the CoGTA's list of legislation (Annexure B).

D. Recommendations for the repeal and amendment of legislation currently administered by the Department of Co-operative Governance and Traditional Affairs

2.12 For purposes of this Discussion Paper, the analysis of legislation administered by CoGTA has indicated the need to make a distinction between the following categories of legislation:

1. Legislation which requires an extensive transversal analysis process, involving either other Government departments or CoGTA and one or more other Government departments. A typical example of this category are the various Black Laws Amendment Acts (Annexure B, no. 1-11).

2. Legislation which has already been repealed, and which consequently should be removed from the CoGTA list, e.g. the Local Government Training Amendment Acts No 84 of 1988 and 76 of 1991) (Annexure B, no. 28 and 29 respectively).

3. Amendment Acts which are in principle included in the latest version of the principal legislation concerned. The analysis contained in this Discussion Paper thus focuses only on the review of the principal legislation (which encompasses all amendment legislation). Examples of this are the various Abolition of Development Bodies Amendment Acts (Annexure B, no. 22-23).

4. Repeal Acts are not to be considered for repeal, as their repeal might result in the implied resuscitation of the original legislation; they must consequently be retained. Examples of this are the Repeal of Volkstaat Council Provisions Act, 2001 (Act No. 30 of 2001) and the Disestablishment of the Local Government Affairs Council Act, 1999 (Act No. 59 of 1999).

2.13 Some related observations follow in the discussion below.

1. Statutes redundant, expired, spent, obsolete or unconstitutional and provisionally proposed to be repealed as a whole

(a) Pension Benefits for Councillors of Local Authorities Act 105 of 1987

(i) Provisional proposal

2.14 It is provisionally proposed that the Pension Benefits for Councillors of Local Authorities Act 105 of 1987 be repealed since it contains provisions (in section 1) which distinguish between persons belonging to different races through references to differentiated local authorities on the basis of "population groups". Also, the Act refers to legislation that no longer exists.

(ii) Evaluation of Pension Benefits for Councillors of Local Authorities Act 105 of 1987

2.15 The purpose of this Act is to authorise a local authority to establish a pension fund or a pension scheme for the benefit of its councillors and their dependants, or to participate in the scheme of such pension fund. The Act sought to authorise a local authority to establish either a pension fund in terms of section 2 or a pension scheme in terms of section 3 for the benefit of its councillors and their dependants, or to participate in the scheme of the established pension fund. It also allowed local authorities to enter into agreements with any person, body or pension fund to manage and administer such pension fund or pension scheme (section 4).

2.16 Research (inter alia through enquiries addressed at relevant legal advisors at municipalities) showed that this particular Act was seldom, if ever, applied. For the establishment of and participation in pension funds the "general" regulatory Act, the Pension Funds Act 24 of 1956, was used. Given the reality of the Act's current virtual non-application as set out above, combined with the fact that a post-1994 Act, the Remuneration of Public Office Bearers Act 20 of 1998, accomplishes the same purposes as the earlier Pension Benefits for Councillors of Local Authorities Act 105 of 1987 by a "repetition of its terms", this Act seems to be superseded by the Remuneration of Public Office Bearers Act 20 of 1998.

2.17 This provides a strong argument in favour of the complete repeal of the Act. It is furthermore provisionally proposed that the Act be repealed since it contains provisions (in

section 1) which distinguish between persons belonging to different races through references to differentiated local authorities on the basis of "population groups". Also, the Act refers to legislation that no longer exists. These Acts are: the Provincial Government Act 32 of 1961, the Promotion of Local Government Affairs Act 91 of 1983, the Rural Areas Act (House of Representatives) 9 of 1987, and the Black Local Authorities Act 102 of 1982. Section 30(2)(a) of the Black Administration Act 38 of 1927, referred to in section 1 of the 1987 Act was, for example, repealed by section 8(1) of Act 108 of 1991.

2.18 Bearing the above in mind it is accordingly provisionally proposed that the 1987 Act be repealed. Although a strong argument can be made for the repeal of the Act, an operational enquiry may prove otherwise. It may well be proven that some councillors are still subject to the 1987 Act.

(b) South African Olympic Hosting Act 36 of 1997

(i) Provisional proposal

2.19 It is provisionally proposed that the South African Olympic Hosting Act 36 of 1997 be repealed since it became spent as it was enacted to regulate the Olympic Games of 2004 which would have been a once-off occasion. The Act achieved its original objectives and no longer serves any practical purpose.

(ii) Evaluation of South African Olympic Hosting Act 36 of 1997

2.20 The Act in the main provided for the execution of the host city contract if the hosting of the 28th Olympic Games in 2004 were to have been awarded to the City of Cape Town. As it stands, the Act is in line with the Constitution and no observations can be made in terms of the focus of the current investigation. However, it is proposed generally, that the Act be repealed since it became spent as it was enacted to regulate the Olympic Games of 2004 which would have been a once-off occasion. The Act achieved its original objectives and no longer serves any practical purpose.

2.21 However, the Act could be amended to apply to and regulate the hosting of future Olympic Games in South Africa, generally. This would require a reconsideration of, for example, the section 1 definition of 'Olympic Games' as well as of sections that make specific reference to the City of Cape Town such as sections 2(1) to 2(5). Since unrelated to the focus of this review, no amendments in order to effect the former have been included in

the proposed Co-operative Governance and Traditional Affairs Laws Amendment and Repeal Bill in Annexure A.

(c) Disestablishment of the Local Government Affairs Council Act 59 of 1999

(i) Provisional proposal

2.22 It is provisionally proposed that the Disestablishment of the Local Government Affairs Council Act 59 of 1999 be repealed. Section 3 of the Act, which empowers the Minister for Co-operative Governance and Traditional Affairs to implement such transitional measures as were necessary in order to wind up the affairs of the Council, has run its course and therefore this provision is now obsolete and could be repealed.

(ii) Evaluation of Disestablishment of the Local Government Affairs Council Act 59 of 1999

2.23 The Act was passed to disestablish the Local Government Affairs Council by repealing the statute establishing the Council. In addition, the Act was intended to empower the Minister for Co-operative Governance and Traditional Affairs to implement such transitional measures as were necessary in order to wind up the affairs of the Council. Section 3 of the Act empowered the Minister to make such arrangements as may be necessary regarding matters relating to the employees, assets, liabilities, rights, obligations and finances of the Council. As concerns the transitional arrangements provided for in section 3, it is presumed that the Minister has taken all such steps as were necessary and that, subject to confirmation by the Minister and/or relevant officials in the Department, section 3 of the Act is therefore obsolete.

2.24 If the transitional arrangements contemplated in section 3 of the Act have run their course, that provision is now obsolete and could be repealed. Section 3 is the only remaining potentially operative provision of the Act, as the other provisions were included to disestablish the Local Government Affairs Council (section 1), repeal the statute that established the Council (section 2) and provide the short title of the Act (section 4). It is therefore provisionally proposed that the Act be repealed.

(d) Black Laws Amendment Act 46 of 1937

(i) Provisional proposal

2.25 Since all the remaining sections of Act 46 of 1937 are redundant, it is provisionally proposed that the whole Black Laws Amendment Act 46 of 1937 be repealed.

(ii) Evaluation of the Black Laws Amendment Act 46 of 1937

2.26 The purpose of the Black Laws Amendment Act 46 of 1937 is **to amend the laws relating to Blacks in urban areas, to the regulation of the recruiting and employment of Black labourers and to the acquisition of land by Blacks**.

2.27 All the sections of the Act have been repealed, save for sections 36 and 42[12]. Section 36 of the Black Laws Amendment Act 46 of 1937 amends the definition of Minister in section 7 of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 as follows:

> ''Minister' shall mean the Minister of Public Works and Land Affairs or any other Minister who may be authorized for the time being to discharge the duties of that Minister'.

2.28 However, the above amendment was subsequently substituted by section 3 of the Abolition of Racially Based Land Measure Act, 108 of 1991, which renders section 36 of the Black Laws Amendment Act 46 of 1937 redundant. Being the only remaining section of the Act, it is provisionally recommended that the whole Black Laws Amendment Act 46 of 1937 be repealed.

(e) <u>Black Laws Further Amendment Act 79 of 1957</u>

(i) Provisional proposal

2.29 In the main, the Black Laws Further Amendment Act 79 of 1957 provides for the amendment of the Black Administration Act 38 of 1927. In terms of the President's Minute No.13 of 10 June 1994, the whole of Act 38 of 1927, excluding sections 2(2) and (6), 11, 11A, 12, 20, 21A, 22, 22bis and 23, was assigned to the Minister of Land Affairs as the Minister responsible for the administration of this Act. Since all the remaining sections of Act 79 of 1959 mentioned below are redundant, it is provisionally proposed that the whole Act 79

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[12] Section 42 of the Act is the short title and date of commencement

of 1959 be repealed in consultation with the Department of Rural Development and Land Reform.

(ii) Evaluation of the Black Laws Further Amendment Act 79 of 1957

2.30 The purpose of the Black Laws Further Amendment Act 79 of 1957 **is to amend the Black Administration Act, 1927, the Development Trust and Land Act, 1936, the Blacks (Urban Areas) Consolidation Act, 1945, the Black Services Levy Act, 1952, and the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952**.

2.31 Section 1 of Act 79 of 1957 amends section 2(6) of the Black Administration Act 38 of 1927. However, section 2(6) was later substituted by section 9(1)(b) and (c) of Act 46 of 1962, amended by section 10 of Act 108 of 1991 and repealed by section 1(1) of Act 28 of 2005. This means therefore that section 2(6) of Act 79 of 1957 is redundant.

2.32 Section 2 of Act 79 of 1957 substitutes section 9 of the Black Administration Act 38 of 1927. However, Section 9 of Act 38 of 1927 was later amended by section 1 of Act 63 of 1966 and by section 2 of Act 98 of 1979 and repealed by section 2 of Act 34 of 1986. This means therefore that section 2 of Act 79 of 1957 is redundant.

2.33 Subsection 3(1) of Act 79 of 1957 amends section 10 of the Black Administration Act 38 of 1927. However, section 10 of Act 38 of 1927 was amended by section 2(1) of Act 70 of 1974, by section 1 of Act 12 of 1978, by section 1 of Act 44 of 1981 and repealed by section 2 of Act 34 of 1986. This means therefore that section 3(1) of Act 79 of 1957 is redundant.

2.34 Subsection 3(2) of Act 79 of 1957 provides as follows:

> "(2) Anything done by the State President under the provisions of subsection (1), (2) or (3) of section ten of the Black Administration Act, 1927 (Act 38 of 1927), prior to the date of commencement of this Act, shall be deemed to have been done by the Minister of Plural Relations and Development under the said subsections as amended by subsection (1) of this section."

2.35 Since the whole of section 10 of Act 38 of 1927 has been completely repealed by section 2 of Act 34 of 1986, this means therefore that section 3(2) of Act 79 of 1957 is also redundant.

2.36 Section 4 of Act 79 of 1957 amends section 29 of the Black Administration Act 38 of 1927. However, section 29 of Act 38 of 1927 was amended by section 3 of Act 70 of 1974, by section 7 of Act 108 of 1991 and repealed by section 7 of Act 206 of 1993. This means therefore that section 4 of Act 79 of 1957 is redundant.

(f) Black Laws Amendment Act 63 of 1966

(i) Provisional proposal

2.37 It is provisionally proposed that the whole of Act 63 of 1966 be repealed due to the fact that all the remaining provisions of the Act are redundant.

(ii) Evaluation of the Black Laws Amendment Act 63 of 1966

2.38 The purpose of Act 63 of 1966 is **to amend section 9 of the Black Administration Act, 1927, in order to make provision for the holding of a criminal court at a place which has been designated for the hearing of civil cases; to amend that Act by the insertion of section 32A in terms of which certain civil actions become prescribed; to amend section 24 of the Development Trust and Land Act, 1936, in order to apply subsections (1) and (3) of that section to self-governing Black States; to amend section 40bis of the Blacks (Urban Areas) Consolidation Act, 1945, in order to make provision for pensions and other benefits for employees of management boards; to amend section 2 of the Black Affairs Act, 1959, in order to change the constitution of the Commission for Plural Affairs; to amend section 52 of the Transkei Constitution Act, 1963, in order to empower the Legislative Assembly not to pay certain revenues into the Transkeian Revenue Fund; to amend the Black States Development Corporations Act, 1965, by the insertion of section 17A in terms of which corporations are exempted from the payment of certain moneys; and to provide for incidental matters**.

2.39 Section 1 of Act 63 of 1966 amends section 9 of the Black Administration Act 38 of 1927. However, section 9 of Act 38 of 1927 was later substituted by section 2 of Act 98 of 1979 and repealed by section 2 of Act 34 of 1986. This means therefore that section 1 of Act 63 of 1966 is redundant.

2.40 Section 2 of Act 63 of 1966 amends the Black Administration Act 38 of 1927 by the insertion of section 32A. However, section 32A of Act 38 of 1927 was repealed by section 2(1) of Act 40 of 2002.

2.41 Section 6 of Act 63 of 1966 amends section 52 of the Transkei Constitution Act 48 of 1963. However, the Transkei Constitution Act 48 of 1963 was repealed by the Constitution of the Republic of South Africa 200 of 1993. This means therefore that section 6 of Act 63 of 1966 is redundant.

2.42 Accordingly it is recommended that the whole of Act 63 of 1966 be repealed due to the fact that all the remaining provisions of the Act are redundant.

(g) Black Laws Amendment Act 56 of 1968

(i) Provisional proposal

2.43 It is provisionally proposed that the Black Laws Amendment Act 56 of 1968 be repealed as a whole due to the fact that the remaining provisions of the Act, namely, sections 1 and 4(2) are redundant whereas subsections 5(1) and (2) amend the Black Authorities Act which is currently in the process of being repealed as a whole by the DRDLR.

(ii) Evaluation of the Black Laws Amendment Act 56 of 1968

2.44 The purpose of the Act 56 of 1968 **is to amend the provisions of the Black Administration Act, 1927, relating to the issue of deeds of grant; to amend the provisions of the Blacks (Urban Areas) Consolidation Act, 1945, relating to locations, Black villages, Black hostels, prescribed areas and management boards; to amend the provisions of the Black Authorities Act, 1951, relating to tribal, community, regional and territorial authorities; to amend the provisions of the Promotion of Black Self-government Act, 1959, relating to representatives of Blacks in urban areas; to amend the provisions of the Sorghum Beer Act, 1962, relating to presumptions and savings; and to provide for incidental matters**.

2.45 Section 1 of Act 56 of 1968 amends the Second Schedule to the Black Administration Act 38 of 1927, by deleting paragraph 2. However, the Second Schedule to Act 38 of 1927 was repealed by section 1(1) of Act 28 of 2005. This means therefore that section 1 of Act 56 of 1968 is redundant.

2.46 Section 4(2) of Act 56 of 1968 provides as follows:

"(2) The Management Board of Sebokeng established by Proclamation 65 of 1965, shall be deemed to have been lawfully established with effect from the first day of April, 1965, in accordance with the provisions of section 40bis of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), for the area defined in the Schedule to the said Proclamation as amended by Proclamation 96 of 1967, and any act purporting to have been performed by the said Board prior to the commencement of this Act under or by virtue of the provisions of the said section, shall be deemed to have been lawfully performed by that Board under or by virtue of the provisions of that section as amended by this section, and any laws purporting to have been made prior to such commencement under or by virtue of the provisions of the Blacks (Urban Areas) Consolidation Act, 1945, or section 25 of the Black Administration Act, 1927 (Act 38 of 1927), for the area so defined or any portion thereof, shall be deemed to have been lawfully made."

2.47 However, the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945) was repealed by the Black Communities Development Act 4 of 1984. Section 25 of Act 38 of 1927 was repealed by section 5(1) of Act 108 of 1991. This means therefore that section 4(2) of Act 56 of 1968 is redundant.

2.48 Section 5(1) of Act 56 of 1968 amends section 2 of the Black Authorities Act 68 of 1951, by substituting subsection (3). Section 5(2) of Act 56 of 1968 provides as follows:

> "(2) Anything done under the provisions of section 2 of the Black Authorities Act, 1951, at any time prior to the date on which any amendment of that section came into force, shall be deemed to have been done under the said provisions as amended from time to time."

2.49 In view of the fact that the Black Authorities Act 68 of 1951 is currently in the process of being repealed by the DRDLR, and the remaining provisions of Act 56 of 1968, namely: sections 1 and 4(2) are redundant, it is accordingly recommended that the Black Laws Amendment Act 68 of 1951 may be repealed as a whole.

(h) <u>Second Black Laws Amendment Act 27 of 1970</u>

(i) Provisional proposal

2.50 It is provisionally proposed that Act 27 of 1970 be repealed as a whole due to the fact that all the remaining provisions of the Act are redundant.

(ii) Evaluation of the Black Laws Amendment Act 27 of 1970

2.51 The purpose of Act 27 of 1970 is **to amend section 9bis of the Development Trust and Land Act, 1936, so as to regulate further the auditing of the books and accounts of the South African Development Trust; to amend the Workmen's Compensation Act, 1941, so as to make provision for the exemption of certain Black boards from assessments; to amend section 4 of the Finance Act, 1943, so as to exempt certain Black governments, councils and authorities from the payment of certain taxes; to amend the provisions of the Black Authorities Act, 1951, and of the Development of Self-government for Native Nations in South-West Africa Act, 1968, so as to regulate further the auditing of the books and accounts of Black authorities and executive councils; to amend the said Black Authorities Act, 1951, so as to extend the power to make regulations; to amend the Transkei Constitution Act, 1963, so as to exclude from the Transkeian Revenue Fund revenue derived from certain sources; to provide for the auditing of the accounts of certain local institutions; and to empower the Legislative Assembly in the Transkei to make laws in relation to the preservation of flora and fauna and the destruction of vermin in the Transkei; to amend the Black Laws Amendment Act, 1966, so as to make section 6 thereof retrospective; to provide for the transfer of certain movable property to certain Black boards; and to provide for matters incidental thereto**.

2.52 Section 3 of Act 27 of 1970 substitutes section 4 of the Finance Act 37 of 1943. However, the Finance Act 37 of 1943 was repealed by the Finance and Financial Adjustment Act Consolidation Act 11 of 1977. This means that section 3 of Act 27 of 1970 is redundant.

2.53 Section 4 of Act 27 of 1970 amends section 8 of the Black Authorities Act 68 of 1951 by deleting subsection 3. Section 5 of the Act amends the Black Authorities Act 68 of 1951 by the insertion of section 8A. Section 6 of the Act amends section 17(1) of the Black Authorities Act 68 of 1951, as follows: paragraph (a) substitutes paragraph (a); and paragraph (b) substitutes paragraph (e).

2.54 In view of the fact that the Black Authorities Act 68 of 1951 is currently in the process of being repealed as a whole by the DRDLR, it is recommended that sections 4, 5 and 6 of Act 27 of 1970 also be repealed.

2.55 Section 7 of Act 27 of 1970 amends section 52(1) of the Transkei Constitution Act 48 of 1963, by substituting paragraph (b). Section 8 of the Act amends the Transkei Constitution Act 48 of 1963 by the substitution of section 58. Section 9 of the Act amends part B of the First Schedule to the Transkei Constitution Act 48 of 1963 by inserting item 20A. Section 10 of the Act amends section 6 of the Black Laws Amendment Act 63 of 1966, by adding subsection (2), the existing section becoming section (1). Section 6 of the Black Laws Amendment Act amends section 52 of the Transkei Constitution Act 48 of 1963.

2.56 Since the Transkei Constitution Act 48 of 1963 was repealed by the Constitution of the Republic of South Africa 200 of 1993, this means therefore that sections 7; 8; 9 and 10 of Act 27 of 1970 are redundant.

2.57 Accordingly it is recommended that the whole of Act 27 of 1970 be repealed due to the fact that all the remaining provisions of the Act are redundant.

(i) Third Black Laws Amendment Act 49 of 1970

(i) Provisional proposal

2.58 It is provisionally proposed that Act 27 of 1970 be repealed as a whole due to the fact that all the remaining provisions of the Act are redundant.

(ii) Evaluation of the Third Black Laws Amendment Act 49 of 1970

2.59 The purpose of the Third Black Laws Amendment Act 49 of 1970 is **to amend section 4 of the Development Trust and Land Act, 1936, so as to regulate further the functions of the Commission for Plural Affairs and its members in relation to the affairs of the South African Development Trust; to amend the Promotion of Black Self-government Act, 1959, so as to regulate further the appointment of representatives of Blacks in urban areas and to define further their powers, functions and duties; to amend the Black Affairs Act, 1959, so as to alter the constitution of the Commission for Plural Affairs; to extend the power to make regulations in regard to the affairs of the said commission; to apply the provisions of the last-mentioned Act in connection**

with the said commission in respect of South-West Africa; and to substitute the words 'State President' for the word 'Governor-General'; to amend the Urban Black Councils Act, 1961, so as to alter the constitution of urban Black councils; to amend the Transkei Constitution Act, 1963, so as to empower the Legislative Assembly in the Transkei to make laws in relation to customary unions; and to provide for matters incidental thereto.

2.60 Section 8 of the Third Black Laws Amendment Act 49 of 1970 amends section 3 of the Urban Black Councils Act 79 of 1961, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (3)(b) and paragraph (c) substitutes subsection (4).

2.61 Section 9 of the Third Black Laws Amendment Act 49 of 1970 amends section 5 of the Urban Black Councils Act 79 of 1961 by substituting paragraph (a).

2.62 Section 10 of the Third Black Laws Amendment Act 49 of 1970 amends section 10(1) of the Urban Black Councils Act 79 of 1961 by substituting paragraph (a).

2.63 Section 11 of the Third Black Laws Amendment Act 49 of 1970 provides as follows:

> **"11 Effect of amendments by this Act to Act 79 of 1961 on existing urban Black councils**
>
> The amendments effected to sections 3, 5 and 10 of the Urban Black Councils Act, 1961, by respectively sections 8, 9 and 10 of this Act, shall not affect the membership of any serving selected member of an urban Black council referred to in section 2 of the first-mentioned Act."

2.64 The Urban Black Councils Act 79 of 1961 was repealed by the Community Councils Act 125 of 1977 which in turn was repealed by the Black Local Authorities Act 102 of 1982. The latter Act was repealed by the Local Government Transition Act 209 of 1993 which in turn was repealed by the Local Government Laws Amendment Act 19 of 2008. This means therefore that sections 8; 9; 10 and 11 of the Third Black Laws Amendment Act 49 of 1970 are redundant. Being the only remaining sections of the Act, it is accordingly recommended that the whole Third Black Laws Amendment Act 49 of 1970 be repealed.

(j) Black Laws Amendment Act 12 of 1978

(i) Provisional proposal

2.65 It is provisionally proposed that Act 12 of 1978 be repealed as a whole due to the fact that the remaining provisions of the Act are redundant.

(ii) Evaluation of the Black Laws Amendment Act 12 of 1978

2.66 The purpose of Act 12 of 1978 is **to amend the Black Administration Act, 1927, so as to extend the jurisdiction of a Commissioner's Court in respect of garnishee orders; to amend the Blacks (Urban Areas) Consolidation Act, 1945, so as to extend exemption from the operation of section 12 of the said Act, further define the expression 'idle person', regulate the suspension of certain orders, further regulate certain enquiries in regard to the summoning of assessors, and provide for the granting of exemptions from the provisions of the said Act; to amend the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952, so as to further regulate the issue of reference books and identity documents; to amend the Promotion of Black Self-government Act, 1959, so as to further regulate the appointment of commissioners-general; to repeal section 16 of the Black Labour Act, 1964; to amend the said Act so as to extend exemption from the operation of section 26 thereof; to amend the Promotion of the Economic Development of National States Act, 1968, so as to further regulate the indemnification of certain persons against loss; to repeal section 46 of the Black Taxation Act, 1969; to amend the National States Constitution Act, 1971, so as to further regulate the withdrawal of moneys from a revenue fund and the auditing of accounts, regulate the creation of new paramount chieftainships and chieftainships, provide for extension of the powers of legislative assemblies, and regulate the exercise of their legislative powers in respect of tribes and office-bearers therein; to regulate certain matters in areas excised from Black areas; and to provide for matters connected therewith**.

2.67 Section 1 of Act 12 of 1978 amends section 10 of the Black Administration Act 38 of 1927 by substituting subsection 6. However, subsection 10(6) of Act 38 of 1927 was repealed by section 2 of Act 34 of 1986. This means therefore that section 1 of Act 12 of 1978 is redundant and may be repealed.

2.68 Section 10 of Act 12 of 1978 repeals section 16 of the Black Labour Act 67 of 1964. However, the whole Black Labour Act 67 of 1964 was repealed by the Black Communities Development Act 4 of 1984. This means therefore that section 10 of Act 12 of 1978 is redundant and may be repealed.

2.69 Accordingly it is recommended that the Black Laws Amendment Act 12 of 1978 be repealed as a whole due to the fact that all the remaining provisions are redundant.

2. Statutes redundant, expired, spent, obsolete or unconstitutional and provisionally proposed to be repealed in its entirety by the relevant provincial legislatures

(a) Civil Protection Act 67 of 1977

(i) Provisional proposal

2.70 It is provisionally proposed that the remaining provisions of the Civil Protection Act 67 of 1977, that is, sections 2, 2A, 3, 4, 5, 6(1) and 7, be repealed by the relevant provincial legislatures on the grounds that the Act has become obsolete in as far as the mentioned provisions no longer serve any useful purpose.

(ii) Evaluation of Civil Protection Act 67 of 1977

2.71 This Act was promulgated on 26 May 1977. Its purpose was to regulate civil defence during emergencies or disasters, and to confer upon provincial councils the power to make ordinances in connection with civil defence in a state of emergency or disaster. However, in terms of Proclamation 153 of 31 October 1994, the administration of sections 2, 2A, 3, 4, 5, 6(1) and 7 of the Act was assigned to the provinces and thus falls under the competency of the provinces. The Act was then repealed by section 64 of the Disaster Management Act 57 of 2002 (which is dealt with below), which now regulates disaster management, except for the aforementioned sections which are still administered by the provinces.

2.72 The Disaster Management Act specifically provides that the provisions of the Act that were assigned to a province continue to apply in the province until repealed by provincial

legislation.[13] The North West Province and the Free State Province subsequently repealed the abovementioned sections of the Act following the enactment of the Disaster Management Act. It is therefore provisionally proposed that the remaining provisions of the Act be repealed by the relevant provincial legislatures on the grounds that the Act has become obsolete in as far as the mentioned provisions no longer serve any useful purpose.

(b) Regional Services Councils Act 109 of 1985

2.73 The Regional Services Councils Act (No.109 of 1985) was assigned to the appropriate provinces in terms of section 235 of the Interim Constitution[14]. The power of the regional services councils to levy and claim RSC levies were vested in the district and metropolitan councils established under the Local Government Transition Act No.209 of 1993 ("LGTA"), following the dissolution of regional services councils. However, the relevant provisions in the LGTA were later replaced by section 93(6) of the Local Government: Municipal Structures Act No.117 of 1998 that authorize district and metropolitan municipalities to levy and claim a regional services levy and a regional establishment levy referred to in section 12(1) of the Regional Services Councils Act, 1985.

2.76 The Regional Services Councils Act, 1985 has not been amended to vest the RSC levying powers in district and metropolitan councils. As a result, the source of the levying power was not the Regional Services Councils Act, 1985 but the Municipal Structures Act, 1998. Section 93(6) of the latter Act was repealed by section 59(1) of the Small Business Tax Amnesty and Amendment of Taxation laws Act No.9 of 2006, thereby removing district and metropolitan municipalities' authority to collecting these levies and thus making the Regional Services Council Act redundant.

2.77 Section 59(1) of the Small Business Tax Amnesty and Amendment of Taxation Laws Act No. 9 of 2006 provides as follows:

> **Amendment of section 93 of Act 117 of 1998, as amended by section 11 of Act 33 of 2000 and section 21 of Act 51 of 2002**

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13 Section 64(1)(b) of the Disaster Management Act 57 of 2002.

14 See Proclamation R153 in Government Gazette 16049 of 31 October 1994, as amended by Proclamation R31 in Government Gazette 16346 of 7 April 1995

"**59.** (1) Section 93 of the Local Government: Municipal Structures Act, 1998, is hereby amended by the deletion of subsection (6).

(2) Despite subsection (1), any regional establishment levy or regional services levy for which liability arose in terms of the Regional Services Council Act, 1985 (Act No. 109 of 1985), or the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), before or on 30 June 2006 may be collected by a municipal council in accordance with the provisions of those Acts.

(3) The liability for any regional establishment levy or regional services levy referred to in subsection (2) in respect of which a summons for the collection thereof has not been issued before or on 30 June 2008 lapses on that date.

(4) Subsections (1) and (2) are deemed to have come into operation on 1 July 2006".

2.78 The assignment of the Act to the relevant provinces had the effect of changing the status of the Act, to the extent assigned, from national legislation to provincial legislation, which may only be amended or repealed by a provincial legislature.

(c) KwaZulu and Natal Joint Services Act 84 of 1990 (section 23)

2.79 The Act provides for the establishment of Joint Services Boards, Management Committees and rural councils, and matters related to the powers and functions of these bodies. In addition, the Act deals with financial matters related to the said bodies, and provides for the charging of certain levies.

2.80 The KwaZulu and Natal Joint Services Act, 1990 was assigned to the province of KwaZulu-Natal in terms of section 235 of the Interim Constitution[15]. The power of the joint services boards to levy and claim JSB levies were vested in the district and metropolitan councils established under the Local Government Transition Act No.209 of 1993 ("LGTA"), following the dissolution of joint services boards. However, the relevant provisions in the LGTA were later replaced by section 93(6) of the Local Government: Municipal Structures

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15 See Proclamation R155 in Government Gazette 16049 of 31 October 1994

Act No.117 of 1998 that authorize district and metropolitan municipalities to levy and claim a regional services levy and regional establishment levy referred to in section 16(1) of the KwaZulu and Natal Joint Services Act, 1990.

2.81 The KwaZulu and Natal Joint Services Act, 1990 has not been amended to vest the RSC levying powers in district and metropolitan councils. As a result, the source of the levying power was not the KwaZulu and Natal Joint Services Act, 1990 but the Municipal Structures Act, 1998. Section 93(6) of the latter Act was repealed by section 59(1) of the Small Business Tax Amnesty and Amendment of Taxation laws Act No.9 of 2006, thereby removing district and metropolitan municipalities' authority to collecting these levies and thus making the KwaZulu and Natal Joint Services Act redundant.

2.82 The assignment of the Act to the province of KwaZulu-Natal had the effect of changing the status of the Act, to the extent assigned, from national legislation to provincial legislation, which may only be amended or repealed by a provincial legislature.

3. Statues redundant, expired, spent, obsolete or unconstitutional and provisionally proposed for partial repeal

(a) Black Laws Amendment Act 76 of 1963

(i) Provisional proposal

2.83 It is provisionally proposed that subsections 31(1); (2); (2A); (3);(4); (6) and (7) of Act 76 of 1963 be repealed and that a provision similar to subsection 31(5) be embodied in the Recognition of Customary Marriages Act 120 of 1998, following consultation with the Department of Home Affairs in addition to the Department of Cooperative Governance and Traditional Affairs that administers the Black Laws Amendment Act.

(ii) Evaluation of the Black Laws Amendment Act 76 of 1963

2.84 The purpose of the Black Laws Amendment Act 76 of 1963 is **to amend the Black Labour Regulation Act, 1911, the Black Taxation and Development Act, 1925, the Development Trust and Land Act, 1936, the Blacks (Urban Areas) Consolidation Act, 1945, the Prevention of Illegal Squatting Act, 1951, the Black Authorities Act, 1951, the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952, and the Urban Black Councils Act, 1961; to authorize the transfer of certain farms in the**

district of Rustenburg and Brits; to authorize a partner to a customary union to claim damages from any person who unlawfully causes the death of the other partner to such union; and to provide for the construction of the word 'native' in laws and documents.

2.85 The only remaining substantive provision of Act 76 of 1963 is section 31 and all its subsections[16]. Section 31 of Act 76 of 1963 provides for a partner to a customary union to claim damages from person unlawfully causing the death of another partner.

2.86 Prior to the above enactment the position was briefly that a spouse of a customary marriage could not obtain compensation for loss of support because this type of marriage was regarded as not bringing about a reciprocal duty of maintenance. The spouse seeking maintenance for himself or herself was held to have had no cause of action[17] Appeal courts for commissioners' courts however, held that such a spouse had a valid cause of action[18]. That was cold comfort, because these courts had jurisdiction only in cases where both parties were Africans. The position was rectified in 1963 when legislation was passed to grant a spouse of a customary marriage a right of action to claim for loss of support where his or her spouse was unlawfully killed[19].

2.87 Section 31(1) of the Black Laws Amendment Act 76 of 1963 provides that:

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16 Sections 13 and 14 of the Act amended sections 8 and 17 respectively of the Black Authorities Act 68 of 1951. However, section 13 of the Act was later deleted by section 4 of Act 27 of 1970. Similarly, section 17 of the Act was substituted by section 6(a) of Act 27 of 1970. This means therefore that both sections 13 and 14 of the Black Laws Amendment Act 76 of 1963 are redundant. Section 33 of the Act is short title and date of commencement.

17 (see, *inter alia*, Mokoena v Laub 1943 WLD 63; Zulu v Minister of Justice 1956 2 SA 128 (N); and SA Nationale Trust en Assuransie Maatskappy, Bpk v Fondo 1960 2 SA 467 (A)).

18 (Zitulele v Mangquza 1950 NAC (S) 249; Dhlamini v Mabuza 1960 NAC (N-E) 62; Kabe v Inyanga 1954 NAC (C) 220 and the repealed section 10*bis*(4) of Act 38 of 1927).

19 See section 31 of the Black Laws Amendment Act 76 of 1963; Bekker Seymour's Customary Law in Southern Africa (1989) 379-82; Davel Dood van 'n Broodwinner as Skadevergoedingsoorsaak (LLD thesis UP (1984) 419ff

> "A partner to a customary union as defined in section thirty-five of the Black Administration Act, 1927 (Act 38 of 1927), shall, subject to the provisions of this section, be entitled to claim damages for loss of support from any person who unlawfully causes the death of the other partner to such union or is legally liable in respect thereof, provided such partner or such other partner is not at the time of such death a party to a subsisting marriage."

2.88 Firstly, the Black Laws Amendment Act 76 of 1963 uses the definition of 'customary union' as defined in section 35 of the Black Administration Act 38 of 1927. In terms of section 35 of Act 38 of 1927, a 'customary union' is defined as follows:

> "'customary union' means the association of a man and a woman in a conjugal relationship according to Black law and custom, where neither the man nor the woman is party to a subsisting marriage."

2.89 Since customary marriages are no longer customary unions, the above definition is obsolete and needs to be harmonized with the definition of customary marriage as provided for in section 1 of Act 120 of 1998.

2.90 Secondly, section 31 of the Black Laws Amendment Act 76 of 1963 was not repealed by Act 120 of 1998. On the basis of the rule that all laws remain in force until repealed by a competent authority, one must ascertain the reason why this law was not repealed. It was obviously not to retain a basis for a claim, because customary marriages are for all purposes recognized as marriages (see section 2(1) and (2) of Act 120 of 1998).

2.91 In the matter of ***Nontobeko Virginia Gaza v Road Accident Fund & 5 Others SCA*** (unreported Case No 314/04), the main issue for determination was whether a widow of a customary marriage whose husband was, at the time of his death, a spouse to a civil marriage with another woman, was owed a duty of support or maintenance by her deceased husband. Were it to be found that such legal duty existed, the further questions was whether this legal duty or right to support was worthy of protection by current South African law. The deceased, David Siponono Gaza, was killed in a motor vehicle accident on 21 February 2000. At the time of his death, he was married to the plaintiff, Nontobeko Virginia Gaza, by customary rites. This customary marriage was registered at the office of the Commissioner of the District of Durban in terms of the Natal Code of Zulu Law (Proclamation R151 of 1987) on 15 July 1987. The deceased was also married by civil rites to one Makhosasana Lillian Gaza.

2.92 The civil marriage was contracted before the conclusion of the customary marriage with the plaintiff. Both women claimed for loss of support or maintenance as a result of the negligent death of their husband. The Durban and Coast Local Division granted the wife married by civil rites compensation for loss of support as a result of the negligent death of her husband. Compensation for loss of support was not granted to the plaintiff (wife by customary rites) on the basis that this was excluded by the proviso to section 31 of the Black Laws Amendment Act of 1963 to the effect that "such partner or such other partner is not, at the time of such death, a party to a subsisting marriage".

2.93 Leave to appeal was sought from the Supreme Court of Appeal. Without dealing with the legal issues between the parties, the Supreme Court of Appeal ordered that:

> "(i) the judgment of the Durban and Coast Local Division absolving the defendant from the instance in a claim for loss of support by a widow of a customary marriage entered into in terms of the Natal Code of Zulu Law and which was contracted during the subsistence of a valid civil marriage be abandoned by the defendant (Road Accident Fund) and set aside;
>
> (ii) Any claimant who falls into the category of a spouse of a customary marriage where one of the spouses was, at the time of death, a spouse to a civil marriage, be compensated for loss of support by the Road Accident Fund.

2.94 Referring to the above decision of the Supreme Court of Appeal, Professors IP Maithufi and JC Bekker[20] comment that the court order relating to the relevance of the

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[20] "The Existence and Proof of Customary Marriages for Purposes of Road Accident Fund" *Obiter* 2009. They state, inter alia, the following:

> The order granted in this case is in fact an encouragement by the Supreme Court of Appeal towards the reform of marriage law in South Africa. The order has the effect of extending the dependant's action to a widow of a customary marriage which was concluded during the subsistence of a valid civil marriage. As already mentioned, the customary marriage so contracted is, in terms of current South African law, invalid in that a spouse to a civil marriage is not competent to contract another marriage. It is not surprising therefore that the third respondent, the Minister of Justice and Constitutional Development, was enjoined to review the relevance of the continued existence of section 31 of the Black Laws Amendment Act of 1963 which was enacted before a customary marriage was accorded full recognition as a

continued existence of section 31 of the Black Laws Amendment Act of 1963 in its present form has to be commended. They believe law reform in this instance is long overdue if regard is had to the fact that customary marriages have been elevated to the same position as valid marriages equivalent to civil marriages by Act 120 of 1998. The order has the effect of extending the dependant's action to a widow of a customary marriage which was concluded during the subsistence of a valid civil marriage. As already mentioned, the customary marriage so contracted is, in terms of current South African law, invalid in that a spouse to a civil marriage is not competent to contract another marriage. Section 31 of the Black Laws Amendment Act of 1963 may on this basis be unconstitutional in that it unfairly discriminates against spouses married by customary rites. These spouses presently have the same rights as those married by civil rites, including the right to sue for loss of support as a result of the death of the breadwinner.

2.95 It is therefore proposed that section 31(1) of the Black Laws Amendment Act 76 of 1963 be repealed by the proposed Recognition of Customary Marriages Amendment Bill, 2009[21].

2.96 Section 31(2) of the Black Laws Amendment Act of 1963 provides that:

> "No such claim for damages shall be enforceable by any person who claims to be a partner to a customary union with such deceased partner, unless-

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valid marriage. It is submitted that the continued existence of this section may have been rendered superfluous or redundant by the Recognition of Customary Marriages Act of 1998. Its repeal was obviously overlooked when the Recognition of Customary Marriages Act of 1998 was enacted. The section may, however, still be relevant to customary marriages contracted contrary to the provisions of the Marriage and Matrimonial Property Law Amendment Act of 1988 and its predecessors (Act 38 of 1927, the KwaZulu Act on the Code of Zulu Law and Natal Code of Zulu Law of 1985 and 1987 respectively).

The review ordered, it is submitted, has to take into account the present constitutional dispensation relating to the recognition of marriages, in particular the Bill of Rights as contained in the Constitution of the Republic of South Africa, 1996 (Ch 2) and the impact of the Recognition of Customary Marriages Act of 1998 on family law in South Africa.

[21] On 8 May 2009, the Department of Home Affairs published the Draft Recognition of Customary Marriages Amendment Bill, 2009 for comment.

2(a) such person produces a certificate issued by a Commissioner stating the name of the partner, or in the case of a union with more than one woman, the names of the partners, with whom the deceased partner had entered into a customary union which was still in existence at the time of death of the deceased partner; and

(b) such person's name appears on such certificate.

(2A) A certificate referred to in subsection (2) shall be accepted as conclusive proof of the existence of a customary union of the deceased partner and the partner or, in the case of a union with more than one woman, the partners whose name or names appear on such certificate."

2.97 Earlier consultations conducted by the SALRC with the Road Accident Fund revealed that in order to prove the existence of a customary 'union' (now marriage), the production of a certificate issued in terms of the Black Laws Amendment Act of 1963 is regarded as conclusive proof of the existence of a valid customary marriage with the deceased spouse (see subsection 31(2A)) [22]. Conflicting decisions were reached by our courts as to the nature of the certificate and the time at which it had to be produced. Despite this conflict, it is clear that what was required was a certificate issued by a commissioner (previously) or a magistrate stating that a customary marriage existed between the claimant and the deceased and was still in existence at the time of death. The issuing of the certificate may be

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[22] In terms of the **Road Accident Fund v Mongalo (**Cases no: 487/01 and 495/01 Suprme Court of Appeal) [12] 'Conclusive proof' in s 31(2A) therefore does not mean that evidence of fraud cannot be led to impugn the certificate. Apart from principle, the remaining provisions of s 31 show how unjust the opposite conclusion would be. The section creates an entitlement on the part of the partner to a customary union to claim damages for loss of support from any person who unlawfully causes the death of the other partner (s 31(1)).20 Where it appears from the certificate that more than one customary union partner has survived the deceased, 'all such surviving partners who desire to claim damages for loss of support, shall be joined as plaintiffs in one action' (s 31(3)) (though such a person may later join as a co-plaintiff (s 31(4)(a))). The nub is the provision that the surviving partners must share the damages between them (s 31(5)). The effect of a fraudulently obtained certificate on the genuine customary union partner or partners could therefore be most materially adverse. As Snyders J pointed out, it could never have been the intention of the legislation to license injustice of this kind through fraud.

based on the information obtained from a marriage register or from an enquiry held by a magistrate or commissioner, as the case may.

2.98 Subsection 31(2) of the Black Laws Amendment Act 76 of 1963 need not be retained because in terms of subsection 4(8) of Act 120 of 1998, registration of a customary marriage issued under this section or any other law providing for the registration of customary marriages constitutes prima facie proof of the customary marriage. The proposed repeal of section 31(2) of the Black Laws Amendment Act of 1963 will not have retrospective effect and will therefore not affect the validity of customary marriages registered in terms of this section. It may be added that a civil marriage is also no more than prima facie proof of the existence of a civil marriage. There is no reason to distinguish between these two types of marriages.

2.99 The continued existence of section 31(2) of the Black Laws Amendment Act 76 of 1963 effectively means that there are two statutes on the statute book providing for the same subject matter, namely the obscure provisions of the Black Laws Amendment Act of 1963 and the well-known provisions of the Recognition of Customary Marriages Act. It is recommended that section 31(2) and (2A) be repealed by the proposed Recognition of Customary Marriages Amendment Bill, 2010.

2.100 Subsections 31(3) and (4) of the Black Laws Amendment Act 76 of 1963 provide that:

> "(3) Where it appears from the certificate referred to in subsection (2) that the deceased partner was survived by more than one partner to a customary union, all such surviving partners who desire to claim damages for loss of support, shall be joined as plaintiffs in one action.
>
> (4)(a) Where any action is instituted under this section against any person by a partner to a customary union and it appears from the certificate referred to in subsection (2) that the deceased partner was survived by a partner to a customary union who has not been joined as a plaintiff, such person may serve a notice on such partner who has not been joined as a plaintiff to intervene in the action as a co-plaintiff within a period of not less than fourteen days nor more than one month specified in such notice, and thereupon the action shall be stayed for the period so specified.

(b) If any partner to a customary union upon whom a notice has been served in terms of paragraph (a), fails to intervene in the action within the period specified in such notice or within such extended period as the court on good cause shown may allow, such partner shall be deemed to have abandoned her claim."

2.101 The above subsections 31(3) and 31 (4) of the Black Laws Amendment Act 76 of 1963 need also not be retained since it is submitted that matters relating to the joinder of persons as co-plaintiffs in any action are adequately provided for in the laws and rules governing civil procedure in our courts. Alternatively, the provisions of sections 31(3) and (4) could be re-enacted in the Recognition of Customary Marriages Act of 1998 if it is considered that their repeal might create a lacuna in the law in this regard.

2.102 Subsection 31(5) of the Black Laws Amendment Act 76 of 1963 provides as follows:

"If a deceased partner to a customary union is survived by more than one partner to such a union, the aggregate of the amounts of the damages to be awarded to such partners in terms of this section shall under no circumstances exceed the amount which would have been awarded had the deceased partner been survived by only one partner to a customary union."

2.103 We were advised by the Road Accident Fund that the usual approach followed by the Road Accident Fund to assess damages for loss of support is to apportion two parts to each adult and one part to each child. In order to give effect to the above subsection (5), it is common to allocate to multiple spouses a pro-rata share of two parts. If there are four wives, then each wife gets a quarter share of two parts, that is to say ½ a child's share each. The Recognition of Customary Marriages Act 120 of 1998 provides for consultative procedures to be followed for the conclusion of second and third customary marriages. It also renders community of property the normal matrimonial property regime.

2.104 The Road Accident Fund has, however, indicated that there are reservations about the principle embodied in subsection 31(5) being done away with. It is a fact that such a step would have the effect of widening the liability of the Road Accident Fund and consequently of adding to its financial burden. Such effect would moreover appear to be unfair to a certain extent, as third parties (persons other than the spouses to a marriage) who are juristic persons (such as the Fund) or natural persons of whatever ethnic background who do not share the culture and traditional customs and usages governing the polygamous customary

marriage of the spouses thereto, ought not to be adversely affected by the legal recognition of such a marriage. It is therefore recommended that the principle embodied in subsection 31(5) should be re-enacted by way of an appropriate amendment to the Recognition of Customary Marriages Act, 1998, when the Black Laws Amendment Act, 1963, is repealed.

2.105 Subsection 31(6) of the Black Laws Amendment Act 76 of 1963 goes hand in hand with subsection 31(2), and subsection 31(7) must be read together with the rest of section 31 of this Act. Subsection 31(6) provides that:

> "(6) A partner to a customary union whose name has been omitted from a certificate issued by a Commissioner in terms of subsection (2) shall not by reason of such omission have any claim against the Government of the Republic or the Commissioner if such omission was made bona fide."

2.106 However, Act 120 of 1998 provides a number of safeguards in this regard. In particular, paragraphs (a) and (b) of subsection 4(5) of Act 120 of 1998 provide that:

> "(a) If for any reason a customary marriage is not registered, any person who satisfies a registering officer that he or she has a sufficient interest in the matter may apply to the registering officer in the prescribed manner to enquire into the existence of the marriage.
>
> (b) If the registering officer is satisfied that a valid customary marriage exists or existed between the spouses, he or she must register the marriage and issue a certificate of registration as contemplated in subsection (4)."

2.107 Furthermore, subsection 4(9) of Act 120 of 1998 provides that:

> "(9) Failure to register a customary marriage does not affect the validity of that marriage. "

2.108 Subsection 31(7) of the Black Laws Amendment Act 76 of 1963 provides that:

> "(7) Nothing in this section contained shall be construed as affecting in any manner the procedure prescribed in any other law to be followed in the institution of a claim for damages for loss of support."

2.109 As stated above, subsection 31(7) must be read together with the rest of section 31. If subsections (1); (2); (2A); (3); (4) and (6) are repealed, then subsection (7) may also be repealed.

2.110 In summary, it is recommended that the entire section 31 of the Black Laws Amendment Act 76 of 1963, excluding subsection 31(5), be repealed by the proposed Recognition of Customary Marriages Amendment Bill, 2009.

(b) Black Laws Amendment Act 42 of 1964

(i) Provisional proposal

2.111 It is provisionally proposed that the whole of Act 42 of 1964, excluding section 14, be repealed in consultation with the Department of Rural Development and Land Reform (DRDLR). The DRDLR has already submitted the Black Authorities Act Repeal Bill to Cabinet for approval to introduce the Bill in Parliament. Should the Bill be approved by Parliament, all the provisions of Act 42 of 1964 which amends the Black Authorities Act 68 of 1951 will in effect become redundant.

(ii) Evaluation of the Black Laws Amendment Act 42 of 1964

2.112 The purpose of the Black Laws Amendment Act 42 of 1964 is **to amend the Black Labour Regulation Act, 1911; to repeal the Black Service Contract Act, 1932; to amend the Development Trust and Land Act, 1936, the Blacks (Urban Areas) Consolidation Act, 1945, the Black Authorities Act, 1951, the Black Services Levy Act, 1952, the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952, the Blacks (Prohibition of Interdicts) Act, 1956, the Black Transport Services Act, 1957, the Sorghum Beer Act, 1962, and the Better Administration of Designated Areas Act, 1963; and to substitute the word 'native' and derivatives thereof in all laws**.

2.113 Section 14 of Act 42 of 1964 repeals the Black Service Contract Act 24 of 1932. As stated in paragraph 2.11 (4) of this draft Discussion Paper, Repeal Acts are not to be considered for repeal, as their repeal might result in the implied resuscitation of the original legislation. They must consequently be retained.

2.114 Sections 77, 78 and 79 of Act 42 of 1964 amend sections 1, 2 and 3 of the Black Authorities Act 68 of 1951 respectively, as follows:

(a) Section 77 of Act 42 of 1964 amends section 1 of Act 68 of 1951 by the substitution for the definition of 'tribal authority'. However, this definition was later substituted by section 39(1) of the Self-governing Territories Constitution Act 21 of 1971. The latter Act was repealed by the Constitution of the Republic of South Africa 200 of 1993 which in turn was repealed by the Constitution of the Republic of South Africa 108 of 1996. This means therefore that section 77 of Act 42 of 1964 is redundant.

(b) Section 78(a) of Act 42 of 1964 substitutes paragraph (a) of subsection 2(1) of Act 68 of 1951.

(c) Section 78(b) of Act 42 of 1964 amends subsection 2(1) of Act 68 of 1951.

(d) Section 78(c) of Act 42 of 1964 substitutes subsection 2(2) of Act 68 of 1951.

(e) Section 78(c) of Act 42 of 1964 substitutes subsection 2(3) of Act 68 of 1951. However, this subsection was later substituted by section 5(1) of Act 56 of 1968.

(f) Section 79(a) of Act 42 of 1964 substituted subsection 3(1) of Act 68 of 1951. However, this subsection was later substituted by section 39(1) of Act 21 of 1971.

(g) Section 79(b) of Act 42 of 1964 amends subsection 3(2) of Act 68 of 1951. However, this subsection was later deleted by section 39(1) of Act 21 of 1971.

(h) Section 79(c) of Act 42 of 1964 deleted subsections 3(5) and (6) of Act 68 of 1951.

2.115 Section 80 of Act 42 of 1964 amends the Black Authorities Act 68 of 1951 by the substitution for the words 'Governor-General' and 'Union' wherever they occur of the words 'State President' and 'Republic' respectively.

2.116 Section 88 of Act 42 of 1964 amends section 1 of the Blacks (Prohibition of Interdicts) Act 64 of 1956. However, the Blacks (Prohibition of Interdicts) Act 64 of 1956 was repealed by the Abolition of Influx Control Act 68 of 1986. This means therefore that section 88 of Act 42 of 1964 is redundant.

2.117 Section 89 of Act 42 of 1964 amends section 5 of the Blacks (Prohibition of Interdicts) Act 64 of 1956. However, the Blacks (Prohibition of Interdicts) Act 64 of 1956 was repealed by the Abolition of Influx Control Act 68 of 1986. This means therefore that section 89 of Act 42 of 1964 is redundant.

2.118 Section 90 of Act 42 of 1964 amends section 1 of the Black Transport Services Act 53 of 1957. However, the Black Transport Services Act 53 of 1957 was repealed by the Population Registration Act Repeal Act 114 of 1991. This means therefore that section 90 of Act 42 of 1964 is redundant.

2.119 Section 91(1) of Act 42 of 1964 amends section 3 of the Black Transport Services Act 53 of 1957. However, the Black Transport Services Act 53 of 1957 was repealed by the Population Registration Act Repeal Act 114 of 1991. This means therefore that section 91(1) of Act 42 of 1964 is redundant.

2.120 Accordingly, it is recommended that the whole of Act 42 of 1964, excluding section 14, be repealed. This is due to the fact that the DRDLR is currently in the process of introducing the Black Authorities Act Repeal Bill which proposes to repeal the whole Black Authorities Act 63 of 1951. The other remaining provisions of Act 42 of 1964, excluding section 14, are in effect redundant.

(c) Black Laws Amendment Act 23 of 1972

(i) Provisional proposal

2.121 It is provisionally proposed that sections 2 and 10 of Act 23 of 1972 be repealed in consultation with the DRDLR due to the fact that these provisions of the Act are redundant

(ii) Evaluation of the Black Laws Amendment Act 23 of 1972

2.122 The purpose of act 23 of 1972 is **to amend the Black Administration Act, 1927, so as to repeal the provision that every Commissioner in the Transvaal shall have the power to solemnize marriages; and to provide that a Black female, who is of age, shall not, in the provinces of Natal and the Transvaal, enter into a marriage without the consent of her father or legal guardian; to amend the Development Trust and Land Act, 1936, so as to increase the extent of the released areas; to amend the South-West Africa Native Affairs Administration Act, 1954 so as to provide for the interpretation of the word 'Black' and certain expressions of which that word forms a part; to amend the Transkei Constitution Act, 1963, so as to empower the Legislative Assembly of the Transkei to make laws in relation to prisons for Black persons, and in relation to motor carrier transportation; to amend the Development of Self-government for Native**

Nations in South-West Africa Act, 1968, so as to change the names of certain areas in the territory of South-West Africa and to extend the powers of legislative councils; to amend the Second Black Laws Amendment Act, 1970, so as further to regulate the transfer of certain property from the State or the administration of South-West Africa to a Black authority, legislative council, legislative assembly, executive council, cabinet or government; to amend the Black Authorities' Service Pensions Act, 1971, so as to provide for further delegation of powers by certain officers; to amend the National States Constitution Act, 1971, so as to extend the powers of legislative assemblies referred to therein; and to provide for matters connected therewith.

2.123 Section 1 of Act 23 of 1972 amends section 2 of the Black Administration Act 38 of 1927 by deleting subsection (4). Section 2 of the Act amends Act 38 of 1927 by the insertion of section 22ter. However, section 22 ter was subsequently repealed by section 2 of Act 91 of 1985.

2.124 In terms of the President's Minute No.13 of 10 June 1994, the whole of the Black Administration Act 38 of 1927, excluding sections 2(2) and (6), 11, 11A, 12, 20, 21A, 22, 22 bis and 23,was assigned to the Minister of Land Affairs[23] as the Minister responsible for the administration of this Act.

2.125 Section 10 of Act 23 of 1972 amends the Second Black Laws Amendment Act 27 of 1970 by the substitution of section 12. However, this section was subsequently substituted by section 10 of the Regional and Land Affairs General Amendment Act 89 of 1993 and repealed by section 27 of the Land Affairs General Amendment Act 11 of 1995. This means therefore that section 10 of the Black Laws Amendment Act 23 of 1972 is redundant and may be repealed.

2.126 Accordingly, it is recommended that sections 2 and 10 of the Black Laws Amendment Act 23 of 1972 be repealed in consultation with the DRDLR due to the fact that these provisions of the Act are redundant.

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[23] Currently known as the Minister of Rural Development and Land Reform

4. Specific provisions outdated, redundant, spent, obsolete or unconstitutional and provisionally proposed for amendment

(a) Removal of Restrictions Act 84 of 1967 (Section 5)

(i) Provisional proposal

2.127 Certain provisions and definitions of the Removal of Restrictions Act 84 of 1967 are glaringly obsolete and it is provisionally proposed that these be amended as stated below.

(ii) Evaluation of Removal of Restrictions Act 84 of 1967 (Section 5)

2.128 The Act was passed, inter alia, to regulate the empowering of provincial administrators to alter, suspend or remove certain restrictions and obligations pertaining to land within their respective provinces; to repeal the Removal of Restrictions in Townships Act 48 of 1946 and to validate certain proclamations of administrators. The Act is administered by both the Department of Rural Development and Land Reform and CoGTA and should therefore be subject to a more transversal review process as was indicted earlier in this Paper.

2.129 The Act applies to removals, alterations or suspensions of restrictions and obligations pertaining to land which is often required to develop land or when rezoning of land is considered. Some definitions and provisions are outdated and should be revised. This is attended to below. Section 5 of the Act confers powers on the Minister of Land and Regional Affairs. The responsibility for administration of the Act should be reconsidered or clarified, as CoGTA is not primarily responsible for administration of the Act, but will only be indirectly involved as functions, powers and duties are assigned to provincial functionaries and local governments. For this reason, consultation with the Department of Rural Development and Land Reform prior to the suggested amendments, is strongly advised.

2.130 It is provisionally proposed that section 2(4)(b) and 3(b) be amended since these provisions refer to the official languages at the time of promulgation of the Act, being Afrikaans and English, thus excluding the other nine official languages. It is further provisionally proposed that the section 1 definition of ‘local authority’ be amended to refer to the current statutory position, since it still refers to the Local Government Transitional Act 209 of 1993. The section 1 definition of the ‘Minister’ may be amended since a more generic reference to the “national Minister responsible for the administration of land affairs” would

exclude any doubt regarding the applicable functionary and future departmental name changes will be accommodated.

2.131 The definition of 'Province' should be amended since reference is still made to the Constitution of the Republic of South Africa, Act 200 of 1993 ("the Interim Constitution"). Section 2(1)(b)(ii) and (iii) provide that conditions may be removed for a number of reasons, including if the land is required for "public purposes by the State or a local authority" or "for the use or erection of any building by the State or a local authority". The provision is not untenable as it stands, but the definition of "organ of state" in the Constitution includes state departments in all three spheres, as well as other functionaries and institutions performing public functions. Broadening of this provision by reference to the constitutional definition of organ of state should be considered. The ambit of the first provision will still be limited by the qualifying phrase "for public purposes" but the second provision will have a broader ambit as it refers to the "use or erection of any building".

2.132 The distinction between land situated within the area of a local authority and land not situated within the area of a local authority in sections 2(4)(a), 3(2), 3(3) and 5(2)(b)(i), has become obsolete. In terms of section 151(1) of the Constitution and subsequent legislation, all land in the Republic is situated within the jurisdiction of a municipality. It is accordingly provisionally proposed that the said provisions be amended to do away with the distinction, to ensure alignment with the Constitution.

(b) Abolition of Development Bodies Act 75 of 1986

(i) Provisional proposal

2.133 Certain provisions and definitions of the Abolition of Development Bodies Act 75 of 1986 are glaringly obsolete and it is provisionally proposed that these be amended below.

(ii) Evaluation of Abolition of Development Bodies Act 75 of 1986

2.134 This Act was promulgated on 1 July 1986. Its purpose was to provide for the abolition of certain bodies, and it provided further for the transfer of the powers, assets, liabilities, rights, duties, obligations and staff of such bodies to other public authorities. The Act appears to be in line with section 9 of the Constitution, and with reference only to the core mandate of this Discussion Paper, does not per se require amendment. However, certain provisions and definitions are glaringly obsolete and it is provisionally proposed that these be

amended. Due to the repeal of the bulk of the provisions of the Interim Constitution and the establishment of provincial Executive Councils responsible for the administration of the provinces and the powers and functions assigned to them by the various Premiers, the term "Administrator", wherever it appears in the Act, should be substituted in order to correctly identify the authority competent to carry out the functions detailed in the Act.

2.135 It is therefore provisionally proposed that the term “Administrator” be replaced with the term “Relevant Member of provincial Executive Council”, within the Act, and that “Relevant MEC” is accordingly defined in section 1 of the Act. It is also provisionally proposed that the definition of "Minister" be amended in order to correctly identify the authority competent to carry out the relevant functions detailed in the Act.

2.136 It is further provisionally proposed that the definition of "development body" be amended. Section 2(1) of the Act abolished the development bodies referred to in paragraphs (a) and (b) of the definition of “development body”, effective from 1 July 1986. As a result, and with due consideration to the effective date, paragraphs (a) and (b) of the definition of “development body” are redundant and should be repealed. It is provisionally proposed that paragraph (d) of the definition of “development body” should be amended in light of sections 2(a) and 2(e)(iv) of Proclamation No. 26 of 2000, so as to refer correctly to uMsekeli, which is the corporate body established in terms of section 2 of the Development and Services Board Ordinance, 1941 (Ordinance No. 20 of 1941), of Natal. It is further provisionally proposed that paragraphs (a) and (b) of the definition of a “public authority” be amended to correctly reflect the respective appointments of a Minister and a Relevant MEC.

2.137 Section 2(1) of the Act abolished certain development bodies, as defined in either paragraphs (a) or (b) of the definition of a “development body”, on 1 July 1986. With due consideration to the effective date, section 2(1) of the Act is now redundant and it is provisionally proposed that this section be repealed. It is provisionally proposed that this amendment be reflected in section 2(4) of the Act by repealing the reference to “subsection (1)”.

2.138 Furthermore, section 3 of the Act has been implemented. Section 3(1)(a) deals with the transfer of assets, liabilities, rights, duties and obligations from the abolished development bodies mentioned in Schedule 1 to the Administrators of the various provinces mentioned in column 2 of Schedule 1. This took effect on 1 July 1986. Subsequently, in terms of section 3(2)(a) the Minister was to transfer the assets, liabilities, rights, duties and obligations specified in section 3(1)(a) to a public authority, as defined in the Act, by notice in

the Gazette. This was accomplished in respect of items 2 to 14 of Schedule 1 by notice.[24] The transfer to a public authority was also accomplished in respect of item 1 of Schedule 1 by notice.[25] Upon the completion of this process, both Schedule 1 and the provisions of section 3 have become redundant.

2.139 Furthermore, section 3(1)(b) of the Act makes reference to section 20 of the Black Communities Development Act 4 of 1984. As the Black Communities Development Act has been repealed, it is provisionally proposed that all references to this statute, such as in section 3(1)(b) of the Act, be repealed. Section 5(4)(c) also deals with the regulations that the State President may make in terms of the Republic of South Africa Constitution Act 110 of 1983. As the latter Act has been repealed, section 5(4)(c) can be viewed as redundant and it is provisionally proposed that it be repealed. Similarly, sections 5(1), (1A), (2) and (4) of the Act which deal with the administration of laws, with specific reference to a development body referred to in section 3(1)(a) or section 3(2)(b), is no longer applicable or necessary. In addition, the Provincial Government Act 69 of 1986 has been repealed and it is provisionally proposed that all references thereto be deleted from the Act, such as in section 5(2) of the Act. It is thus provisionally proposed that Schedule 1 and sections 3, 5(1), 5(1A), 5(2) and 5(4) of the Act be repealed.

2.140 Sections 6(1)(a) and (c) of the Act make reference to redundant provisions (in terms of column 2 of Schedule 1, and section 4(1) of the Act), and section 6(1)(b) makes reference to a development body that has been abolished. It is thus provisionally proposed that section 6(1) of the Act be repealed. Sections 6(2)(a) and (b) of the Act should be amended to delete the reference to a provision that may be repealed,[26] and a provision that has already been repealed.[27]

2.141 The Constitutional Affairs Amendment Act 104 of 1985 was repealed by Schedule 7 of the Interim Constitution. As a result, section 7B(1) of the Act is redundant as it makes reference to an election contemplated in terms of the Constitutional Affairs Amendment Act and it is provisionally proposed that this section be repealed. Also, certain sections of the

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24 Government Gazette No. 11084 Notice 2885, 31 December 1987.

25 Government Gazette No. 11978 Notice 1335, 30 June 1989, amended by Government Gazette No. 14669 Notice 505, 26 March 1993.

26 Section 5(1)(b) of the Act.

27 Section 4 of the Act.

Black Communities Development Act 4 of 1984 contained in Schedule 2 were repealed by the Act. However, the Black Communities Development Act as a whole, with the exception of Chapters VI and VII, was repealed by section 72 of the Abolition of Racially Based Land Measures Act 108 of 1991. The repeal contained in the Act is thus redundant, and it is provisionally proposed that this portion of the Schedule also be repealed.

(c) Fire Brigade Services Act 99 of 1987

(i) Provisional proposal

2.142 It is provisionally proposed that the grounds of discrimination listed in section 11(2)(b) of the Fire Brigade Services Act 99 of 1987 be expanded to include all the grounds listed in section 9(3) of the Constitution.

(ii) Evaluation of Fire Brigade Services Act 99 of 1987

2.143 This Act was promulgated on 23 October 1987. Its purpose was to provide for the establishment, maintenance, employment, co-ordination and standardisation of fire brigade services, as well as any connected matters. Section 11(2)(b) of the Act, which provides for the relevant local authority to pay a grant-in-aid calculated on the prescribed basis to any controlling authority in respect of the establishment or maintenance of its service, only lists sex, race, colour and religion as the grounds upon which discrimination may not occur. In the context of the current review, it is provisionally proposed that the grounds of discrimination listed in section 11(2)(b) of the Act be expanded to include all the grounds listed in section 9(3) of the Constitution.

2.144 Although not directly related to the core focus of this Discussion Paper the following recommendations are made: Due to the repeal of the bulk of the provisions of the Interim Constitution and the establishment of provincial Executive Councils responsible for the administration of the provinces, and the resultant powers and functions that were assigned to them by the various Premiers, it is provisionally proposed that the definition of "Administrator" be repealed, and that of "Minister" be amended, in order to correctly identify the authorities competent to carry out the functions detailed in the Act. In addition, as the terms “Administrator” and “Minister” are used, except in sections 2, 5 and 15, to denote the same competent authority authorised to perform the same function in terms of the Act, it is provisionally proposed that these terms be replaced with the term “Relevant MEC” within the Act. This substitution is provisionally proposed for all relevant sections in the Act, with the

exception of sections 2, 15 and 17 of the Act. Furthermore, it is provisionally proposed that the definition of "local authority" be amended so as to comply with section 2 of the Local Government: Municipal Systems Act 32 of 2000.

(d) Organised Local Government Act 52 of 1997

(i) Provisional proposal

2.145 It is provisionally proposed that the definition of "Minister" contained in section 1 of the Organised Local Government Act 52 of 1997 be amended so as to correctly identify the Minister of CGTA; and section 3(2)(a) of the Act be amended in order to include a reference to the grounds outlined in section 9(3) of the Constitution.

(ii) Evaluation of Organised Local Government Act 52 of 1997

2.146 The purpose of the Act was to cater for the recognition of national and provincial organisations representing municipalities. The Act further determined procedures by which local government may consult the national and provincial governments, designate representatives to participate in the National Council of Provinces (“NCOP”), and nominate persons to the Financial and Fiscal Commission. It is provisionally proposed that the definition of "Minister" contained in section 1 of the Act be amended so as to correctly identify the Minister of CGTA as the authority competent to carry out the functions detailed in the Act (see the proposed formulation in Schedule 1 of this Paper). Section 3(2)(a) of the Act, which provides for the designation of representatives to participate in the NCOP, does not specify which criteria should be applied when assessing the designation for participation in the proceedings of the NCOP. It is provisionally proposed that a reference to the grounds outlined in section 9(3) of the Constitution be included in section 3(2)(a) of the Act, and that such section is amended accordingly.

(e) Traditional Leadership and Framework Act 41 of 2003

(i) Issues for noting

2.147 In the context of the current review, the Traditional Leadership and Framework Act 41 of 2003 does not contain any ‘glaringly’ discriminatory provisions. However, a number of issues have been noted in paragraphs 2.139-2.143 below for information.

(ii) Evaluation of Traditional Leadership and Framework Act 41 of 2003

2.148 The Act provides a framework for the recognition of traditional communities, the establishment and recognition of traditional councils to administer the affairs of those communities as well as the recognition of traditional leaders and their removal from office.[28] The Act also provides for the establishment of a Commission on Traditional Leadership Disputes and Claims. Finally, the Act seeks to transform the institution of traditional leadership to be in line with the Constitution and the Bill of Rights. In the context of the current review, the Act does not contain any 'glaringly' discriminatory provisions. However, the following points should be made:

2.149 The Act promotes the imperatives of affirmative action contained in section 9(2) of the Constitution by requiring in section 3(2)(b) that one third of the members of the traditional council should be women. The Act is however silent on the question whether a Premier of the province where the traditional council is located can withdraw the recognition of the traditional community if the traditional council does not comply with this requirement. It is therefore provisionally proposed that CoGTA consider amending section 7(1) in order to include a provision making it possible for withdrawal of recognition of a traditional community on the basis that it does not comply with the requirement set out in section 3(2)(b).

2.150 Moreover, section 3(2)(d) permits the Premier of a Province to set a lower threshold for the participation of women 'where it has been proved that an insufficient number of women are available to participate in a traditional council.' Given the fact that women constitute at least half the population of every community in South Africa, it is unclear when this will be the case.

2.151 Section 16(3) of the Act requires provincial legislation to make provision for mechanisms or procedures that would allow 'a sufficient number' of women to be represented in the provincial house of traditional leaders and to be elected as

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[28] Section 31 of the Constitution guarantees the rights of communities to practice a culture of their own choice and create their own cultural institutions, subject to the Constitution. Sections 211 and 212 of the Constitution furthermore recognise and protect the institution, status and role of traditional leadership according to customary law, subject to the Constitution. Towards those ends, and in order to ensure that the institutions of traditional leadership conform to the Constitution, the Act sets out a national framework and norms and standards to define the place and role of traditional leadership.

representatives of the provincial house of traditional leaders to the National House of Traditional Leaders. The provision accordingly serves as a corrective to the National House of Traditional Leaders Act 10 of 1997, which is silent on the issue of women representation.

2.152 In the context of the current review, the important question remains whether a female applicant might succeed in an application requesting a court to declare unconstitutional the customs and practices of her community relating to succession to chieftainship on the allegation that they follow the principle of male primogeniture and therefore unfairly discriminate on the basis of gender. In this regard, it is important to note that the Act does not outline any specific procedure that needs to be followed when a royal family chooses a successor. The Act is thus silent on the issue whether females can become traditional leaders or whether it endorses the customary law principle of male primogeniture in succession to traditional leadership. The Act simply provides that the royal family concerned must *identify* a successor 'with due regard to applicable customary law' - section 9(1) for kings and queens and section 11(1) for senior leaders and headmen or headwomen.[29] It is therefore provisionally proposed that section 9(1)(a) and section 11(1)(a) be amended by way of including references to section 9 of the Constitution.

5. Statutes reviewed and provisionally proposed to be retained

2.153 For the sake of comprehensiveness and historical memory and in order to serve an educational purpose this section reviews a number of statutes administered by CoGTA that do not, in the framework of the current review, require any immediate legislative action. However, as was indicated before, the fact that these statutes meet the requirements set by

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[29] It is worth noting that in *Shilubana and others v Nwamitwa* 2008 (9) BCLR 914 (CC), when the Valoyi Royal Family decided to confer the chieftainship on the applicant, the Act was not yet in existence. The court held that a traditional authority can develop its community's customary law relating to succession to chieftainship in line with the imperatives of the Constitution. It is likely that such a female applicant will succeed for the reasons given in *Bhe v Magistrate, Khayelitsha* 2005 (1) SA 580 (CC). In that case the Constitutional Court ruled that the principle of male primogeniture was unconstitutional: '[t]he primogeniture rule as applied to the customary law of succession cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Rights.' The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, which came into operation in 2003, also prohibits in section 8(d) unfair discrimination on the basis of gender including "any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between men and women…"

section 9 of the Constitution, does not imply that they do not require legislative review and action on account of inconsistency with other provisions of the Constitution and other anomalies.

(a) Promotion of Local Government Affairs Act 91 of 1983 (excluding Chapter 1 and 1A and section 14, section 15 insofar as it is applied with respect to sections 3(12), 6(1)(b) and 7A(2), and sections 17A and 17G)[30]

2.154 The references to the demarcation board in the long title of the Act are redundant and could be repealed. Without an operational review to determine whether, in fact, the co-ordinating council established under the Act remains in use in practice, it is not possible to determine whether the remaining provisions of the Act might be redundant, but it is assumed that these provisions remain operative. There are no provisions in the Act that seem to conflict with the Constitution. It is therefore provisionally proposed that this Act be retained.

2.155 The main purpose of the Act is to make provision for the co-ordination of functions of general interest to local authorities and of those functions of local authorities which should in the national interest be co-ordinated and for the establishment of a co-ordinating council and various committees of the council. The Act is an extensive statute also providing for the said bodies' powers and functions. The provisions of the Act relating to demarcation of the areas of jurisdiction of local authorities have been repealed, as these issues are now dealt with under the Local Government: Municipal Demarcation Act 27 of 1998. Accordingly, the references to the demarcation board in the long title of the Act are redundant and could be repealed, though they are not operative provisions and therefore repeal would serve no purpose. Without an operational review to determine whether, in fact, the co-ordinating council established under the Act remains in use, it is not possible to determine whether the remaining provisions of the Act might be redundant, but it is assumed that these provisions remain operative. There are no provisions in the Act that seem to conflict with the Constitution. It is therefore provisionally proposed that this Act be retained.

(b) Lekoa City Council Dissolution Act 61 of 1991

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[30] Chapter 1, section 14, section 15 in so far as it has not been assigned to a province (i.e. in so far as it is applied with respect to sections 3(12), 6(1)(b) and (7A)), sections 17A and G were repealed by section 36 of Act 19 of 2008. Chapter 1A was repealed by section 43 of Act 27 of 1998.

2.156 The purposes of the Act are to: dissolve the Lekoa City Council; provide for the transfer of assets, liabilities, duties, rights and obligations; provide for the transfer of staff and incidental labour related issues pertaining to the transfer of staff; create a development area and authorise the establishment of local authorities; authorise the establishment of management bodies and provide for transitional arrangements. The Lekoa City Council comprised the townships of Sebokeng, Boipatong, Bophelong and Sharpeville. The single council was dissolved and it appears from telephone interviews conducted with officials currently employed by the Emfuleni Municipality, that separate councils were subsequently established. Those councils were later subject to the country-wide reform of local government and currently form part of other municipal councils, the Emfuleni municipality being one of them. The dissolution of Lekoa City Council took place in the early 1990's and various powers were granted to and duties imposed on the then administrators of both Transvaal and the Orange Free State. The administrator of the Free State was, for instance, obliged to transfer all land vested in him/her and situated within certain geographical areas, to the councils to be established under the Act, in terms of section 4(2)(b) of the Act. Staff transfers and benefits were dealt with at length as well as the transfer of assets, liabilities, rights, duties and obligations of the Lekoa City Council.

2.157 The Act should not be repealed if it still serves any regulatory function or if any of the duties or obligations imposed by it, have not been met or complied with. Within the limited time frame and due to the nature of such an enquiry, it could not be established whether all duties and obligations imposed by the Act, have been fulfilled or whether there are still any contracts entered into in the name of Lekoa City Council. It appears from a telephone interview with an official who was employed by the Lekoa City Council and is now employed by the Emfuleni Municipality, that it is uncertain whether the administrator of the Free State indeed transferred land as required by section 4(2)(b) of the Act. It is therefore provisionally proposed that a thorough audit be conducted by the Department, in co-operation with the applicable provincial and local authorities to establish whether the Act has been complied with and the obligations imposed by the Act, have been fulfilled. Such an audit would entail the listing of land (and possibly assets); title deed searches, perusal of staff records*, in situ* records searches for contracts etc. A repeal of the Act is not recommended at this stage, as it is not clear what the factual position regarding its state of implementation is. In addition, it is clear that there are still employees employed by at least one successor in title, who are entitled to the benefits bestowed by and subject to the arrangements provided for in section

5 of the Act. Once the audit has been completed, the possible repeal of the Act may be reconsidered.[31]

(c) National House of Traditional Leaders Act 10 of 1997

2.158 The Act establishes the National House of Traditional Leaders made up of three representatives from the different provincial houses of traditional leaders. The Act also enumerates the mainly advisory functions that the House has in relation to the national government. The House is set up to, inter alia, promote the role of traditional leadership within a democratic constitutional dispensation. The Interim Constitution required the new provinces to establish provincial houses of traditional leaders. Apart from Gauteng, Northern Cape and Western Cape, the other six provinces established provincial traditional houses in 1994 and 1995. The House mainly plays an advisory role vis-à-vis the national government on matters of customary law and traditional leadership. For purposes of the current review, the Act does not contain any 'glaringly' discriminatory provisions. However, the Act does not explicitly make mention of any affirmative action measures in order to ensure that women are represented in the House. Given the fact that the system of traditional leadership - based as it was on the principle of male primogeniture- is dominated by males, the silence of the Act on this issue could be said to perpetuate discrimination. Despite this observation, it appears unnecessary to amend section 4 dealing with the nomination of members to the House so as to explicitly include affirmative action measures in line with section 9(2) of the Constitution. This issue is, in fact, taken care of in the Traditional Leadership and Framework Act 4 of 2003. Section 16(3)(b) of the latter Act requires provincial legislation to be enacted in order to provide mechanisms or procedures to ensure that a 'sufficient number' of women are representatives to the House. It is therefore provisionally proposed that the Act be retained.

(d) Remuneration of Public Office Bearers Act 20 of 1998

2.159 The objectives of this Act include, inter alia, to provide a framework for determining the salaries and allowances of the President, members of the National Assembly, permanent delegates to the NCOP, Deputy President, Ministers, Deputy Ministers, traditional leaders,

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[31] The findings in *Bareki NO and Another v Gencor Ltd and Others* 2006 (1) SA 432 (T) at 450-454 lead to the cautionary recommendation in this regard.

members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders and to provide a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils as well as for determining pension and medical aid benefits of office bearers. This post-1994 Act provides a framework for determining the salaries and allowances of, as the short title indicates, "public office bearers", including traditional leaders, members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders. As such, this Act serves as framework legislation.[32] A characteristic of such legislation is the inclusion of broad-based policy and principles.[33] None of the provisions in the Act appears to be unconstitutional or in conflict with section 9 of the Constitution. On the contrary: the Act is the outcome of a constitutional direction – to pass national legislation to provide for a framework for determining salaries, allowances and benefits for public office bearers. It is accordingly provisionally proposed that the Act be retained.

(e) Repeal of Local Government Laws Act 42 of 1997

2.160 This Act was promulgated on 3 October 1997. Its purpose was to repeal certain laws pertaining to local government.[34] As that purpose has now been achieved, this Act serves no further purpose and could probably be repealed itself.[35] However, as the only practical effect of repealing this Act would be to replace it with another Act which would have no purpose other than to repeal this Act, it is provisionally proposed that the Act be retained.

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32 The Act owes its existence to section 219 ("Remuneration of persons holding public office") of the Constitution. The Act must further be read in conjunction with the *Independent Commission for the Remuneration of Public Office-bearers Act* 92 of 1997.

33 On the features of framework legislation see eg Nel J and Du Plessis W "An evaluation of NEMA based on a generic framework for environmental framework legislation" 2001 (8) *SAJELP* 1-33 at 3.

34 Namely, the *Local Government Bodies Franchise Act* 117 of 1984, the *Prior Votes for Election of Members of Local Government Bodies Act* 94 of 1988, section 16 of the *Local Government Affairs Amendments Act* 56 of 1993, and Schedule 3 of both the *Regional Services Council Act* 109 of 1985 and the *KwaZulu and Natal Joint Services Act* 84 of 1990, only in so far as these two Acts amended section 1 of the *Local Government Bodies Franchise Act*, 1984.

35 See section 12(2) of the *Interpretation Act* 33 of 1957.

(f) Transfer of Staff to Municipalities Act 17 of 1998

2.161 The Act, inter alia, deals with the transfer by the MEC of a province of employees from provincial government to municipalities. Section 2(1) of the Act empowers the MEC of a province responsible for local government to effect such transfers, subject to the provisions of the Labour Relations Act 66 of 1995 ("LRA"), while section 2(2) sets out the requirements for a transfer, which include the consent of the affected employee and the concurrence of the designated municipality. The Act (sections 3 to 5) also deals with certain ancillary matters, namely accumulated vacation leave, pensions and disciplinary or grievance proceedings. As indicated, the Act empowers provincial MECs responsible for local government to transfer employees of provincial departments to municipalities. This power remains relevant and exercisable. The Act is furthermore sensitive to the need to comply with the related requirements of the LRA. Indeed, in requiring the consent of employees, the Act's requirement is stricter than the LRA, which permits the transfer of employees subject only to consultation and certain procedural requirements. For purposes of the current review, no unconstitutional or redundant provisions are perceived in the Act and it is therefore provisionally proposed that the Act be retained.

(g) Local Government: Municipal Demarcation Act 27 of 1998

2.162 The purpose of this Act is to provide criteria and procedures for the determination of municipal boundaries by an independent authority and to provide for matters connected therewith. The Act also establishes the Demarcation Board. The provisions of this post-1996 Act are neither discriminatory nor unconstitutional. Being part of the suite of local government legislation that regulates the entire demarcation process across South Africa, some provisions in the Act may, however, in future require a further statutory review and amendment in order to enhance legal certainty, among others. However, in terms of the current investigation it is provisionally proposed that the Act be retained as it seems in line with section 9 of the Constitution and remains essential for the purpose of achieving its objectives.

(h) Council of Traditional Leaders Amendment Act 85 of 1998

2.163 The purpose of the Act is to amend the Council of Traditional Leaders Act 10 of 1997 so as to change the name of the Council of Traditional Leaders to the National House of Traditional Leaders. It was necessary to change the name to the 'national house' in order to have some uniformity with provincial institutions which are referred to as provincial houses.

For purposes of the current review, it is provisionally proposed that the Act be retained as it does not conflict with section 9 of the Constitution.

(i) Local Government: Municipal Structures Act 117 of 1998

2.164 The Act serves as an extensive framework law and provides for the establishment of municipalities in accordance with the requirements related to categories and types of municipalities. It establishes criteria for determining different categories of municipalities and furthermore defines the types of municipalities that may be established within each category. The Act aims, inter alia, to: provide for an appropriate division of functions and powers between categories of municipalities; regulate the internal systems, structures and office-bearers of municipalities and to provide for appropriate electoral systems. The provisions of the Act are neither discriminatory nor unconstitutional and appear to have been carefully aligned with the Constitution. Several provisions in the Act may, however, in future require further statutory review and amendment in order to enhance legal certainty, to ensure more comprehensive/clear regulation of matters that fall within the ambit of the objectives of the Act and to ensure alignment of the Act with other legislation and provisions in the Constitution. However, in terms of the current investigation it is provisionally proposed that the Act be retained.

(j) Local Government: Municipal Systems Act 32 of 2000

2.165 The Act was promulgated to provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and to ensure universal access to essential services that are affordable to all. The Act further defines the legal nature of a municipality, provides for the manner in which municipal powers and functions are exercised and performed to provide for community participation and aims to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government. Another objective of the Act is to empower poor people and to ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts.

2.166 The provisions of the Act are neither discriminatory nor unconstitutional. Having been in force for close to a decade, the Act may, however, in future require statutory review and

amendment in order to enhance legal certainty, to ensure more comprehensive/clear regulation of matters covered by the Act and to ensure alignment with the Act and other statutes (such as the Intergovernmental Relations Framework Act 13 of 2005, the Promotion of Administrative Justice Act 3 of 2000 and the National Environmental Management Act 107 of 1998) and/or the Constitution. But, in terms of the current investigation it is provisionally proposed that the Act be retained, as it remains fundamental for the purpose of achieving its objectives.

(k) Repeal of Volkstaat Council Provisions Act 30 of 2001

2.167 This Act was promulgated on 30 April 2001. Its purpose was to repeal sections 184A and 184B(1)(a), (b) and (d) of the Interim Constitution. The Constitution repealed the Interim Constitution, with the exception of certain specified sections of the Interim Constitution which remained in force, including the sections which were subsequently repealed by this Act. As the Act has achieved its objective (namely to repeal the abovementioned provisions of the Interim Constitution) it could itself now be repealed,[36] but the only practical effect of repealing this Act would be to replace it with another Act which would have no purpose other than to repeal this Act. As the Interim Constitution has not yet been repealed in its entirety (several sections remain in force), the Act remains applicable and it is provisionally proposed that the Act should be retained.

(l) Commission for the Promotion and Protection of the Rights of Cultural and Linguistic Communities Act 19 of 2002

2.168 The Act, in order to give effect to the provisions of the Constitution, provides for the composition of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and for additional functions of the said Commission. The Act also provides for the convening of a national consultative conference and the establishment and recognition of community councils and certain related affairs. The Act is furthermore aimed at the promotion of respect for and furthering of the protection of the rights of cultural, religious and linguistic communities and at the promotion of peace, friendship, humanity, tolerance and national unity among and within such communities, on the basis of equality, non-discrimination and free association in order to foster mutual respect among cultural, religious and linguistic communities. The Act may be perceived as complementary to section 9 of the Constitution and it forms a legal basis in the instance of

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[36] See section 12(2) of the *Interpretation Act* 33 of 1957.

an infringement of certain constitutional entitlements. For purposes of the current review, it is provisionally proposed that the Act be retained since it continues to play an important role in promoting the rights of cultural and religious groups in the diverse society of South Africa.

(m) Disaster Management Act 57 of 2002

2.169 Chapters 2, 3 and 4 of the Act commenced on 1 April 2004 (and Chapters 1, 6 and 8 of the Act, in so far as they relate to Chapters 2, 3 and 4), while the remaining provisions of the Act came into operation on 1 July 2004. The Act provides for an integrated and co-ordinated disaster management policy. The focus of the disaster management policy is on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, ensuring a rapid and effective response to disasters, and providing for post-disaster recovery. The Act further establishes national, provincial and municipal disaster management centres and regulates disaster management volunteers. The Act also repealed and replaced the Civil Protection Act 67 of 1977. The provisions of the Act are neither discriminatory nor unconstitutional. It is therefore provisionally proposed that the Act be retained, as it remains necessary for the purpose of achieving its objectives.

(n) Local Government: Municipal Property Rates Act 6 of 2004

2.170 The purposes of the Act, among others, include to regulate the power of a municipality to impose rates on property; to exclude certain properties from rating in the national interest; and to make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies. The Act appears to be particularly responsive to section 9 of the Constitution in its establishment of the criteria to be applied in the adoption and content of rates policies (section 3) and in its procedural requirements with regard to community participation (section 4), for example. In the context of the current review, the provisions of the Act are neither discriminatory nor unconstitutional and comply with the Constitution. Some sections of the Act may, however, in future require amendment in order to enhance legal certainty and to ensure alignment of the Act and other statutes. For purposes of the current review it is provisionally proposed that the Act be retained.

(o) Intergovernmental Relations Framework Act 13 of 2005

2.171 The Act aims, inter alia, to establish a general legislative framework for Government in all three spheres to promote and facilitate intergovernmental relations and to provide a

general legislative framework for mechanisms and procedures to facilitate the settlement of intergovernmental disputes. Section 41(2) of the Constitution required Parliament to promulgate an Act to give effect to the abovementioned objects of the Act. Although various other Acts provided for matters relating to intergovernmental relationships, the Act was required to establish a single legislative framework applicable to all spheres and sectors of Government, to ensure that intergovernmental relations are conducted in the spirit of (particularly chapter 3 of) the Constitution.

2.172 Section 4 stipulates that the objects of the Act also include facilitation of "co-ordination in the implementation of policy and legislation, including (a) coherent government, (b) effective provision of services; (c) monitoring implementation of policy and legislation; and (d) realisation of national priorities. Despite the comments in the *National Lotteries Board* case,[37] the Act appears to comply with its constitutional mandate and other constitutional provisions, including the equality section. Any differentiation made in terms of the Act will have to be tested against the equality section and additional provisions are not required. It may be noted that some frustration apparently exists about the functioning of structures established by the Act, but such an enquiry does not fall within the scope of the current review. Although the Act emphasises intergovernmental co-operation of executive rather than administrative structures and functionaries, provision is made for the establishment of intergovernmental technical support structures. The establishment of such structures will depend upon the appropriate intergovernmental structure's willingness and desire to establish technical support structures. The CoGTA may consider encouraging the establishment of such structures to ensure co-operation and co-ordination on that level. However, for purposes of the current review it is proposed that the Act be retained.

(p) Black Laws Amendment Act 119 of 1977

(i) Provisional proposal

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37 *National Lotteries Board v Robin Leslie Bruss, Brian Jeffrey Miller N.O. and Others* unreported judgment by Claassen J in the Transvaal Provincial Division of the High Court of South Africa on 2 November 2007, case number 13046/06. The obiter remarks contained in par 24 indicated the judge's view that "…regarding the arguments raised in respect of the Intergovernmental Relations Framework Act, I agree with all counsel that it is amazingly poorly drafted and should be revisited by the Legislature with the greatest of urgency." The judge, however, also remarked (obiter) that the Act was not applicable to the present dispute.

2.173 It is provisionally proposed that the Black Laws Amendment Act 119 of 1997 be retained since the only remaining section of the Act, that is section 1, provides for the repeal of the Liquor Ordinance, 1922 (Ordinance 7 of 1922), and the Liquor Licences Amendment Ordinance, 1928 (Ordinance 3 of 1928) of the province of the Cape of Good Hope.

(ii) Evaluation of the Black Laws Amendment Act 119 of 1977

2.174 The purpose of Act 119 of 1977 **is to repeal the Liquor Licences Ordinance, 1922, and the Liquor Licences Amendment Ordinance, 1928, of the province of the Cape of Good Hope; to amend the provisions of the Development Trust and Land Act, 1936, relating to the moneys to be paid into the South African Development Trust Fund; to amend the provisions of the Blacks (Urban Areas) Consolidation Act, 1945, in order to increase the penalties for certain offences; and to further regulate the appropriation of moneys in the sorghum beer account; to amend the provisions of the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952, in order to provide for the issue of identity documents to foreign Blacks; and to enable the Minister of Plural Relations and Development to make regulations; to amend the provisions of the Black Labour Act, 1964, in order to provide for the making of regulations relating to the compulsory provision of goods and services by employers to their Black employees; to amend the provisions of the Black Authorities' Service Pension Act, 1971, relating to the interest to be added to certain amounts; and to provide for the transfer of certain assets and liabilities of the Authorities' Service Pension Fund and the Authorities Service Superannuation Fund to certain other provident funds; and to amend the provisions of the Black Affairs Administration Act, 1971, relating to pension matters of employees of Administration Boards; and to apply the Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970, to all Administration Boards**.

2.175 All the sections of Act 119 of 1997 have been repealed, excluding section 1. Section 1 of the Act repeals the Liquor Ordinance, 1922 (Ordinance 7 of 1922), and the Liquor Licences Amendment Ordinance, 1928 (Ordinance 3 of 1928) of the province of the Cape of Good Hope.

2.176 Accordingly it is recommended that section 1 of Act 119 of 1997 be retained.

Annexure A

CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS LAWS AMENDMENT AND REPEAL BILL

GENERAL EXPLANATORY NOTE:

[ ] Unless otherwise indicated words in bold type in square brackets indicate omissions from existing enactments.

_____ Unless otherwise indicated words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend and repeal certain laws of the Republic pertaining to co-operative governance and traditional affairs containing discriminatory or obsolete provisions

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

Repeal of laws

1. (a) The laws specified in Schedule 1 are hereby repealed.

(b) The laws specified in Schedule 2 are hereby repealed to the extent set out in the third column of Schedule 3.

Amendment of laws

2. The laws specified in Schedule 3 are hereby amended to the extent set out in the fourth column of the Schedule.

Short title and commencement

3. This Act is called the Co-operative Governance and Traditional Affairs Laws Amendment and Repeal Act, and comes into operation on a date determined by the President by proclamation in the Gazette.

SCHEDULE 1

Item No.	No. and year of	Title or subject of law
1.	105 of 1987	Pension Benefits for Councilors of Local Authorities Act 105 1987
2.	36 of 1997	South African Olympic Hosting Act 36 of 1997
3.	59 of 1999	Disestablishment of the Local Government Affairs Council Act 59 of 1999
4.	46 of 1937	Black Laws Amendment Act 46 of 1937
5.	79 of 1957	Black Laws Further Amendment Act 79 of 1957
6.	63 of 1966	Black Laws Amendment Act 63 of 1966
7.	56 of 1968	Black Laws Amendment Act 56 of 1968
8.	27 of 1970	Second Black Laws Amendment Act 27 of 1970
9.	49 of 1970	Third Black Laws Amendment Act 49 of 1970
10.	12 of 1978	Black Laws Amendment Act 12 of 1978

SCHEDULE 2

Item No.	No. and year of law	Title and subject	Extent of repeal
1.	75 of 1986	Abolition of Development Bodies Act 75 of 1986	1. Repeal schedule 1, and sections 3, 5(1), 5(1A), 5(2) and 5(4). 2. Repeal section 2(1). 3. Repeal sections 6(1) and 6(2)(b). 4. Repeal section 7B(1). 5. Repeal the provisions of Schedule 2 providing for the repeal of certain provisions of the Black Communities Development Act, 1984 (Act No. 4 of 1984).
2.	76 of 1963	Black Laws Amendment Act 76 of 1963	Repeal section 3(1), 3(2), 3(2A), 3(3), 3(4), 3(6) and 3(7)
3.	42 of 1964	Black Laws Amendment Act 42 of 1964	Repeal sections 77, 78(a), 78(b), 78(c), 79(a), 79(b), 79(c), 80, 88, 89, 90 and 91(1),
4.	23 of 1972	Black Laws Amendment Act 23 of 1972	Repeal sections 2 and 10

SCHEDULE 3

Item No.	No. and year of law	Title and subject	Extent of amendment
1.	Act 84 of 1967	Removal of Restrictions Act, 1967	1. Section 1 is hereby amended: (a) by the substitution of the definition of "Minister" by the following definition: "Minister", means the national Minister responsible for the administration of Rural Development and Land Reform; (b) by the substitution of the definition of "local authority" by the following definition: "local authority", means any district municipality, local municipality or metropolitan municipality as defined in section 1 and established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998; (c) by the substitution of the definition of "province" by the following definition: "province", means a province in terms of section 103 of the Constitution of the Republic of South Africa, 1996; 2. Section 2(1)(b)(ii) is hereby amended by the repeal of the following underlined text and insertion of the text in brackets: for public purposes by the State or a local authority; [an organ of state as defined in section 239 of the

			Constitution of the Republic of South Africa, 1996,] or 3. Section 2(4)(a) is hereby amended by the repeal of the following (underlined) phrase: <u>If the land concerned is situate in the area of a local municipality,</u> [C]ause a notice to be served on the said local authority informing it of the proposed alteration, suspension or removal, as the case may be, of the restriction or obligation specified in such notice and calling for its comments and recommendation to be lodged with him within a period of twenty-one days after the date of such notice. 4. Section 3(2) is hereby amended by the repeal of the following underlined text and insertion of the text in brackets: <u>If the land concerned is situated in the area of a local authority,</u> [t]he application shall be lodged with <u>such</u> the applicable local authority wherein such land is situate, [in accordance with the provisions of section 84 of the Local Government: Municipal Structures Act 117 of 1998,] and the applicant shall simultaneously forward a copy of such application to Director-

			General of the province wherein the land is situate. The local authority shall transmit the application to the Director-General together with its comments and recommendations thereon. 5. Section 3(3) is hereby amended by the repeal of the following (underlined) phrase: <u>If the land concerned is not situated in the area of a local authority or</u> [I]f the application is made by a local authority, the application shall be lodged with the Director-General of the province wherein such land is situate. 6. Section 5(2)(b)(i) is hereby amended by the repeal of the following (underlined) phrase: <u>If the land concerned is situate in the area of a local authority,</u> [I]nform the said local authority of the Minister's views and call for its comments and recommendations thereon.
2.	Act 75 of 1986	Abolition of Development Bodies Act, 1986	1. Section 1 is hereby amended- (a) by the repeal of paragraphs (a) and (b) of the definition of "development body" and the substitution for paragraph (d) of the definition of "development body", of the following

			definition: uMsekeli, the corporate body established in terms of section 2 of the Development and Services Board Ordinance, 1941 (Ordinance No. 20 of 1941), of Natal; (b) by the substitution in the said section for the definition of “Minister” of the following definition: “Minister” means the national Minister responsible for local government; (c) by the substitution in the said section of paragraphs (a) and (b) of the definition of “public authority”, by the following definition: (i) a Minister of the Republic appointed under the Constitution of the Republic of South Africa, 1996, administering a department of State; (ii) a Premier of a province appointed under the Constitution of the Republic of South Africa, 1996; (d) by the repeal in the said section of the definition of “Administrator” and the insertion of the following definition of “Relevant MEC”: “Relevant MEC” means the Member

			of provincial Executive Council responsible for the administration of development bodies. (e) The term “Administrator” is hereby substituted with the term “Relevant MEC”, where relevant and in the appropriate places in the Act and in the regulations promulgated in terms of the Act. 2. Section 2(4) is amended to read as follows: “A member or alternate member of any development body abolished in terms of the provisions of subsection (2) shall vacate his office with effect from the date of such abolition.” 3. Section 6(2)(a) of the Act is amended by the deletion of the words “as contemplated in section 5(1)(b); and”; and section 6(2)(b) is amended by the deletion of the words “in terms of section 4”.”
3.	Act 99 of 1987	Fire Brigade Services Act, 1987	1. Section 1 is hereby amended – (a) by the substitution in the said section for the definition of “Minister” of the following definition: “Minister”, in paragraph (a) of the definition of “local authority” and in sections 2, 15 and 17 of the Act, means the national Minister

			responsible for local government. (b) by the substitution in the said section for the definition of "Administrator" of the following definition of "Relevant MEC": "Relevant MEC" means the Member of provincial Executive Council responsible for fire brigade services in the province. (c) by the substitution in the said section for the definition of "local authority" of the following definition: "local authority" means a municipality contemplated in section 2 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) and includes– an institution or body declared by the Minister, by notice in the Gazette, to be a local government for the purposes of this Act: Provided that the Minister may only declare an institution or body to be a local government if such institution or body was established by an Act of Parliament and if it, in terms of or by virtue of that Act, exercises powers and performs duties which, in the opinion of the Minister, may be exercised or performed by an institution, contemplated in section 2 of the

			Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000).” 2. The term “Relevant MEC” is hereby substituted for the term “Administrator”, where relevant and in the appropriate places in the Fire Brigade Services Act, 1987 and in the regulations promulgated in terms of the Act. 3. Except in sections 1, 2, 15 and 17 of the Fire Brigade Services Act, 1987, the term "Relevant MEC" is hereby substituted for the term “Minister", where relevant and in the appropriate places in the Act and in the regulations promulgated in terms of the Act. 4. Section 11(2)(b) is amended to read as follows: “shall not be paid unless any local authority produces proof to the Administrator that the local authority does not discriminate in its service between its employees on the basis of sex, race, colour, [or] religion or any other ground listed in section 9(3) of the Constitution of the Republic of South Africa, 1996”.
4.	Act 52 of 1997	Organised Local Government Act, 1997	1. Section 1 is amended by the substitution for the definition of "Minister" of the following definition: “Minister means the national Minister responsible for local

			government ". 2. Section 3(2)(a) is amended by the addition of the following proviso immediately after the words "National Council of Provinces": "provided that such criteria shall not unfairly discriminate directly or indirectly on any ground listed in section 9(3) of the Constitution of the Republic of South Africa, 1996".
5.	Act 41 of 2003	Traditional Leadership and Framework Act, 2003	1. Sections 9(1)(a) and 11(1)(a) are amended by inclusion of the following words: (a) Sections 9(1)(a): The royal family must, within a reasonable time after the need arises for the position of a king or a queen to be filled, and with due regard to applicable customary law and the equality provisions contained in section 9 of the Constitution. (b) Section 11(1)(a): The royal family must, within a reasonable time after the need arises for the position of a king or a queen to be filled, and with due regard to applicable customary law and the equality provisions contained in section 9 of the Constitution.

Annexure B

STATUTES ADMINISTERED BY THE DEPARTMENT OF CO-OPERATIVE AND TRADITIONAL AFFAIRS (AS PROVIDED BY CoGTA)

No.	Name of Act, number and year
1.	Black Laws Amendment Act, 1937 (Act No.46 of 1937)
2.	Black Laws Amendment Act, 1963 (Act No.76 of 1963)
3.	Black Laws Further Amendment Act, 1957 (Act No.79 of 1957)
4.	Black Laws Amendment Act, 1966 (Act No.63 of 1966)
5.	Black Laws Amendment Act, 1964 (Act No.42 of 1964)
6.	Black Laws Amendment Act, 1968 (Act No.56 of 1968)
7.	Second Black Laws Amendment Act, 1970 (Act No.27 of 1970)
8.	Third Black Laws Amendment Act, 1970 (Act No.49 of 1970)
9.	Black Laws Amendment Act, 1972 (Act No.23 of 1972)
10.	Black Laws Amendment Act, 1977 (Act No.119 of 1977)
11.	Black Laws Amendment Act, 1978 (Act No.12 of 1978)
12.	Removal of Restrictions Act, 1967 (Act No.84 of 1967) (section 5)
13.	Civil Protection Act, 1977 (Act No.67 of 1977) (only provisions assigned to the provinces remain) [repealed by Act 57 of 2002]
14.	Promotion of Local Government Affairs Act, 1983 (Act No.91 of 1983) (to be repealed partially), excluding Chapter 1 and 1A and section 14, section 15 in so far as it is applied with respect to sections 3(12), 6(1)(b) and 7A, and sections 17A and 17G
15.	Promotion of Local Government Affairs Amendment Act, 1984 (Act No.116 of 1984)
16.	Promotion of Local Government Affairs Amendment Act, 1985 (Act No.45 of 1985)
17.	Regional Services Councils Act, 1985 (Act No.109 of 1985)
18.	Regional Services Councils Amendment Act, 1986 (Act No.78 of 1986)
19.	Regional Services Councils Amendment Act, 1988 (Act No.49 of 1988)
20.	Regional Services Councils Amendment Act, 1991 (Act No.75 of 1991)
21.	Abolition of Development Bodies Act, 1986 (Act No.75 of 1986)
22.	Abolition of Development Bodies Amendment Act, 1988 (Act No.47 of 1988)
23.	Abolition of Development Bodies Amendment Act, 1990 (Act No.81 of 1990)
24.	Fire Brigade Services Act, 1987 (Act No.99 of 1987) sections 2 and 15
25.	Fire Brigade Services Amendment Act, 1990 (Act No.83 of 1990)
26.	Fire Brigade Services Amendment Act, 2000 (Act No.14 of 2000)
27.	Pension Benefits for Councillors of Local Authorities Act, 1987 (Act No.105 of 1987)

28.	KwaZulu-Natal Joint Services Act, 1990 (Act No.84 of 1990) (section 23)
29.	Lekoa City Council Dissolution Act, 1991 (Act No.61 of 1991)
30.	Local Government Affairs Amendment Act, 1993 (Act No.56 of 1993)
31.	Local Government Affairs Second Amendment Act, 1993 (Act No.117 of 1993)
32.	National House of Traditional Leaders Act, 1997 (Act No.10 of 1997)
33.	National House of Traditional Leaders Amendment Act, 2000 (Act No.20 of 2000)
34.	South African Olympic Hosting Act, 1997 (Act No.36 of 1997)
35.	Repeal of Local Government Laws Act, 1997 (Act No.42 of 1997)
36.	Organised Local Government Act, 1997 (Act No.52 of 1997)
37.	Transfer of Staff to Municipalities Act, 1998 (Act NO.17 of 1998)
38.	Remuneration of Public Office Bearers Act, 1998 (Act No.20 of 1998)
39.	Local Government: Municipal Demarcation Act, 1998 (Act No.27 of 1998)
40.	Council of Traditional Leaders Amendment Act, 1998 (Act No.85 of 1998)
41.	Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998)
42.	Local Government: Municipal Structures Amendment Act, 1999 (Act No.58 of 1999)
43.	Local Government: Municipal Structures Amendment Act, 2000 (Act No.33 of 2000)
44.	Local Government: Municipal Structures Amendment Act, 2002 (Act No.20 of 2002)
45.	Local Government: Municipal Structures Amendment Act, 2003 (Act No.1 of 2003)
46.	Disestablishment of the Local Government Affairs Council Act, 1999 (Act No.59 of 1999)
47.	Remuneration of Public Office Bearers Amendment Act, 2000 (Act No.9 of 2000)
48.	Remuneration of Public Office Bearers Second Amendment Act, 2000 (Act No.21 of 2000)
49.	Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000)
50.	Local Government: Municipal Systems Amendment Act, 2003 (Act No.44 of 2003)
51.	Repeal of Volkstaat Council Provisions Act, 2001 (Act No.30 of 2001)
52.	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002 (Act No.19 of 2002)
53.	Disaster Management Act, 2002 (Act No.57 of 2002)
54.	Traditional Leadership and Framework Act, 2003 (Act No.41 of 2003)
55.	Local Government: Municipal Property Rates Act, 2004 (Act No.6 of 2004)
56.	Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005)
57.	Black Administration Act, 1927 (Act No.38 of 1927), excluding sections 1, 2(7), 7(bis), 7(ter), 8, 11, 11A, 12, 20, 21A, 22, 22 (bis) and 23

Annexure C

RATIONALISED LIST OF STATUTES ADMINISTERED BY THE DEPARTMENT OF CO-OPERATIVE AND TRADITIONAL AFFAIRS

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
1.	Black Laws Amendment Act, 1937 (Act No.46 of 1937)		X			
2.	Black Laws Amendment Act, 1963 (Act No.76 of 1963)		X			
3.	Black Laws Further Amendment Act, 1957 (Act No.79 of 1957)		X			
4.	Black Laws Amendment Act, 1966 (Act No.63 of 1966)		X			
5.	Black Laws Amendment Act, 1964 (Act No.42 of 1964)		X			
6.	Black Laws Amendment Act, 1968 (Act		X			

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
	No.56 of 1968)					
7.	Second Black Laws Amendment Act, 1970 (Act No.27 of 1970)		X			
8.	Third Black Laws Amendment Act, 1970 (Act No.49 of 1970)		X			
9.	Black Laws Amendment Act, 1972 (Act No.23 of 1972)		X			
10.	Black Laws Amendment Act, 1977 (Act No.119 of 1977)		X			
11.	Black Laws Amendment Act, 1978 (Act No.12 of 1978)		X			
12.	Removal of Restrictions Act, 1967 (Act No.84 of 1967) (section 5)	X				
13.	Civil Protection Act, 1977 (Act No. 67 of 1977) (only provisions assigned to the provinces remain) [repealed by Act 57 of			X		

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
	2002]					
14.	Promotion of Local Government Affairs Act, 1983 (Act No.91 of 1983) (to be repealed partially), excluding Chapter 1 and 1A and section 14, section 15 in so far as it is applied with respect to sections 3(12), 6(1)(b) and 7A, and sections 17A and 17G	X				
15.	Promotion of Local Government Affairs Amendment Act, 1984 (Act No.116 of 1984)				X	
16.	Promotion of Local Government Affairs Amendment Act, 1985 (Act No. 45 of 1985)				X	
17.	Regional Services Councils Act, 1985 (Act No.109 of 1985)		X			
18.	Regional Services Councils Amendment		X			

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
	Act, 1986 (Act No. 78 of 1986)					
19.	Regional Services Councils Amendment Act, 1988 (Act No. 49 of 1988)		X			
20.	Regional Services Councils Amendment Act, 1991 (Act No.75 of 1991)		X			
21.	Abolition of Development Bodies Act, 1986 (Act No.75 of 1986)	X				
22.	Abolition of Development Bodies Amendment Act, 1988 (Act No.47 of 1988)				X	
23.	Abolition of Development Bodies Amendment Act, 1990 (Act No.81 of 1990)				X	
24.	Fire Brigade Services Act, 1987 (Act No.99 of 1987) sections 2 and 15	X				
25.	Fire Brigade Services Amendment Act, 1990 (Act No.83 of 1990)				X	
26.	Fire Brigade Services Amendment Act,				X	

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
	2000 (Act No.14 of 2000)					
27.	Pension Benefits for Councillors of Local Authorities Act, 1987 (Act No.105 of 1987)	X				
28.	KwaZulu-Natal Joint Services Act, 1990 (Act No.84 of 1990) (section 23)	X				
29.	Lekoa City Council Dissolution Act, 1991 (Act No.61 of 1991)		X			
30.	Local Government Affairs Amendment Act, 1993 (Act No.56 of 1993)				X	
31.	Local Government Affairs Second Amendment Act, 1993 (Act No.117 of 1993)				X	
32.	National House of Traditional Leaders Act, 1997 (Act No.10 of 1997)	X				
33.	National House of Traditional Leaders Amendment Act, 2000 (Act No.20 of 2000)				X	

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
34.	South African Olympic Hosting Act, 1997 (Act No.36 of 1997)	X				
35.	Repeal of Local Government Laws Act, 1997 (Act No.42 of 1997)					X
36.	Organised Local Government Act, 1997 (Act No.52 of 1997)	X				
37.	Transfer of Staff to Municipalities Act, 1998 (Act NO.17 of 1998)	X				
38.	Remuneration of Public Office Bearers Act, 1998 (Act No.20 of 1998)	X				
39.	Local Government: Municipal Demarcation Act, 1998 (Act No.27 of 1998)	X				
40.	Council of Traditional Leaders Amendment Act, 1998 (Act No.85 of 1998)				X	
41.	Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998)	X				

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
42.	Local Government: Municipal Structures Amendment Act, 1999 (Act No.58 of 1999)				X	
43.	Local Government: Municipal Structures Amendment Act, 2000 (Act No.33 of 2000)				X	
44.	Local Government: Municipal Structures Amendment Act, 2002 (Act No.20 of 2002)				X	
45.	Local Government: Municipal Structures Amendment Act, 2003 (Act No.1 of 2003)				X	
46.	Disestablishment of the Local Government Affairs Council Act, 1999 (Act No.59 of 1999)					X
47.	Remuneration of Public Office Bearers Amendment Act, 2000 (Act No.9 of 2000)				X	
48.	Remuneration of Public Office Bearers Second Amendment Act, 2000 (Act No.21 of 2000)				X	

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
49.	Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000)	X				
50.	Local Government: Municipal Systems Amendment Act, 2003 (Act No.44 of 2003)				X	
51.	Repeal of Volkstaat Council Provisions Act, 2001 (Act No.30 of 2001)					X
52.	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002 (Act No.19 of 2002)	X				
53.	Disaster Management Act, 2002 (Act No.57 of 2002)	X				
54.	Traditional Leadership and Framework Act, 2003 (Act No.41 of 2003)	X				
55.	Local Government: Municipal Property Rates Act, 2004 (Act No.6 of 2004)	X				

No.	Name of Act, number and year	Reviewed in Discussion Paper	Category 1: Transversal process	Category 2: Already repealed and must be scraped from CoGTA list	Category 3: Amendment Acts which should be removed from CoGTA list as they are contained in the principal legislation; alternatively, all Amendment Acts should be included in the CoGTA list	Category 4: Repeal Acts which are to be retained
56.	Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005)	X				
57.	Black Administration Act, 1927 (Act No.38 of 1927), excluding sections 1, 2(7), 7(bis), 7(ter), 8, 11, 11A, 12, 20, 21A, 22, 22 (bis) and 23		X			