



DISCUSSION PAPER 129

PROJECT 25

**STATUTORY LAW REVISION:
LEGISLATION ADMINISTERED**

BY THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(Legislation regulating the legal profession; courts and other institutions; civil procedure and evidence; substantive criminal law; civil law; wills, estates and insolvency and constitutional and political legislation)

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29 FEBRUARY 2012

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 Justice Y Mokgoro (Chairperson)

The Honourable Mr Justice WL Seriti (Vice-Chairperson)

Professor C Albertyn

The Honourable Mr Justice DM Davis

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The Secretary of the SALRC is Mr Michael Palumbo. The project leaders responsible for this investigation are Professor Cathi Albertyn and Mr Tembeka Ngcukaitobi. The SALRC official assigned to this investigation is Adv Fanyana Mdumbe. The SALRC's temporary offices are on the 5th Floor, Die Meent Building, corner Andries and Pretorius Streets, Pretoria.

On 23 July 2008 the then Minister of Justice and Constitutional Development appointed the following advisory committee members who assisted the SALRC in this review:

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- Dr Ingrid Tufvesson, Transformation Officer, Faculty of Commerce: University of Cape Town
- Mr Mohamed Paleker, Faculty of Law: University of Cape Town
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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 findings and proposals following the review of the legislation administered by the Department of Justice and Constitutional Development (DOJCD) for constitutionality, redundancy and obsolescence. The views, conclusions, and recommendations which follow should not be regarded as the SALRC's final views. The SALRC has liaised with the DOJCD prior to the publication of this discussion paper and acknowledges the valuable assistance and comments it received. A special mention of gratitude is due to Mr LSG Bassett, Deputy Chief State Law Adviser: Legislative Development in the DOJCD for his assistance in this review.

This discussion paper, which includes a draft Bill entitled Justice Laws Repeal and Amendment Bill which, if enacted, will repeal redundant, obsolete and unconstitutional legislation or provisions in legislation currently administered by the DOJCD, is published in full so as to provide persons and institutions wishing to comment with sufficient background information to enable them to place focussed submissions before the SALRC. **A summary of the preliminary recommendations appear on page (vi). The proposed Justice Laws Repeal and Amendment Bill is contained in Annexure B. Schedule 1 of the proposed Bill consists of Acts that may be wholly repealed and Schedule 2 identifies a specific provision or provisions in various pieces of legislation administered or partly administered by the DOJCD that require amendment or repeal. The draft Human Rights Commission Amendment Bill proposes amendments to the Human Rights Commission Act of 1994 to align it with the Constitution of the Republic of South Africa, 1996.**

The SALRC will assume that respondents agree to the SALRC quoting from, or referring to, comments made in submissions to the SALRC and to attributing such 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 29 February 2012 at the address appearing on the previous page. Comments can be sent by post, email or fax. Comments sent by email in electronic format are preferable.

This discussion paper is available on the internet at: www.doj.gov.za/salrc/index.htm

Any inquiries should be addressed to the Secretary of the SALRC or to the SALRC official assigned to this investigation, Adv Fanyana Mdumbe. Contact particulars appear on page (iii).

Preliminary recommendations

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 right to equality in the Constitution of the Republic of South Africa of 1996, redundant or obsolete. Pursuant to this mandate, the SALRC has established that there are approximately 2800 statutes in the statute book. Hundred and fifty-nine (159) of these statutes are principal Acts administered by the Department of Justice and Constitutional Development (DOJCD). For the purpose of this review and to make the analysis more manageable, each of these statutes was, depending on its subject-matter, placed under one of the following categories:

- Legal Profession
- Courts and other Institutions
- Criminal Procedure and Evidence
- Civil Procedure and Evidence
- Substantive Criminal Law
- Civil Law
- Family Law and Marriage
- Wills, Estates and Insolvency
- Constitutional and Political
- Transkei Penal Code

All legislation administered by the DOJCD falling under the above classifications, with the exception of legislation dealing with family law and marriage; the Criminal Procedure Act 51 of 1977 and the Transkei Penal Code of 1983, has been reviewed for redundancy or unconstitutionality and the findings and recommendations for legislative reforms are contained in this discussion paper. The SALRC recommends that:

- (a) The Acts set out in Schedule 1 of the Justice Laws Repeal and Amendment Bill be wholly repealed;**
- (b) the Acts set out in Schedule 2 of the Justice Laws Repeal and Amendment Bill be amended or repealed to the extent set out in the third column of that Schedule; and that**

- (c) the Human Rights Commission Act, 1994 (Act 54 of 1994) be amended as proposed in the Human Rights Commission Amendment Bill.**

It is possible that some of the statutes or provisions recommended for repeal or amendment are still useful, and thus should not be repealed. It is also possible that there are other pieces of legislation that have not been identified as possible candidates for repeal which are of no practical utility anymore and which should be repealed. These statutes must be identified and brought to the attention of the SALRC.

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CHAPTER 1

A. INTRODUCTION

1. Background of the investigation

1.1 The objects of the SA Law Reform Commission (SALRC), as set out in the South African Law Reform Commission Act 19 of 1973, are 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, modernization 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.

1.3 Shortly after its establishment in 1973 the SALRC undertook a revision of all pre-Union legislation as part of its project 7. This resulted in the repeal of approximately 1 200 laws, 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 94 of 1981) which repealed approximately 790 post-Union statutes.

1.4 In 2003 Cabinet approved a proposal 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 (3) 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 entailed 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 is on compliance with the Constitution. All redundant and obsolete provisions identified in the course of the current investigation will also be recommended for repeal. It can be argued that purging the statute book of redundant and obsolete legislation first will facilitate the constitutional scrutiny of those statutes that remain on the statute book.

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 pre-1994 provisions are not constitutionally 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, while many others still contain unconstitutional provisions that have already given rise to expensive and sometimes protracted litigation.

2. Initial investigation

1.7 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. The Centre for Applied Legal Studies of the University of the Witwatersrand pursued four main avenues of research in their study conducted in 2001:¹

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.

¹ "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.

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 jurisprudence in relation to each category. The three categories were: reverse onus provisions; discriminatory provisions; and provisions that infringe on 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.

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.

3. Reports of the SALRC proposing reform or the repeal of discriminatory provisions

1.8 The following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions, have been finalised by the SALRC–

- Recognition of Customary Marriages (August 1998);
- Review of the Marriage Act 25 of 1961 (May 2001);
- Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- Traditional Courts (January 2003);
- Recognition of Muslim Marriages (January 2003);
- Repeal of the Black Administration Act, 1927 (March 2004);
- Customary Law of Succession (March 2004); and
- Domestic Partnerships (March 2004).

4. Commencement of project

1.9 Early in 2004 the SALRC informed all national Government departments of the priority of the investigation into statutory law revision. The SALRC conducted a workshop with representatives from these departments, so as to elicit their participation in the revision process. From the outset it was clear that with the available capacity at the SALRC and in government departments, the review will, at this stage, focus on national legislation.

1.10 As mentioned previously, a provisional audit of all national legislation on the statute book — from 1910 to 2004 — was conducted by the SALRC, in July 2004. This audit determined 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. Government departments were then requested, in August 2004, to study the provisional audit of national legislation and to confirm their respective responsibilities for administering the statutes that were allocated to them. A number of statutes, however, remained unaccounted for and were not claimed by any of the departments. Consequently, the SALRC launched its own investigation in order to establish which Ministers introduced these statutes. A significant problem encountered in this regard was that some departments, which existed at the time the legislation was promulgated, are no longer in existence today. Furthermore, it was not clear which of the current Government departments inherited the legislation administered by these “old” departments. The SALRC then grouped the remaining legislation into various categories, and submitted this information, during 2005, to those departments the SALRC believed had responsibility for administering the remaining statutes and requested them to investigate and provide feedback.

1.11 In 2006 the SALRC once again corresponded with Government departments informing them that it wished to secure their assistance in reducing the number of obsolete or redundant pieces of legislation on our statute book. The number of statutes that each department is responsible for were set out in lists which were forwarded to them. It was pointed out to the departments that it was possible that although some of these statutes may be redundant or obsolete, they still remain on the statute book, since they have never been repealed. In some instances, principal

Acts may have been repealed while their corresponding amendment Acts were never listed in a Schedule to the repealing Act — thus causing the amendment Acts, although of no legal force, to clutter up the statute book (unless, of course, they contain substantive provisions).

B. WHAT IS STATUTORY LAW REVISION?

1.12 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.² 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.

1.13 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.³ 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.

1.14 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.

² 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 29 March 2011.

³ 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 29 March 2011.

1.15 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:⁴

- (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.

1.16 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:⁵

- 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

⁴ 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 29 March 2011.

⁵ 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.

- 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.

1.17 Statutory provisions usually become redundant as time passes.⁶ 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.

1.18 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 1978 of England and Wales.⁷ 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

⁶ *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 29 March 2011.

⁷ *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 29 March 2011.

- (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,
- 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.

C. SCOPE OF THE PROJECT

1.19 This investigation then will focus not only on obsolescence or redundancy of provisions but also on the question of the constitutionality of provisions in statutes. In 2004 Cabinet agreed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9(2) 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. The SALRC agrees that the project should proceed by scrutinising and revising national legislation which discriminates unfairly.⁸ It is not foreseen that the SALRC and national 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.

D. ASSISTANCE BY GOVERNMENT DEPARTMENTS AND STAKEHOLDERS

1.20 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 SALRC relies on

⁸ Professor 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.

the assistance of departments and stakeholders. This will ensure that all relevant provisions are identified during this review, and dealt with responsively and without creating unintended negative consequences. It is important that the departments feel that they have ownership over this process and that it is not something that is being imposed upon them, so open lines of communication with each department is essential for the success of this project.

E. APPOINTMENT OF EXPERTS TO INCREASE RESEARCH CAPACITY

1.21 The review of the statutes administered by the Departments of Public Works, National Treasury, International Relations and Cooperation, Arts and Culture, and Sport and Recreation has commenced. At its meeting on 23 June 2007 the SALRC noted that there is limited research capacity at the SALRC to conduct statutory law review due to most of its researchers attending to other projects on its programme. At this meeting the SALRC approved in principle the appointment of experts by the Minister of Justice and Constitutional Development to conduct statutory review and thereby increase the SALRC's research capacity in respect of fourteen National Government Departments administering a high number of statutes, including the statutes administered by the Department of Justice and Constitutional Development. The statutes of the remaining twelve Departments which administer a low number of statutes will be reviewed by SALRC researchers.

1.22 Section 7A(1)(b)(ii) of the South African Law Reform Commission Act 19 of 1973 provides as follows on the establishment of committees by the Commission:

- “(1) The Commission may, if it deems it necessary for the proper performance of its functions-
- (a) . . .
 - (b) establish such other committees as it may deem necessary, and which shall consist of-
 - (i) such members of the Commission as the Commission may designate; or
 - (ii) such members of the Commission as the Commission may designate and the other persons appointed by the Minister for the period determined by the Minister.”

1.23 Section 7(4)(a) of the Act provides that a committee referred to in subsection (1) shall, subject to the directions of the Commission, perform those functions of the Commission assigned to it by the Commission. The Commission may also employ

persons with special knowledge of any matter relating to the work of the Commission. Section 8(2) of the South African Law Reform Commission Act provides as follows:

“(2) The Commission may, with the approval of the Minister in consultation with the Minister of Finance, on a temporary basis or for a particular matter which is being investigated by it, employ any person with special knowledge of any matter relating to the work of the Commission, or obtain the co-operation of any body, to advise or assist the Commission in the performance of its functions under this Act, and fix the remuneration, including reimbursement for travelling, subsistence and other expenses, of such person or body.”

1.24 The SALRC approved that the statutes of the following twelve national government departments would be reviewed by researchers of the Commission, namely Arts and Culture; Correctional Services; International Relations and Cooperation; Housing; National Intelligence; Public Enterprises; Public Service and Administration; Science and Technology; Social Development; Safety and Security; Sport and Recreation; and Water Affairs and Forestry. The SALRC further approved that experts should be appointed in respect of the following fourteen government departments, namely Agriculture; Communications; Defence; Education; Environmental Affairs and Tourism; Health; Home Affairs; Justice and Constitutional Development; Labour; Land Affairs; Minerals and Energy Affairs; National Treasury (in respect of tax legislation); Provincial and Local Government; and Trade and Industry.

F. STATUTES ADMINISTERED BY THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

1.25 The scope of this statutory review was mainly to assess whether the provisions of various statutes administered by the Department of Justice and Constitutional Development are in conformity with the equality provisions of section 9 of the Constitution. However, whilst not an intensive statutory review process vis-à-vis the Constitution, the project also involved the identification of statutory provisions that have become obsolete, redundant, as well as those provisions that are outdated.

1.26 At the beginning of this project, all statutes administered by the Department of Justice and Constitutional Development were thematically divided into the following categories:

- Legal profession
- Courts and institutions

- Criminal Procedure and Evidence
- Civil Procedure and Evidence
- Substantive Criminal Law
- Civil Law
- Family Law and Marriage
- Wills, Estates and Insolvency
- Constitutional and Political
- Transkei Penal Code

1.27 Each category was allocated to a specific advisory committee member or members and peer-reviewed by a fellow member or members. The findings of the statutory review process included recommendations for repeal or amendment as well as retention of statutes in their current form. These findings and proposals following the review of all legislation, except legislation dealing with criminal procedure, family law and marriage, and the Transkei Penal Code, are set out in the ensuing chapters.

G. CONSULTATION WITH THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

1.28 The SALRC consulted extensively with the Department of Justice and Constitutional Development prior to the finalization and publication of this discussion paper. In the light of the comments received from DOJCD, the SALRC has reconsidered some of its initial proposals and, where necessary, amended or abandoned them. The SALRC has also decided not to review legislation regulating the legal profession for constitutionality or redundancy as these statutes have been earmarked for repeal in the proposed Legal Practice Bill.⁹

⁹ These Acts are the Admission of Advocates Act 74 of 1964; the Admission of Advocates Amendment Acts of 1977, 1979, 1984, 1987, 1991 and 1994; the Right of Appearance in Court Act 62 of 1995; the Attorneys Act 53 of 1979; and the Attorneys Amendment Act 116 of 1981.

CHAPTER 2 COURTS AND INSTITUTIONS

1. **Black High Court Abolition Act 13 of 1954**

2.1 The purpose of this Act was to abolish the Black High Court, transfer its jurisdiction to the Supreme Court and to provide for incidental matters.

2.2 The whole of this Act is now redundant given that it was enacted to abolish the Black High Court and to transfer jurisdiction, registers and records to the Supreme Court within one month of the Act coming into force. This process took place in February 1955; and as a result the Act has become spent. The SALRC thus proposes that it be repealed in its entirety.

2. **Commissions Act 8 of 1947**

2.3 The purpose of this Act was to confer powers to commissions established by the Governor-General for purposes of investigating matters of public interest.

2.4 Various provisions of this Act require amendment as they still make reference to functionaries that no longer exist, and use archaic words. First, the long title and section 1 make reference to "Governor-General". The SALRC proposes that the long title and section 1(1) of this Act be amended by the substitution for the expression "Governor-General" of the expression "President". Second, section 1(2) provides that the regulations made by the President may include penalties for the contravention thereof.¹⁰ It is recommended that the provisions of the Adjustment of Fines Act of 1991 be incorporated into this provision by reference. Section 2 states that the Commission may sit in any place in the "Union". Section 3(1) also makes mention of the "Union".¹¹ The SALRC proposes that sections 2 and 3(1) of this Act be amended by

¹⁰ Section 1(2) reads:

"Any regulation made under paragraph (b) of subsection (1) may provide for penalties for any contravention thereof or failure to comply therewith, by way of-

(a) in the case of a regulation referred to in subparagraph (i), (ii) or (iv) of the said paragraph, a fine not exceeding two hundred rand or imprisonment for a period not exceeding six months;

(b) in the case of a regulation referred to in subparagraph (iii) of the said paragraph, a fine not exceeding one thousand rand or imprisonment for a period not exceeding one year."

¹¹ Section 3(1) of Act 8 of 1947 reads:

the substitution of the words "Republic of South Africa" for the word "Union". Furthermore, section 3(1) makes reference to the "Provincial Division of the Supreme Court". The Constitution provides that the courts in the Republic are the Constitutional Court, the Supreme Court of Appeal, the High Courts and the Magistrates' Courts. It is recommended that the expression "High Court" be substituted for the expression "Provincial Division of the Supreme Court". The penalty provisions in sections 5 and 6 still refer to "fifty pounds". It is no longer necessary to specify the amount of fine in legislation as this is regulated by the Adjustment of Fines Act of 1991.¹² It is recommended that these provisions be amended by deleting the specific monetary value and that the provisions of the Adjustment of Fines Act be incorporated into these provisions by reference. Third, the designation "chairman" is used throughout the Act.¹³ The SALRC proposes that the word "chairperson" be substituted for the word "chairman" wherever it occurs in this Act. Lastly, it is recommended that the words "he or she", "his or her" be substituted for the words "he" or "his" wherever they occur in the Act.

3. Judicial Service Commission Act 9 of 1994

2.5 The Judicial Service Commission Act 9 of 1994 was enacted in 1994 and its purpose is to regulate matters incidental to the establishment of the Judicial Service Commission. It is therefore not surprising that most of its provisions referred to the Constitution of the Republic of South Africa Act 200 of 1993 (the 1993 Constitution). However, this has been remedied by the legislature through the enactment of the Judicial Service Commission Amendment Act 20 of 2008 which has replaced all

³ Commission's powers as to witnesses

(1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the Union have the powers which a Provincial Division of the Supreme Court of South Africa has within its province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects."

¹² Section 1(2) of the Adjustment of Fines Act 101 of 1991 provides that: "If any law (irrespective of whether such law came into operation prior to or after the commencement of this Act) provides that any person may upon conviction of an offence be sentenced to pay a fine of a prescribed maximum amount or a maximum amount which may be determined by a Minister or, in the alternative, to undergo a prescribed maximum period of imprisonment, or be sentenced to such a fine and such imprisonment, the amount of the maximum fine which may be imposed shall, notwithstanding the said penalty clause, but subject to section 4, be an amount calculated in accordance with the ratio referred to in subsection (1) (a): Provided that this provision shall not apply if the maximum amount of the fine prescribed in the law or determined by the Minister exceeds the maximum amount calculated in accordance with the ratio referred to in subsection (1) (a)."

¹³ See sections 3, 4 and 6 of the Commissions Act.

references to the 1993 Constitution with references to the 1996 Constitution. Since this Act has been updated by the Judicial Service Commission Amendment Act of 2008, the SALRC makes no proposal for reform in respect this particular piece of legislation.

4. National Council of Provinces (Permanent Delegates Vacancies) Act 17 of 1997

2.6 The purpose of this Act was to make provision for the filling of vacancies in respect of permanent delegates to the National Council of Provinces, and to cater for incidental matters arising in that context. The provisions of this short Act are still useful and do not have any inconsistencies with the Constitution. This Act speaks to the current provisions in Chapter 4 of the Constitution; therefore, it is proposed that this Act be retained as it is.

5. South African Law Reform Commission Act 19 of 1973

2.7 This Act established the South African Law Reform Commission and specifies its powers and functions. It has been amended several times, most recently, in 2002 and no relevant case law has been generated by this piece of legislation.

2.8 Various provisions contained in this Act require amendment. Sections 3(1)(b); 6(1); 6(3) and 7A(3) make unbalanced gender reference to "chairman" and "vice-chairman". Similarly, section 3(2) makes reference to the President in the 3rd person masculine singular "he".

2.9 It is proposed that this Act remains in place but subject to amendments to sections 3(1)(b); 6(1); 6(3) and 7A(3) by the deletion of the word "chairman" and "vice-chairman" wherever they occur in these provisions and in their place insert the words "chairperson" and "vice-chairperson", as the case may be. Similarly, section 3(2) of this Act should be amended by the substitution of the phrase "he or she" for the phrase "he" wherever it occurs. Section 9(1)(b) should be amended by adding the phrase "or her" after the word "him" wherever this word occurs in this section.

6. Rules Board for Courts of Law Act 107 of 1985

2.10 The purpose of this Act was to establish the Rules Board for Courts of Law responsible for making rules that aim to achieve the efficient, expedite and uniform administration of justice by all courts. The latest amendment of this Act was in 2001.

2.11 This Act still serves its purpose because it operates in agreement with many other operational Acts that establish and confer competences to the courts of law such as the Magistrates' Courts Act 32 of 1944, the Supreme Court Act 59 of 1959, and the Foreign Courts Evidence Act 80 of 1962.

2.12 This Act has already been significantly amended to put it in conformity with section 9 of the Constitution by the deletion of words such as "he", "him", "his", "chairman" and "vice-chairman", wherever these words occurred in this Act, and their replacement by the insertion of words such as "he or she", "him or her", "his or her", "chairperson" and "vice-chairperson", respectively.

2.13 However, the Act contains a few provisions that are outdated and require amendment. Section 1 provides that "Minister" means the Minister of Justice. It is recommended that that definition of "Minister" be amended to read "'Minister' means the Minister of Justice and Constitutional Development". Section 3(1)(e) of this Act provides that the Board shall consist of, among others, two practising attorneys, after consultation with the Association of Law Societies of the Republic of South Africa. In 1998 the Law Society of the Republic of South Africa was established replacing its predecessor, the Association of Law Societies of the Republic of South Africa". The SALRC recommends that section 3(1)(e) of this Act be amended so that it reflects this development. Paragraph (g) of section 3(1) provides that the Board must also include "an officer of the Department of Justice". It is recommended that section 3(1)(g) be amended to read "an officer of the Department of Justice and Constitutional Development".

7. State Attorney Act 56 of 1957

2.14 This Act was enacted to consolidate existing laws dealing with the establishment of the office the State Attorney and to cater of incidental matters. Most

of the Act's provisions are still intact notwithstanding various amendments, the last of which was in 1996.

2.15 This Act continues to serve its purpose given that the office of the State Attorney is still in existence and fully functional, responsible for handling litigation and other duties on behalf of the Government or the state. Its provisions still serve the purpose of defining the nature and scope of the office of the State Attorney including the establishment of such offices around the country and regulating matters related to the function of this office. For the above reasons, it is proposed that the Act remains on the statute book.

2.16 The provisions of this Act do not contravene section 9 of the Constitution. However, certain provisions need to be updated in order to get rid of the gender slur they seem to inflict by making reference to persons capable of being appointed to the office of the State Attorney as "he", "his" and "him".

2.17 Therefore it is proposed that the Act be updated by the deletion of the word "he" wherever it occurs in sections 2(5); 6(1); 7; and 8 and in its place insert the phrase "he or she".

2.18 It is also proposed that this Act be updated by the deletion of the word "his" wherever it occurs in sections 2(5); 3(1); 3(3); 7; 8(1); 9(d)(i); and 9(d)(ii), and in its place by the insertion of the words "his or her".

2.19 Furthermore, it is proposed that this Act be updated by the deletion of the word "him" wherever it occurs in sections 2(5); 7; and 8(3) and in its place inserting the words "him or her".

2.20 Section 3(2) of this Act provides that the State Attorney's Office can also "perform function for or on behalf of the administration of any province, **and the South African Railways and Harbours Administration**, subject to such terms and conditions as may be arranged between the Minister of Justice and the Administration concerned". The South African Railways and Harbours Administration no longer exist and its functions were initially taken over by the South African Transport Services, and thereafter they were transferred to Transnet. The SALRC proposes that section 3(2) of

this Act be amended by the substitution of the word "Transnet" for the words "South African Railways and Harbours Administration".

2.21 Section 6(4) and 8(2) of this Act makes reference to the "Consolidated Revenue Fund".¹⁴ The Constitution¹⁵ and the Public Finance Management Act¹⁶ refer to the national revenue fund and the provincial revenue funds. It is therefore recommended that the expression "National Revenue Fund" be substituted for the expression "Consolidated Revenue Fund" in sections 6(4) and 8(2) of this Act. Furthermore, various provisions of this Act make reference to the "Supreme Court of South Africa".¹⁷ It is recommended that the expression "High Court" be substituted for the expression "Supreme Court of South Africa". Lastly, this Act makes reference to the "Minister of Justice". This reference is outdated. It is recommended that the expression "Minister of Justice and Constitutional Development" be substituted for the reference "Minister of Justice" wherever it occurs in the Act.

8. Special Courts for Blacks Abolition Act 34 of 1986

2.22 This Act was promulgated to abolish the Commissioners' Courts and the Appeal Courts for Commissioners' Courts constituted under sections 10 and 13 respectively of the Black Administration Act 38 of 1927 and to effect amendments to various sections of the Black Administration Act 38 of 1927, Administration Amendment Act 9 of 1929, Magistrates' Courts Act 32 of 1944, Blacks (Urban Areas) Consolidation Act 25 of 1945, Children's Act 33 of 1960, Black Labour Act 67 of 1964, National States Constitution 21 of 1971.

2.23 Special courts for blacks have been abolished and pending cases on enactment of the law have since been dealt with according to the pre-existing legal system. Accordingly, the provisions of this Act have become spent. The amendments effected

¹⁴ Section 6(4) of this Act reads: "Any duty, fees and costs recovered shall be paid into the Consolidated Revenue Fund." Section 8(2) provides that: "Any allowances recovered shall be paid into the Consolidated Revenue Fund, and any such correspondent shall be entitled to accept such employment and make such allowances."

¹⁵ Section 213 of the Constitution provides that "There is a National Revenue Fund into which all money received by the national government must be paid"; and section 226 provides that "There is a provincial revenue fund for each province into which all money received by the provincial government must be paid."

¹⁶ The Public Finance Management Act 1 of 1999 provides in the definition section that 'Revenue Fund' means-(a) the National Revenue Fund mentioned in section 213 of the Constitution; or (b) a Provincial Revenue Fund mentioned in section 226 of the Constitution.

¹⁷ Sections 2(1)(a), 4 and 5.

by this Act to sections 12(4), 20(5), 20(6) and 23(5) of the Black Administration Act of 1927 have been repealed by the various provisions of the Repeal of the Black Administration Act and the Amendment of Certain Laws Act 28 of 2005. The entire Administration Amendment Act 9 of 1929 has been repealed by section 10 of Act 31 of 2008. The amendments made by this Act to the Magistrates Courts Act have either been further substituted or repealed by some or other provisions contained in later statutes. The Black Labour Act of 1964 was repealed by Act 4 of 1984. The National States Constitution Act of 1971 was repealed by the 1993 Constitution.

2.24 Therefore, it is proposed that this Act be repealed in its entirety.

9. Special Investigating Units and Special Tribunals Act 74 of 1996

2.25 This Act provides for the establishment and conferment of competencies on Special Investigating Units investigating serious malpractice or maladministration of State institutions, State assets and public money, as well as any other conduct with a potential of harming the interests of the public. It further provides for the establishment of Special Tribunals to preside over civil matters emanating from investigations by the Special Investigating Units.

2.26 All the provisions of this Act, except for section 5(8), remain in place and operational. This Act therefore still serves its original purpose.

2.27 A number of decided cases exist in relation to various provisions of this Act. Indeed, almost every provision of the Act has been the subject of litigation. These provisions include sections 2; 3; 4; 5; 6; 7; 9; 11; 13; and 14. Therefore, subject to the exception below, no amendment or repeal of this Act is necessary.

2.28 Section 1 of this Act provides that "state institution" means "any national or provincial department, any local government, any institution in which the State is the majority or controlling shareholder or in which the State has a material financial interest, or a public entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act 93 of 1992)". The Reporting by Public Entities Act of 1992 was repealed the Public Finance Management Act 1 of 1999. The Public Finance Management Act 1 of 1999 also contains a definition of "public entity" in section 1. The SALRC thus recommends that the definition of "state institution" in section 1 of

this Act be amended by the substitution of the expression “or a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act 1 of 1999)” for the expression “or a public entity as defined in section of the Reporting by Public Entities Act, 1992 (Act 93 of 1992).” Furthermore, section 3(5)(a) and (b); 7(7)(a); and section 11 makes reference to the “Minister of Justice”. It is recommended that the expression “Minister of Justice and Constitutional Development” be substituted for the expression “Minister of Justice” in this Act. Section 7(7)(a) provides that a Special Tribunal must be assisted in the performance of its work by officials in the Department of Justice. The SALRC recommends that the expression “Department of Justice” in this section be replaced with the expression “Department of Justice and Constitutional Development.” Lastly, section 7(3)(b) provides that members of the Tribunal may be appointed from the ranks of advocates or attorneys of the “Supreme Court”; section 7(4)(b) makes provision for the appointment of judges of the “Supreme Court” to serve in the Tribunal; section 8(7) makes provision for appeal against decisions of the Tribunal to the Provincial Division of the “Supreme Court”; section 9(7) provides that decisions of the Special Tribunal shall be executed as if they were decisions of the “division of the Supreme Court” having jurisdiction in such area; and section 14(3) of this Act provides that if the Supreme Court is satisfied that a party has been prejudiced by a ruling, the court must set aside such finding or ruling. The SALRC recommends that the expression “High Court” be substituted for the expression “Supreme Court” wherever it occurs in these provisions.

10. Promotion of National Unity and Reconciliation Act 34 of 1995

2.29 This Act was enacted primarily to provide for the investigation and establishment of the nature, cause and extent of gross human rights violations in South Africa from 1 March 1960 to 8 October 1990. It facilitated the process of establishing, by way of documentation, what transpired during that period, the nature of the causes and perpetration of human rights violations as well as the whereabouts of victims of such violations.

2.30 The Act further provides for the granting of amnesty to perpetrators of human rights violations of a political nature upon making a full and complete disclosure of their involvement in politically motivated atrocities, at the same time providing an opportunity for the victims of violence to relate their experiences during the said period.

2.31 Furthermore, this Act provides for the provisions of reparations and rehabilitation to victims of such violations and restoration of their human dignity. In terms of this Act, names of victims and the nature of violations suffered by them would be reported to the Nation. This Act also provides for the adoption of measures to prevent recurrence of a similar tragedy in future.

2.32 For the realisation of the above purposes this Act establishes a Truth and Reconciliation Commission made up of a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation. The Act also confers certain powers and functions on the Commission and Committees.

2.33 Despite various and recent amendments by the Promotion of National Unity and Reconciliation Amendment Act 18 of 1997, the Public Service Laws Amendment Act 47 of 1997, the Promotion of National Unity and Reconciliation Second Amendment Act 84 of 1997, the Promotion of National Unity and Reconciliation Amendment Act 33 of 1998, the Judicial Matters Amendment Act 34 of 1998, and the Promotion of National Unity and Reconciliation Amendment Act 23 of 2003, the provisions of this Act are still intact and still serve their purposes outlined in the earlier paragraphs.

2.34 In terms of section 43 of this Act, notwithstanding that the Commission might have finished its work; there exists a possibility that the President might reconvene the Commission by way of a publication in the *Gazette* whereupon the Commission resumes work based on the provisions of this Act.

2.35 For the reasons that none of the provisions in this Act engage section 9 of the Constitution; its provisions still serve a purpose; and actions in terms of section 27,¹⁸

¹⁸ This section provides:

"27 Parliament to consider recommendations with regard to reparation of victims
(1) The recommendations referred to in section 4(f)(i) shall be considered by the President with a view to making recommendations to Parliament and making regulations.
(2) The recommendations referred to in subsection (1) shall be considered by the joint committee and the decisions of the said joint committee shall, when approved by Parliament, be implemented by the President by making regulations.
(3) The regulations referred to in subsection (2)-
(a) shall-
(i) determine the basis and conditions upon which reparation shall be granted;

including reparations from the Presidents Fund, are not yet finalized; it is proposed that nothing be done to amend or repeal this Act.

11. National Prosecuting Authority Act 32 of 1998

2.36 This Act constitutes the legal framework for implementing the provisions of section 179 of the Constitution¹⁹ relating to the establishment of a single national prosecuting authority.

-
- (ii) determine the authority responsible for the application of the regulations; and
 - (b) may-
 - (i) provide for the revision and, in appropriate cases, the discontinuance or reduction of any reparation;
 - (ii) prohibit the cession, assignment or attachment of any reparation in terms of the regulations, or the right to any such reparation;
 - (iii) determine that any reparation received in terms of the regulations shall not form part of the estate of the recipient should such estate be sequestrated; and
 - (iv) provide for any other matter which the President may deem fit to prescribe in order to ensure an efficient application of the regulations.

(4) The joint committee may also advise the President in respect of measures that should be taken to grant urgent interim reparation to victims.”

¹⁹ Section 179 of the Constitution provides:

“179 Prosecuting authority

(1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of-

- (a) a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President, as head of the national executive; and
- (b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.

(2) The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.

(3) National legislation must ensure that the Directors of Public Prosecutions-

- (a) are appropriately qualified; and
- (b) are responsible for prosecutions in specific jurisdictions, subject to subsection (5).

(4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.

(5) The National Director of Public Prosecutions-

- (a) must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy, which must be observed in the prosecution process;
- (b) must issue policy directives which must be observed in the prosecution process;
- (c) may intervene in the prosecution process when policy directives are not complied with; and
- (d) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following:

2.37 Despite amendments of certain provisions of this Act by the Judicial Matters Second Amendment Act 122 of 1998; National Prosecuting Authority Amendment Act 61 of 2000 (which deleted sections 28 (11) and 28(12)); Judicial Matters Amendment Act 42 of 2001; Criminal Law (Sentencing) Amendment Act 38 of 2007, the rest of the provisions of this Act remain functional as the basis on which the National Prosecuting Authority draws its existence, powers, objects and structure.

2.38 No provision of this Act contravenes section 9 of the Constitution. It appears as if this Act was drafted with equality provisions of the Constitution in mind as section 8 specifically requires that the National Prosecuting Authority must be representative and that when members of the prosecuting authority are appointed, the need to reflect broadly the racial and gender composition of South Africa must be considered.

2.39 However, two sections of this Act need to be updated: section 17(1)(a) and 28(2)(b). Section 17(1)(a) Act provides:

“(1) The remuneration, allowances and other terms and conditions of service and service benefits of the National Director, a Deputy National Director and a Director shall be determined by the President: Provided that-

- (a) the salary of the National Director shall not be less than the salary of a judge of a High Court, as determined by the President under section 2 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989).”

2.40 The Judges' Remuneration and Conditions of Employment Act 88 of 1989 was repealed by the Judges' Remuneration and Conditions of Employment Act 47 of 2001. Section 2(1)(a)(i) and (ii) of Act 47 of 2001 empower the President to determine the salary, allowances or benefits of judges subject approval by Parliament. It is therefore recommended that section 17(1)(a) of the National Prosecuting Authority Act be

-
- (i) The accused person.
 - (ii) The complainant.
 - (iii) Any other person or party whom the National Director considers to be relevant.

(6) The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.

(7) All other matters concerning the prosecuting authority must be determined by national legislation.”

amended by the substitution of the expression “as determined by the President under section 2(1)(a)(i) and (ii) of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001)” for the expression “as determined by the President under section 2(1) of the Judges Remuneration and Conditions of Service Act, 1989 (Act 88 of 1989).”

2.41 Section 28(2)(b) empowers the Investigating Director to designate a person specified in that section to conduct an investigation on his or her behalf and to report to him or her. Section 28(2)(b) goes further and states:

“A person so designated shall for the purpose of the investigation concerned have the same powers as those which the Investigating Director has in terms of this section and section 29 of this Act, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person.”

2.42 The Exchequer Act 66 of 1975 referred to in this section was repealed by the Public Finance Management Act 1 of 1999 (PFMA). The PFMA also makes provision for the National Treasury to issue instructions. In terms of section 93 of the PFMA, all instructions issued under the Exchequer Act of 1975 remain in force until repealed in terms of section 76 of that Act. However, it is no longer possible to issue new instructions in terms of that Act. Section 76(4) of the PFMA empowers the National Treasury to issue instructions applicable to institutions to which the PFMA applies. In the light of this provision, the SALRC recommends that section 28(2)(b) be amended by the substitution of the expression “and the instruction issued by the Treasury under section 76 of the Public Finance Management Act, 1999 (Act 1 of 1999) applicable to departments or institutions” for the expression “and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act 66 of 1975) in respect of commissions of inquiry.”

12. South African Judicial Education Institute Act 14 of 2008

2.43 This Act was enacted to establish the South African Judicial Institute in order to promote the independence, impartiality, dignity, accessibility and effectiveness of the

courts by providing judicial education for judicial officers and to provide for the administration and management of the affairs of that Institute.

2.44 As the Act has recently come into force, there are no decided cases. Similarly, no amendments or repeals are contemplated. In addition, no provision of this Act contravenes section 9 of the Constitution. The SALRC makes no proposal for reform in respect of this Act.

13. Human Rights Commission Act 54 of 1994

2.45 This Act implements the provisions of sections 115 to 118 of the 1993 Constitution providing for the establishment of the South African Human Rights Commission.

2.46 Although none of the provisions contained in this Act contravene section 9 of the 1996 Constitution, it is teeming with references to the provisions of the 1993 Constitution. The provisions of this Act (Act 54 of 1994) together with recommendations for their alignment with the relevant provisions of the 1996 Constitution are contained below.

2.47 The long title of this Act currently reads:

“To regulate the matters incidental to the establishment of the Human Rights Commission by the Constitution of the Republic of South Africa, 1993; and to provide for matters connected therewith.”

2.48 The SALRC proposes that the following long title be substituted for the long title above:

“To provide for matters incidental to the Human Rights Commission contemplated in the Constitution of the Republic of South Africa, 1996; and to provide for matters connected therewith.”

2.49 The preamble also makes reference to the 1993 Constitution,²⁰ and thus requires amendment. The first hurdle in the attempt to update the preamble is that the 1996 Constitution did not establish the Human Rights Commission. It should be pointed out that although the word “establishment” is used in the heading of section 181 of the Constitution which sets out the state institutions supporting democracy, including the Human Rights Commission; this provision does not necessarily establish the Human Rights Commission. This conclusion is bolstered by section 184 of the Constitution which merely sets out, in a skeletal form, the powers and functions of the Human Rights Commission. In other words, the 1996 Constitution does not contain a provision similar to section 115 of the 1993 Constitution which read:

“There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.”

2.50 Furthermore, item 20(2) of Schedule 6 to the 1996 Constitution provides that a constitutional institution established in terms of the previous Constitution continues to function in terms of legislation applicable to it and that anyone holding office as a commission member when the new Constitution takes effect, continues to hold office in terms of the legislation applicable to that office subject to any amendment or repeal of that legislation or consistency with the new Constitution.

²⁰ The preamble of this Act reads:

“WHEREAS sections 115 up to and including 118 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), provide for the establishment of a Human Rights Commission; the appointment of the members of the Commission; the conferring of certain powers on and assignment of certain duties and functions to the Commission; the appointment of a chief executive officer of the Commission; and the tabling by the President in the National Assembly and the Senate of reports by the Commission;

AND WHEREAS the Constitution provides that the Human Rights Commission shall, inter alia, be competent and obliged to promote the observance of, respect for and the protection of fundamental rights; to develop an awareness of fundamental rights among all people of the Republic; to make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution; to undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions; to request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights; and to investigate any alleged violation of fundamental rights and to assist any person adversely affected thereby to secure redress;

AND WHEREAS the Constitution envisages further powers, duties and functions to be conferred on or assigned to the Human Rights Commission by law, and that staff of the Commission be appointed on such terms and conditions of service as may be determined by or under an Act of Parliament;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: -”.

2.51 It is recommended that the current preamble be substituted with a new preamble reflecting sections 181, 184 and 193(4)(a) of the Constitution. It is also recommended that the provisions contained in the 1993 Constitution establishing the Human Rights Commission (s115(1)); dealing with the election of the Chairperson and Deputy Chairperson of the Human Rights Commission (s115(5)); the appointment of a director (Chief Executive Officer)(s117(1)); and the provisions dealing with reporting (s118) be incorporated into this Act because the 1996 Constitution does not contain similar provisions. These provisions can be inserted as section 1A in the Human Rights Act of 1994. This approach is not novel; it was used by the legislature to align the Public Protector Act 23 of 1994 with the Constitution. The proposed section 1A would read:

“1A Establishment and appointment

(1) There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.

(2) The members of the Commission shall be appointed as provided for in section 193 of the Constitution and vacancies in the Commission shall be filled accordingly.

(3) The President shall, whenever it becomes necessary, appoint as a member of the Commission a person in accordance with section 193 of the Constitution.

(4) A Chairperson and a Deputy Chairperson of the Commission shall as often as it becomes necessary be elected by the members of the Commission from among their number

(5) The Commission shall report to the President at least once every year on its activities, and the President shall cause such report to be tabled promptly in the National Assembly and the National Council of Provinces.”

2.52 The definition section provides that “Chairperson” means the chairperson of the Commission referred to in section 115(1) and (5) of the Constitution. It further provides that the “Commission” means the Human Rights Commission established by section 115(1) of the Constitution. Furthermore, it states that “fundamental rights” includes fundamental rights contained in Chapter 3 of the Constitution. It is

recommended that the following definition: "Chairperson" means the chairperson of the Commission appointed in terms of section 1A be substituted for the current definition of "Chairperson". It is also recommended that the definition of "Commission" be amended to read "'Commission' means the South African Human Rights Commission contemplated in section 181(1)(b) of the Constitution." The definition of fundamental rights should also be replaced by "fundamental Rights includes the fundamental rights contained in Chapter 2 of the Constitution". Lastly, section 1 provides that "'organ of state' includes any statutory body or functionary." It is recommended that this definition be amended to read "'organ of state' means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996."

2.53 Another section of this Act requiring attention is section 3 which regulates the term of office of the members of the Human Rights Commission. Section 3(1) of the Act provides that:

"The members of the Commission contemplated in section 115(1) of the Constitution may be appointed as full-time or part-time members and shall hold office for such fixed term as the President may determine at the time of such appointment, but not exceeding seven years..."

2.54 The SALRC recommends that section 3(1) referred to above be amended to read:

"The members of the Commission referred to in section 193(4)(a) of the Constitution may be appointed as full-time or part-time members and shall hold office for such fixed term as the President may determine at the time of such appointment..."

2.55 Furthermore section 3(1)(a) and (b) of this Act empowers the President to remove any member of the Commission from office if (a) such a removal is requested by a joint committee composed as contemplated in section 115(3)(a) of the Constitution; and (b) such a request is approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting.

2.56 The provisions referred to above require alignment with the general provisions contained in the 1996 Constitution which regulate the removal of, among others, a member of the Human Rights Commission. Section 194(1) provides that a member of the Commission may be removed from office on grounds of (a) misconduct, incapacity or incompetence; (b) on a finding to that effect by a committee of the National Assembly; and (c) the adoption by the assembly of a resolution calling for that person's removal from office. Section 194(2)(b) of the Constitution provides that: "A resolution of the National Assembly concerning the removal from office of a member of a Commission must be adopted with a supporting vote of a majority of the members of the assembly." Section 194(3) of the Constitution empowers the President (a) to suspend a person from office at any time after the start of the proceedings of the committee and (b) to remove a person from office upon adoption by the National Assembly of a resolution calling for that person's removal.

2.57 The SALRC, therefore, recommends that the provisions of section 194(1)(a), (b), and (c); 194(2)(b) and 194(3)(a) and (b) of the Constitution be incorporated into section 3(1)(a) and (b) of this Act. Section 3 would then read:

"(1) The members of the Commission referred to in section **[115(1)]** 193(4)(a) of the Constitution may be appointed as full-time or part-time members and shall hold office for such fixed term as the President may prescribe at the time of such appointment, but not exceeding seven years: Provided that no less than five members are appointed on full-time basis: Provided further that the President shall remove any member from office **[if] only on-**

(a) the ground of misconduct, incapacity or incompetence;

(b) upon a finding to that effect by a committee of the National Assembly; and

(c) by the adoption of a resolution by the National Assembly calling for the removal of that person from office.

(2) A resolution of the National Assembly concerning the removal of a member of the Commission must be adopted with a supporting vote of a majority of the members of the National Assembly.

(3) The President-

- (a) may suspend a person from office at any time after the start of the proceedings of the committee of the National Assembly for the removal of that person; and
- (b) must remove a person from office upon adoption by the National Assembly of the resolution calling for that person's removal."

2.58 The SALRC recommends that the current section 3(2), (3) and (4) of this Act²¹ be retained in this section as subsections (4), (5) and (6).

2.59 Section 7(1)(a) and (d) of this Act dealing with the powers, duties and functions of the Commission provides that:

"(1) In addition to any other powers, duties and functions conferred on or assigned to it by section 116 of the Constitution, this Act or any other law, the Commission –

(a) shall develop and conduct information programmes to foster public understanding of this Act, Chapter 3 of the Constitution and the role and activities of the Commission;

...

(d) shall carry out or cause to be carried out such studies concerning fundamental rights as may be referred to it by the President and the Commission shall include in a report referred to in section 118 of the Constitution a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate."

2.60 It is recommended that reference to Chapter 3 of the Constitution be deleted and replaced with reference to Chapter 2 of the 1996 Constitution. The powers and functions of the Commission contemplated in this section are now found in section 184

²¹ These provisions read:

"(2) The President may, in consultation with the Commission, appoint a part-time member as a full-time member for the unexpired portion of the part-time member's term of office.

(3) Any person whose term of office as a member of the Commission has expired, may be reappointed for one additional term.

(4) A member of the Commission may resign from office by submitting at least three months' written notice thereof to Parliament, unless Parliament by resolution allows a shorter period in a specific case."

of the Constitution. It is therefore, recommended that section 7(1) of the Act be amended to read:

“(1) In addition to any other powers, duties and functions conferred on or assigned to it by section 184 of the Constitution, this Act or any other law, the Commission-”.

2.61 Section 118 of the 1993 Constitution provided that:

“The Commission shall report to the President at least once a year on its activities and the President shall cause such a report to be tabled promptly in the National Assembly and the Senate.”

2.62 The 1996 Constitution does not impose a similar duty on the Commission, resulting in section 7(1)(d), in so far as it relates to reporting, becoming redundant. It is recommended that a provision regulating reporting by the Commission be included in the proposed section 1A. It is suggested above that this provision could be inserted in this Act as section 1A(5).

2.63 Section 9(1) of this Act dealing with investigations by the Commission provides that:

“Pursuant to the provisions of section 116(3) of the Constitution the Commission may, in order to enable it to exercise its powers and perform its duties and functions-...”.

2.64 Section 116(3) of the 1993 Constitution gave the Commission the power to investigate of its own accord or on receipt of a complaint, assist the complainant and persons affected to secure redress, arrange for or provide financial assistance to enable proceedings to be instituted or direct complainant to an appropriate forum. These powers are implied in section 184(2)(a) and (b) of the Constitution which provide that the Commission has the power to investigate and to report on the observance of human rights and to take to secure redress where there has been a violation of human rights.

2.65 The SALRC, therefore, recommends the amendment of section 9(1) of the Act so that it refers to section 184(2)(a) and (b) of the Constitution, not section 116(3) of the interim Constitution. Section 9(1) would read as follows:

“(1) Pursuant to the provisions of section 184(2)(a) and (b) of the Constitution, the Commission may, in order to exercise its powers and perform its duties and functions.”

2.66 Section 11(2)(b) of this Act dealing with vacancies at the Commission provides that

“A vacancy in the Commission shall be filled as soon as practicable in accordance with section 115 of the Constitution.”

2.67 As stated above, the procedure for the appointment of members of the Commission is now regulated by section 193 of the 1996 Constitution. It is therefore recommended that the provision be amended to read that a vacancy in the Commission shall-

“(b) be filled as soon as practicable in accordance with section 193 of the Constitution.”

2.68 Section 12(2) of this Act reads:

“If the Chairperson is absent from a meeting of the Commission, the Deputy Chairperson referred to in subsection 115(5) of the Constitution shall act as chairperson, and if both the Chairperson and Deputy Chairperson are absent from the meeting of the Commission, the members present shall elect one from among their number to preside at that meeting.”

2.69 Section 115(5) of the 1993 Constitution provided that:

“A Chairperson and a Deputy Chairperson of the Commission shall as soon as often as it becomes necessary be elected by the members from among their number.”

2.70 The 1996 Constitution does not contain a similar provision. It is therefore recommended that provisions similar to those contained in section 115(5) of the 1993 Constitution be incorporated in the proposed section 1A.

2.71 It is therefore recommended that section 12(2) regulating the meetings of the Commission be amended to read:

“If the Chairperson is absent from a meeting of the Commission, the Deputy Chairperson referred to in section 1A of this Act shall act as chairperson, and if both the Chairperson and the Deputy Chairperson are absent from the meeting of the Commission, the members present shall elect one from among their number to preside at that meeting.”

2.72 Section 15(2) of this Act provides that

“In addition to the report contemplated in section 118 of the Constitution, the Commission shall submit to the President and Parliament quarterly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it during that quarter: Provided that the Commission may, at any time, submit a report to the President and Parliament if it deems it necessary.”

2.73 The SALRC has recommended above that a provision dealing with reporting by the Commission be incorporated in the proposed section 1A. In the light of that recommendation, it also recommends that reference in section 15(2) of this Act to section 118 of the Constitution be deleted and that it be replaced with reference to the proposed section 1A.

2.74 Section 16(1) of this Act, dealing with staff, finances and accountability of the Commission provides that:

“The Commission shall at its first meeting or as soon as practicable thereafter appoint a director as chief executive officer of the Commission in accordance with section 117(1) of the Constitution,...”.

2.75 The 1996 Constitution does not have provisions dealing with the appointment of a director who shall be the Chief Executive Officer of the Commission. This section became spent when the first Chief Executive Officer of the Commission was appointed. However, due to the fact that it could become necessary for the Commission to appoint a new Chief Executive Officer, it is recommended that the provision be retained, but that it be amended so as to read as follows:

“The Commission shall, whenever it becomes necessary, appoint a director as the chief executive officer of the Commission, who-...”.

2.76 Section 16(1)(c)(i) of this Act provides that the Chief Executive Office of the Commission shall, subject to the Exchequer Act 66 of 1975 be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission. Since the Exchequer Act of 1975 was repealed by the Public Finance Management Act 1 of 1999, it is recommended that reference to the Exchequer Act be deleted and substituted with reference to the Public Finance Management Act of 1999.

2.77 Section 16(3) of this Act provides:

“The defrayal of expenditure in connection with matters provided for in this Act or in section 115(5) up to and including 118 of the Constitution shall be subject to-

...

(b) the provisions of the Exchequer Act, 1975, and the regulations and instructions issued in terms thereof, as well as the Auditor-General Act, 1989 (Act 52 of 1989).”

2.78 As stated above, the 1996 Constitution regulates the powers and functions of the Commission in section 184. It is therefore recommended that section 16(3) be amended to read:

“The defrayal of expenditure in connection with matters provided for in this Act or in section 184 of the Constitution shall be subject to...”.

2.79 It is established law in South Africa that when an Act is repealed, all subordinate legislation enacted pursuant to that Act also falls away. It is thus

recommended, in the light of the fact that the Exchequer Act of 1975 and the Auditor-General Act of 1989 no longer exist in the statute book, that section 16(3)(b) be amended to read:

“the provisions of the Public Finance Management Act, 1999, and the regulations and instructions issued in terms thereof, as well as the Public Audit Act, 2004 (Act 25 of 2004).”

14. The Magistrates Act 90 of 1993

2.80 This Act was enacted to provide for the establishment of a commission known as the Magistrates Commission and to constitute this commission with necessary powers, objects and functions as well as to provide for administrative matters such as the process of appointing magistrates, their remuneration and issues incidental to this purpose.

2.81 This Act has been significantly amended by the Magistrates Amendment Act 35 of 1996, which updated provisions relating to masculine gender to include feminine gender.

2.82 Section 4(1)(c) of this Act which provides for the objects of the Magistrates Commission makes reference to continuing education of magistrates. It is important to note that there is legislation enabled by section 180(a) of the Constitution entirely dedicated to fulfill this role.

2.83 Otherwise the rest of the provisions of this Act are still intact and still serve their purpose of regulating the process of hiring, functioning and remuneration of magistrates to serve in the lower courts of this country. For that reason the Act still serve its purpose and should remain in force. Furthermore, none of the provisions of this Act contravene section 9 of the Constitution.

2.84 However, various provisions of this Act require amendment. It is proposed that the definition of “Minister” in section 1 be amended to read “Minister means the Minister of Justice and Constitutional Development”. Furthermore, various provisions

of this Act make references to “the Supreme Court of South Africa”,²² “the Department of Justice”²³ and to “the Director-General: Justice”.²⁴ The SALRC recommends that the expression “High Court” be substituted for the expression “Supreme Court of South Africa”. Furthermore, the SALRC recommends that the relevant provisions of this Act that refer to the Department of Justice and the Director-General: Justice be amended to read “the Department of Justice and Constitutional Development” or “the Director-General: Department of Justice and Constitutional Development”, as the case may be. Lastly, section 8(1) and (2) of this Act requires the Minister (defined in the Act as Minister of Justice) to determine, with the concurrence of the State Expenditure, remuneration to be paid to the persons referred to in those sections. Section 16(3) of this Act correctly provides that any regulation made under this section which results in State expenditure, shall be made with the concurrence of the Minister of Finance. It is recommended, for the sake of consistency, that the designation “Minister of Finance” be substituted for the designation “State Expenditure” in section 8(1) and (2) of this Act.

15. Judges’ Remuneration and Conditions of Employment Act 47 of 2001

2.85 This Act provides for the remuneration and conditions of employment for all judges in the higher courts, namely, the Constitutional Court, the Supreme Court of Appeal and High Courts, and to cater for incidental matters in connection thereto the purpose.

2.86 This Act is fairly recent and repealed all previous legislation dealing with remuneration of judges. As the only legislation on these matters, it still serves an important purpose.

²² Section 3(1)(a)(i) of this Act provides that “the commission shall consist of a judge of the Supreme Court of South Africa, as chairperson, designated by the President in consultation with the Chief Justice”. Section 8(1) provides that “The chairperson of the Commission or a member of a committee who is a judge of the Supreme Court or a member of the Commission designated in terms of section 3(1)(a)(x) and (xi), may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister may determine with the concurrence of the Minister of State Expenditure.

²³ Section 3(1)(a)(ii) provides that the Commission shall consist of “the Minister or his or her nominee, who must be an officer of the Department of Justice”. Section 9 provides that: “The work incidental to the performance by the Commission of its functions shall be performed by officers of the Department of Justice designated by the Director-General: Justice, of whom one shall be designated by him or her as secretary of the Commission.”

²⁴ See section 9 above.

2.87 Nothing in this Act expressly or otherwise engages section 9 of the Constitution. Furthermore, no provisions of this Act require updating. It is proposed that this Act remain the statute books in its current form.

16. Constitutional Court Complementary Act 13 of 1995

2.88 Since this Act has been earmarked for repeal in the Superior Courts Bill, the SALRC has decided not to review it for constitutionality or redundancy.

17. Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969

2.89 In view of the fact that this Act has been earmarked for repeal in its entirety by the Superior Courts Bill, the SALRC has decided not to review it for constitutionality or redundancy.

18. Supreme Court Act 59 of 1959

2.90 In view of the fact that this Act has been earmarked for repeal in the Superior Courts Bill, the SALRC has decided not to review it for constitutionality or redundancy.

19. Security Forces Board of Inquiry Act 95 of 1993

2.91 This Act, which is still to come into force, was enacted to establish the Security Forces Board of Inquiry tasked to investigate allegations of commission of serious offences²⁵ by members of the security force, and to regulate the powers, objects and functions of the said board.

2.92 The SALRC is of the view that a number of provisions in this Act have been rendered nugatory by legislative and other developments which have occurred since 1994. First, this Act gives the Board the power to inquire into the alleged commission of serious offences by a member of the security force. The term "member of a security force" is defined to mean a member:

²⁵ This Act defines serious offences as murder, kidnapping, assault with intent to do grievous bodily harm, defeating ends of justice, a contravention of the Corruption Act of 1992, any other offence which in the opinion of the Chairman and the Chief Executive Officer is a serious offence and any attempt to commit any of these offences.

- (a) of the South African Defence Force or the Reserve as defined in section 5 of the Defence Act 44 of 1957;
- (b) of the Force as defined in section 1 of the Police Act 7 of 1958;
- (c) of the Department of Correctional Services referred to in section 2(1) of the Correctional Services Act 8 of 1959;
- (d) of a category referred to in section 334(1) of the Criminal Procedure Act 51 of 1977; and
- (e) in the case of a self-governing territory, of the police force of such self-governing territory.

2.93 The first three pieces of legislation referred to in the preceding paragraph were repealed by the Defence Act 42 of 2002, Proclamation R5 of 1995 and the Correctional Services Act 111 of 1998 respectively. Therefore, the definition of "member of a security force" requires amendment by replacing references to these Acts with the recent legislation and by deleting paragraph (e) because self-governing territories no longer exist. Furthermore, a decision has to be taken whether this Act has not been rendered nugatory by developments (legislative or otherwise) that have taken place since 1994. This Act gives the board the power to investigate alleged commission of an offence by a member of the security force, to submit a report on its findings to the President and to make recommendations to the President about how the problems experienced in inquiring into these offence can be overcome (s2(2)(a)-(c)). Section 101 of the Defence Act of 2002 empowers the Minister, the Secretary of Defence or the Chief of the Defence Force to convene a board of inquiry to inquire into any matter concerning the Department, any employee thereof or any member of the Defence Force or any auxiliary service, any public property and to report thereon and to make recommendations. These are very wide discretionary powers which could include an inquiry into the alleged commission of an offence by a member of the Defence Force. Furthermore, in 1997 the Independent Complaints Directorate was established as a department of state (see schedule 1 to the Public Service Act of 1994) to investigate the commission of offences by members of the South African Police Service. In addition, section 85 of the Correctional Services Act 111 of 1998 establishes the Judicial Services Inspectorate which is headed by an Inspecting Judge. The function of this body is to report on the treatment of prisoners, the conditions in prisons and any corrupt and dishonest practices in prisons. The Act requires the Inspecting Judge to report annually to the President and the Minister. Furthermore,

the report thus submitted must be tabled in Parliament by the Minister. It therefore seems, in respect of the police and the defence force, that the Act has been superseded by the enactment of the Defence Act of 2002 and the Correctional Service Act 111 of 1998 and the establishment of the Independent Complaints Directorate. A policy decision has to be taken whether, despite these developments, the powers given to the President in this Act must be preserved.

2.94 If it is decided that the application of this Act to the police, correctional service officials and the defence is no longer necessary, it would apply to the peace officers contemplated in section 344 of the Criminal Procedure Act 51 of 1977. The following recommendations are made:

- That the definition the following definition be substituted for the definition of "chairman" in section 1 of this Act: "chairperson" means the chairperson of the Board mentioned in section 3(1)(a).
- That paragraphs (a), (b), (c) and (e) of the definition of "member of a security force" be deleted.
- That reference to the Corruption Act 94 of 1992 be replaced with reference to the Prevention and Combating of Corrupt Activities Act 12 of 2004.
- That the words "Director of Public Prosecutions" be substituted for the words "an attorney-general" in section 3(3)(a), 4(1)(a), (b) of this Act.
- That the words "Minister of Finance" be substituted for the words "Minister of State Expenditure" in section 9(3)(a).
- That reference to section 5(c) of the Police Act 7 of 1958 be deleted because that Act was repealed by Proclamation R5 of 1995. Reference must be to the South African Police Service Act 68 of 1995.
- That section 16 of this Act which extends the application of this Act to self-governing territories be repealed because they no longer exist.

2.95 However, if the application of this Act to the police, defence force and correctional service officials is retained, the SALRC proposes that the following amendments be made:

- That paragraph (a) of the definition of "member of security force" be amended to read "of the South African National Defence Force referred to in section 11 of the Defence Act 42 of 2002."

- That paragraph (b) of the definition referred to above be amended to read “of the South African Police Service referred to in section 5 of the South African Police Service Act 68 of 1995.”
- That the paragraph (c) of the definition of member of security service be amended to read “of the Department of correctional services referred to in section 3 of the Correctional Services Act 111 of 1998.”

20. Natal Advocates and Attorneys Preservation of Rights Act 27 of 1939

2.96 This Act was promulgated to provide for the preservation of rights of certain Natal advocates and attorneys having the right to practice both as attorneys and as advocates in the new Durban High Court formerly a Natal Provincial Division of the Supreme Court of South Africa. This Act only applies to those attorneys and advocates who were practicing law between 29 June 1932 and 30 June 1937.

2.97 Nonetheless, given the time frame during which this Act was operational, this Act in all probability has become obsolete, given the likelihood that none of the beneficiaries of this Act are still making use of these privileges for reasons ranging from retirement to death.

2.98 It is therefore, proposed that this Act be repealed in its entirety.

21. Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002

2.99 This Act was enacted mainly to domesticate the provisions of the Rome Statute of the International Criminal Court (ICC) to provide for a framework under which South Africa conforms to its obligations under the statute, to provide for definition of certain international crimes such as genocide, war crimes, crimes against humanity, to provide for prosecution in South Africa of persons accused of committing such crimes in or outside of South Africa, and to provide for co-operation of South Africa with the ICC.

2.100 The provisions of this Act still serve their purpose of facilitating co-operation between South Africa and the ICC on matters outlined in this Act. None of the

provisions contravene section 9 of the Constitution. Therefore, it is proposed that it remains as it is.

22. Arbitration Act 42 of 1965

2.101 This Act provides for the regulation of dispute settlement through arbitration tribunals and for the enforcement of arbitration awards. It is clear from the South African Law Reform Commission *Arbitration* Project 94 Report that this Act was enacted to regulate arbitration proceedings within South Africa arising from agreements of a national nature. This is why the said report has recommended that separate arbitration legislation be enacted in order to regulate international arbitration.

2.102 At the same time, the SALRC report recommended that this Act be repealed and replaced by new legislation containing certain substantive provisions of this Act as well as new provisions drawn from other jurisdictions. This was a follow-up to the South African Law Reform Commission *Domestic Arbitration* Discussion Paper 83 of August 1999. In its May 2001 *Domestication Arbitration* Project 94 Report, the South African Law Reform Commission also recommended the repeal of this Act and its replacement with new legislation. A draft bill was attached to that report.

2.103 Notwithstanding the above developments, this Act needs to be updated in terms of the 1996 Constitution. Section 1 of this Act provides that “‘court’ means any court of a provincial or local division of the Supreme Court of South Africa having jurisdiction.” It is recommended that this definition be amended to read “‘court’ means a division of the high court having jurisdiction.”

2.104 Furthermore, the word “him” should be deleted and in its place insert the phrase “him or her” in sections 4(3); 5(3); 10(1); 10(2); 10(3); 11(2); 12(1)(b); 12(1)(e); 12(1)(f); 12(6); 13(2)(a); 19(a); 19(b); 22(1)(d); 22(1)(e); 22(1)(f); 33(1)(a); 34(1); 34(4).

2.105 The word “himself” should be deleted and in its place insert the phrase “himself or herself” in sections 12(6); 22(1)(f); 33(1)(a).

2.106 Similarly, references to "his" should be deleted and in their place insert references to "his or her" in sections 4(2); 10(1) and (3); 11(2); 12(1)(e); 12(3); 12(4); 12(6); 13(3); 14(1)(a)(ii) and (iii); 19(b), 22(1)(d); 32(4); 33(1)(a), 34(4), 35(6); 37(c).

2.107 Although no provision of this Act contravenes section 9 or any other provisions of the Constitution, the following provisions require attention. Section 6(1) states that "if any party to an arbitration agreement institutes proceedings in any court (including any inferior court) against any other party...". Section 1(2) of the Criminal Procedure Act 51 of 1977 provides that any reference in any law to an "inferior court" shall be construed as reference to lower court as defined in that Act. In the light of this provision, the SALRC recommends that reference to "inferior court" in section 6(1) be deleted or amended to refer to any court established in terms of the Magistrates' Court Act of 1944.

2.108 Furthermore, section 16(3) of this Act provides that:

"The provisions of subsection (3) and (4) of *section eighty-seven* of the Correctional Services Act, 1959 (Act 8 of 1959), relating to the service of a subpoena upon any prisoner to give evidence in any court, shall *mutatis mutandis* apply with reference to the service of summons upon any prisoner required to give evidence before an arbitration tribunal as if the proceedings before such tribunal were civil proceedings pending in a court."

2.109 The Correctional Services Act of 1959 was repealed by the Correctional Services Act 111 of 1998. Since the later Act does not contain a provision similar to section 87(3) and (4) of the repealed Correctional Services Act of 1959, it is recommended that this section 16(3) be repealed.

23. Public Protector Act 23 of 1994

2.110 The purpose of this Act is to provide for matters related to the office of the Public Protector as created by sections 182 to 183, as well as sections 193 and 194 of the Constitution. The role of this office is to investigate any matter in state affairs and or public administration in government where such conduct has led to impropriety or prejudice.

2.111 This Act has been thoroughly amended, especially by the Public Protector Amendment Acts 113 of 1998 and 22 of 2003 which effectively repealed or updated certain provisions to bring them in line with the Constitution. The office of the Public Protector is operational, hence there is need to keep this Act in place. None of the provisions engage the discrimination provisions of the Constitution. It is therefore proposed that this Act remain in its current form.

24. Small Claims Courts Act 61 of 1984

2.112 This Act regulates all matters related to the Small Claims Court. Section 166(e) of the Constitution envisages a Small Claims Courts where it provides that;

“The Courts are;

(a)...

(e) any other court established or recognised by an Act of Parliament.”

2.113 To that end this Act implements these provisions of the Constitution. Furthermore, Small Claims Courts are established to enhance public access to justice at reasonable cost in an environment free from complex legal proceedings and jargon. For that reason these courts play a very important role in the consolidation of democracy through access to justice.

2.114 Section 1 of this Act provides that “Minister means the Minister of Justice”. It is recommended that this definition be amended to read “Minister means the Minister of Justice and Constitutional Development.”

2.115 Section 5(1) provides that “either of the official languages of the Republic may be used at any stage of the proceedings of a court.” This provision is inconsistent with section 6(1) of the Constitution which recognises 11 official languages. It is recommended that section 5 be amended to read: “any of the official languages of the Republic may be used at any stage of the proceedings of a court.” Section 6(1) provides that the documents of a court shall be preserved at the seat of the magistracy of the district in which the seat of that court is situated for such period as the Director-General: Justice may determine. Section 6(2) provides that the Director-General: Justice may order that the documents that have been so preserved be removed to a specified place of custody or be destroyed. It is recommended that

reference in both sections to the Director-General: Justice be amended to read "Director-General; Department of Justice and Constitutional Development."

2.116 Section 9(1)(a) of this Act provides that the Minister or any officer of the Department of Justice with the rank of a director or an equivalent or higher rank delegated thereto by the Minister may appoint one or more commissioners for any court. It is recommended that reference to the Department of Justice be amended to read "Department of Justice and Constitutional Development." Section 9(6) of this Act sets out the oath of office to be taken by a commissioner before assuming office. It is recommended that the oath of office should mirror, as far as is possible, Item 6 of Schedule 2 of the Constitution of the Republic of South Africa, 1996, as amended by section 18 of the Constitution of the Republic of South Africa Amendment Act 34 of 2001.

2.117 Section 11(2) of this Act reads:

"The messenger of the court appointed under the Magistrates' Courts Act, 1944 (Act 32 of 1944), for the magistrate's court of a district, shall act as messenger of the court for a court in that part of the said district falling within the area of jurisdiction of that court."

2.118 The Sheriffs Act 90 of 1986 provides that any person who immediately prior to the commencement of that Act held office as messenger or acting messenger of any lower court, or was appointed as a deputy messenger, shall upon that commencement be deemed to be appointed under the provisions of this Act as a sheriff or acting sheriff of that lower court, or as a deputy sheriff, respectively. It is therefore recommended that section 11(2) be amended to read "the sheriff appointed under the Sheriffs Act, 1986 (Act 90 of 1986)...".

2.119 Section 16 of this Act, listing matters beyond the jurisdiction of the Small Claims Court, provides that a Small Claims Court shall not have jurisdiction in matters:

"(a) in which the dissolution of any marriage, or of a customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927) is sought."

2.120 Section 1(7) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 has repealed, among other provisions, section 35 of the Black Administration Act of 1927. Since customary marriages are now recognized as a marriage, the SALRC recommends that section 16(a) be amended by the deletion of the words “or of a customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927).”

2.121 Section 46 sets out the grounds upon which proceedings in the small claims court may be taken on review before “a provincial and local division of the Supreme Court of South Africa...”. This should be amended to read “a division of the High Court having jurisdiction”.

2.122 Furthermore, this Act needs to be updated by deleting the words “he” in sections 9(2); 9(7); 14(1)(d); 25(1)(e); 26(3); 32; 34(a); 34(b); 35(1)(b); 35(2)(b); 39(1); 43; 48(2) or wherever it occurs and replace it with the words “he or she”. Similarly, the word “his” should be removed from sections 9(5); 9(6); 9(7); 16(c); 18(1); 19; 26(3); 27(1); 28; 29(1)(a); 29(2); 29(3); 30(1); 32; 33(1); 34(a); 34(b); 39(1); 40; 41(1); 41(3); 43; 47(a); 48 or wherever it occurs and replace it with the words “his or her”. Furthermore, the word “him” should be replaced with the words “him or her” in sections 9(2)(c); 9(6); 13; 19; 28; 35(1); 48(2) or wherever it occurs. Reference to the division of the Supreme Court of South Africa in s 46 of this Act should be replaced with reference to the High Court.

25. Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005

2.123 The purpose of this Act is to repeal the Black Administration Act, incrementally; to amend the Administration of Estates Act, 1965, so as to give the Masters of the High Courts jurisdiction over the property of all minors, including those who are governed by the principles of customary law; and to provide for matters connected therewith.

2.124 This Act mentions in the preamble that the Black Administration Act, 1927 was enacted on the basis of historical divisions and discrimination, hence it should be repealed. This Act effectively dealt with the section 9 issues engaged by the Black

Administration Act, 1927, hence it is proposed that this Act, though it was enacted on a temporary basis, be retained in its entirety for the time being.

26. General Law Amendment Act 62 of 1973 (sections 18-20)

2.125 The purpose of sections 18, 19 and 20 of this Act was to amend certain provisions of the Supreme Court Act of 1959. Since the Supreme Court Act of 1959 will cease to exist once the Superior Courts Bill is enacted as law, the SALRC recommends that when that happens consequential amendment must be effected to this Act by deleting section 18, 19 and 20.

27. General Law Amendment Act 139 of 1992 (sections 23, 24 and 29)

2.126 The purpose of section 23 was to amend the Small Claims Courts Act 61 of 1984; section 24 amends the Rule Board for Courts of Law Act 107 of 1985, whereas section 29 amends the Judicial Matters Amendment Act 4 of 1991. These sections have been reviewed above when discussing the principal Acts. It is, therefore, not necessary to deal with them separately.

28. General Law Third Amendment Act 129 of 1993 (sections 11, 17-29, 61-64)

2.127 Section 11 amends the State Attorneys Act of 1957; sections 17-29 amend the Supreme Court Act 59 of 1959; and sections 61-64 amend the Rules Board for Courts of Law Act, 1985. As stated above, the Supreme Court Act of 1959 will cease to exist when the Superior Courts Bill becomes a law. The SALRC is of the view that when that happens, sections 17 to 29 of this Act would become redundant and would have to be repealed.

29. Judicial Matters Second Amendment Act 122 of 1998 (sections 6, 12 and 13)

2.128 Only section 6 of this Act, which effected amendments to section 19(1) of the Supreme Court Act 59 of 1959 by adding paragraph (c), needs to be brought to the attention of the Department. As stated above, the enactment of the Superior Courts Act would render this amendment redundant which would necessitate its repeal.

CHAPTER 3
SUBSTANTIVE CIVIL LAW

1. Apportionment of Damages Act 34 of 1956

3.1 The purpose of the Act was to amend the law relating to contributory negligence and the law relating to the liability of persons jointly or severally liable in delict for the same damage. The Act has been amended four times, in 1971, 1984 and twice in 1996.

3.2 No obvious unconstitutionality or obsolescence arises. However, this Act contains a number of provisions where the words "he"; "him"; "his" are used. Although, section 6(a) of the Interpretation Act 33 of 1957 provides that in every law, unless the contrary intention appears, words importing masculine gender includes females; the SALRC proposes that the words "he or she" be substituted for the word "he" in section 2(1A); 2(10) and 2(11)(a); that the words "him or her" be substituted for the words "him" in section 2(8)(b) and in section 2(10); and that the words "his or her" be substituted for the word "his" in section 2(9)(b).

3.3 The only substantive problem appears to be section 3, which reads:

"3 Application of provisions of section 2 to liability imposed in terms of Act 29 of 1942

The provisions of section two shall apply also in relation to any liability imposed in terms of the Motor Vehicle Accidents Act, 1986 (Act 84 of 1986), on the State or any person in respect of loss or damage caused by or arising out of the driving of a motor vehicle."

3.4 Act 29 of 1942 referred to in the heading of section 3 above is the Motor Vehicle Act 29 of 1942 which was repealed by the Compulsory Motor Vehicle Insurance Act 56 of 1972. However, consequential amendments to this heading were never effected. Furthermore, Act 56 of 1972 was subsequently repealed by the Motor Vehicle Accidents Act 84 of 1986. The SALRC also noted that the Motor Vehicle Accidents Act 84 of 1986 was repealed by the Road Accident Fund Act 56 of 1996. It is therefore recommended that references to Act 29 of 1942 and Act 84 of 1986 be deleted and replaced with reference to the Road Accident Fund Act 56 of 1996.

Furthermore, this Act was amended by the Apportionment of Damages Amendment Act 58 of 1971. The Apportionment of Damages Amendment Act extended the application of the Apportionment of Damages Act of 1956 to the "Eastern Caprivi Zipfel." South Africa's laws no longer apply in Namibia, including Eastern Caprivi Zipfel. Therefore, reference to it in the Apportionment of Damages Amendment Act is obsolete. It is thus recommended that section 2 of Act 58 of 1971 be repealed.

2. State Liability Act 20 of 1957

3.5 The purpose of the Act was to consolidate the law relating to the liability of the State in respect of acts of its servants. The Act has been amended twice, in 1989 and in 1993.

3.6 In *Nyathi v MEC for Department of Health, Gauteng and Another*,²⁶ the Constitutional Court considered whether section 3 of this Act limits any of the provisions of the Constitution, including the right to equality. This provision reads:

"Satisfaction of judgment

No execution, attachment or like process shall be issued against the defendant or respondent in any such action or proceedings or against any property of the State, but the amount, if any, which may be required to satisfy any judgment or order given or made against the nominal defendant or respondent in any such action or proceedings may be paid out of the National Revenue Fund or a Provincial Revenue Fund, as the case may be."

3.7 It was alleged that section 3 makes an unjustifiable differentiation between a judgment creditor who obtains a judgment against the State and a judgment creditor who obtains a judgment against a private litigant in that a judgment creditor who obtains a judgment against a private litigant is entitled to execute against a private litigant in order to obtain satisfaction of the judgement debt, whereas a judgment creditor who obtains a judgment against the State is prohibited from executing against State property in order to obtain satisfaction of the judgment debt.²⁷

²⁶ 2008 (5) SA 94 (CC).

²⁷ Id para 39 and 40.

3.8 The Court held that section 3 of the State Liability Act effectively places the State above the law and it does not treat judgment creditors as equal before the law and thus limits the right to equality, equal protection and benefit of the law guaranteed by section 9(1) of the Constitution.²⁸ The court further held that the limitation imposed by section 3 was neither reasonable nor justifiable in terms of section 36 of the Constitution.²⁹

3.9 The Court declared section 3 of the State Liability Act of 1957 unconstitutional to the extent that it does not allow for the execution or attachment against the State and that it does not provide for an express procedure for the satisfaction of judgment debts. The declaration of invalidity was suspended for a period of 12 months to allow Parliament to pass legislation that provides for effective enforcement of court orders. The Minister of Justice and Constitutional Development applied for an extension of the period of suspension of the order of constitutional validity made by the Constitutional Court on 2 June 2008 in order to introduce the State Liability Bill in Parliament. The Constitutional Court³⁰ extended the period of suspension of invalidity to 31 August 2009, and on 31 August 2009 it was again extended to 31 August 2011.

3.10 In response to this decision, the State Liability Bill was published in June 2009 for public comment. The State Liability Act 20 of 1957 was earmarked for repeal in this Bill. On 9 October 2009 the Constitutional Court delivered judgement which provides for an order that will regulate the satisfaction of judgment debts against the State until 31 August 2011 or until remedial legislation is enacted, whichever occurs first. The order provides for a tailored attachment and execution procedure against movable assets of the State. A revised State Liability Amendment Bill [B2-2011] which incorporates comments received to the earlier Bill, and which seeks to give effect to the Constitutional Court decisions in *Nyathi* cases, was introduced in Parliament.³¹ None of the provisions of the State Liability Act, other than those declared unconstitutional by the Constitutional Court, require amendment. The provisions declared unconstitutional by the Constitutional Court are receiving attention.

²⁸ Para 44 and 47.

²⁹ Para 50.

³⁰ In *Minister for Justice and Constitutional Development v Nyathi and Others, In re: Nyathi v Member of the Executive Council for Health, Gauteng and Another* (Case CCT 53/09).

³¹ The Bill was published in Government Gazette No. 33950 of 21 January 2011.

3. Indemnity Acts 61 of 1961 and 13 of 1977

3.11 The purpose of the Indemnity Acts 61 of 1961 and 13 of 1977 was to indemnify the government and other officials³² in respects of acts, announcements, statements or information advised, commanded, ordered, directed, done, made or published in good faith for the prevention or suppression of internal disorder or the maintenance or restoration of good order or public safety or essential services or the preservation of life or property in any part of South Africa included in the Republic during the period mentioned in the respective Acts.³³ The 1961 Act also placed beyond the reach of the justice system acts, announcement, statement or information ordered, advised, commanded, done, directed with intent to prevent suppress internal disorder or to maintain good order or public safety or to terminate a state of emergency in any area included in the Republic whether it was declared in terms the Public Safety Act 3 of 1953 or not.

3.12 These Acts provides that no civil or criminal proceedings shall be brought in any court of law against the officials listed therein or against any persons acting under the authority of or by the direction or with the approval of any officer, member or person referred to in these Acts by reason of any act, announcement, statement, or information advised, commanded, ordered, directed, done, made or published by him in good faith with intent to prevent, suppress internal disorder in any part of South Africa or to maintain or restore good order or public safety or essential services therein or to preserve life or property.

3.13 Both these Acts effectively place the functionaries of the State listed therein above the law and beyond the reach of the justice system, and thus violate the right of access to courts entrenched in section 34 of the Constitution.³⁴ This conclusion is

³² In the 1961 Act these officials were the President, any member of the Executive Council of the Republic, any member of the defence forces of the Republic, any person employed in the public services or the railways and harbours service or in the police forces or the Department of correctional services of the Republic or any person acting under the authority or direction or approval of any officer referred to in this paragraph. See section 1(1)(a)-(e). In the 1977 these were the State, any member of the Executive Council of the Republic, any person in the service of the State and any person acting under the authority or by direction or with the approval of any member mentioned in this paragraph. See section 1(1)(a)-(d) of that Act.

³³ The 1961 Act indemnified officials for acts performed between 21 March 1960 and 5 July 1961, and the 1977 Act for acts done between 16 June 1976 and 16 March 1977 and

³⁴ Section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of the law, decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

bolstered by the stringent approach of the courts, particularly the Constitution Court, to similar provisions in other statutes. In *Moise*,³⁵ for example, the Constitutional Court confirmed the order declaring section 2(1)(a) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 which placed special time limits within which litigation and notice requirements in relation to claims against the State unconstitutional.³⁶ These Acts are probably obsolete in that claims arising from acts committed then have already prescribed. The SALRC recommends that both Acts be repealed.

4. Conventional Penalties Act 15 of 1962

3.14 The purpose of the Act was to provide for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage, and of forfeiture clauses. The Act has been amended four times; most recently by the National Credit Act 34 of 2005. There is no obvious unconstitutionality in the provisions of the Act. No sections seem to be obsolete or to have been superseded or to be in conflict with other legislation.

5. Assessment of Damages Act 9 of 1969

3.15 The purpose of the Act was to amend the law relating to the assessment of damages for loss of support as a result of a person's death. The Act has been amended once, by the General Law Amendment Act 49 of 1996.

3.16 There is no obvious unconstitutionality in the provisions of the Act. No provisions seem to be obsolete or to have been superseded or to be in conflict with other legislation.

³⁵ *Moise v Greater Germiston Transitional Local Council: Minister of Justice and Constitutional Development Intervening (Women's Legal Resources Centre as Amicus Curiae)* 2001 (4) SA 491 (CC).

³⁶ Section 2(1)(a) of the Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 provides that:

"Subject to the provisions of this Act, no legal proceedings in respect of any debt shall be instituted against an administration, local authority or officer (hereinafter referred to as the debtor)-

(a) unless the creditor has within 90 days as from the day on which the debt became due, served a written notice of such proceedings, in which are set out the facts from which the debt arose and such particulars of such debt as are within the knowledge of the creditor, on the debtor by delivering it to him or by sending it to him by registered post."

6. Formalities in respect of Leases of Land Act 18 of 1969

3.17 The primary purpose of the Act was to provide for the formalities in respect of leases of land. The Act has been amended once, by the General Laws Amendment Act 49 of 1996.

3.18 There is no contravention of the Constitution by any of the provisions of the Act. Further, no provisions seem to be obsolete or to have been superseded or to be in conflict with other legislation.

7. Prescription Act 68 of 1969

3.19 The purpose of the Prescription Act was to consolidate and amend the laws relating to prescription. The Act has been amended six times, mostly recently by the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

3.20 Various provisions in this Act make reference to "he", "his" and "him".³⁷ The SALRC recommends that these references be amended to read "he or she", "his or her" and "him or her", as the case may be. Furthermore, sections 3 and 13(1)(a)³⁸ refer to "an insane person". This is not in line with the terminology used in recent legislation dealing with people who suffer from mental disabilities. It is recommended that the expression "insane" be replaced with the expression "a person with mental disability". Section 13 (1) (g) states that:

"The completion of prescription is delayed if the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Agricultural Credit Act, 1966."

³⁷ Sections 1; 3(2); 4; 6; 15(2), (3) and (5)

³⁸ Section 3(1)(a) reads:

"the person against whom the prescription is running is a minor or is insane, or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4". Section 13(1)(a) reads: "If the creditor is a minor or is insane or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15 (1)."

3.21 The Agricultural Credit Act of 1966³⁹ authorised the Minister of Agriculture to render assistance to persons applying for such assistance.⁴⁰ The Agricultural Credit Act of 1966 was repealed by the Agricultural Debt Management Act of 2001.⁴¹ The latter Act also gave wide powers to the Director-General of the Department of Agriculture.⁴² The 2001 Act further provided that any agreement which directly or indirectly relates to a debt remains legally binding and is enforceable despite the repeal of any legislation under which it was concluded and that the Director-General of the Department of Agriculture must collect outstanding debts.⁴³ These provisions were wide enough to include the assistance rendered to applicants by the Minister in terms of section 11 of the Agricultural Credit Act of 1966. Although the Agricultural Debt Management Act of 2001 was repealed by the Agricultural Debt Management Repeal Act of 2008,⁴⁴ the provisions of the 2001 Act relating to agreements remain in force until those agreements and the debt associated with those agreements have been recovered or extinguished.⁴⁵ The intention of the legislature to enable the Director-General of the Department of Agriculture to recover debts owed by virtue of the repealed Acts is very clear. It is thus imperative that references to the debts owing by

³⁹ Agricultural Credit Act 28 of 1966.

⁴⁰ Section 11 of Act 28 of 1966 provided that:

"The Minister may in his discretion, and on such terms and conditions as he may determine, but subject to the provisions of section 15, render assistance to any person applying for such assistance-

(a) by transferring to such person the liability for the repayment of any amount recoverable under this Act or any law repealed by this Act from any other person;

(b) by consolidating amounts recoverable by the State from such first-mentioned person by virtue of the application of this Act or any law repealed by this Act."

⁴¹ Agricultural Debt Management Act 45 of 2001.

⁴² Section 8(3) provided that: "The Director-General may, at the request of a debtor or any person having a legitimate interest therein and on such conditions as he or she may determine-

(a) consolidate amounts and interests owed as debt under different agreements;

(b) substitutes debtors, vary or substitute bonds, impose or vary conditions or restrictions, vary securities or accept other securities;

(c) vary or waive any right of the State subject to the provisions of this Act, consent to any legal act and vary or waive any term of an existing agreement;

(d) determine any other condition subject to which an agreement is concluded or amended, including interest rates, the payment of collection costs or legal fees incurred in the collection of a debt, and the incorporation of any bond, condition or restriction or other provision of an existing agreement into that agreement."

⁴³ Sections 7 and 8 of the Agricultural Debt Management Act 45 of 2001.

⁴⁴ Agricultural Debt Management Repeal Act 15 of 2008.

⁴⁵ Section 2(1) of the Agricultural Debt Management Repeal Act of 2008 provides that "Despite the repeal of the Agricultural Debt Management Act, 2001 ([Act 45 of 2001](#)), the provisions contained in sections 2, 7, 8 (1), (2) and (3) and 9 of that Act remain in force until all agreements referred to in that Act have been terminated and the debt associated with those agreements have been recovered or otherwise extinguished."

virtue of the agreement entered into in terms of the Agricultural Credit Act and the Agricultural Debt Management Act be retained in section 13(1)(g) of the Prescription Act. The SALRC therefore recommends the following amendment to section 13(1)(g) of the Prescription Act of 1969:

“(g) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant or debtor under the Agricultural Credit Act, 1966 or the Agricultural Debt Management Act, 2001 (Act 45 of 2001), despite the repeal of these Acts;”.

3.22 Section 20 states that “In so far as any right or obligation of any person against any other person is governed by Black law, the provisions of this Act shall not apply.” Prescription is unknown in customary law.⁴⁶ The term “Black Law” is not defined, but presumably refers to African Customary Law. It is therefore recommended that section 20 be amended to read:

“20 This Act not applicable where [Black law] African customary law applies

In so far as any right or obligation of any person against any other person is governed by **[Black law] African customary law**, the provisions of this Act shall not apply.”

8. Suretyship Amendment Act 57 of 1971

3.23 The purpose of this Act was to remove from South African law two well known rules of law relating to suretyship, namely *senatusconsultum Velleianum*⁴⁷ and *Authentica si qua mulier*⁴⁸. During the second reading debates, the then Minister of Justice explained why these rules were promulgated in Rome in the first place:

⁴⁶ See JC Bekker *Seymour's Customary Law in Southern Africa* (1989) at 65.

⁴⁷ *Senatusconsultum Velleianum* was passed in the year AD 46 and it prohibited *intercessio* by a woman on behalf of any person, including her husband. See B v D van Niekerk in (1968) South African Law Journal 132.

⁴⁸ *D v B Van Niekerk* supra explains that *Authentica si qua mulier* was introduced by Justinian some five centuries later, in which he repeated the essential provisions of *Senatusconsultum Velleianum* but only in relation to intercession between on behalf of the woman's husband. He adds that to this provision, which threatened intercession on behalf of the husband with complete voidness, there was only one exception, namely a case where it is clearly proven that the money was expended for the benefit of the woman herself.

"The reasons for the Roman legislation were: firstly, that it was regarded as unseemly for women to undertake men's work, and suretyship was regarded as such because it amounted to taking the principal debtor under protection. Secondly, the aim was to protect women against their inclination to respond to calls for assistance."⁴⁹

3.24 This Act therefore, contains only one substantive provision, which states that the rules "*senatusconsultum Velleianum and Authentica si qua mulier*" cease to have the force of law as from commencement of the Act. Those rules would be both unconstitutional and obsolete/abrogated by disuse today in any event, since they restrict women's capacity to bind themselves as sureties. The SALRC proposes that this Act be repealed. Furthermore, such repeal will not revive the rules repealed by this Act.⁵⁰

9. Prescribed Rate of Interest Act 55 of 1975

3.25 The purpose of the Act was to provide for the payment of interest on debts, including judgement debts.

3.26 There is no contravention of the constitution by any of the provisions of the Act. Further, no provisions seem to be obsolete or to have been superseded or to be in conflict with other legislation.

10. Sheriffs Act 90 of 1986

3.27 The purpose of the Act is to provide for the appointment of sheriffs, the establishment of a South African Board for Sheriffs and a Fidelity Fund for Sheriffs and for the regulation of the conduct of sheriffs. The Act has been amended five times, most recently by the Judicial Matters Second Amendment Act 55 of 2003.

3.28 None of the provisions of this Act contravene the right to equality or any other provision of the Constitution. However, various definitions contained in section 1 of

⁴⁹ See Hansard (House of Assembly Debates) 11 May 1971 6462

⁵⁰ Section 12(2)(a) of the Interpretation Act 3 of 1957 provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes place.

this Act require amendment. Section 1 of this Act provides that “auditor” means a person registered as an accountant and auditor in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act 80 of 1991). Act 80 of 1991 was repealed by the Auditing Profession Act 26 of 2005. Although section 59(6) of the Auditing Profession Act of 2005 provides that “Any person who immediately prior to the commencement date was registered as an accountant and auditor under the Public Accountants’ and Auditors’ Act, 1991, is deemed to be registered as an auditor under this Act”, the SALRC proposes that the definition of “auditor” in the definition section be amended to make it clear that it also encompasses auditors registered in terms of the new Act. It is thus recommended that the expression “registered as an auditor in terms of the Auditing Profession Act, 2005 (Act 26 of 2005)” be substituted for the expression “registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act 80 of 1991).” Section 1 also provides that “‘Minister’ means the Minister of Justice”. It is recommended that this definition be amended to read “‘Minister’ means the Minister of Justice and Constitutional Development.” The definition of “superior court” also requires amendment. It is proposed that this definition be amended to read “‘superior court’ means a division of the high court.”

3.29 Section 63(1)(a) of this Act empowers the Minister of Justice and Constitutional Development to delegate to any officer of the Department of Justice any power conferred upon him by this Act. The SALRC proposes that the reference to the Department of Justice be amended to read “Department of Justice and Constitutional Development”. Lastly, there are various provisions in this Act that make reference to masculine gender, namely “he”⁵¹, “his”⁵², “him”⁵³ and “himself”.⁵⁴ The SALRC proposes that these provisions be amended to read “‘he or she”, “his or her”, “him or her” and “himself or herself” as the case may be.

⁵¹ See sections 3(1); 4(1); 5(1A)(a); 6(1) and (3); 10; 11(1); 22(3); 33(1); 35(a)(i); 36(2)(a); 38(2); 43(1)(a)-(f); 43(2) and (3); 50(1) and (2); 51; 52(1); 56(2); 60(1)(g)(ii) and 62(1)(b).

⁵² See sections 3(3); 4(3); 5(1)(a); 5(1)(c)(i); 6(3); 11(1) and (2); 14(2) and (5); 22(3); 23(2); 31(3); 34(3); 35(a)(i) and (ii); 35(b); 36(2)(a); 37(2); 38(1); 39; 43(2) and (3); 50(1); 51(a) and (b); 53; 54; 55; 56(3); 60(1)(g)(ii) and 61(1)(a).

⁵³ See sections 6(2); 23(1); 33(2); 35(a)(ii)(cc); 36(2)(b); 38(2); 43(2); and 55.

⁵⁴ See sections 51; 53; and 60(1)(i).

11. Domicile Act 3 of 1992

3.30 The purpose of the Act was to amend the laws of domicile. It has never been amended. Nevertheless it is still current legislation, and there is no obvious unconstitutionality in the provisions of the Act. With one exception, no provisions seem to be obsolete or to have been superseded or to be in conflict with other legislation. Section 8(1) of this Act provides that: "This Act shall apply subject to the Aliens Control Act, 1991 (Act 96 of 1991)." The Aliens Control Act of 1991 was repealed by the Immigration Act 13 of 2002. The SALRC recommends that section 8(1) be amended by the substitution for reference to the Aliens Control Act 1991 of reference to the Immigration Act 13 of 2002. Furthermore, a number of provisions in this Act refer to "he" and "his". The SALRC recommends that these references be amended to read "he or she" and "his or her" as the case may be.

12. Security by Means of Movable Property Act 57 of 1993

3.31 The primary purpose of the Act was to regulate the legal consequences of the registration of a notarial bond over specified movable property and to exclude the operation of the landlord's tacit hypothec in respect of certain movable property.

3.32 Section 5 of the Act contains the "Savings" provisions of the Act. Section 5(b) states that "Nothing in this Act shall affect any right acquired under the Agricultural Credit Act, 1966 (Act 28 of 1966)." The Agricultural Credit Act, 1966 was repealed by the Agricultural Debt Management Act 45 of 2001. The latter Act has been repealed by the Agricultural Debt Management Repeal Act 15 of 2008. The SALRC recommends that section 5(b) of this Act be repealed on the basis that it has become obsolete. The proposed repeal will not affect the rights acquired in terms of the Agricultural Credit Act of 1966.⁵⁵ In the light of the general savings provisions of the Interpretation Act

⁵⁵ Section 12 of the Interpretation Act 33 of 1957 provides that:

"12 Effect of repeal of a law

(1) Where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.

(2) 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

33 of 1957, the SALRC is of the view that section 5(b) was included *ex abundanti cautela*.

13. General Law Amendment Act 50 of 1956 (sections 1, 5 and 6)

3.33 Section 1, 5 and 6 of this Act makes it an offence to appropriate another's property without his or her consent and regulate the law relating to the formalities of contracts of donation and of suretyship. Sections 1 and 5 make reference to the masculine gender by referring to the words "he", "him" and "his". The SALRC recommends that these references be amended to include feminine gender. There is no obvious unconstitutionality in the provisions of the Act. The sections do not seem to be obsolete or to have been superseded or to be in conflict with other legislation.

14. General Law Amendment Act 68 of 1957 (section 5(1) and 5(2))

3.34 The purpose of the section is to prohibit the publication of any information pertaining to the identity of litigants or witnesses who are under the age of 18 years without the written permission of the presiding officer.

3.35 There is no obvious contravention of the Constitution in the provisions of the Act. Section 5(1) makes it an offence to reveal the identity of a person below the age of 18 who has been a party or a witness in civil proceedings. Section 5(2), which is ancillary to subsection (1), provides that:

"(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment

(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,

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."

for a period not exceeding three months or to both such fine and such imprisonment.”

3.36 This penalty provision still refers to “fifty pounds”. South African currency is no longer referred to as pounds. Furthermore, it is no longer necessary to specify the amount of fine in legislation as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and that the provisions of the Adjustment of Fines Act be incorporated by reference.

15. General Law Amendment Act 139 of 1992 (section 8)

3.37 Section 8 of this Act provides that the provisions of sections 3 and 4 of the Prohibition of Foreign Financing of Political Parties Act of 1968 are suspended from the date of commencement of this section until a date determined by the State President by proclamation in the *Gazette*. The SALRC proposes that this provision be repealed as Prohibition of Foreign Financing of Political Parties Act 51 of 1968 was repealed by the Abolition of Restrictions on Free Political Activity Act 206 of 1993.

CHAPTER 4

CONSTITUTIONAL AND POLITICAL LEGISLATION

1. Transfer of Powers and Duties of the State President Act 97 of 1986

4.1 The purpose of this Act was to divest certain functions from the State President and to invest them in Ministers of State. This Act provided for the amendment of numerous Acts to achieve this divestiture and investiture. The Act does not use any sexist or gender-insensitive language. It does not contravene section 9 of the Constitution and no amendments are suggested in this regard.

4.2 A number of provisions contained in this Act effected amendments to numerous statutes that were subsequently repealed by other pieces of legislation. However, these amendments were not repealed contemporaneously with those statutes. Therefore, the amendments recommended in the ensuing paragraphs became redundant when the principal Act to which they refer were repealed. The SALRC recommends that the following provisions of this Act be repealed:

- Section 5 of this Act amended section 94 of the Workmen's Compensation Act 30 of 1941. Act 30 of 1941 was repealed by section 100 (1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, rendering section 5 redundant.
- Section 6 amended section 65(1) of the Land Bank Act 13 of 1944. The Land Bank Act of 1944 was subsequently repealed by section 53 of the Land and Agricultural Development Bank Act 15 of 2002.
- Sections 10 to 26 amended various provisions of the Water Act 54 of 1956. The Water Act of 1954 was recently repealed by the National Water Act 36 of 1998.
- Sections 29 and 30 of this Act amended the Police Act 7 of 1958. The Police Act of 1958 was repealed by the South African Police Service Rationalisation Proclamation of 1995 which has also since been partly repealed by the South African Police Service Act 68 of 1995.

- Sections 31 to 33 effected amendments to the Prisons Act 8 of 1959. The Prisons Act of 1959 was repealed in 1998 by section 137 of the Correctional Services Act 111 of 1998.
- Section 34 amended the Dairy Industry Act 30 of 1961. Act 30 of 1961 was repealed by the Agricultural Product Standards Act 119 of 1990.
- Section 35 amended section 64 of the Precious Stones Act 73 of 1964. This Act was repealed by the Mineral and Energy Laws Rationalisation Act of 1994, which in turn has been repealed by Mineral and Petroleum Resources Development Act 28 of 2002.
- Section 39 amended section 8 of the Commission for Fresh Produce Markets Act 82 1970. Act 82 of 1970 was repealed by the Agricultural Produce Agents Act 12 of 1992.
- Section 41 amended section 37 of the Mental Health Act 18 of 1973. This Act has been repealed by the Mental Health Care Act 17 of 2002.
- Sections 42 to 43 amended section 3 and section 159 of the Liquor Act 87 of 1977. The Liquor Act of 1977 was repealed by the Liquor Act, 1989 (now also repealed by the Liquor Act, 2003).
- Section 44 amended section 3 of the Maintenance and Promotion of Competition Act 96 of 1979. Act 96 of 1979 was repealed by the Competition Act 89 of 1998.

4.3 A number of statutes amended by section 47 and listed in the first and second Schedule of this Act have been repealed. In the light of the fact that it is permissible to amend a schedule of an Act by deleting legislation listed therein, the SALRC recommends that the first and the second Schedule of Act 97 of 1996 be amended by the deletion of these Acts. The SALRC recommends that the following Acts listed in the first Schedule be deleted: the Vaal River Development Scheme Act of 1934,⁵⁶ the Livestock and Meat Industries Act of 1934,⁵⁷ the Workmen's Compensation Act of 1941,⁵⁸ the Land Bank Act of 1944,⁵⁹ the South African Reserve Bank Act of 1944,⁶⁰

⁵⁶ Repealed by Act 36 of 1998.

⁵⁷ Repealed by Act 79 of 1987.

⁵⁸ Repealed by Act 130 of 1993.

Rand Water Board Statutes (Private) Act of 1950,⁶¹ the Mooi River District Adjustment Act of 1954,⁶² the Mines and Works Act of 1956,⁶³ the Labour Relations Act of 1956,⁶⁴ the Water Act of 1956,⁶⁵ the Wage Act of 1957,⁶⁶ the Wine, Other Fermented Beverages and Spirits Act of 1957,⁶⁷ the Defence Act of 1957,⁶⁸ the Police Act of 1958,⁶⁹ the Electricity Act of 1958,⁷⁰ the Prisons Act of 1959,⁷¹ the Suid Afrikaanse Akademie vir Wetenskap and Kuns Act of 1959,⁷² the Business Names Act of 1960,⁷³ the Sorghum Beer Act of 1962,⁷⁴ the Aviation Act of 1962,⁷⁵ the South African Mint and Coinage Act of 1964,⁷⁶ the Banks Act of 1965,⁷⁷ the Building Societies Act of 1965,⁷⁸ the Unemployment Insurance Act of 1966,⁷⁹ the Mining Rights Act of 1967,⁸⁰ the Designs Act of 1967,⁸¹ the Armaments Development and Production Act of 1968,⁸² the Marketing Act of 1968,⁸³ the Stamp Duties Act of 1968,⁸⁴ the Orange River Development Project Act of 1969,⁸⁵ the Egg Production Control Act of 1970,⁸⁶ the National Roads Act of 1971,⁸⁷ the Sea Fisheries Act of 1973,⁸⁸ the Lake Areas Development Act of 1975,⁸⁹ the Abattoir Industry Act of 1976,⁹⁰ the National Parks Act of 1976,⁹¹ the Civil Defence Act of 1977,⁹² the Liquor Act of 1977,⁹³ the Nursing

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- 59 Repealed by Act 15 of 2002
60 Repealed by Act 90 of 1989.
61 Repealed by Act 36 of 1998.
62 Repealed by Act 36 of 1998.
63 Repealed by Act 50 of 1991.
64 Repealed by Act 66 of 1995.
65 Repealed by Act 36 of 1998.
66 Repealed by Act 75 of 1997.
67 Repealed by Act 60 of 1989.
68 Repealed by Act 42 of 2002.
69 Repealed by Procl R5 of 1995.
70 Repealed by Act 41 of 1987.
71 Repealed by Act 111 of 1998.
72 Repealed by Act 67 of 2001.
73 Repealed by Act 68 of 2008.
74 Repealed by Act 27 of 1989.
75 Repealed by Act 13 of 2009.
76 Repealed by Act 49 of 1989.
77 Repealed by Act 94 of 1990.
78 Repealed by Act 124 of 1994.
79 Repealed by Act 63 of 2001.
80 Repealed by Act 37 of 2005.
81 Repealed by Act 195 of 1993.
82 Repealed by Act 51 of 2003.
83 Repealed by Act 47 of 1996.
84 Repealed by Act 60 of 2008.
85 Repealed by Act 36 of 1998
86 Repealed by Act 188 of 1993.
87 Repealed Act 7 of 1998 .
88 Repealed by Act 12 of 1988.
89 Repealed by Act 57 of 2003.
90 Repealed by Act 120 of 1992.
91 Repealed by Act 57 of 2003.

Act of 1978,⁹⁴ the South African Transport Services Act of 1981,⁹⁵ the Nuclear Energy Act of 1982,⁹⁶ the Scientific Research Council Act of 1984,⁹⁷ and the Forest Act of 1984.⁹⁸

4.4 The SALRC also recommends that the following Acts listed in the Second Schedule be deleted, namely:

- the Restriction on the Importation of Wine and Spirits Act of 1921 which was repealed by section 32 Liquor Products Act, 1980.
- Insolvency Act of 1936 (sections 19(6), 63(1)*bis*, 153(1)*bis*, and 158*bis* have all been substituted in terms of Act 16 of 2003.
- Workmen's Compensation Act of 1941 which was repealed by section 100 (1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.
- Land Bank Act of 1944 which was repealed by section 53 of the Land and Agricultural Development Bank Act 15 of 2002.
- Water Act of 1956 which was repealed by section 84 of the Water Services Act 108 of 1997.
- Section 6(4) of the Supreme Court Act of 1959 which was repealed by section 4 of Act 41 of 2001.
- Section 49 of the Income Tax Act of 1962 which was repealed by section 31 (1) of Act 101 of 1990.
- Paragraph 10 of the Fifth Schedule of the Income Tax Act of 1962 which was deleted by section 19 of Act 72 of 1963.
- Sorghum Beer Act repealed by the Liquor Act 27 of 1989, which in turn has been repealed by section 46 of the Liquor Act 59 of 2003 in those provinces that have promulgated provincial liquor legislation. The Liquor Act 27 of 1989

⁹² Repealed by Act 57 of 2002.

⁹³ Repealed by Act 27 of 1989.

⁹⁴ Repealed by Act 33 of 2005.

⁹⁵ Repealed by Act 9 of 1989.

⁹⁶ Repealed by Act 131 of 1993.

⁹⁷ Repealed by Act 46 of 1988.

⁹⁸ Repealed by Act 10 of 2004.

remains in force in respect of provinces that have not promulgated liquor legislation.

- South African Mint and Coinage Act which was repealed by section 35 the South African Reserve Bank Amendment Act 49 of 1989, which in turn has been repealed by s40 of South African Reserve Bank Act 90 of 1989.
- Unemployment Insurance Act of 1966 which was repealed by the Unemployment Insurance Act of 2001.
- The Designs Act of 1967 which was repealed by the Designs Act, 1993.
- Physical Planning Act of 1967 which was repealed by the Physical Planning Act, 1967 which also has been repealed by the Physical Planning Act 1991.
- Marketing Act 59 of 1968 which was repealed by section 27(1) of Marketing of Agricultural Products Act 47 of 1996.
- Orange River Development Project Act 78 of 1969 which was repealed by section 163(1) of the National Water Act 36 of 1998.
- Egg Production Control Act of 1970 which repealed by Marketing Amendment Act 188 of 1993.
- National Roads Act of 1971, the whole of this Act, except section 2(1A), was repealed by section 60(2) of the South African National Roads Agency Limited and National Roads Act 7 of 1998 which came into operation on 1 April 1998.
- Sea Fisheries Act of 1973 which was repealed by the Sea Fisheries Act 12 of 1988.
- Section 3(5) of the International Health Regulations Act, 1974 which was repealed by section 1 of Act 49 of 1996.
- Section 33 of the Pharmacy Act of 1974 which was substituted by section 27 of Act 88 of 1997.
- Sections 31(2),(3) and (4) of the Medical, Dental and Supplementary Health Service Professions Act of 1974 (now entitled Health Professions Act) which was superseded by section 28(c) of Act 89 of 1997 and section 30 of the Health Professions Amendment Act 29 of 2007 .

- Lake Areas Development Act of 1975 which was repealed by section 90 of National Environmental Management: Protected Areas Act 57 of 2003.
- Section 23(1A) and (5) of the Plant Breeders Rights Act of 1976 which have been amended by sections 46 and 47 of Act 97 of 1986 and substituted by section 13 of Act 15 of 1996.
- Abattoir Industry Act of 1976 which was repealed by the Abattoir Hygiene Act 121 of 1992 which except for section 23, was repealed by section 25 (1) of the Meat Safety Act 40 of 2000.
- National Parks Act of 1976. The whole of which, except section 2(1) and Schedule 1, was repealed by section 90(1) of the National Environmental Management: Protected Areas Act 57 of 2003.
- Liquor Act of 1977 which was repealed by the Liquor Act 27 of 1989.
- Section 1(2) of the Nuclear Energy Act of 1982 which was repealed by section 60(1)(b) of the Nuclear Energy Act 46 of 1999.
- Section 13 of the Divorce Act of 1979 which was superseded by section 7 of Act 3 of 1992.

2. Transfer of Powers and Duties of the State President Act 51 of 1991

4.5 This Act amended certain laws so as to vest certain functions assigned to the State President in the respective Ministers of State who are charged with the administration of those laws. The Act does not use any sexist or gender-insensitive language or contravene section 9 of the Constitution.

4.6 As is the case with the Transfer of Powers and Duties of the State President Act of 1986 discussed above, a number of provisions contained in this Act effected amendments to various statutes which were subsequently repealed. However, the provisions of this Act relating to the repealed statutes were not contemporaneously repealed with those statutes. The amendments recommended for repeal in the

ensuing paragraphs became redundant when the principal Acts to which they relate were repealed. The SALRC therefore recommends the repeal of the following provisions:

- Section 1 amended section 10(4)(a) of the Black Administration Act, 1927, Amendment Act 9 of 1929. The Black Administration Act, 1927, Amendment Act of 1929 has been repealed in its entirety by section 10(1) of the Jurisdiction of Regional Courts Amendment Act 31 of 2008 which come into operation in August 2010.
- Section 2 amended section 39(6) of the Workmen's Compensation Act 30 of 1941. The Workmen's Compensation Act of 1941 was repealed by section 100(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.
- Section 5 amended section 26 of the National Road Safety Act 9 of 1972. The National Road Safety Act of 1972 was repealed by the National Road Traffic Act 93 of 1996.
- Section 6 amended section 1 of the Mental Health Act 18 of 1973 which was repealed by the Mental Health Care Act 17 of 2002.
- Section 7 amended section 6 the Mental Health Act of 1973 which was repealed by the Mental Health Care Act 17 of 2002.
- Section 8 substituted section 4 of the Diplomatic Immunities and Privileges Act 74 of 1989. Act 74 of 1989 was subsequently repealed by section 16 Diplomatic Immunities and Privileges Act 37 of 2001.

4.7 Section 9 of this Act amended the laws listed in the first Schedule. Section 10 amended the laws specified in the second Schedule. A number of these statutes have been repealed. In the light of the fact that it is permissible to amend a schedule of an Act by deleting legislation listed therein, the SALRC recommends that the following Acts listed in the first and the second Schedule be deleted:

- The Land Bank Act, 1944 (repealed by section 53 of the Land and Agricultural Development Bank Act 15 of 2002).
- Section 72G of the Defence Act, 1957 (repealed by the Defence Act 42 of 2002).
- Mining Titles Registration Act, 1967 (repealed by section 9 Act 20 of 2003).

- Armaments Development and Production Act, 1968 (repealed by section 23 Armaments Corporation of SA Limited Act 51 of 2003).
- Mental Health Act 18 of 1973 which was repealed, except Chapter 8, repealed by the Mental Health Care Act 17 of 2002.
- Sections 77(6)(a), 77(7), 77(9) and 78(6) of the Criminal Procedure Act, 1977 – superseded⁹⁹
- Civil Protection Act, 1977 (repealed by section 64 Disaster Management Act, 2002).
- Maintenance and Promotion of Competition Act, 1979 (repealed by Competition Act 89 of 1998).
- Nuclear Energy Act, 1982 (repealed by Nuclear Energy Act, 1993 which was also repealed by the Nuclear Energy Act of 1999).
- Public Investment Commissioners Act of 1984 which was repealed by Public Investment Corporation Act 23 of 2004.
- Auditor-General Act, 1989 (repealed by Auditor-General Act 12 of 1995).
- Diplomatic Immunities and Privileges Act, 1989 (repealed by section 16 of the Diplomatic Immunities and Privileges Act 37 of 2001).
- Defence Act of 1957 and the
- Nuclear Energy Act of 1982.

3. Public Funding of Represented Political Parties Act 103 of 1997

4.8 This Act was enacted to establish the Represented Political Parties' Fund to make financial provision for political parties participating in Parliament and provincial legislatures; to provide for the management of that Fund by the Electoral

⁹⁹ Section 78(6) substituted by section 11 of Act 33 of 1986, amended by section 9 of Act 51 of 1991 and by section 43 of Act 129 of 1993 and substituted by section 5(d) of Act 68 of 1998, by section 13 of Act 55 of 2002 and by section 68 of Act 32 of 2007. Section 77(6) substituted by section 10 of Act 33 of 1986, amended by s. 9 of Act 51 of 1991, by s. 42 (a) of Act 129 of 1993, by s. 3 (b) of Act 68 of 1998 and by s. 12 of Act 55 of 2002 and substituted by s. 68 of Act 32 of 2007. Section 77(7) amended by section 9 of Act 51 of 1991 and substituted by section 42 (b) of Act 129 of 1993 and by section 3(c) of Act 68 of 1998. Section 77(9) amended by section 9 of Act 51 of 1991 and substituted by section 42 (c) of Act 129 of 1993 and by section 3(d) of Act 68 of 1998.

Commission and for accountability regarding that Fund; to regulate the allocation of moneys from that Fund and the purposes for which allocated moneys may be used by political parties; to regulate the repayment to the Electoral Commission of the unspent balances of moneys by political parties under certain circumstances; and to provide for incidental matters.

4.9 This Act does not contravene section 9 of the Constitution. And, it does not use any sexist or gender-insensitive language.

4.10 Section 3(2) of this Act requires amendment. This section provides that:

“The moneys of the Fund that are not required immediately for making allocations to political parties in terms of section 5, may be invested with the Public Investment Commissioners contemplated in the Public Investment Commissioners Act, 1984 (Act 45 of 1984).”

4.11 The Public Investment Commissioners Act referred to in section 3(2) of this Act was repealed by the Public Investment Corporation Act 23 of 2004. The SALRC thus recommends that section 3(2) of this Act be amended to read “The moneys of the Fund that are not required immediately for making allocations to political parties in terms of section 5, may be invested with the Public Investment Corporation contemplated in the Public Investment Corporation Act, 2004 (Act 23 of 2004).”

4. DETERMINATION OF DELEGATES ACT 69 OF 1998

4.12 This Act provides for the determination of permanent and special delegates to the National Council of Provinces as contemplated in section 61(2) of the Constitution; and related matters. It only refers to the Constitution. There is no reference to any repealed or superseded law. This Act deals neutrally with the determination of delegates. It does not use any sexist or gender-insensitive language. It does not contravene section 9 of the Constitution. It is therefore recommended that this Act be retained in its entirety.

5. Promotion of Access to Information Act 2 of 2000

4.13 This Act gives effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights. There is no reference to any repealed or superseded law. The Act does not use any sexist or gender-insensitive language.

4.14 On 16 March 2009 in *Brummer v Minister of Social Development and Others* the Western Cape High Court held that section 78(2) of this Act is unconstitutional to the extent that it infringes the right of access to court by imposing an unreasonable time limit on the period within which legal proceedings may be instituted.¹⁰⁰ This section requires that litigation be instituted within 30 days.

4.15 The Cape High Court's declaration of constitutional invalidity has been confirmed by the Constitutional Court.¹⁰¹ The Department of Justice and Constitutional Development has already initiated the process aimed at giving effect to the decision of the Constitutional Court. The DOJCD has informed the SALRC that this matter is being addressed in the Judicial Matters Amendment Bill which is in the DOJCD's 2011 Legislative Programme.

6. Promotion of Administrative Justice Act 3 of 2000

4.16 The purpose of this Act gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution. The Act does not use any sexist or gender-insensitive language. It is therefore recommended that this Act be retained in its entirety.

¹⁰⁰ Case no. 10013/07 (As yet unreported) at par 71.

¹⁰¹ See *Brummer v Minister for Social Development and Others* 2009 (6) SA 323 (CC).

7. Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

4.17 The purpose of this Act is to give effect to section 9, read with item 23(1) of Schedule 6 to the Constitution so as to prevent and prohibit unfair discrimination and harassment; and to promote equality and eliminate unfair discrimination. The Act does not use any sexist or gender-insensitive language.

4.18 The reverse onus provided for in section 13 of the Act does not contravene section 9 of the Constitution. This is because section 9(5) of the Constitution provides that discrimination on one or more of the grounds listed in section 9(3) is unfair unless it is established that the discrimination is fair. In other words there is a presumption of unfairness and a reverse onus is placed on the person accused of unfair discrimination. This approach is justified because discrimination is particularly difficult to prove and much of the relevant information lies with the accused rather than with the accuser. No amendments are therefore proposed with regard to section 13.

4.19 Section 25(4), contained in Chapter 5 of this Act,¹⁰² reads:

“(4) All Ministers must implement measures within the available resources which are aimed at the achievement of equality in their areas of responsibility by-

(a) eliminating any form of unfair discrimination or the perpetuation of inequality in any law, policy or practice for which those Ministers are responsible; and

(b) preparing and implementing equality plans in the prescribed manner, the contents of which must include a time frame for implementation of such plans, formulated in consultation with the Minister of Finance.”

4.20 This provision requires all Ministers of state to prepare equality plans which are to be submitted to the SA Human Rights Commission. There is no equivalent requirement for other levels of government, namely provincial and local government.

¹⁰² Chapter 5 of this Act has not yet come into operation.

It therefore appears that national government has been treated differently from provincial and local spheres government. This distinction is difficult to justify as all spheres of the state are enjoined to promote equality. Accordingly, it is suggested that provincial sphere of government also be required to prepare and submit equality plans. Due the large number of municipalities that exist in the Republic,¹⁰³ the SALRC is of the view that it would not be expedient to extend this obligation to municipal councils.

4.21 The SALRC proposes that section 25(4) be amended by expressly including all the members of the Executive Councils of each of the nine provinces. The following amendment of section 25(4) is proposed:

“(4) All Ministers and Members of the Executive Councils of each province must implement measures within the available resources which are aimed at the achievement of equality in their areas of responsibility by-

- (a) eliminating any form of unfair discrimination or the perpetuation of inequality in any law, policy or practice for which those Ministers or Members of the Executive Councils are responsible; and
- (b) preparing and implementing equality plans in the prescribed manner, the contents of which must include a time frame for implementation of such plans, formulated in consultation with the Minister of Finance.”

8. Citation of Constitutional Laws Act 5 of 2005

4.22 This Act was enacted to amend the citation of the Constitution and its Amending Acts and to substitute short titles for the Amendment Acts. Consequently, it only refers to the Constitution and its Amendment Acts. There is no reference to any repealed or superseded law. This Act deals with ‘technical’ issues of citation and titles. Therefore there are no substantive provisions to test against section 9 of the Constitution. The Act does not use any sexist or gender-insensitive language.

¹⁰³ There are approximately 264 municipalities in the Republic.

4.23 It is therefore recommended that this Act be retained in its entirety.

CHAPTER 5

WILLS, ESTATES AND INSOLVENCY

1. Insolvency Act 24 of 1936

5.1 The purpose of the Insolvency Act 24 of 1936 is shortly stated in its preamble to be to consolidate and amend the law relating to insolvent persons. The Act came into operation on 1 July 1936 and has been amended on numerous occasions over the intervening years.

5.2 The provisions of this Act have been interpreted in numerous decisions over the years including constitutional challenges to certain of its provisions.

5.3 The South African Law Reform Commission (SALRC) was, for some time, engaged in a large scale review of the law of insolvency in its project 63. According to the South African Law Reform Commission Annual Report for 2007/8, the work of Project Committee 63 is complete, its report having been submitted in February 2000. That report is receiving the attention of the Department of Justice and Constitutional Development (DOJCD).

5.4 The SALRC's report included a draft Insolvency Bill that, among other things, addresses the issues under review in this project, including taking account of the constitutional challenges referred to in 5.2 above as well as taking account of certain other provisions that are not in accordance with the Bill of Rights and particularly section 9 of the Constitution, such as section 27 of the present Insolvency Act.

5.5 To review the present Insolvency Act 24 of 1936 would simply repeat the work already done by the SALRC and it is therefore recommended that no changes to the present Insolvency Act be made at this stage.

2. Wills Act 7 of 1953

5.6 The purpose of this Act was to consolidate and amend the law relating to testate succession. To this end, the Act, *inter alia*, regulates the execution of wills, condonation of non-compliance with formalities, revocation of wills, interpretation of wills, competency to make a will and to benefit under a will, and conflict of law rules.

5.7 The Act came into operation on 1 January 1954 and has since been amended by Wills Amendment Act 48 of 1958, General Law Amendment Act 80 of 1964, Wills Amendment Act 41 of 1965, Law of Succession Amendment Act 43 of 1992, and General Law Amendment Act 49 of 1996. Sections 3, 5, 6 and 8 have been repealed by the Law of Succession Amendment Act 43 of 1992.

5.8 Various provisions of this Act require amendment. Section 1 provides that “‘court’ means a provincial or local division of the supreme court or any judge thereof” and that “‘Master’ means a Master, Deputy Master or Assistant Master of the Supreme Court. The SALRC recommends that these definitions be amended by the substitution for the expression “supreme court” of the expression “high court” in both definitions. Furthermore, the SALRC has noted that the Constitution makes no reference to local or provincial division of the high court. It is therefore recommended that in the amendment the expression “local or provincial division” be excluded.

5.9 This Act makes reference to the masculine gender by using the words “he” and “his” in sections 1, 2, 2A-D, 3bis, 4, 5. The SALRC recommends that the words “he or

she" and "his or her" be substituted for the words "he" or "she" as the case may be wherever they occur in this Act

5.10 Section 4A(2)(b) of this Act reads:

"a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession."

5.11 In *Hassam v Jacobs*, the Constitutional Court held that the word "spouse" as used in the Intestate Succession Act of 1987 was not capable of being understood to include more than one partner to a marriage.¹⁰⁴ To remedy the defect the court held that the words "or spouses" after each use of the "spouse" in the Act. In the light of this decision, the SALRC recommends that the words "or spouses" be inserted after the words "or his spouse" wherever they occur in this section.

3. Administration of Estates Act 66 of 1965

5.12 The purpose of this Act was to consolidate and amend the law relating to the liquidation and distribution of deceased persons' estates; the administration of the property of minors and persons under curatorship, and of derelict estates; to regulate the rights of beneficiaries under mutual wills and certain other matters.

¹⁰⁴ *Hassam v Jacobs NO and Others* 2009 (5) SA 572 (CC). Paragraph 48.

5.13 The Act came into force on 2 October 1967 and has been amended on numerous occasions since.

5.14 An attempt, in the Administration of Estates Laws Interim Rationalisation Act 20 of 2001, has already been made to address the issues under review in this investigation through various amendments to the Administration of Estates Act. The proposed amendments that follow simply complete that process.

5.15 Section 1 of this Act states that “‘Minister’ means the Minister of Justice.” The SALRC recommends that this definition be amended to read: “Minister means the Minister of Justice and Constitutional Development”. Section 2(4) empowers the Minister of Justice to delegate any of the power conferred on him or her to the Director-General: Justice or a deputy Director-General in the Department of Justice. The SALRC recommends that the section 2(4) be amended as follows:

“The Minister may delegate any power conferred on him or her by this section to the Director-General: Justice and Constitutional Development or a deputy director-general in the Department of Justice and Constitutional Development.”

5.16 Section 4(2)(b)(ii) of this Act provides that:

“in the case of any mentally ill person who under the Mental Health Act, 1973 (Act 18 of 1973), has been received or is detained in any place, jurisdiction shall lie with the Master who, immediately prior to such reception or detention, had jurisdiction in respect of his or her property under paragraph (a) or (b).”

5.17 The Mental Health Act 18 of 1973 was repealed by the Mental Health Care Act 17 of 2002. It is recommended that the expression "Mental Health Care Act, 2002 (Act 17 of 2002)" be substituted for the expression "Mental Health Act, 1973 (Act 18 of 1973)" in section 4(2)(b)(ii) referred to above.

5.18 Section 6(1) of this Act provides that the Minister or any officer of the Department of Justice may for any area specified appoint persons to be appraisers for the valuation of property for the purposes of this Act. It is recommended that this section be amended referring to the Department of Justice as the Department of Justice and Constitutional Development.

5.19 Section 18(1) empowers the Master, among other things, to:

"appoint and grant letters of executorship to such person or persons whom he may deem fit and proper to be executor or executors of the estate of the deceased, or, if he deems it necessary or expedient, by notice published in the Gazette and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the surviving spouse (if any), the heirs of the deceased and all persons having claims against the estate, to attend before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as executor or executors, a person or a specified number of persons."

5.20 In the light of the Constitutional Court decision in *Hassam v Jacobs*¹⁰⁵ the SALRC recommends that the words "or spouses" be inserted after the words "call

¹⁰⁵ *Hassam v Jacobs NO and Others* above.

upon the surviving spouse". The same recommendation is made in respect of section 19¹⁰⁶ and 38.¹⁰⁷

5.21 Section 72 of this Act gives the Master the power to grant letters of tutorship or curatorship to persons nominated by will or written instrument. Section 72(1)(a) and (b) read:

"72 Letters of tutorship and curatorship to tutors and curators nominate and endorsement in case of assumed tutors and curators

(1) The Master shall, subject to the provisions of subsection (3) and to any applicable provision of section 5 of the Matrimonial Affairs Act, 1953 (Act 37 of 1953), or any order of court made under any such provision or any provision of the Divorce Act, 1979, on the written application of any person-

(a) who has been nominated by will or written instrument-

¹⁰⁶ Section 19 of this Act reads:

"Competition for office of executor

If more than one person is nominated for recommendation to the Master, the Master shall, in making any appointment, give preference to-

- (a) the surviving spouse or his nominee; or
- (b) if no surviving spouse is so nominated or the surviving spouse has not nominated any person, an heir or his nominee; or
- (c) if no heir is so nominated or no heir has nominated any person, a creditor or his nominee; or
- (d) the tutor or curator of any heir or creditor so nominated who is a minor or a person under curatorship, in the place of such heir or creditor:

Provided that the Master may-

- (i) join any of the said persons as executor with any other of them; or
- (ii) if there is any good reason therefor, pass by any or all of the said persons."

¹⁰⁷ Section 38 of this Act reads:

"38 Taking over by surviving spouse of estate or portion thereof

(1) The Master may, if-

- (a) one of two spouses, whether they were married in or out of community of property, has died; and
 - (b) the deceased has made no provision to the contrary in any will; and
 - (c) the major heirs and any claimants against the estate consent; and
 - (d) it appears to him that no person interested would be prejudiced thereby,
- authorize the executor, subject to security being given mutatis mutandis as provided in subsection (2) of section forty-three for the payment of any minor's share, and to such conditions as the Master may determine, to make over any property or all the property of the deceased, or the whole or any part of that portion of his property in respect of which he has made no testamentary provision to the contrary, to the surviving spouse at a valuation to be made by an appraiser or any other person approved by the Master, and to frame his distribution account on the basis of such valuation."

(i) by the parent of a legitimate minor who has not been deprived, as a result of an order under subsection (1) of the said section 5 or the Divorce Act, 1979, of the guardianship of such minor and who immediately before his death was the sole natural guardian of such minor; or

(ii) by the mother of a minor born out of wedlock who has not been so deprived of the guardianship of such minor or of her parental powers over him or her; or

(iii) by the parent to whom the sole guardianship of a minor has been granted under subsection (1) of the said section 5 or under the Divorce Act, 1979,

to administer the person as tutor, or to take care of or administer his property as curator; or

(b) who has been nominated by will or written instrument by any parent of a minor to administer as curator any property which the minor has inherited from such parent; or...".

5.22 The acquisition and loss of parental rights and responsibilities is now comprehensively regulated by the Children's Act of 2005. For this reason, the SALRC has, as part of this investigation into statutory law revision, recommended that the Matrimonial Affairs Act 37 of 1953 be repealed in its entirety. It is therefore recommended that reference to the Matrimonial Affairs Act of 1953 in section 72(1) of this Act be deleted and replaced with reference to the Children's Act of 2005.

5.23 Section 72(1)(a)(i) draws a distinction between parents who have been deprived of guardianship by virtue of an order granted in terms of section 5 of the Matrimonial Affairs Act or the Divorce Act of 1979 and those who have not been so deprived. Interpreted literally, this provision empowers the Master to ignore a nomination in a will or instrument of a person to administer the person as a tutor or to take care of or administer his estate as a curator that is made by a parent who does not have guardianship. In respect of a child born out of wedlock, only the nomination

made by the mother will be considered by the Master. This provision discriminates against mothers who do not have guardianship over their children. It also discriminates against fathers of children born out of wedlock and this offends section 9 of the Constitution. To remedy the obvious unconstitutionality of these provisions, the SALRC recommends that subparagraph (i) and (ii) of section 72(1)(a) of this Act be repealed. Furthermore, and to enable Master to continue to appoint persons as nominated by will or other written instrument tutors of minor persons, the SALRC proposes the following amendment to paragraph (b) of section 72(1):

“(b) who has been nominated by will or written instrument by any parent of a minor to administer as curator any property which the minor has inherited from such parent or to administer the person as tutor; or...”.

5.24 Section 73(1)(b) of this Act makes reference to the Mental Health Act 18 of 1973.¹⁰⁸

¹⁰⁸ Section 73 of this Act reads:

“73 Proceedings on failure of nomination of tutors or curators, or on death, incapacity or refusal to act, etc

(1) The Master may, subject to the provisions of subsections (2), (3) and (4)-

(a) if it comes to his knowledge-

(i) that any minor is the owner of any property in the Republic which is not under the care of any guardian, tutor or curator; or

(ii) that any absentee is the owner of any property in the Republic, and he is satisfied that the said property should be cared for or administered on behalf of such minor or absentee; or

(b) in any case in which it would, in terms of the proviso to section 56 (1) of the Mental Health Act, 1973 (Act 18 of 1973), be competent for a judge in chambers to appoint a curator, or in any case in which the Master would be competent to appoint a curator in terms of section 56A of the said Act; or

(c) if any eventuality referred to in paragraph (b), (c), (d), (e) or (f) of section 18 (1) occurs with reference to any person who has been nominated or appointed as provided in paragraph (a), (b), (c) or (d) of section 72 (1), or to whom letters of tutorship or curatorship have been granted under the latter section or under this subsection,

by notice published in the Gazette and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the relatives of the minor, absentee or other person concerned, and upon all persons having an interest in the care or administration of his property to attend before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as tutor or tutors or as curator or curators, a person or a specified number of persons.”

5.25 The Mental Health Act referred to in this provision was repealed by the Mental Health Care Act 17 of 2002. The appointment of the administrator to care for the property of a mentally ill person or person with severe or profound intellectual disability is regulated by section 59 of the Mental Health Care Act of 2002. The SALRC recommends that this section be amended by the substitution of reference to section 59 of the Mental Health Care Act 17 of 2002 for reference to section 56 and 59 of the Mental Health Act of 1973.

5.26 Section 77(1) of this Act reads:

“77 Security by tutors and curators

(1) Every person appointed or to be appointed tutor or curator as provided in section 72(1)(d) or (2) or under section 73 or 74, shall, subject to the proviso to section 57 (3) of the Mental Health Act, 1973 (Act 18 of 1973), before letters of tutorship or curatorship are granted or signed and sealed, or any endorsement is made, as the case may be, and at any time thereafter when called upon by the Master to do so, find security or additional security to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.”

5.27 The proviso in section 57(3) of the Mental Health Act of 1973 allowed the Master to dispense with the requirement of security in respect of the appointment of a curator to a mentally ill indigent person.¹⁰⁹ As stated above, the Mental Health Act was repealed by the Mental Health Care Act 17 of 2002. Section 63 of the Mental Health Care Act of 2002 also empowers the Master, on good cause shown by the administrator, to reduce the amount of security or dispense with it.¹¹⁰ The SALRC

¹⁰⁹ Section 57(3) of the Mental Health Act of 1973 provided that:

“(3) A curator (including a curator *bonis* appointed under section 56 (2)), shall find security to the satisfaction of the Master and, unless the court directs otherwise, such security shall be given at the expense of the estate: Provided that the Master shall require security from a curator appointed under section 56A only if he is satisfied that, in the circumstances of the case, it is necessary to do so.”

¹¹⁰ The relevant provisions of section 63 of the Mental Health Care Act of 2002 read:

recommends that the expression "shall, subject to section 63(1)(b)(i) and (ii) of the Mental Health Care Act, 2002 (Act 17 of 2002)" be substituted for the expression "shall, subject to the proviso to section 57 (3) of the Mental Health Act, 1973 (Act 18 of 1973)."

5.28 Section 87 of this Act provides that the moneys in the guardian's fund shall be deemed to be deposits for the purposes of the Public Investment Commissioners Act, 1984 (Act 45 of 1984). The Public Commissioners Act of 1984 was repealed by the Public Investment Corporation Act 23 of 2004. The 2004 Act also contains a definition of "deposit". It is thus recommended that this provision be amended by the substitution of reference to the Public Investment Corporation Act, 2004 (Act 23 of 2004) for the reference to "Public Commissioners Act 45 of 1984".

5.29 Section 104(b) provides that this Act shall not apply to the property of any person belonging to and serving with any visiting force as defined in section 1 of the Defence Act 44 of 1957 who dies in the Republic while on service with that force, unless it be shown to the satisfaction of the Court or the Master that for the proper liquidation and distribution of that property it is expedient that it be dealt with under this Act. The Defence Act of 1957 was repealed by the Defence Act 42 of 2002. The latter Act also contains the definition of "visiting force". It is therefore recommended that the expression "Defence Act, 2002 (Act 42 of 2002)" be substituted for the expression "Defence Act, 1957 (Act 44 of 1957)" in section 104(b).

"63 Powers, functions and duties of administrators and miscellaneous provisions relating to appointment of administrators

(1) (a) An administrator must, before a Master of a High Court signs an official notice of appointment, lodge security with the relevant Master of the High Court of an amount to be determined by the Master.

(b) The Master may, on good cause shown by the administrator-

- (i) reduce the amount of security required; or
- (ii) dispense with security.

(2) If the Master at any stage-

(a) becomes aware that sequestration proceedings against the administrator have commenced or are likely to be instituted; or

(b) has reason to believe that it is in the best interest of the person in respect of whom the administrator has been appointed, he or she may-

- (i) increase the amount of security to be paid by that administrator, or
- (ii) appoint a co-administrator, and all acts relating to the property of the person concerned must be done with the consent of both administrators."

5.30 The SALRC also recommends that the expression "he or she", "his or her", "him or her" and "himself or herself" be substituted for the words "he", "his", "him" or "himself" as the case may be wherever these words occur in this Act. ¹¹¹

4. Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965

5.31 The purpose of this Act was to consolidate and amend the laws relating to the removal or modification of restrictions on immovable property imposed by will or other instrument; to impose a limit on the duration of *fideicommissa* created by will or other instrument in respect of immovable property; to impose a limit on the duration of restrictions on the alienation of immovable property imposed by will or other instrument otherwise than by way of a *fideicommissum*; and to provide for certain incidental matters.

5.32 Section 1 of this Act provides that "'court' means a court of a provincial or local division of the Supreme Court of South Africa having jurisdiction". It is recommended that this definition be amended to read "court means any division of the high court having jurisdiction".

5.33 Section 4(c) of this Act provides that the court may, if thinks fit:

"(c) refer the application to the Master of the Supreme Court or to some other person specially appointed by the court for a report thereon or upon some matter arising therefrom."

¹¹¹ In the definition of "absentee" in section 1, and in sections 5(1); 6(2)-(5); 7(1)-(3); 8; 9; 11; 12; 15(3); 16; 18(1) and (2); 19(a)-(c); 22(2)(b); 23; 24; 25; 26; 27; 29(1); 30; 31; 32(1); 33; 34; 35; 38; 39; 40; 41; 43; 45; 49; 50; 51; 52; 53; 54; 55; 56; 71; 72; 73; 75; 76; 77; 78; 79; 80; 81; 82; 83; 84; 86; 90; 90A.

5.34 It is recommended that the expression "Master of the High Court" be substituted for the expression "Master of the Supreme Court" in section 4(c) of this Act.

5.35 Lastly, section 5 provides that an appeal from a judgment or order of the court under this Act shall lie direct to the Appellate Division of the Supreme Court without leave first obtained. The name of the Appellate Division has changed to the Supreme Court of Appeal. It is recommended that the name "Supreme Court of Appeal" be substituted for the name "Appellate Division of the Supreme Court of South Africa" in this section.

5.36 Nothing in the Act obviously offends the provisions of section 9 of the Constitution.

5. Intestate Succession Act 81 of 1987

5.37 This Act codifies the law relating to intestate succession. It came into operation on 18 March 1988 and has been amended by the Law of Succession Amendment Act 43 of 1992 which came into operation on 1 October 1992.

5.38 The Act has also been subject to several constitutional challenges. In some of these cases the Constitutional Court confirmed that the provisions of the Act had to be 'read down' in accordance with the spirit of the Constitution of the Republic of South Africa Act, 1996 and, in other cases, the court declared provisions unconstitutional and amended them by reading-in words and phrases to make the relevant provision constitutionally sound.

5.39 In *Daniels v Campbell* 2004 (5) SA 331 (CC) the Constitutional Court ruled that the word "spouse" as used in the Intestate Succession Act 81 of 1987, includes the surviving partner to a monogamous Islamic marriage. As the word "spouse" in the Intestate Succession Act was simply interpreted in accordance with the spirit of the Constitution, there is no need to amend the Act so as to accommodate this order of the Court.

5.40 In *Bhe v Magistrate, Khayelitsha; Shibi v Sithole; South African Human Rights Commission v President of the Republic of South Africa* 2005 (1) 580 (CC) the Constitutional Court made the following order:

- 1.1.1. "2. Section 23 of the Black Administration Act 38 of 1927 is declared to be inconsistent with the Constitution and invalid.
- 1.1.2. The Regulations for the Administration and Distribution of the Estates of Deceased Blacks (R200) published in Government Gazette No 10601 dated 6 February 1987, as amended, are declared to be invalid.
- 1.1.3. The rule of male primogeniture as it applies in customary law to the inheritance of property is declared to be inconsistent with the Constitution and invalid to the extent that it excludes or hinders women and extra-marital children from inheriting property.
- 1.1.4. Section 1(4)(b) of the Intestate Succession Act 81 of 1987 is declared to be inconsistent with the Constitution and invalid.
- 1.1.5. Subject to para 7 of this order, section 1 of the Intestate Succession Act 81 of 1987 applies to the intestate deceased estates that would formerly have been governed by section 23 of the Black Administration Act 38 of 1927.
- 1.1.6. In the application of sections 1(1)(c)(i) and 1(4)(f) of the Intestate Succession Act 81 of 1987 to the estate of a deceased person who is survived by more than one spouse:

(a) A child's share in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of the children of the deceased who have either survived or

predeceased such deceased person but are survived by their descendants, plus the number of spouses who have survived such deceased;

(b) each surviving spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice and Constitutional Development by notice in the Gazette, whichever is the greater; and

(c) notwithstanding the provisions of sub-para (b) above, where the assets in the estate are not sufficient to provide each spouse with the amount fixed by the Minister, the estate shall be equally divided between the surviving spouses.

1.1.7. In terms of section 172(1)(b) of the Constitution, the orders in paras 2, 3, 4, 5 and 6 of this order, shall not invalidate the transfer of ownership prior to the date of this order of any property pursuant to the distribution of an estate in terms of section 23 of the Black Administration Act 38 of 1927 and its regulations, unless it is established that when such transfer was taken, the transferee was on notice that the property in question was subject to a legal challenge on the grounds upon which the applicants brought challenges in this case.

1.1.8. In terms of section 172(1)(b) of the Constitution, it is declared that any estate that is currently being administered in terms of section 23 of the Black Administration Act 38 of 1927 and its regulations shall continue to be so administered, despite the provisions of paras 2 and 3 of this order, but subject to paras 4, 5 and 6 of this order, until it is finally wound up."

5.41 Although the appropriate amendment of the Intestate Succession Act in line with the *Bhe* judgment was called for, the Reform of the Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 has subsequently been passed by Parliament and its effect has been that the *Bhe* judgment has been incorporated in a separate statute. It has thus removed the need to amend the provisions of the Intestate Succession Act. It is therefore recommended that no amendment of the Intestate Succession Act to take account of the *Bhe* judgment be made at this stage.

5.42 In *Gory v Kolver* 2007 (4) 97 (CC) the Constitutional Court made the following order:

“1. It is declared that, with effect from 27 April 1994, the omission in section 1(1) of the Intestate Succession Act 81 of 1987 after the word 'spouse', wherever it appears in the section, of the words 'or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support' is unconstitutional and invalid.

2. It is declared that, with effect from 27 April 1994, section 1(1) of the Intestate Succession Act is to be read as though the following words appear therein after the word 'spouse', wherever it appears in the section: 'or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support'.

3. In terms of section 172(1)(b) of the Constitution, the orders in the preceding two paragraphs of this order shall not invalidate any transfer of ownership prior to the date of this order of any property pursuant to the distribution of the residue of an estate, unless it is established that when such transfer was effected, the transferee was on notice that the property in question was subject to a legal challenge on the grounds upon which the applicant brought the present application.”

5.43 During consultation with the DOJCD, the SALRC recommended that the Intestate Succession Act should be appropriately amended to take into account the above order when effecting the amendment, it is important to bear in mind that since the above order was made the Civil Union Act 17 of 2006 has come into operation and that when amending the Intestate Succession Act the provisions of the Act should be reconciled with the provisions of Act 17 of 2006, as it is now possible for same-sex couples to either marry or to enter into a civil union. It further pointed out that it must be noted that while homosexual couples also have a choice to cohabit or marry or enter a civil union, and enjoy intestate benefits in these relationships, the same cannot be said for heterosexual cohabiting couples. The Constitutional Court's decision in *Volks NO v Robinson* 2005 (5) BCLR 446 (CC) meant that the Maintenance of Surviving Spouses Act 27 of 1990 did not apply to persons in heterosexual cohabitive

relationships. Although the Court argued that heterosexuals have legal capacity to marry, and thus should bear the consequences of their decision not to marry; the current legal framework (in the wake of *Fourie* and the Civil Union Act) could be said to discriminate unfairly against cohabiting heterosexual couples. The SALRC recommends that urgent attention be paid to this by the Legislature, either by amending the Intestate Succession Act to include cohabiting heterosexual couples or by introducing new legislation as recommended in its report on domestic partnerships (Project 118).¹¹²

5.44 In *Hassam v Jacobs* [2008] JOL 22098 (C) the court made the following order:

“[T]he word “spouse” as used in the Intestate Succession Act 81 of 1987, includes a surviving partner to a polygamous Muslim marriage;

...

It is declared that section 1(4)(f) of the Intestate Succession Act 81 of 1987 is inconsistent with the Constitution, to the extent that it makes provision for only one spouse in a Muslim marriage to be an heir in the intestate estate of their deceased husband.

Section 1(4)(f) of the Intestate Succession Act 81 of 1987 is to be read as though the whole of it was substituted by the following: In the application of sections 1(1)(c)(i) to the estate of a deceased person who is survived by more than one spouse:

a) A child’s share in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal

¹¹² South African Law Reform Commission on Domestic Partnerships (Project 118) March 2006. This view is in line with the view expressed by the DOJCD. It indicated that amendments to give effect to the Gory judgment were in fact included in the Judicial Matters Amendment Bill, 2008 (Bill 48 of 2008). These provisions were, however, removed during the parliamentary process on the basis that circumstances in the *Gory* judgment had been overtaken by the Civil Union Act of 2006. It was argued that the effect of these provisions in the Bill was to put same-sex life partners in a more favourable position than heterosexual partners. The DOJCD therefore does not agree that amendments to give effect to the *Gory* judgment are appropriate. Particularly because of the draft legislation that is in the pipeline which deals with domestic partnerships, which legislation emanates from the Law Reform Commission report and is being dealt with by the Department of Home Affairs.

to the number of the children of the deceased who have either survived or predeceased such deceased person but are survived by their descendants, plus the number of spouses who have survived such deceased;

- b) Each surviving spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice and Constitutional Development by notice in the Gazette, whichever is the greater; and
- c) Notwithstanding the provisions of subpara (b) above, where the assets in the estate are not sufficient to provide each spouse with the amount fixed by the Minister, the estate shall be equally divided between the surviving spouses."

5.45 The Constitutional Court has confirmed the order of the Western Cape High Court declaring section 1(4)(f) of the Intestate Succession Act of 1987 invalid.¹¹³ The Constitutional Court per Nkabinde J held that the effects of the failure to afford the benefits of the Act to widows of polygynous Muslim marriages will generally cause widows significant and material disadvantage of the sort which it is the expression purpose of our equality provision to avoid. The grounds of discrimination can be understood to be overlapping on the grounds of religion, in the sense that the particular religion concerned was in the past not one deemed to be worthy of respect; marital status, because polygynous Muslim marriages are not afforded the protection other marriages receive; and gender, in the sense that it is only the wives in polygynous Muslim marriages that are affected by the Act's exclusion.¹¹⁴ The court held that the word "spouse" as it is used in the Act was not capable of being understood to include more than one partner to a marriage.¹¹⁵ To remedy the defect the court held that the words "or spouses" after each use of the "spouse" in the Act.

5.46 In the light of this decision, the SALRC makes the following recommendations in respect of section 1 and 6 of this Act:

¹¹³ *Hassam v Jacobs No and Others* 2009 (5) SA 572 (CC).

¹¹⁴ Id paragraph 34.

¹¹⁵ Paragraph 48.

"1 Intestate succession

(1) If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and-

(a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;

(Aa) is survived by more than one spouse, but not by a descendant, the intestate estate shall be divided equally among the spouses

(b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;

(Bb) is survived by more than one descendant, but not by a spouse, the intestate estate shall be divided equally among the descendants;

(c) is survived by a spouse as well as a descendant -

(i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and

(ii) such descendant shall inherit the residue (if any) of the intestate estate;

(Cc) is survived by more than one spouse as well as descendants-

(i) each spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and

(ii) the residue (if any) of the intestate estate shall be divided equally among the descendants.

(iii) where the intestate estate contemplated in paragraph (Cc)(i) is not adequate to provide each spouse with the amount fixed by

the Minister, estate shall be divided equally among the surviving spouses.

(d) is not survived by a spouse or descendant, but is survived-

(i) by both his parents, his parents shall inherit the intestate estate in equal shares; or

(ii) by one of his parents, the surviving parent shall inherit one half of the intestate estate and the descendants of the deceased parent the other half, and if there are no such descendants who have survived the deceased, the surviving parent shall inherit the intestate estate; or

(e) is not survived by a spouse or descendant or parent, but is survived-

(i) by-

(aa) descendants of his deceased mother who are related to the deceased through her only, as well as by descendants of his deceased father who are related to the deceased through him only; or

(bb) descendants of his deceased parents who are related to the deceased through both such parents; or

(cc) any of the descendants mentioned in subparagraph (aa), as well as by any of the descendants mentioned in subparagraph (bb),;

the intestate estate shall be divided into two equal shares and the descendants related to the deceased through the deceased mother shall inherit one half of the estate and the descendants related to the deceased through the deceased father shall inherit the other half of the estate; or

(ii) only by descendants of one of the deceased parents of the deceased who are related to the deceased through such parent alone, such descendants shall inherit the intestate estate;

(f) is not survived by a spouse, descendant, parent, or a descendant of a parent, the other blood relation or blood relations of the deceased who are related to him nearest in degree shall inherit the intestate estate in equal shares."

5.47 And, in respect of section 1(6), the following amendment is proposed:

"(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with the surviving spouse or spouses of the deceased, is entitled to a benefit from an intestate estate renounces his or her right to receive such a benefit, such benefit shall vest in the surviving spouse."

5.48 Lastly, the SALRC recommends that the expression "he or she", "his or her" and "him or her" be substituted for the words "he", "him" or "his" wherever they occur in sections 1(1)(d)(i) and (ii); 1(1)(e)(i)(aa) and (bb); 1(4)(e)(i) and (ii); 1(4)(f); and 1(5).

6. Trust Property Control Act 57 of 1988

5.49 The purpose of this Act is to regulate the control of trust property. The Act came into operation on 31 March 1989 and retains its original purpose.

5.50 Section 1 of this Act provides that "banking institution means an institution registered otherwise than provisionally as a bank in terms of the Banks Act, 1965 (Act 23 of 1965)." The Banks Act 23 of 1965 was repealed by the Banks Act 94 of 1990.

The SALRC recommends that this definition be amended to read “Banking institution means an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990).”

5.51 This section also states that “building society means a mutual building society registered finally as a mutual building society in terms of the Building Societies Act, 1965 (Act 24 of 1965), or a building society registered finally as a building society in terms of the Building Societies Act, 1986 (Act 82 of 1986).” Both Acts referred to in this definition have been repealed by the Act 124 of 1993 and Act 94 of 1990 respectively. Section 94 of the Mutual Banks Act of 1993 provides that a reference in any law in force immediately prior to the commencement of this Act to a mutual building society as defined in section 1 of, or registered under, the Mutual Building Societies Act, 1965 (Act 24 of 1965), shall, in so far as it is a reference to a permanent mutual building society and unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a mutual bank registered as such in terms of this Act. In contrast, section 93 of the Banks Act of 1990 provides that a reference in any law in force immediately prior to the commencement of the Deposit-taking Institutions Amendment Act, 1993, or in any other document, to a deposit-taking institution, discount house, banking institution, banking institution registered under or in terms of the Banks Act, 1965 (Act 23 of 1965), or building society registered in terms of the Building Societies Act, 1986 (Act 82 of 1986), shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a bank. The SALRC recommends, for the sake of legal certainty, that this definition be amended to read:

“‘building society’ means a **[mutual building society registered finally as a mutual building society in terms of the Mutual Building Societies Act, 1965 (Act 24 of 1965)]** mutual bank registered in terms of the Mutual Banks Act, 1993 (Act 124 of 1993), or a **[building society registered finally as a building society in terms of the Building Societies Act, 1986 (Act 82 of 1986)]** bank registered in terms of the Banks Act, 1990 (Act 94 of 1990);”.

5.52 Section 1 also provides that “court means the provincial or local division of the Supreme Court of South Africa having jurisdiction.” It is recommended that this definition be amended to read “court means a division of the High Court having jurisdiction.” This section also provides that “master, in relation to any matter, means the Master, Deputy Master or Assistant Master of the Supreme Court appointed under section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965), who under section 3 of this Act has jurisdiction in respect of the matter concerned.” The SALRC recommends that the expression “high court” be substituted for the words “Supreme Court” in this definition.

5.53 Lastly, the definition section provides that 'financial institution' means a financial institution as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984). The Financial Institutions (Investment of Funds) Act of 1984 was repealed by the Financial Institutions (Protection of Funds) Act 28 of 2001. It is recommended that the words “Financial Institutions (Protection of Funds) Act 28 of 2001” be substituted for the words “Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)” in this definition.

5.54 Section 11 of this Act provides that:

“11 Registration and identification of trust property

(1) Subject to the provisions of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984), section 40 of the Administration of Estates Act, 1965 (Act 66 of 1965), and the provisions of the trust instrument concerned, a trustee shall-

(a) indicate clearly in his bookkeeping the property which he holds in his capacity as a trustee;

(b) if applicable, register trust property or keep it registered in such manner as to make it clear from the registration that it is trust property;

(c) make any account or investment at a financial institution identifiable as a trust account or trust investment;

(d) in the case of trust property other than property referred to in paragraphs (b) or (c), make such property identifiable as trust property in the best possible manner."

5.55 As stated above in respect of the definition of "financial institution", the Financial Institutions (Investment of Funds) Act of 1984 was repealed by the Financial Institutions (Protection of Funds) Act of 2001. The SALRC recommends that the expression "Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001) be substituted for the expression "Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)" in section 11(1) of this Act.

5.56 Section 20(1)(d) provides that a trustee may be removed from office:

"(d) if he has been declared by a competent court to be mentally ill or incapable of managing his own affairs or if he is by virtue of the Mental Health Act, 1973 (Act 18 of 1973), detained as a patient in an institution or as a State patient; or".

5.57 The Mental Health Act of 1973 was repealed by the Mental Health Care Act 17 of 2002. The SALRC proposes that the expression "Mental Health Care Act, 2002 (Act 17 of 2002) be substituted for the expression "Mental Health Act, 1973 (Act 18 of 1973)". Furthermore, the SALRC proposes that the word "admitted" which is used in the Mental Health Care Act of 2002 be substituted for the word "detained" in this provision.

5.58 Section 24 of this Act empowers the “Minister of Justice” to make regulations regarding any matter which in terms of this Act is required or permitted to be prescribed. It is recommended that the designation of the Minister of Justice be amended to read “Minister of Justice and Constitutional Development.”

5.59 The SALRC also recommends that the expression “he or she”, “his or her” and “him or her” be substituted for the expression “he”, “his” or “him” wherever they occur in sections 3(2); 4(1); 5; 6(2)(a) and (b); 6(3); 7(1) and (2); 9(1) and (2); 11(1)(a); 15; 16(1)-(3); 18; 20(1)-(3); and 22.

5.60 No provision in the Act obviously offends section 9 of the Constitution.

7. Maintenance of Surviving Spouses Act 27 of 1990

5.61 The purpose of this Act is to provide a surviving spouse, in certain circumstances, with a claim for maintenance against the estate of his/her deceased spouse. It also provides for the calculation of a maintenance claim and the practicalities of lodging a claim.

5.62 The Act came into operation on 1 July 1990 and has been amended by the Estate Affairs Amendment Act 1 of 1992.

5.63 The Constitutional Court has held, in *Daniels v Campbell* 2004 (5) SA 331 (CC), that the word “survivor” as used in Act 27 of 1990 includes the surviving partner to a monogamous Islamic marriage. Since the Constitutional Court in the *Daniels* case simply read the word “survivor” in accordance with the spirit of the Constitution, there is no need to amend the Act to accommodate this decision.

5.64 In *Kambule v The Master* 2007 (3) SA 403 (E) the court held that in terms of s 1 of Act 27 of 1990 a “survivor” is defined as “the surviving spouse in a marriage dissolved by death”. The Act does not define “spouse” or “marriage”. Accordingly, in the light of the provisions of section 2(1) of the Recognition of Customary Marriages Act 120 of 1998, and on a constitutionally acceptable interpretation of section 2(1) of the Maintenance of Surviving Spouses Act, a “spouse” would include a spouse who entered into a registered or an unregistered customary marriage.

5.65 Having regard to the non-pejorative definition of the word “survivor”, it is recommended that the word need not be amended and should be left as is. In its current formulation, the word “survivor” can accommodate all types of marriages: customary, religious and even a marriage in terms of the Civil Union Act 17 of 2006. However, if the legislature decides to recognize rights for cohabiting couples, the means test contained in section 3 of the Act and the meaning of the word “survivor” would have to be amended accordingly.

5.66 As stated above, the Constitutional Court in *Hassam v Jacobson* held that the word “spouse” as used in the Intestate Succession Act of 1987 was not capable of being understood to include more than one partner to a marriage.¹¹⁶ To remedy the defect the court held that the words “or spouses” after each use of the “spouse” in the Act. In the light of this decision, and to avoid uncertainty with regard to the application of the Maintenance of Surviving Spouses Act of 1990 to spouses in polygynous marriages, the SALRC recommends that the definition of “survivor” be in section 1 be amended by the inclusion of spouses in polygynous marriage concluded under any system of religious law. The SALRC also recommends that the words “he or she” and “his or her” be substituted for the words “he” or “his” in section 2(1) of this Act.

¹¹⁶ *Hassam v Jacobs NO and Others* 2009 (5) SA 572 (CC) paragraph 48.

8. Law of Succession Amendment Act 43 of 1992

5.67 The purpose of this Act was, *inter alia*, to amend the Wills Act, 1953, so as to define certain expressions; to further regulate the formalities in the execution of wills; to provide for cases where such formalities are not complied with; to grant a court the power to declare a will to be revoked; to regulate the effect of a divorce or the annulment of a marriage on a will; to provide for the vesting of certain benefits from the testator's will in the surviving spouse or the descendants of certain persons; to provide for the interpretation of wills in certain cases; to repeal the provision for a soldier's will; to further regulate the competency of certain persons to receive a benefit under a will or to be nominated as executor; to repeal the application of the Act to South West Africa; and to provide for the form in which certain certificates may be drawn up; to amend the Administration of Estates Act, 1965, so as to further regulate certain powers and functions of the Master in relation to wills; to amend the Intestate Succession Act, 1987, so as to provide for the vesting of certain benefits from an intestate estate in the surviving spouse or the descendants of certain persons; and to provide for matters connected therewith.

5.68 This Act came into operation on 1 October 1992 and has been amended by General Law Amendment Act 139 of 1992.

5.69 No provisions are redundant and none offends section 9 of the Constitution. Accordingly, no proposals to amend are made in respect of the Act.

9. Cross-Border Insolvency Act 42 of 2000

5.70 The purpose of this Act is to provide an effective mechanism for dealing with cases of Cross-Border insolvency and to that end to amend the Insolvency Act 24 of

1926; regulate the jurisdiction of the High Courts, and deal with certain further related matters.

5.71 The Act commenced on 28 November 2003, but, in terms of section 2(a) the Act applies only in respect of any cross-border insolvency involving a State designated by the Minister and to date no such designations have been made. So although the Act has commenced, it has, as yet, no application.

5.72 Section 1(b) of this Act provides that "'curator of an institution' means a curator appointed in terms of section 6 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984), or section 69 of the Banks Act, 1990 (Act 94 of 1990), or section 81 of the Mutual Banks Act, 1993 (Act 124 of 1993)." As stated above, Act 39 of 1984 was repealed by the Financial Institutions (Protection of Funds) Act 28 of 2001. Like its predecessor, the 2001 Act makes provision for the appointment of a curator.¹¹⁷ The SALRC recommends the amendment of this definition by the

¹¹⁷ Section 5 of the Financial Institutions (Protection of Funds) Act of 2002 provides that:

"5 Appointment of curator

- (1) The registrar may, on good cause shown, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.
- (2) Upon an application in terms of subsection (1) the court may-
 - (a) provisionally appoint a curator to take control of, and to manage the whole or any part of, the business of the institution on such conditions and for such a period as the court deems fit; and
 - (b) simultaneously grant a rule nisi calling upon the institution and other interested parties to show cause on a day mentioned in the rule why the appointment of the curator should not be confirmed.
- (3) On application by the institution the court may anticipate the return day if not less than 48 hours' notice of such application has been given to the registrar.
- (4) If at the hearing pursuant to the rule nisi the court is satisfied that it is desirable to do so, it may confirm the appointment of the curator.
- (5) The court may make an order with regard to-
 - (a) the suspension of legal proceedings against the institution for the duration of the curatorship;
 - (b) the powers and duties of the curator;
 - (c) the remuneration of a curator appointed provisionally under subsection (2) (a) or finally under subsection (4);
 - (d) the costs relating to any application made by the registrar under subsection (1);
 - (e) the costs incurred by the registrar in respect of an inspection of the affairs of the institution concerned in terms of the Inspection of Financial Institutions Act, 1998 (Act 80 of 1998); or
 - (f) any other matter which the court deems necessary.

substitution of the expression "appointed in terms of section 5 of the Financial Institutions (Protection of Funds) Act 28 of 2001" Financial Institutions (Protection of Funds) Act 28 of 2001 Financial Institutions (Protection of Funds) Act 28 of 2001 for the expression "appointed in terms of section 6 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)." Furthermore, section 1(k);¹¹⁸ 19(2)¹¹⁹ and 20(2)¹²⁰ of this Act make references to the Companies Act. The Companies Act of 1971 has been repealed by the Companies Act 71 of 2008 and since there are no provisions in the latter Act corresponding to the provision of the 1971 Act, the SALRC recommends that references to these provisions be deleted.

5.73 There are no redundant provisions in the Act and no provision obviously offends section 9 of the Constitution. Accordingly no amendments are proposed.

(6) The curator acts under the control of the registrar who made the application under subsection (1), and may apply to that registrar for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution.

(7) The curator must furnish the registrar of the institution concerned with such information concerning the affairs of that institution as the registrar may require.

(8) (a) Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the registrar with regard to any matter arising out of, or in connection with, the control and management of the business of an institution which has been placed under curatorship.

(b) A person who makes application contemplated in paragraph (a) must give notice of not less than 48 hours of such application to the registrar or the curator, as the case may be, and such registrar or curator is entitled to be heard at such application.

(9) The court may, on good cause shown, cancel the appointment of the curator at any time.

¹¹⁸ Section 1(k) provides that "(k) 'receiver' means a receiver or other person appointed by a court to administer a compromise or arrangement under section 311 of the Companies Act, 1973 (Act 61 of 1973)."

¹¹⁹ Section 19(2) provides that "(2) An order issued under subsection (1) must be dealt with as contemplated in section 17 of the Insolvency Act, 1936 (Act 24 of 1936), or section 357 (1) and (4) of the Companies Act, 1973 (Act 61 of 1973), as the case may be."

¹²⁰ Section 20(2) reads: "(2) The scope, and the modification or termination, of the stay and suspension referred to in subsection (1) are subject to sections 20, 23 and 75 of the Insolvency Act, 1936, and sections 341 and 359 of the Companies Act, 1973 (Act 61 of 1973), and the court may, at the request of the foreign representative or a person affected by subsection (1), modify or terminate the scope of the stay and suspension."

10. Administration of Estates Laws Interim Rationalisation Act 20 of 2001

5.74 This Act effected various amendments to the Administration of Estates Act 66 of 1965 and repealed corresponding laws in force in the areas of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei. To the extent that this Act effects amendments to the Administration of Estates Act 66 of 1965, those amendments have been dealt with in the review of the Administration of Estates Act.

11. Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005, section 2

5.75 This section effects amendments to the Administration of Estates Act 66 of 1965 and those amendments have been dealt with in the review of the Administration of Estates Act 66 of 1965.

12. General Law Amendment Act 62 of 1955, sections 19-21

5.76 Sections 19 to 21 inclusive relate to amendments to sections 4, 108 and 153 of the Insolvency Act 24 of 1936 and have been dealt with in the review of this Act.

13. General Law Amendment Act 50 of 1956, sections 11-13

5.77 Sections 11 and 12 amend respectively sections 19 and 63 of the Insolvency Act 24 of 1936 and have been dealt with in the review of this Act.

5.78 Section 13 inserted section 158*bis* in the Insolvency Act 24 of 1936 and this has been dealt with in the review of the Insolvency Act.

14. General Law Amendment Act 62 of 1973, section 6

5.79 This section amends section 99(1) the Insolvency Act 24 of 1936 by inserting paragraph (cA) in that sub-section and this has been dealt with in the review of the Insolvency Act.

15. General Law Amendment Act 139 of 1992, sections 3-4, 7

5.80 Sections 3 and 4 amend sections 99(1) and 100 of the Insolvency Act 24 of 1936 and have been dealt with in the review of that Act.

5.81 Section 7 amends section 39 of the Administration of Estates Act 66 of 1965 and has been dealt with in the review of that Act.

16. General Law Third Amendment Act 129 of 1993, section 1

5.82 Section 1 amends section 150 of the Insolvency Act 24 of 1936 and this has been dealt with in the review of the Insolvency Act.

17. Judicial Matters Second Amendment Act 122 of 1998, sections 1-5

5.83 Sections 1, 3 and 5 amend sections 96, 99 and 104(1) respectively of the Insolvency Act 24 of 1936 and have been dealt with in the review of the Insolvency Act.

5.84 Section 2 inserts section 98A in the Insolvency Act 24 of 1936 and has been dealt with in the review of that Act.

5.85 Section 4 repeals s 100 of the Insolvency Act 24 of 1936.

18. Justice Laws Rationalisation Act 18 of 1996, section 4

5.86 The amendments to various Acts in this cluster effected by this section have been dealt with in the reviews of the relevant Acts.

CHAPTER 6

CIVIL PROCEDURE AND EVIDENCE

1. Magistrates' Courts Act 32 of 1944

6.1 This Act, which came into operation on 2 July 1945, establishes Magistrates' Courts, determines their functions and powers, and sets out the procedural rules and processes of the Courts. The procedural rules contained in the Act are supplemented by Magistrates' Courts Rules which appeared for the first time in Government Notice R1108 published in Regulation Gazette 980 of 21 June 1968. The Rules came into operation on 30 August 1968.¹²¹ Since the purpose of this Report is to analyze original legislation only, no more will be said about the Rules of Court.

¹²¹ Government Notice R1108 has been amended by Government Notice R3002 in Regulation Gazette 1156 of 25 July 1969 [with effect from 1 September 1969 (except amendments to forms 2, 3 and 52: 1 September 1970)]; Government Notice R490 in Regulation Gazette 1253 of 26 March 1970 [with effect from 1 May 1970]; Government Notice R947 in Regulation Gazette 1633 of 2 June 1972 [with effect from 3 July 1972]; Government Notice R1115 in Regulation Gazette 1996 of 28 June 1974 [with effect from 1 August 1974]; Government Notice R689 in Regulation Gazette 2304 of 23 April 1976 [with effect from 1 June 1976]; Government Notice R261 in Regulation Gazette 2426 of 25 February 1977 [with effect from 1 April 1977]; Government Notice R2221 in Regulation Gazette 2554 of 28 October 1977 [with effect from 1 December 1977]; Government Notice R327 in Regulation Gazette 2603 of 24 February 1978 [with effect from 28 March 1978]; Government Notice R2222 in Regulation Gazette 2687 of 10 November 1978 [with effect from 1 January 1979]; Government Notice R1449 in Regulation Gazette 2822 of 29 June 1979 [with effect from 1 August 1979]; Government Notice R1314 in Regulation Gazette 3033 of 27 June 1980 [with effect from 1 August 1980]; Government Notice R1800 in Regulation Gazette 3278 of 28 August 1981 [with effect from 1 October 1981]; Government Notice R1139 in Regulation Gazette 3435 of 11 June 1982 [with effect from 12 July 1982]; Government Notice R1689 in Regulation Gazette 8828 of 29 July 1983 [with effect from 1 September 1983 and as corrected by Government Notice R1946 in Regulation Gazette 8879 of 9 September 1983]; Government Notice R1338 in Regulation Gazette 9276 of 29 June 1984 [with effect from 1 August 1984]; Government Notice R1994 in Regulation Gazette 9413 of 7 September 1984 [with effect from 8 October 1984 and as corrected by Government Notice R2083 in Regulation Gazette 9429 of 21 September 1984]; Government Notice R391 in Government Gazette 10114 of 7 March 1986 [with effect from 1 May 1986]; Government Notice R2165 in Government Gazette 10958 of 2 October 1987 [with effect from 2 November 1987]; Government Notice R1451 in Government Gazette 11428 of 22 July 1988 [with effect from 22 July 1988]; Government Notice R1765 in Government Gazette 11492 of 26 August 1988 [with effect from 26 September 1988]; Government Notice R211 in Government Gazette 11694 of 10 February 1989 [with effect from 10 March 1989]; Government Notice R2629 in Government Gazette 12205 of 2 December 1989 [with effect from 2 January 1990]; Government Notice R186 in Government Gazette 12276 of 2 February 1990 [with effect from 2 March 1990]; Government Notice R1887 in Government Gazette 12689 of 8 August 1990 [with effect from 8 September 1990]; Government Notice R1928 in Government Gazette 12614 of 10 August 1990 [with effect from 10 September 1990 and as corrected by Government Notice R1967 in Government Gazette 12695 of 17 August 1990]; Government Notice R1261 in Government Gazette 13283

6.2 Since its birth, the Magistrates' Courts Act has been amended by Magistrates' Courts Amendment Act 40 of 1952; Magistrates' Courts Amendment Act 14 of 1954; General Law Amendment Act 62 of 1955; General Law Amendment Act 50 of 1956; General Law Amendment Act 68 of 1957; Criminal Law Amendment Act 16 of 1959; Criminal Law Further Amendment Act 75 of 1959; General Law Further Amendment Act 93 of 1962; Magistrates' Courts Amendment Act 19 of 1963; General Law Amendment Act 37 of 1963; General Law Further Amendment Act 93 of 1963; General Law Amendment Act 80 of 1964; Magistrates' Courts Amendment Act 48 of 1965; Magistrates' Courts Amendment Act 8 of 1967; General Law Amendment Act 70

of 30 May 1991 [with effect from 1 July 1991]; Government Notice R2407 in Government Gazette 13557 of 27 September 1991 [with effect from 30 October 1991]; Government Notice R2409 in Government Gazette 13558 of 30 September 1991 [with effect from 1 November 1991 and as corrected by Government Notice R2479 in Government Gazette 13578 of 18 October 1991]; Government Notice R405 in Government Gazette 13759 of 7 February 1992 [with effect from 9 March 1992]; Government Notice R1510 in Government Gazette 14010 of 29 May 1992 [with effect from 1 July 1992]; Government Notice R1882 in Government Gazette 14110 of 3 July 1992 [with effect from 3 August 1992]; Government Notice R871 in Government Gazette 14817 of 21 May 1993 [with effect from 1 July 1993]; Government Notice R959 in Government Gazette 14844 of 28 May 1993 [with effect from 28 June 1993]; Government Notice R1134 in Government Gazette 14896 of 25 June 1993 [with effect from 26 July 1993]; Government Notice R1355 in Government Gazette 15021 of 30 July 1993 [with effect from 1 September 1993]; Government Notice R1844 in Government Gazette 15147 of 1 October 1993 [with effect from 1 November 1993]; Government Notice R2530 in Government Gazette 15393 of 31 December 1993 [with effect from 31 January 1994]; Government Notice R150 in Government Gazette 15461 of 28 January 1994 [with effect from 1 March 1994]; Government Notice R180 in Government Gazette 15464 of 28 January 1994 [with effect from 1 March 1994]; Government Notice R498 in Government Gazette 15567 of 11 March 1994 [with effect from 11 April 1994 and as corrected by GN R625 in Government Gazette 15603 of 28 March 1994]; Government Notice R710 in Government Gazette 15634 of 12 April 1994; Government Notice R1062 in Government Gazette 17279 of 28 June 1996 [with effect from 29 July 1996]; Government Notice R1130 in Government Gazette 17313 of 5 July 1996 [with effect from 5 August 1996]; Government Notice R419 in Government Gazette 17853 of 14 March 1997 [with effect from 14 April 1997]; Government Notice R492 in Government Gazette 17882 of 27 March 1997 [with effect from 29 April 1997]; Government Notice R570 in Government Gazette 17925 of 18 April 1997 [with effect from 19 May 1997]; Government Notice R797 in Government Gazette 18055 of 13 June 1997 [with effect from 14 July 1997]; Government Notice R784 in Government Gazette 18956 of 5 June 1998 [with effect from 6 July 1998]; Government Notice R910 in Government Gazette 19042 of 3 July 1998 [with effect from 3 August 1998]; Government Notice R1025 in Government Gazette 19136 of 7 August 1998 [with effect from 7 September 1998]; Government Notice R569 in Government Gazette 20036 of 30 April 1999 [with effect from 31 May 1999]; Government Notice R501 in Government Gazette 21204 of 19 May 2000 [with effect from 19 June 2000 and as corrected by Government Notice R687 in Government Gazette 21355 of 7 July 2000 [with effect from 19 June 2000]; Government Notice R1087 in Government Gazette 22796 of 26 October 2001 [with effect from 26 November 2001]; Government Notice R1087 in Government Gazette 23029 of 18 January 2002 [with effect from 18 February 2002]; Government Notice R1299 in Government Gazette 23943 of 18 October 2002 [with effect from 18 November 2002]; Government Notice R228 in Government Gazette 26070 of 20 February 2004 [with effect from 22 March 2004]; Government Notice R295 in Government Gazette 26124 of 5 March 2004 [with effect from 5 April 2004]; Government Notice R880 in Government Gazette 26601 of 23 July 2004 [with effect from 23 August 2004].

of 1968; Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969; Magistrates' Courts Amendment Act 17 of 1969; General Law Amendment Act 101 of 1969; General Law Amendment Act 17 of 1970; Magistrates' Courts Amendment Act 53 of 1970; General Law Amendment Act 80 of 1971; General Law Amendment Act 102 of 1972; General Law Amendment Act 29 of 1974; Second General Law Amendment Act 94 of 1974; Magistrates' Courts Amendment Act 63 of 1976; Criminal Procedure Act 51 of 1977; Lower Courts Amendment Act 91 of 1977; Magistrates' Courts Amendment Act 28 of 1981; Magistrates' Courts Amendment Act 59 of 1982; Appeals Amendment Act 105 of 1982; Courts of Justice Amendment Act 53 of 1983; Magistrates' Courts Amendment Act 56 of 1984; Criminal Procedure Matters Amendment Act 109 of 1984; Matrimonial Property Act 88 of 1984; Magistrates' Courts Amendment Act 19 of 1985; Rules Board for Courts of Law Act 107 of 1985; Special Courts for Blacks Abolition Act 34 of 1986; Sheriffs Act 90 of 1986; Magistrates' Courts Amendment Act 25 of 1987; Law of Evidence Amendment Act 45 of 1988; Attorneys Amendment Act 87 of 1989; Criminal Law Amendment Act 107 of 1990; Judicial Matters Amendment Act 4 of 1991; Magistrates' Courts Amendment Act 118 of 1991; Magistrates Act 90 of 1993; Attorneys Amendment Act 115 of 1993; Magistrates' Courts Amendment Act 120 of 1993; General Law Third Amendment Act 129 of 1993; General Law Fourth Amendment Act 132 of 1993; General Law Fifth Amendment Act 157 of 1993; General Law Sixth Amendment Act 204 of 1993; Justice Laws Rationalisation Act 18 of 1996; Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996; Judicial Matters Amendment Act 104 of 1996; Abolition of Corporal Punishment Act 33 of 1997; Magistrates' Courts Second Amendment Act 80 of 1997; Magistrates' Courts Amendment Act 81 of 1997; Magistrates Amendment Act 66 of 1998; Magistrates' Courts Amendment Act 67 of 1998; Sheriff's Amendment Act 74 of 1998; Debt Collectors Act 114 of 1998; Judicial Matters Amendment Act 62 of 2000; Judicial Matters Amendment Act 55 of 2002; Judicial Officers (Amendment of Conditions of Service) Act 28 of 2003; Judicial Matters Amendment Act 22 of 2005; National Credit Act 34 of 2005; Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

6.3 The following table sets out the plethora of problems identified in the Act.

SECTION	COMMENT
1	The definition of "Minister" should be amended to read "Minister of Justice and Constitutional Development."

SECTION	COMMENT
	<p>"Practitioner" is defined in this section to mean an advocate, an attorney, an articled clerk such as is referred to in section 21 or an agent such as is referred to in section 22. Section 21 makes reference to a "candidate attorney" and not to "an articled clerk. It is recommended that the words "an articled clerk" be deleted and replaced with the words "a candidate attorney".</p> <p>The definition of "territory" should be deleted as "South-West Africa" no longer exists and is not part of the territory of South Africa. The definitions of "province" and "Republic" are also recommended for repeal. These definitions merely extended the meaning of these terms to include "a territory".</p>
4 (4)	<p>This provision and many other provisions in the Act, <i>inter alia</i> sections 14, 16, 17, 31, refer to the "messenger of the court". In terms of section 65 of the Sheriffs Act 90 of 1986 a reference in any law in force immediately prior to the commencement of the Sheriffs Act to a messenger or a messenger of any lower court must be construed as a reference to a sheriff of that lower court.</p> <p>Consequently, all references to the "messenger" of the court must be amended to <i>sheriff</i>.</p>
6 (1)	<p>The reference to "either of the official languages" is inconsistent with section 6(1) of the Constitution of the Republic of South Africa, 1996 which identifies the following languages as the official languages: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu. Furthermore, it has to be noted that the position under the subsection does not reflect the common-law position, in terms of which a party to litigation and a witness has the right, during the proceedings of a court, to use a language of his or her choice whether or not it be an official language: see <i>Matemane v Magistrate, Alberton</i> 1991 (4) SA 613 (W) at 619F. Furthermore, the 'guiding principles' relating to the use of particular languages in court proceedings, which were stated in <i>Matemane v</i></p>

SECTION	COMMENT
	<p><i>Magistrate, Alberton</i> 1991 (4) SA 613 (W) at 619C–620C, must now be read in the light of s 6 of the Constitution of the Republic of South Africa, 1996.</p>
7(1)	<p>Reference is made in this subsection to the “Director-General: Justice. It is recommended that this reference be replaced with “Director-General: Justice and Constitutional Development. This recommendation applies to section 7(2) as well.</p>
14	<p>Formerly, this section dealt with the appointment of messengers and related matters, and was, with the exception of subsections (7) and (8), repealed by s 64 of the Sheriffs Act 90 of 1986 with effect from 1 March 1990. Section 64 also repealed sections 18 and 18A, and amended sections 15 and 107 of the Magistrates’ Courts Act. In terms of section 2 of the Sheriffs Act, the Minister may appoint, in the manner prescribed in the Act, for a lower or superior court a person as sheriff of that court. A person so appointed shall perform within the area of jurisdiction of the lower or superior court for which he has been appointed the functions assigned by or under any law to a sheriff of that court. The following matters are, <i>inter alia</i>, dealt with in the Sheriffs Act: the term of office of sheriffs (s 4); appointment of acting sheriffs (s 5) and deputy sheriffs (s 6); establishment of a South African Board for Sheriffs (s 7); accounts for trust moneys (s 22); establishment and control of a Fidelity Fund for sheriffs (s 26) and fidelity fund certificates (s 30); liability of Fund (ss 35–42); improper conduct (ss 43–52); liability of sheriffs (s 55); inspectors (ss 56–57). Regulations made under section 62 of the Sheriffs Act were published by GN R411 of 12 March 1990. The sheriff, his deputy-sheriff or an acting sheriff may not perform any function assigned to a sheriff by or under any law unless he is the holder of a fidelity fund certificate or, in the case of an acting sheriff, he has paid the prescribed contribution to the South African Board for Sheriffs. As from 1 July 1990 the provisions of s 30 of the Sheriffs Act apply to persons who, immediately prior to the commencement of the Act, held office as messenger or acting messenger or deputy messenger.</p>

SECTION	COMMENT
	<p>In terms of section 65 of the Sheriffs Act, a reference in any law in force immediately prior to the commencement of the Sheriffs Act to a messenger or a messenger of any lower court must be construed as a reference to a sheriff of that lower court.</p> <p>It is recommended, therefore, that section 14 be amended by simply making reference to the Sheriffs Act where appropriate.</p>
15(b)	<p>In terms of the Constitution of the Republic of South Africa, 1996, the State Revenue Fund is replaced by the National Revenue Fund. In terms of section 4 (read with Schedule III) of the Justice Laws Rationalisation Act 18 of 1996, which came into operation on 1 April 1997, the term "State Revenue Fund" in section 15(2)(c) of the Magistrates' Courts Act is to be replaced by the term "National Revenue Fund". It seems as if the term "Consolidated Revenue Fund" is retained <i>per incuriam</i> in this subsection. Another section where a similar mistake appears is section 71A.</p> <p>It is therefore recommended that all references to the State Revenue Fund be amended to read <i>National Revenue Fund</i></p>
20	<p>This section refers to the "Supreme Court". In accordance with Chapter 8 of the Constitution of the Republic of South Africa, 1996, this reference and all other references in the Act to "Supreme Court" should be amended to High Court.</p>
22(2) and(3)	<p>These provisions refer to the "Supreme Court".¹²² It is recommended that these references be replaced with "High Court."</p>
50(1) and (2)	<p>These subsections refer to the "provincial or local division having jurisdiction".¹²³ It is recommended that these words be deleted and replaced with "to a High Court having jurisdiction".</p>

¹²² Section 22(2) and (3) read:

"(2) The Supreme Court shall possess in respect of any such agent the same powers as it possesses in respect of attorneys of the Supreme Court.

(3) The law society of any Province may bring to the notice of the Supreme Court any facts regarding the conduct of any such agent which, in the opinion of the said Society, ought to be brought to the notice of the Supreme Court, in the same manner as if such agent were an attorney of the Supreme Court."

¹²³ The relevant provisions of section 50 read:

"50 Removal of actions from court to provincial or local division

SECTION	COMMENT
51(2)(a)	This provision refers to "R300" as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by incorporating the provisions of the Adjustment of fines Act by reference. ¹²⁴
57	This section should be subject to Part D of Chapter 4, sections 127, 129, 131, 132, 164 and Chapter 7 of the National Credit Act 34 of 2005 which introduces special procedures to protect consumers from creditors and credit providers.
58	This section should be subject to Part D of Chapter 4, sections 127, 129, 131, 132, 164 and Chapter 7 of the National Credit Act 34 of 2005 which introduces special procedures to protect the consumer from debtors and credit providers.

(1) Any action in which the amount of the claim exceeds the amount determined by the Minister from time to time by notice in the Gazette, exclusive of interest and costs, may, upon application to the court by the defendant, or if there is more than one defendant, by any defendant, be removed to the provincial or local division having jurisdiction where the court is held, subject to the following provisions-

...

Upon compliance by the applicant with those provisions, all proceedings in the action in the court shall be stayed, and the action and all proceedings therein, shall, if the plaintiff so requires, be as to the defendant or defendants, forthwith removed from the court into the provincial or local division aforesaid having jurisdiction. Upon the removal, the summons in the court shall, as to the defendant or defendants, stand as the summons in the division to which the action is removed, the return date thereof being the date of the order of removal in an action other than one founded on a liquid document, and, in an action founded on a liquid document, being such convenient day on which the said division sits for the hearing of provisional sentence cases, as the court may order: Provided that the plaintiff in the action may, instead of requiring the action to be so removed, issue a fresh summons against the defendant or defendants in any competent court and the costs already incurred by the parties to the action shall be costs in the cause.

(2) If the plaintiff is successful in an action so removed to a provincial or local division, he may be awarded costs as between attorney and client."

¹²⁴ This section reads:

"(2) (a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his reasonable expenses, calculated in accordance with the tariff prescribed under section 51bis, have been paid or offered to him, impose upon the said person a fine not exceeding R300, and in default of payment, imprisonment for a period not exceeding three months, whether or not such person is otherwise subject to the jurisdiction of the court."

SECTION	COMMENT
60(2)	This provision is a penalty provision and specifies the amount of money to be paid as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by incorporating the provisions of the Adjustment of fines Act by reference. ¹²⁵
65M	This section refers to the "Supreme Court". ¹²⁶ It is recommended that these words be replaced with the words "High Court".
66(6)	This section makes reference to the "Supreme Court". ¹²⁷
71A	The references, in this section, to the Consolidated Revenue Fund should be amended to read <i>National Revenue Fund</i> . Furthermore, the subsection which refers to sales in execution of property attached by the sheriff and then released from attachment but whose owners or possessors cannot be found, requires for the sale in execution to be published in "one English and one Afrikaans newspaper". It is submitted, having regard to section 6(1) of the Constitution of the Republic of South Africa, 1996 and for the sake of expediency, the

¹²⁵ Section 60(2) of this Act provides:

"(2) Any person who contravenes any provision of subsection (1), shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000, or, in default of payment, to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment."

¹²⁶ Section 65M reads:

"65M Enforcement of certain judgments of Supreme Court

If a judgment for the payment of any amount of money has been given by a division of the Supreme Court of South Africa, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of section 65A (1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate."

¹²⁷ Section 66(6) reads:

"(6) A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a magistrate's court) desiring to attach immovable property that is already under attachment (whether made by a deputy sheriff or by a messenger) and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the deputy sheriff or messenger of the court, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of this warrant."

SECTION	COMMENT
	provision should be amended to read "in an English newspaper and in a newspaper published in any other official language where there is reason to believe that the other official language is the home language of the owner or possessor."
74(1)	In this subsection reference is made to section 34 <i>bis</i> of the Land Bank Act 13 of 1944. Act 13 of 1944 was repealed by section 53 of the Land and Agricultural Development Bank Act 15 of 2002. As there is no analogous provision to section 34 <i>bis</i> of the Land Bank Act 15 of 2002, the reference to s 34 <i>bis</i> in section 74(1) of the Magistrates' Court is thus meaningless and should be deleted.
74J(7)(b)	This paragraph refers to the Attorneys, Notaries and Conveyancers Admission Act 23 of 1934. However, this Act was repealed and replaced by the Attorneys' Act 53 of 1979. Section 78 of the latter Act, which provides for the keeping of a trust account by a practicing attorney, may be regarded as a re-enactment of s 33 of the repealed Act. Although the reference to the repealed section in this subsection can, in terms of section 12(1) of the Interpretation Act 33 of 1957, be construed as a reference to section 78 of the Attorneys' Act 53 of 1979, it is recommended that reference should simply be made to Act 53 of 1979.
74S(2)	This provision provides that the provisions of the Criminal Procedure Act, 1955 (Act 56 of 1955), with regard to periodical imprisonment shall mutatis mutandis apply to periodical imprisonment imposed in terms of subsection (1). The Criminal Procedure also contains detailed provisions dealing with periodical imprisonment. It is therefore recommended that reference to the Criminal Procedure Act of 1995 be deleted and replaced with reference to the Criminal Procedure Act of 1977.
74W	This provision is a penalty provision and specifies the amount of money to be paid as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by incorporating the provisions of the Adjustment of fines Act by

SECTION	COMMENT
	reference. ¹²⁸
75bis	This provision provides that the court may, on the application of any interested party, review and confirm, modify or settle the conditions of sale in respect of any immovable property to be sold in execution of any judgment of any division of the Supreme Court of South Africa. It is recommended that the words "Supreme Court of South Africa" be replaced with the words "High Court".
83	This section provides that a party to any civil suit or proceeding in a court may appeal to the provincial or local division of the Supreme Court having jurisdiction to hear the appeal. It is recommended that the words "provincial or local division of the Supreme Court" be replaced with the words "High Court". ¹²⁹
90(2)(d)	This paragraph gives a South African regional court jurisdiction over offences perpetrated within the territorial waters of the territory of South-West Africa. Since South West-Africa (now Namibia) is no longer part of South Africa and is a sovereign state, this provision needs to be repealed. See in this regard Recognition of the Independence of Namibia Act 34 of 1990.
106A	This provision is a penalty provision and specifies the amount of money to be paid as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by

¹²⁸ Section 74W of this Act reads:

"74W Failure of administrator to carry out certain duty

Any administrator who fails to carry out the duty assigned to him by section 74J (7) shall be guilty of an offence and on conviction liable to a fine not exceeding R500 or in default of payment to imprisonment for a period not exceeding six months."

¹²⁹ This section reads:

"Subject to the provisions of section 82, a party to any civil suit or proceeding in a court may appeal to the provincial or local division of the Supreme Court having jurisdiction to hear the appeal, against-

- (a) any judgment of the nature described in section 48;
- (b) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;
- (c) any decision overruling an exception, when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs."

SECTION	COMMENT
	incorporating the provisions of the Adjustment of fines Act by reference. ¹³⁰
106B	This provision is a penalty provision and specifies the amount of money to be paid as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by incorporating the provisions of the Adjustment of fines Act by reference. ¹³¹
107	The words following subsection (4) of this section contain a penalty provision and specify the amount of money to be paid as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by incorporating the provisions of the Adjustment of fines Act by reference. ¹³²
108(1)	This provision is a penalty provision and specifies the amount of money to be paid as an alternative to a term of imprisonment. It is no longer necessary to specify the amount of fine as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that this provision be amended by deleting the specific monetary value and by

¹³⁰ This section reads:

“106A Offence by garnishee

Any garnishee who, by reason of an emoluments attachment order having been served on him in respect of the emoluments of a judgment debtor not occupying a position of trust in which he handles or has at his disposal moneys, securities or other articles of value, dismisses or otherwise terminates the service of such judgment debtor, shall be guilty of an offence and on conviction liable to a fine not exceeding R300 or, in default of payment, to imprisonment for a period not exceeding three months.”

¹³¹ This section reads:

“106B Offence by employer

Any employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee's emoluments, fails or neglects to do so within a reasonable time, or who wilfully or negligently furnishes incorrect relevant particulars, shall be guilty of an offence and on conviction liable to a fine not exceeding R300 or, in default of payment, to imprisonment for a period not exceeding three months.

¹³² Section 107 of this Act reads:

“shall be guilty of an offence and liable upon conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.”

SECTION	COMMENT
	incorporating the provisions of the Adjustment of fines Act by reference. ¹³³
114(3)	This section refers to section 105 of the South Africa Act of 1909. Furthermore, the provision also refers to the "Appellate Division". This provision has been deleted by the Magistrates' Courts Amendment Act 120 of 1993, a provision which is yet to come into operation. In the light of the fact that the DOJCD has proposed that the Magistrates' Courts Amendment Act of 1993 be repealed, the SALRC recommends that section 114(3) be repealed.
115A	In light of the Recognition of the Independence of Namibia Act 34 of 1990, this section should be deleted.
	This Act is also replete with the pronouns "his" and "he". It is recommended that wherever in the Act the word "his" appears the phrase should read <i>his or her</i> , wherever the word "he" appears the phrase should read <i>he or she</i> and wherever the word "him" appears the phrase should read <i>him or her</i> .

2. Vexatious Proceedings Act 3 of 1956

6.4 The purpose of this Act was succinctly described by the Constitutional Court in *Beinash and Another v Ernst & Young and Others* 1999 (2) SA 116 (CC) at paragraph 15: "to put a stop to persistent and ungrounded institution of legal proceedings." This Act was amended by Justice Laws Rationalisation Act 18 of 1996 and the General Law Amendment Act 49 of 1996.

¹³³ Section 108(1) of this Act reads:

"(1) If any person, whether in custody or not, wilfully insults a judicial officer during his sitting or a clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall (in addition to his liability to being removed and detained as in subsection (3) of section 5 provided) be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine. In this subsection the word 'court' includes a preparatory examination held under the law relating to criminal procedure."

6.5 The Act presents no equality problems. However, section 1 of this Act provides that “court means any provincial or local division of the Supreme Court of South Africa”. The SALRC recommends that this definition be amended to read:

“‘court’ means any division of the high court having jurisdiction”.

6.6 Section 2(2) of this Act provides that “Any proceedings under subsection (1) shall be deemed to be civil proceedings within the meaning of paragraph (c) of section three of the Appellate Division Further Jurisdiction Act, 1911 (Act 1 of 1911).” This Act was, however, repealed by section 46 read with the second schedule of the Supreme Court Act 59 of 1959. The SALRC recommends that this section be amended by the deletion of the words “within the meaning of paragraph (c) of section three of the Appellate Division Further Jurisdiction Act, 1911 (Act 1 of 1911).”

6.7 Section 2(4) of this Act reads

“(4) Any person against whom an order has been made under subsection (1) who institutes any legal proceedings against any person in any court or any inferior court without the leave of that court or a judge thereof or that inferior court, shall be guilty of contempt of court and be liable upon conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months.”

6.8 This penalty provision refers to “one hundred pounds”. It is no longer necessary to specify the amount of fine in legislation as this is regulated by the Adjustment of Fines Act of 1991.¹³⁴ It is recommended that these provisions be amended by deleting the specific monetary value and that the provisions of the Adjustment of Fines Act be incorporated by reference.

¹³⁴ Section 1(2) of the Adjustment of Fines Act provides that: “If any law (irrespective of whether such law came into operation prior to or after the commencement of this Act) provides that any person may upon conviction of an offence be sentenced to pay a fine of a prescribed maximum amount or a maximum amount which may be determined by a Minister or, in the alternative, to undergo a prescribed maximum period of imprisonment, or be sentenced to such a fine and such imprisonment, the amount of the maximum fine which may be imposed shall, notwithstanding the said penalty clause, but subject to section 4, be an amount calculated in accordance with the ratio referred to in subsection (1) (a): Provided that this provision shall not apply if the maximum amount of the fine prescribed in the law or determined by the Minister exceeds the maximum amount calculated in accordance with the ratio referred to in subsection (1) (a).”

6.9 Reference is made in section 2(1)(a) to the pronouns "his" and "him" and in 2(1)(b) to the pronoun "him". It is recommended that wherever in the Act the word "his" appears the phrase should read *his or her*, wherever the word "him" appears the phrase should read *"him or her"* and wherever the word "he" appears the phrase should read *"he or she"*.

6.10 Furthermore, section 2(1)(a), and (b) and section 2(4) of this Acts make reference to "inferior courts". The SALRC recommends that these provisions be amended by the substitution of the expression "lower court" for the expression "inferior court" wherever it occurs in these provisions.

3. Inquests Act 58 of 1959

6.11 The purpose of the Inquests Act is to make provision for the holding of inquests by judicial officers in cases of deaths or alleged deaths apparently occurring from causes other than natural ones, and where criminal proceedings are not instituted in connection with the death.

6.12 This Act was amended by General Law Amendment Act 29 of 1974; Inquests Amendment Act 46 of 1977; Inquests Amendment Act 65 of 1979; Inquests Amendment Act 52 of 1983; Inquests Amendment Act 45 of 1990; Inquests Amendment Act 8 of 1991; Inquests Amendment Act 145 of 1992; Justice Laws Rationalization Act 18 of 1996; and the International Co-operation in Criminal Matters Act 75 of 1996.

6.13 Section 1, the definitions section, defines a "judicial officer" as a "judge of the Supreme Court...". It is recommended that this should be amended to read "judge of the High Court". Furthermore, the definition section defines "Minister" as Minister of Justice. It is recommended that this definition be amended to "Minister of Justice and Constitutional Development." This Act also states that "policeman" includes any member of a force established under any law for the carrying out of police powers, duties, and functions. Furthermore, there are several references to "policeman" in the Act.¹³⁵ The SALRC recommends that the words "policeman" be replaced with the words "police official" wherever they occur in the Act. The Constitution provides that there is a single police service in the Republic. Therefore, the SALRC recommends that

¹³⁵ See sections 2(1); 3(1); 3(5)(a); 3(6); and 4.

the wording used in this Act relating to the police be brought into line with the wording that is used in the Constitution. To that end, the SALRC recommends that the definition of "policeman" in section 1 of this Act be amended to read "'police official' means a member of the police service contemplated in section 205 of the Constitution.

6.14 The Act is peppered with references to the "attorney-general".¹³⁶ Although section 45 of the National Prosecuting Authority Act of 1998 provides that any reference in any law to an attorney-general shall, unless the context indicates otherwise, be construed as a reference to the National Director; and an attorney-general or deputy attorney-general in respect of the area of jurisdiction of a High Court, shall be construed as a reference to a Director or Deputy Director appointed in terms of this Act, for the area of jurisdiction of that Court, it is recommended that these provisions be amended by the substitution of the expression "Deputy Director of Public Prosecutions for the expression "attorney-general.

6.15 Section 6(d) of this Act provides that an inquest shall be held where the Minister has requested a judge president of a provincial division of the Supreme Court, by any judge of the Supreme Court of South Africa, designated by the judge president concerned. Section 17A(1) empowers the Minister of Justice and Constitutional Development, if he or she deems it in the interest of justice, to request a judge president of a provincial division of the Supreme Court to designate any judge of the Supreme Court of South Africa to reopen the inquest. Section 18(1) requires the magistrate to submit the record of the inquest to any provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the inquest was held. Section 18(2A) provides that the findings of a judge of the Supreme Court shall have the same effect as if it were an order issued by a provincial or local division of the Supreme Court having jurisdiction. Lastly, section 20(2) provides that if a magistrate has ordered the detention of or fines any person in terms of section 20(1), the magistrate shall transmit a statement containing the grounds and reasons for his decision to the registrar of the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area where the inquest was held. The SALRC recommends that the expression "any division of the high court having jurisdiction" be substituted for the expression "provincial or local division of the Supreme Court of South Africa" wherever it occurs in these provisions.

¹³⁶ Sections 3(4); 6A(1); 8(1); 17(1)(c); 17(2); 17A(1); and 19(1).

6.16 Section 13(3) of this Act contains a reverse onus provision which reads:

"Any person who in any statement in writing under oath or affirmation contemplated in this section makes a false statement knowing it to be false or without reasonable grounds (the onus of proof of which shall be on him) for believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for perjury."

6.17 This provision differs markedly from section 20(3) which although it makes it an offence to make a false statement knowing it to be false, it does not place the onus of proof on the accused.¹³⁷ The SALRC recommends that the words "the onus of proof of which shall be on him" be deleted.

6.18 This Act contains a number of penalty provisions in sections 2(2),¹³⁸ 3(6),¹³⁹ 10(4),¹⁴⁰ 20(1)¹⁴¹ and (4)¹⁴² which provide for a specific fine and an alternative

¹³⁷ Section 20(3) of this Act reads "Any person who at an inquest gives false evidence knowing it to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury."

¹³⁸ Section 2 of this Act reads:

"2 Duty to report deaths

(1) Any person who has reason to believe that any other person has died and that death was due to other than natural causes, shall as soon as possible report accordingly to a policeman, unless he has reason to believe that a report has been or will be made by any other person.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000."

¹³⁹ Section 3(6) reads:

"(6) Any person who contravenes the provisions of subsection (5), or who hinders or obstructs a medical practitioner, a policeman or any person acting on the instructions of a medical practitioner or policeman in carrying out his powers or duties under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine."

¹⁴⁰ Section 10(4) reads:

"(4) Any person who fails to comply with a direction under subsection (2) or (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment."

¹⁴¹ Section 20(1) of this Act reads:

"(1) Any person who wilfully insults a judicial officer or assessor during his sitting at an inquest, or a clerk or other officer of the court present at the inquest, or wilfully interrupts the proceedings of the inquest or otherwise misbehaves himself in the place where the inquest is being held, shall, in addition to the judicial officer having him removed and detained until after the termination of the sitting, be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine."

¹⁴² Section 20(4) reads:

"(4) Any person who prejudices, influences or anticipates the proceedings or findings at an inquest shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or

term of imprisonment. It is no longer necessary to specify the amount of money in legislation as this is regulated by the Adjustment of Fines Act of 1991. It is recommended that these provisions be amended by deleting the specific monetary value and that the provisions of the Adjustment of Fines Act of 1991 be incorporated into these provisions by reference. Lastly, this legislation is replete with references to "he", "his", "him" and "himself".¹⁴³ It is recommended that the words "he or she", "him or her", "his or her" and "himself or herself" be substituted for the words "he", "his", "him" and "himself" wherever they occur in the Act.

6.19 Section 23(1) of this Act provides that nothing contained in this Act shall be construed as affecting the provisions of section eighty-six of the Correctional Services Act 8 of 1959 or of any other law prescribing an inquiry into an accident attended with a loss of human life. Section 86 of Act 8 of 1959¹⁴⁴ was repealed by section 137 of the Correctional Services Act 111 of 1998. Although section 15(1) of the Correctional Services Act of 1998¹⁴⁵ contains a provision similar to that contained in section 86 of the Correctional Services Act of 1959, the SALRC recommends that the words "provisions of section eighty-six of the Correctional Services Act 8 of 1959 or of" be deleted.

to imprisonment for a period not exceeding six months or to both such fine and such imprisonment."

¹⁴³ See sections 2(1);3(2), (5) and (6); 4; 5(1) and (2); 6(c); 6A(2) and (3); 8(1); 9(1)-(4); 11(1) and (2); 13(2) and (3); 14; 16(3); 17(1)(a) and (b); 18(1); 20(1)and 21(2).

¹⁴⁴ Section 86 of Act 8 of 1959 read:

" Medical certificate on death of prisoner

(1) Where a prisoner dies and a medical practitioner is unable to certify that his death is due to natural causes, the correctional official in charge of the prison in question shall furnish the report required by section 2 of the Inquests Act, 1959 (Act 58 of 1959).

(2) and (3)

(4) The Commissioner shall also cause an enquiry to be held as to any death in any prison from other than natural causes, and report thereon to the Minister."

¹⁴⁵ Section 15 of Act 111 of 1998 reads:

"Death in prison

(1) Where a prisoner dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of Prison must in terms of section 2 of the Inquests Act, 1959 (Act 58 of 1959), report such death.

(2) Any death in prison must be reported forthwith to the Inspecting Judge who may carry out or instruct the Commissioner to conduct any enquiry.

(3) The Head of Prison must forthwith inform the next of kin of the prisoner who has died or, if the next of kin are unknown, any other relative".

4. Supreme Court Act 59 of 1959

6.20 In view of the fact that this Act has been earmarked for repeal in the Superior Courts Bill, the SALRC has decided not to review it for constitutionality or redundancy.

5. Justices of the Peace and Commissioners of Oaths Act 16 of 1963

6.21 The purpose of this Act was to consolidate and amend the laws relating to the appointment, powers and duties of justices of the peace and commissioners of oaths, and to provide for matters incidental thereto. This Act came into operation on 1 December 1964.

6.22 This Act was amended by the General Law Amendment Act 80 of 1964; Justices of the Peace and Commissioners of Oaths Amendment Act 8 of 1965; Justices of the Peace and Commissioners of Oaths Amendment Act 21 of 1967; Justices of the Peace and Commissioners of Oaths Amendment Act 55 of 1970; Parliamentary Service Act 33 of 1974; Justices of the Peace and Commissioners of Oaths Amendment Act 110 of 1984; Justices of the Peace and Commissioners of Oaths Amendment Act 36 of 1986; Transfer of Powers and Duties of the State President Act 97 of 1986; Justice Laws Rationalisation Act 18 of 1996; General Law Amendment Act 49 of 1996; and the Judicial Matters Amendment Act 26 of 1999.

6.23 Section 2(1) of the Act refers to the "Minister of Justice" and to "any officer of the Department of Justice". Reference to the Minister of Justice should be amended to read: "Minister of Justice and Constitutional Development" and reference to the Department of Justice should also be amended to read "Department of Justice and Constitutional Development". Section 5(1) also makes reference to the Department. The recommendation made in respect of section 2(1) applies to section 5(1) as well.¹⁴⁶

6.24 Section 2 regulating the appointment of justices of the peace provides in subsection (2) that "A member of a body referred to in section 2 of the Electoral Act,

¹⁴⁶ Section 5(1) reads: "The Minister or any officer of the Department of Justice with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may appoint any person as a commissioner of oaths for any area fixed by the Minister or the delegated officer."

1993 (Act 202 of 1993), shall not hold the office of the justice of peace. Section 2 of the Electoral Act of 1993 referred to the National Assembly and provincial legislatures.¹⁴⁷ The Electoral Act of 1993 was repealed by the Electoral Act 73 of 1998. The latter Act contains a provision which differs slightly to that found in section 2 of Act 202 of 1993. Section 3 of the Electoral Act of 1998 is broader in that it includes the National Assembly, provincial legislature and municipal councils. The SALRC recommends that section 2(2) of this Act be amended to read: "A member of a body referred to in section 3 of the Electoral Act, 1998 (Act 73 of 1998), shall not hold office as a justice of the peace". Section 2(3) also requires amendment in that it makes reference to the Electoral Act of 1993.¹⁴⁸ To that end, the SALRC recommends that the words "Electoral Act, 1993" be replaced with the words "Electoral Act, 1998". Furthermore, section 2(3) refers to the "Senate". This should be amended to read "National Council of Provinces".

6.25 This Act is replete with references to "he", "his" and "him".¹⁴⁹ It is recommended that wherever in the Act the word "he" appears the phrase should read "he or she", wherever the word "him" appears the phrase should read "him or her" and wherever the word "his" appears the phrase should read "his or her".

6.26 Section 8(1)(b) refers to a "commissioner of the Supreme Court of South Africa". This should be amended to read: "Commissioner of a High Court".

¹⁴⁷ Section 2 of the repealed Act 202 of 1993 read:

"2 Application of Act

The provisions of this Act and any amendment thereof shall apply-

- (a) in respect of the elections held in terms of the Constitution for the National Assembly and all provincial legislatures; and
- (b) in the Republic as a whole, to the exclusion of and in substitution for any other electoral law in force in any part of the national territory immediately prior to the commencement of section 2 of the Electoral Amendment Act, 1996".

¹⁴⁸ This section reads:

"Any person who has been nominated as a candidate for the National Assembly, the Senate or a provincial legislature contemplated in the Electoral Act, 1993 shall not, while he is thus nominated, exercise or carry out any of the powers or duties attaching to the office of justice of the peace and referred to in section 3."

¹⁴⁹ See sections 2(4); 3(a) and (c); 7; 8(1)(a) and (b); and 8(2).

6. Justices of the Peace and Commissioners of Oaths Amendment Act 21 of 1967

6.27 This Act came into operation on 8 March 1967. Its purpose is to amend the Justices of the Peace and Commissioners of Oaths Amendment Act 16 of 1963.

6.28 Reference is made in section 6 to the pronoun "he". It is recommended that the phrase should read "he or she".

7. Justices of the Peace and Commissioners of Oaths Amendment Act 36 of 1986

6.29 This Act came into operation on 23 April 1986. Its purpose is to amend Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

6.30 Reference is made in section 3 to the pronoun "he". It is recommended that the phrase should read "he or she".

8. Reciprocal Enforcement of Maintenance Orders Act 80 of 1963

6.31 The Reciprocal Enforcement of Maintenance Orders Act makes provision for the reciprocal enforcement of maintenance orders in the Republic and certain proclaimed foreign countries.

6.32 The Act came into operation on 22 January 1965 and has been amended by General Law Amendment Act 70 of 1968; Reciprocal Enforcement of Maintenance Orders Amendment Act 40 of 1970; Transfer of Powers and Duties of the State President Act 97 of 1986; General Law Amendment Act 49 of 1996; Maintenance Act 99 of 1998.

6.33 Section 1 of the Act refers to the "Minister of Justice". This should be amended to read: "Minister of Justice and Constitutional Development".

6.34 Section 4(4)(a) of this Act provides that “any person aggrieved by an order made under this section may, within such period and in such manner as may be prescribed, appeal against such order to the provincial or local division of the Supreme Court of South Africa having jurisdiction”. The SALRC recommends that this section be amended by the substitution of the expression “to a division of the High Court having jurisdiction” for the expression “to the provincial or local division of the Supreme Court of South Africa having jurisdiction”.

6.35 It is also recommended that the words “his or her” be substituted for the word “his” wherever it occurs in sections 3 and 4 of this Act.

9. Civil Proceedings Evidence Act 25 of 1965

6.36 This Act sets out the law with regard to receiving and handling of evidence in civil proceedings.

6.37 The Act came into operation on 30 June 1967 and was amended by Criminal Procedure Act 51 of 1977; Transfer of Powers and Duties of the State President Act 97 of 1986; Law of Evidence Amendment Act 45 of 1988; Justice Laws Rationalisation Act 18 of 1996; General Law Amendment Act 49 of 1996.

6.38 Section 1 of the Act refers to the “Minister of Justice”. This should be amended to read: “Minister of Justice and Constitutional Development”.

6.39 Reference is made in section 7 to the pronouns “he”, “him” “his” and “himself”. It is recommended that wherever in the Act the word “he” appears the phrase should read “he or she”, wherever the word “him” appears the phrase should read “him or her” ; wherever the word “his” appears the phrase should read “his or her” and wherever the word “himself” occurs it should be replaced with the words “himself or herself”.¹⁵⁰

6.40 Section 9 of this Act provides that “No person appearing or proved or to be afflicted with idiocy, lunacy or insanity, or to be labouring under any imbecility of mind

¹⁵⁰ These words appear in section 7; 10; 14; 19; 20; 22; 23; 24; 25; 34; 39; and 41 of this Act.

arising from intoxication or otherwise, whereby he is deprived of the proper use of reason, shall be competent to give evidence while so afflicted or disabled." It is recommended that this section be amended and that the terms used be replaced with current terminology that is not demeaning in any manner. It is recommended that the following section be substituted for section 9 of this Act:¹⁵¹

"9 Incompetency due to state of mind

No person appearing or proved to be afflicted with mental illness or to be labouring under any imbecility of mind due to intoxication or drugs or the like, and who is thereby deprived of the proper use of his reason, shall be competent to give evidence while so afflicted or disabled."

6.41 Section 10A of this Act provides that:

"10A Status of certain marriages

Any customary marriage or customary union, concluded under the indigenous law and custom of any of the indigenous peoples of the Republic of South Africa or any marriage concluded under any system of religious law, shall be regarded as a valid marriage for the purposes of the law of evidence."

6.42 The coming into force of the Recognition of Customary Marriages Act of 1998 has put beyond doubt that customary marriages entered into before and after the commencement of that Act are valid marriages. It is therefore recommended that the words "Any customary marriage or customary union, concluded under the indigenous law and custom of any of the indigenous peoples of the Republic of South Africa or" in section 10A be deleted.

6.43 Section 10 of this Act¹⁵² fails to take into account the equality rights of persons in the same sex unions or marriages as contemplated in the Civil Union Act of 2006

¹⁵¹ The proposed wording was taken verbatim from section 194 of the Criminal Procedure Act 51 of 1977.

¹⁵² Section 10 of this Act reads:

"10 Husband and wife not compellable to disclose communications between them

(1) No husband shall be compelled to disclose any communication made to him by his wife during the marriage and no wife shall be compelled to disclose any communication made to her by her husband during the marriage.

(2) Subsection (1) shall also apply to a communication made during the subsistence of a marriage or a putative marriage which has been dissolved or annulled by a competent court."

and is thus unconstitutional. The SALRC proposes the following amendments which have been underlined, with the current subsection (2) becoming subsection (3):

"10 Husband and wife or civil union partners not compellable to disclose communications between them

(1) No husband shall be compelled to disclose any communication made to him by his wife during the marriage and no wife shall be compelled to disclose any communication made to her by her husband during the marriage;

(2) no civil union partner as defined in the Civil Union Act, 2006 (Act 17 of 2006) shall be compelled to disclose any communication made to him or her by his or her civil union partner during the civil union.

(3) Subsection (1) and (2) shall also apply to a communication made during the subsistence of a marriage, civil union or a putative marriage which has been dissolved or annulled by a competent court."

6.44 For the sake of achieving inclusivity, section 12 of this Act is also in need of revision. This section provides:

"12 No witness compellable to testify if husband or wife not compellable

No person shall be compelled to answer any question or to give any evidence which the husband or wife of such person, if under examination as a witness, could not be compelled to answer or give."

6.45 It is recommended that that this section should be revised as follows:

"12 No witness compellable to testify if husband, wife or civil union partner is not compellable

No person shall be compelled to answer any question or to give any evidence which the husband, wife, or a civil union partner of such person, if under examination as a witness, could not be compelled to answer or give."

6.46 Section 19 deals with the production of official documents. The section provides:

“(1) No original document in the custody or under the control of any State official by virtue of his office, shall be produced in evidence in any civil proceedings except upon the order of the head of the department in whose custody or under whose control such document is or of any officer in the service of the State authorized by such head.

(2) Any such document may be produced in evidence by any person authorized by the person ordering the production thereof.”

6.47 It may be the case that this section needs to be revised in light of the Promotion of Access to Information Act 2 of 2000, in particular sections 5, 9, 11 and 12.

6.48 Section 23(1)¹⁵³ and the definition of court in section 25(3)¹⁵⁴ make reference to the Supreme Court of South Africa. It is recommended that the references to the “division of the High Court” should refer to the High Court.

6.49 Section 27 of this provides that:

“In this Part ‘bank’ means a ‘banking institution’ as defined in the Banks Act, 1965, and includes the Land and Agricultural Bank of South Africa, and a building society.”

6.50 The Banks Act of 1965 was repealed by the Banks Act 94 of 1990, the SALRC proposes that this definition be amended by the substitution of the words “Banks Act, 1990 (Act 94 of 1990)” for the words “Banks Act, 1965 (Act 23 of 1965). Furthermore,

¹⁵³ This section reads:

“Any person who will, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any interest in any asset the right or claim to which cannot be brought to trial by him before the happening of such event, may, after notice to every other person who may have an interest in such asset, apply to any division of the Supreme Court of South Africa having jurisdiction, for an order allowing any evidence which may be material for establishing such right or claim, to be taken before a commission appointed by the said division, and the said division may refuse the application or grant it on such conditions as it may think fit to impose.”

¹⁵⁴ This definition reads: 'court' means any division of the Supreme Court of South Africa or any judge thereof.

10. Prize Jurisdiction Act 3 of 1968

6.51 The purpose of this Act is primarily to regulate the prize jurisdiction of the High Courts of South Africa. It was assented to on 27 February 1968 and it is to come into operation on a date to be fixed by the State President. That date has not been fixed. In the nature of prize jurisdiction, it is only necessary in the limited circumstances in which the country is at war. Outside those circumstances, it has no purpose and that is the reason the Act has not been signed into operation by the President. The Act was introduced to obviate the necessity for proclaiming special prize courts by conferring such jurisdiction on the existing courts.

6.52 The provisions presently serve the same purpose as their original purpose and are not redundant. There is value in retaining the statute, albeit not in force, in that the process of signing it into force would be more efficient than following the parliamentary process to enact a statute to regulate this matter in the emergency conditions of war.

6.53 All the provisions of the original statute remain save for section 6 which was repealed by the General Law Amendment Act 49 of 1996. That section made this Act applicable in the then territory of South West Africa.

6.54 Given that the Act has not come into operation, its provisions have not been considered in case law. The SALRC recommends the amendment of the definition of "division" in section 1 which states that 'division' means a provincial or local division of the Supreme Court of South Africa by deleting reference to the provincial or local division of the Supreme Court of South Africa. Section 5 of this Act provides that:

"5 Rules of Court

A power to make rules under the Supreme Court Act, 1959 (Act 59 of 1959), shall be deemed to include also the power to make such rules as the Chief

Justice of South Africa deems necessary or expedient for the adjudication of prize proceedings or the regulation of any matter relating thereto.

6.55 The SALRC recommends that reference to the Supreme Court Act of 1959 be replaced with reference to section 6 of the Rules Board for Courts of Law Act of 1985 and that reference to the Chief Justice be replaced with reference to the Rules Board for Courts of Law. The latter recommendation takes account of the transfer of the authority to make rules for the various courts from the Chief Justice to the Rules Board established in terms of Act 107 of 1985.

6.56 The provisions of this Act do not contravene section 9 of the Constitution.

11. Petition Proceedings Replacement Act 35 of 1976

6.57 This Act came into operation on 1 July 1976. The purpose of this Act was to ensure that any reference in any law to the institution of application proceedings in any court by petition is to be construed as a reference to the institution of such proceedings by notice of motion in terms of the rules regulating the conduct of the proceedings of such court.

6.58 There are no obsolete provisions in this Act and none of its provisions seem to violate section 9 of the Constitution.

12. Abolition of Civil Imprisonment Act 2 of 1977

6.59 This Act came into operation on 1 July 1977. The purpose of the Act was to abolish the civil imprisonment of a debtor for failure to pay a sum of money in terms of any judgment.

6.60 There are no obsolete provisions in this Act and none of its provisions seem to violate section 9 of the Constitution.

13. Small Claims Courts Act 61 of 1984¹⁵⁵

6.61 This Act came into operation on 24 August 1985 and has been amended by Small Claims Courts Amendment Act 92 of 1986; Small Claims Courts Amendment Act 63 of 1989; Small Claims Courts Amendment Act 14 of 1990; Small Claims Courts Amendment Act 2 of 1992; General Law Amendment Act 139 of 1992; General Law Fourth Amendment Act 132 of 1993; Justice Laws Rationalisation Act 18 of 1996; Judicial Matters Amendment Act 26 of 1999; Prevention and Combating of Corrupt Activities Act 12 of 2004; National Credit Act 34 of 2005.

6.62 This Act establishes Small Claim Courts and regulates the practice and procedures of the Courts.

6.63 Section 1 refers to the "Minister of Justice". This should be amended to read Minister of Justice and Constitutional Development.

6.64 Section 5(1) provides that "either of the official languages of the Republic may be used at any stage of the proceedings of a court." This provision is inconsistent with section 6(1) of the Constitution which recognises 11 official languages. It is recommended that section 5 should be amended to read that *any of the official languages of the Republic may be used at any stage of the proceedings of a court*. However, it has to be noted that such a provision will not preclude a litigant or a witness from using his/her mother tongue language which may not be an official language.

6.65 Section 9(6) of this Act sets out the oath of office to be taken by a commissioner before assuming office. It is recommended that the oath of office should mirror, as far as is possible, Item 6 of Schedule 2 of the Constitution of the Republic of South Africa, 1996, as amended by section 18 of the Constitution of the Republic of South Africa Amendment Act 34 of 2001. To this extent, it is proposed that the oath of office should read:

"I, A.B., swear/solemnly affirm that, as a Commissioner of the Small Claims Court/E.F. Court, I will be faithful to the Republic of South Africa, will uphold

¹⁵⁵ This Act is also dealt with above on page 42.

and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.”

6.66 Section 6(1) provides that the documents of a court shall be preserved at the seat of the magistracy of the district in which the seat of that court is situated for such period as the Director-General: Justice may determine. Section 6(2) provides that the Director-General: Justice may order that the documents that have been so preserved be removed to a specified place of custody or be destroyed. It is recommended that reference in both sections to the Director-General: Justice be amended to read “Director-General; Department of Justice and Constitutional Development.

6.67 Section 9(1)(a) of this Act provides that the Minister or any officer of the Department of Justice with the rank of a director or an equivalent or higher rank delegated thereto by the Minister may appoint one or more commissioners for any court. It is recommended that reference to the Department of Justice be amended to read “Department of Justice and Constitutional Development.

6.68 Section 11(2) of this Act reads:

“The messenger of the court appointed under the Magistrates’ Courts Act, 1944 (Act 32 of 1944), for the magistrate’s court of a district, shall act as messenger of the court for a court in that part of the said district falling within the area of jurisdiction of that court.”

6.69 The Sheriffs Act 90 of 1986 provides that any person who immediately prior to the commencement of that Act held office as messenger or acting messenger of any lower court, or was appointed as a deputy messenger, shall upon that commencement be deemed to be appointed under the provisions of this Act as a sheriff or acting sheriff of that lower court, or as a deputy sheriff, respectively. It is therefore recommended that section 11(2) be amended to read “the sheriff appointed under the Sheriffs Act, 1986 (Act 90 of 1986)...”.

6.70 Section 16 of this Act, listing matters beyond the jurisdiction of the Small Claims Court, provides that a Small Claims Court shall not have jurisdictions in matters:

“(a) in which the dissolution of any marriage, or of a customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927) is sought”.

6.71 Section 1(7) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005 has repealed, among other provisions, section 35 of the Black Administration Act of 1927. Since customary marriages are now recognized as a marriage, the SALRC recommends that section 16(a) be amended by the deletion of the words “or of a customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927)”.

6.72 Section 46 sets out the grounds upon which proceedings in the small claims court may be taken on review before “a provincial and local division of the Supreme Court of South Africa...”. This should be amended to read “a division of the High Court having jurisdiction”. Sections 47¹⁵⁶ and 48(1)¹⁵⁷ contain penalty provisions. It is no longer necessary to specify the amount of fine in legislation as this is regulated by the Adjustment of Fines Act of 1991.¹⁵⁸ It is recommended that these provisions be

¹⁵⁶ Section 47 of this Act reads:
“47 Offences relating to execution

Any person who-

(a) obstructs a messenger or deputy messenger of the court in the execution of his duties under this Act;

(b)...

(e) fails to give notice of change of address in terms of section 43, shall be guilty of an offence and liable upon conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.”

¹⁵⁷ This section reads:

“(1) Any person who wilfully insults a commissioner during the session of his court, or a clerk or messenger or other officer present at that session, or who wilfully interrupts the proceedings of a court or otherwise misbehaves himself in the place where the session of a court is held, shall, without prejudice to the provisions of section 4 (3), be liable to be sentenced summarily or upon summons to a fine not exceeding R500 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.”

¹⁵⁸ Section 1(2) of the Adjustment of Fines Act 101 of 1991 provides that: “If any law (irrespective of whether such law came into operation prior to or after the commencement of this Act) provides that any person may upon conviction of an offence be sentenced to pay a fine of a prescribed maximum amount or a maximum amount which may be determined by a Minister or, in the alternative, to undergo a prescribed maximum period of imprisonment, or

amended by deleting the specific monetary value and that the provisions of the Adjustment of Fines Act be incorporated into these provisions by reference.

14. Enforcement of Foreign Civil Judgments Act 32 of 1988

6.73 The purpose of this Act is to facilitate and expedite the enforcement of civil judgments granted in designated foreign countries. This Act came into operation on 8 August 1988 and has since been amended by the International Co-operation in Criminal Matters Act 75 of 1996.

6.74 Section 1 of the Act refers to the "Minister of Justice". This should be amended to read: "Minister of Justice and Constitutional Development."

6.75 None of the provisions in the Act offends section 9 of the Constitution.

15. Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989

6.76 The purpose of this Act is to facilitate and expedite the enforcement of maintenance orders granted by a South African court in designated African countries and vice versa. This Act came into operation on 1 September 1990 and has been amended by the Maintenance Act 99 of 1998.

6.77 Section 1 of this Act provides that "Director-General" means the Director-General: Justice. The SALRC proposes that this definition be amended to read "Director General' means the Director-General: Justice and Constitutional Development." Section 1 of this Act also refers to the "Minister of Justice". This should be amended to read: "Minister of Justice and Constitutional Development."

be sentenced to such a fine and such imprisonment, the amount of the maximum fine which may be imposed shall, notwithstanding the said penalty clause, but subject to section 4, be an amount calculated in accordance with the ratio referred to in subsection (1) (a): Provided that this provision shall not apply if the maximum amount of the fine prescribed in the law or determined by the Minister exceeds the maximum amount calculated in accordance with the ratio referred to in subsection (1) (a)."

6.78 Section 6(5)(a) provides that a person aggrieved by an order made by the court may appeal against such order to the "local or provincial division of the Supreme Court of South Africa." It is recommended reference to the local or provincial division of the Supreme Court of South Africa be replaced with reference to "a division of the high court having jurisdiction."

6.79 Lastly, the SALRC recommends that references to "his" in section 6 and 9 and reference to "him" in section 9(2) be replaced with "his or her" and "him and her" respectively.

16. Reciprocal Service of Civil Process Act 12 of 1990

6.80 The purpose of this Act is to facilitate and expedite the service of civil processes of designated countries in the Republic of South Africa and vice versa. This Act came into operation on 1 September 1990.

6.81 Section 1 of the Act refers to the "Minister of Justice". This should be amended to read: *Minister of Justice and Constitutional Development*.

6.82 Section 3(2) provides: "Any process not drawn up in the English or the Afrikaans language shall not be endorsed in terms of subsection (1) unless it is accompanied by a sworn translation thereof in English or Afrikaans."

6.83 This section appears to be inconsistent with section 6(1) of the Constitution of the Republic of South Africa, 1996 which identifies the following languages as the official languages: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa, and isiZulu.

6.84 Perhaps, for the sake of expediency, the section should be amended to read:

"Any process drawn up in any of the official languages of the Republic, other than English, shall not be endorsed in terms of subsection (1) unless it is accompanied by a sworn English translation."

6.85 An amendment couched in the above manner, if submitted, will strike a balance between giving recognition to all the official languages of South Africa and yet, will not create obligations too onerous for the foreign litigant.

6.86 Section 4 of this Act provides that any process, other than a process relating to the enforcement of a civil judgment, may be issued by the registrar of any division of the Supreme Court or by any clerk of the magistrate's court without leave of the court in question. It is recommended that the reference to the Supreme Court be replaced with reference to the "high court".

6.87 It is also recommended that reference in section 3(1) to "he" be replaced with "he or she".

17. Short Process Courts and Mediation in Certain Civil Cases Act 103 of 1991

6.88 The purpose of this Act is to provide for alternative dispute resolution in the form of mediation in civil cases heard in the Magistrates' Courts. Furthermore, the Act also establishes the Short Process Courts to provide litigants, in civil cases, with the option of taking their matter before these courts and to enjoy the benefits of having a simplified court procedure.

6.89 This Act came into operation on 17 July 1992 and has been amended by Justice Laws Rationalisation Act 18 of 1996 and Prevention and Combating of Corrupt Activities Act 12 of 2004.

6.90 Section 1 of the Act refers to the "Minister of Justice". This should be amended to read 'Minister of Justice and Constitutional Development'.

6.91 Section 2, which regulates the appointment of mediators provides in subsection (1) that:

"The Minister may appoint one or more mediators for an area or district for which a court has been established from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic

of South Africa, the General Bar Council of South Africa and the Department of Justice.”

6.92 It is recommended that reference to the Department of Justice be amended to read “the Department of Justice and Constitutional Development”. This recommendation applies to section 6(1)(a) dealing with the appointment of adjudicators.¹⁵⁹

6.93 Sections 2¹⁶⁰ and 6¹⁶¹ of this Act require mediators and adjudicators to take the oath of office. It is recommended that the oath of office should mirror, as far as is possible, Item 6 of Schedule 2 of the Constitution of the Republic of South Africa, 1996, as amended by section 18 of the Constitution of the Republic of South Africa Amendment Act 34 of 2001. To this extent, it is proposed that the oath of office of the mediator (and with necessary changes, that of the adjudicator) should read:

“I,, do hereby swear solemnly and
(full name)
sincerely affirm and declare that whenever I may be called upon to perform the functions of a mediator in mediation proceedings, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights in it and I will administer justice to all persons alike without fear, favour or prejudice [and, as the circumstances of a particular case may

¹⁵⁹ Section 6(1)(a) of this Act reads:
“Subject to the provisions of this section and section 7 the Minister may, for a court established by him under section 4 (1), appoint one or more adjudicators from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice.”

¹⁶⁰ Section 2(3) of this Act provides :
“I,, do hereby swear solemnly and
(full name)
sincerely affirm and declare that whenever I may be called upon to perform the functions of a mediator in mediation proceedings, I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa applying to the case concerned.”

¹⁶¹ Section 6(5) of this Act reads :
“I,, do hereby swear solemnly and sincerely
(full name)
affirm and declare that whenever I may be called upon to perform the functions of an adjudicator in a court, I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa applying to the case concerned.”

require, in accordance with the law and customs of the Republic of South Africa applying to the case concerned] in accordance with the Constitution and the law."

6.94 Section 12(1) provides that the proceedings of a short process court may be brought under review before a provincial or local division of the Supreme Court section 14 provides that any advocate or attorney of any division of the Supreme Court of South Africa may appear at any proceedings of the short process court. The SALRC recommends that the reference to the Supreme Court in these sections be replaced with reference to the High Court.

6.95 The SALRC also recommends that words "he", "his" and "him", wherever they occur in this Act,¹⁶² be replaced with references to "he or she", "his or her" and "him or her" as the case may be.

6.96 None of the provisions in the Act contravenes section 9 of the Constitution.

18. Magistrates' Courts Amendment Act 120 of 1993

6.97 This Act has not yet come into operation. The purpose of this Act was to amend the Magistrates' Courts Act, 1944, in order to *inter alia* make provision for the establishment and jurisdiction of civil courts for civil divisions and the appointment of senior civil magistrates; to create a separate court structure for the adjudication of civil cases; to further regulate the constitution of the Regional Magistrates Appointments Advisory Board; to provide for the establishment of family courts for the adjudication of divorce actions and the appointment of family magistrates for the said courts; to provide that advocates and attorneys may, in certain circumstances, be appointed as judicial officers; to delete or replace certain obsolete expressions; to amend the Afrikaans text of Act 32 of 1944; to amend the Black Administration Act, 1927, the Deeds Registries Act, 1937, the Interpretation Act, 1957, the General Law Amendment Act, 1957, the Attorneys Act, 1979, the Small Claims Courts Act, 1984, the Matrimonial Property Act, 1984, the Rules Board for Courts of Law Act, 1985, and the Short Process Courts and Mediation in Certain Civil Cases Act, 1991, in order to

¹⁶² These words are found in sections 2; 3; 4;6; 7; and 10.

effect certain consequential amendments; to amend the Black Administration Act, 1927 and Amendment Act, 1929, in order to abolish separate divorce courts for Blacks; to amend the Divorce Act, 1979, in order to provide for certain procedures in connection with divorce actions; to amend the Mediation in Certain Divorce Matters Act, 1987, in order to empower the Minister of Justice to make the provisions thereof applicable to a divorce action adjudicated in a family court; and to provide for matters in connection therewith.

6.98 It has to be noted that had this Act come into operation, many of the anomalies contained in the Magistrates' Courts Act 32 of 1944 would have been eradicated.

6.99 The DOJCD has proposed that this Act be repealed in its entirety because it has been overtaken by events, subsequent legislation and circumstances. The SALRC has thus included it in the proposed repeal Bill.

19. Magistrates' Courts Amendment Act 67 of 1998

6.100 This Act has not yet come into operation. Its purpose was to amend the Magistrates' Courts Act 32 of 1944 so as to further regulate the summoning of assessors in civil and criminal proceedings; to further regulate the procedure in the event of death, incapacity, absence or recusal of an assessor; to empower the Minister of Justice to make regulations in connection with matters pertaining to assessors; and to provide for matters connected therewith.

6.101 None of the provisions in the Act offends section 9 of the Constitution.

20. Debt Collectors Act 114 of 1998

6.102 This Act establishes a council, known as the Council for Debt Collectors and exercises control over the debt collectors' profession. It also legalises the recovery of fees and remuneration by registered debt collectors. This Act came into operation on 7 February 2003 and has been amended by the Judicial Matters Amendment Act 22 of 2005.

6.103 Section 1 of this Act states that "Director-General" means the Director-General of the Department of Justice. The SALRC recommends that this definition be amended

to read "'Director-General' means the Director-General of the Department of Justice and Constitutional Development. Section 1 of this Act also refers to the "Minister of Justice". This should be amended to read 'Minister of Justice and Constitutional Development'. In addition, section 20(6)(a) of this Act provides that a debt collector must, in the prescribed manner and period, cause his or her accounting records to be audited annually by a public accountant or auditor contemplated in the Public Accountants' and Auditors', Act 1991 (Act 80 of 1991). The Public Accountants' and Auditors Act of 1991 was repealed by section 58(1) of the Auditing Profession Act 26 of 2005. The SALRC recommends that section 20(6) be amended to read

"A debt collector must, in the prescribed manner and period –

(a) cause his or her accounting records to be audited annually by an auditor contemplated in the Auditing Profession Act, 2005 (Act 26 of 2005)."

6.104 This Act raises no equality problems.

21. Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002

6.105 The purpose of this Act is firstly to regulate and to harmonize the periods of prescription of debts for which certain organs of state are liable and secondly, to make provision for notice requirements in connection with the institution of legal proceedings against certain organs of state in respect of the recovery of debt.

6.106 This Act came into operation on 28 November 2002 and has been amended by the National Ports Act 12 of 2005.

6.107 None of the provisions of the Act are obsolete and there are no contraventions of section 9 of the Constitution.

22. Admiralty Jurisdiction Regulation Act 105 of 1983

6.108 The purpose of the statute was to confer what is termed 'admiralty jurisdiction' on the High Court of South Africa and to provide for the extension of that jurisdiction; and to establish the law to be applied in admiralty matters and the enforcement procedures before the courts in the exercise of their admiralty jurisdiction. There have been various amendments to the Act since its commencement on 1 November 1983. The Act retains its original purposes.

6.109 The preamble;¹⁶³ the heading of section 2 and subsection (1) of that section;¹⁶⁴ and sections 7(2);¹⁶⁵ 7(5);¹⁶⁶ and 12;¹⁶⁷ of this Act make reference to the Supreme Court. It is recommended that references to the Supreme Court in these provisions be replaced with references to the High Court. It is also recommended that the definition of "Minister" in section 1 of this Act be amended to read "'Minister' means the Minister of Justice and Constitutional Development."

¹⁶³ The preamble reads:

"To provide for the vesting of the powers of the admiralty courts of the Republic in the provincial and local divisions of the Supreme Court of South Africa, and for the extension of those powers; for the law to be applied by, and the procedure applicable in, those divisions; for the repeal of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, in so far as it applies in relation to the Republic; and for incidental matters."

¹⁶⁴ Section 2(1) reads:

"2 Admiralty jurisdiction of Supreme Court

(1) Subject to the provisions of this Act each provincial and local division, including a circuit local division, of the Supreme Court of South Africa shall have jurisdiction (hereinafter referred to as admiralty jurisdiction) to hear and determine any maritime claim (including, in the case of salvage, claims in respect of ships, cargo or goods found on land), irrespective of the place where it arose, of the place of registration of the ship concerned or of the residence, domicile or nationality of its owner."

¹⁶⁵ Section 7(2) reads:

"(2) When in any proceedings before a provincial or local division, including a circuit local division, of the Supreme Court of South Africa the question arises as to whether a matter pending or proceeding before that court is one relating to a maritime claim, the court shall forthwith decide that question, and if the court decides that.."

¹⁶⁶ Section 7(5) reads:

"(5) The Minister may, on the recommendation of the judge president of any provincial division of the Supreme Court of South Africa, submit the question as to whether or not a particular matter gives rise to a maritime claim, to the Appellate Division of the Supreme Court of South Africa and may cause that question to be argued before that Division so that it may decide the question for future guidance."

¹⁶⁷ Section 12 reads:

"12 Appeals

A judgment or order of a court in the exercise of its admiralty jurisdiction shall be subject to appeal as if such judgment or order were that of a provincial or local division of the Supreme Court of South Africa in civil proceedings."

6.110 Section 3(2)(d) of this Act provides that an action in *personam* may only be instituted against a person, among other things:

“(d) in respect of whom any court in the Republic has jurisdiction in terms of Chapter IV of the Insurance Act, 1943 (Act 27 of 1943).”

6.111 The Insurance Act 27 of 1943 was repealed and replaced by the Long-term Insurance Act 52 of 1998 and Short-term Insurance Act 53 of 1998. The reference to Chapter IV of the Insurance Act 27 of 1943 was a reference to provisions dealing with Lloyd’s representatives and the equivalent provisions of the replacement legislation are now contained in Part VIII ‘Provisions relating to Lloyd’s’ of the Short-term Insurance Act 53 of 1998. The reference in this section should accordingly be amended to refer to these provisions.

6.112 Section 4(1) of this Act makes reference to the rules made under section 43 of the Supreme Court Act 59 of 1959.¹⁶⁸ Significant parts of section 43 of the Supreme Court Act 59 of 1959 have been repealed. The remaining provisions of section 43 empower the Judge President of a provincial division to make rules for regulating the proceedings of that division with reference to the times for the holding of court; the placing on the roll of actions for hearing; and the extension or reduction of any period within which any act is required to be performed.¹⁶⁹ These provisions of section 43

¹⁶⁸ Section 4(1) reads:

“4 Procedure and rules of court

(1) Subject to the provisions of this Act the provisions of the Supreme Court Act, 1959 (Act 59 of 1959), and the rules made under section 43 of that Act shall *mutatis mutandis* apply in relation to proceedings in terms of this Act except in so far as those rules are inconsistent with the rules referred to in subsection (2).”

¹⁶⁹ The remaining parts of section 43 read:

“43 Rules of Court

(1)

(2) (a)

(b) The judge president of a provincial division may make rules for regulating the proceedings of that division or of any local division within the area of jurisdiction of which such provincial division exercises concurrent jurisdiction, with reference to-

(i) the times for the holding of courts;

(ii) the placing on the roll of actions for hearing; and

(iii) the extension or reduction as local circumstances may require of any period within which any act is in terms of the rules made under paragraph (a) required to be performed.

(c)

(3)

(4) Different rules may be made in respect of different divisions.

(5) Any rules made under any law repealed by this Act and in force at the commencement thereof, shall, subject to the provisions of this Act, and notwithstanding

have been rendered nugatory and overtaken by section 6 of the Rules Board for Courts of Law Act of 1985. It is therefore recommended that reference to section 43 of the Supreme Court Act of 1959 be deleted and replaced with reference to section 6 of the Rules Board for Courts of Law Act of 1985.

6.113 Section 4(2) of this Act reads

“(2) The rules of the courts of admiralty of the Republic in force in terms of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, immediately before the commencement of this Act, shall be deemed to be rules made under section 43 (2) (a) of the Supreme Court Act, 1959, and shall apply in respect of proceedings in terms of this Act.”

6.114 Section 43(2)(a) referred to in this provision was repealed by the Rules Board for Courts of Law Act of 1985. As a result of this repeal, section 4(2) of this Act has become meaningless. It is recommended that it be repealed.

6.115 Section 4(3)¹⁷⁰ of this Act extended the powers conferred on the Chief Justice by the Supreme Court Act of 1959. This provision requires amendment as the powers of the Chief Justice to make rules for the various courts have been transferred to the Rules Board established by the Rules Board for Courts of Law Act of 1985.

6.116 Section 5(1) also requires amendment as it uses the pronouns “he” and “his”.¹⁷¹

the repeal of that law by section forty-six of this Act, remain in full force and effect until amended or repealed under this section.”

¹⁷⁰ Section 4(3) of this Act reads:

“ The power of the Chief Justice to make rules under section 43 of the Supreme Court Act, 1959, shall include the power to make rules prescribing the following:

- (a) The appointment of any person or body for the assessment of fees and costs and the manner in which such fees and costs are to be assessed;
- (b) measures aimed at avoiding circuitry or multiplicity of actions;
- (c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.

¹⁷¹ Section 5(1) reads “(1) A court may in the exercise of its admiralty jurisdiction permit the joinder in proceedings in terms of this Act of any person against whom any party to those proceedings has a claim, whether jointly with, or separately from, any party to those proceedings, or from whom any party to those proceedings is entitled to claim a contribution or an indemnification, or in respect of whom any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between the party and the person to be joined and which should be determined in such a manner as to bind that person, whether or not the claim against the latter is a maritime claim and notwithstanding the fact

6.117 Section 6(1)(a) makes reference to the “High Court of Justice of the United Kingdom. The reference in this section to the ‘High Court of Justice of the United Kingdom’ is a reference to a non-existent court.¹⁷² It is recommended that reference to this court be replaced with reference to the Supreme Court of England and Wales.

6.118 Section 13 of this Act amended section 2 (2) of the Merchant Shipping Act 57 of 1951 by substituting the definition of ‘superior court’. The definition of “superior court” was subsequently repealed in that Act. It is therefore recommended that section 13 be repealed.

6.119 None of the provisions in this Act contravenes section 9 of the Constitution.

23. Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977

6.120 The purpose of this Act is to provide for the recognition and enforcement of foreign arbitral awards.

6.121 None of the provisions of this Act has been repealed.

6.122 The Act retains its original purpose and none of its provisions is redundant. Section 1 of the Act defines a “court” as “a provincial or local division of the Supreme Court of South Africa”. This should be amended to read “*provincial or local division of the High Court.*”

6.123 None of the provisions of the Act contravenes section 9 of the Constitution.

that he is not otherwise amenable to the jurisdiction of the court, whether by reason of the absence of attachment of his property or otherwise.”

¹⁷² See : *MV Stella Tingas* 2003 (2) SA 473 (SCA) at 479; *MT Argun* 2004 (1) SA 1 (SCA) at 7, and *MV Roxana Bank* 2005 (2) SA 65 (SCA) at 70.

24. Sheriffs Act 90 of 1986

6.124 The purpose of this Act is to provide for the appointment and regulation of sheriffs and to establish a South African Board and Fidelity Fund for sheriffs. The entire Act, aside from a few minor amendments and sections repealed, remains in force.

6.125 The Act retains its original purpose.

6.126 Section 1 of this Act provides that "auditor" means a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991). The Public Accountants' and Auditors' Act of 1991 was repealed by section 58 of the Auditing Profession Act 26 of 2005. Since it is no longer possible to register accountants and auditors in terms of the 1991 Act, the SALRC recommends that this definition be amended to read "'auditor' means a person registered as an accountant or auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991) or in terms of the Auditing Profession Act, 2005 (Act 26 of 2005). Furthermore, section 1 defines a "superior court" as a "provincial or local division of the Supreme Court of South Africa". This must be amended to read provincial or local division of the High Court. Lastly, there are various provisions in this Act that make reference to masculine gender, namely "he"¹⁷³, "his"¹⁷⁴, "him"¹⁷⁵ and "himself".¹⁷⁶ The SALRC proposes that these provisions be amended to read "'he or she", "his or her", "him or her" and "himself or herself" as the case may be.

6.127 None of the provisions in the Act offends section 9 of the Constitution.

¹⁷³ See sections 3(1); 4(1); 5(1A)(a); 6(1) and (3); 10; 11(1); 22(3); 33(1); 35(a)(i); 36(2)(a); 38(2); 43(1)(a)-(f); 43(2) and (3); 50(1) and (2); 51; 52(1); 56(2); 60(1)(g)(ii) and 62(1)(b).

¹⁷⁴ See sections 3(3); 4(3); 5(1)(a); 5(1)(c)(i); 6(3); 11(1) and (2); 14(2) and (5); 22(3); 23(2); 31(3); 34(3); 35(a)(i) and (ii); 35(b); 36(2)(a); 37(2); 38(1); 39; 43(2) and (3); 50(1); 51(a) and (b); 53; 54; 55; 56(3); 60(1)(g)(ii) and 61(1)(a).

¹⁷⁵ See sections 6(2); 23(1); 33(2); 35(a)(ii)(cc); 36(2)(b); 38(2); 43(2); and 55.

¹⁷⁶ See sections 51; 53; and 60(1)(i).

25. General Law Amendment Act 62 of 1955, sections 34-5

6.128 These provisions relate to proceedings against the state. The reference to "Government of the Union" in section 35 should be replaced by "Government of the Republic of South Africa."

6.129 None of the provisions of the Act are obsolete and there are no infringements of section 9 of the Constitution.

26. General Law Amendment Act 50 of 1956, sections 17-20

6.130 These sections relate to amendments to sections 9, 21, 25 and 65 of the Magistrates' Courts Act 32 of 1944 and have been dealt with in the review of that Act.

27. General Law Amendment Act 68 of 1957, sections 7(1)(a) and 7(2), sections 37-39

6.131 These sections relate to amendments to sections 2, 9, 29 and 117 the Magistrates' Courts Act 32 of 1944 and to amendments to section 33 of the Magistrates' Courts Amendment Act 40 of 1952 and section 4 of the Magistrates' Courts Amendment Act 14 of 1954 and have been dealt with in the review of those Acts.

28. General Law Amendment Act 62 of 1973, sections 18-20

6.132 These sections relate to amendments to sections 3 and 6 of and the First Schedule to the Supreme Court Act 59 of 1959 and have been dealt with in the review of that Act.

29. General Law Amendment Act 139 of 1992, sections 21-3

6.133 Section 21 relates to an amendment to section 3(3) of the Admiralty Jurisdiction Regulation Act 105 of 1983 and has been dealt with under the review of that Act.

6.134 Sections 22 and 23 relate to amendments to sections 11 and 14 respectively of the Small Claims Courts Act 61 of 1984 and have been dealt with under the review of that Act.

30. General Law Third Amendment Act 129 of 1993, sections 2, 10, 17-29

6.135 Section 2 relates to an amendment to section 92(1) of the Magistrates' Courts Act 32 of 1944.

6.136 Section 10 relates to an amendment to section 13 of the Interpretation Act 33 of 1957.

6.137 Sections 17-29 relate to amendments to sections 1, 10(2), 19*bis*(5)(a), 20, 21, 21A, 26(1), 30(4), 32, 36, 39, 40 and 41 of the Supreme Court Act 59 of 1959.

6.138 None of the provisions of the Act are obsolete and there are no infringements of section 9 of the Constitution.

31. Justice Laws Rationalisation Act 18 of 1996, sections 4, 6(2), 8(1),

6.139 Subsection 6(2) relates to the Supreme Court Act 59 of 1959 and has been dealt with under the review of that Act.

6.140 Subsection 8(1) relates to the Magistrates' Courts Act 32 of 1944 and has been dealt with under the review of that Act.

6.141 None of the provisions of the Act are obsolete and there are no infringements of section 9 of the Constitution.

32. Judicial Matters Second Amendment Act 122 of 1998, section 6

6.142 Section 6 relates to an amendment to section 19(1) of the Supreme Court Act 59 of 1959 and has been dealt with under the review of that Act.

CHAPTER 7

SUBSTANTIVE CRIMINAL LAW

1. Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

7.1 The purpose of this Act is “to comprehensively and extensively review and amend all aspects of the laws and the implementation of the laws relating to sexual offences, and to deal with all legal aspects of or relating to sexual offences in a single statute”.

7.2 The entire Act still serve its purpose because South Africa continues to suffer from a plague of sexual violence, which this Act seeks to address and ultimately eradicate. Furthermore, the Act embraces constitutional principles, especially equality and dignity, by rendering the definition of rape gender-neutral.

7.3 There are no redundant provisions, but in time sections 70, 71 will become redundant as they are transitional in nature. They will require repeal when legislation is adopted in compliance with *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Trans-National Organized Crime*. (See section 70(1) Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007).

7.4 The Act differentiates between classes of people such as Children (Chapter 3) and Mentally Disabled Persons (Chapter 4), which is based on prohibited grounds of age and disability.

7.5 Although this differentiation might amount to discrimination, it is not unfair. There is no prejudice caused to other groups, and it is meant to enhance protection of

two extremely vulnerable groups. The differentiation in fact is aimed at protecting their right to dignity.

7.6 Other provisions which raise constitutional issues are found in Chapter 5 (Compulsory HIV testing) and Chapter 6 (National register of sex offenders). These have implications for the right to privacy in section 14 of the Constitution, but do not appear to be unconstitutional.

2. Prevention and Combating of Corrupt Activities Act 12 of 2004

7.7 The purpose of this Act is to address the scourge of corruption in South Africa that threatens stability and security and undermines the rights of all South Africans. The Act “unbundles” the offence of corruption into a general offence and various specific offences of corruption. Its purpose is also to give effect to South Africa’s obligations under the *United Nations Convention against Corruption*.

7.8 Given that corruption is rampant in South Africa and stands to seriously undermine the stability of our constitutional democracy, the provisions of this Act still serve their purpose.

7.9 This Act differentiates between categories of people such as public officers (section 4); Agents (section 6); Members of legislative authority (section 7); Judicial officers (section 8); Members of prosecuting authority (section 9); Parties to an employment relationship (section 10); witnesses during certain proceedings (section 11).

7.10 The provisions are rational. Each of the groups is singled out in respect of specific corruption offences. The purpose of these provisions is to draw specific attention to the manner in which these groups can particularly damage and destabilise society due to their positions of trust and authority. There is a strong deterrence rationale. This is not an arbitrary nor irrational purpose – it is legitimate. There is clearly a rational connection between the differentiation and the purpose.

7.11 However, some provisions of this Act refer to Acts that no longer exist, and other provisions raise certain constitutional issues. Section 1 of this Act states that “gambling game” means any gambling game as defined in section 1 of the National Gambling Act, 1996 (Act 33 of 1996). Act 33 of 1996 was repealed by the National Gambling Act 7 of 2004 which also contains the definition of “gambling game”. The SALRC recommends that the definition of “gambling game” be amended so that it makes reference to the National Gambling Act 7 of 2004. Section 1 also states that “listed company” means a company, the equity share capital of which is listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985). Act 1 of 1985 was repealed by the Securities Services Act 36 of 2004 which makes provision for the listing of securities in section 12. The SALRC recommends that this definition be amended so that it makes reference to Act 36 of 2004. In addition, the presumption in section 24(2) creates limited strict liability. The section states that:

“Whenever a public officer whose duties include the detection, investigation, prosecution or punishment of offenders, is charged with an offence involving the acceptance of a gratification, arising from-

- (a) the arrest, detention, investigation or prosecution of any person for an alleged offence;
- (b) the omission to arrest, detain or prosecute any person for an alleged offence; or
- (c) the investigation of an alleged offence,

it is not necessary to prove that the accused person believed that an offence contemplated in paragraphs (a) to (c) or any other offence had been committed.”

7.12 This irrebutable presumption is based on the rule in *S v De Blom* 1977 (3) SA 513 (A) pertaining to knowledge of unlawfulness that if the accused works in a particular sphere of activity s/he must know the law relating to that sphere. This limited strict liability applying only to law enforcement officers could withstand constitutional scrutiny as pragmatically it would save the state the trouble of proving in every case involving law enforcement officers that they did in fact know the law that they are employed to enforce.

3. Adjustment of Fines Act 101 of 1991

7.13 This Act was enacted to make consistent and transparent the maximum fine payable as an alternative to a term of imprisonment where the sentencing court is not a regional court (as defined in the Magistrates' Courts Act, 1944).

7.14 The Act is still relevant as it is meant to assist judicial officers to calculate the appropriate maximum fine payable as an alternative to a prison sentence. The calculation of a fine, where the maximum amount is not prescribed elsewhere in legislation, is set out in section 1 and the calculation of a fine where a sentence imposed is only a fraction of a year is contained in section 2. The purpose of consistent, transparent and rational sentencing practice is important in ensuring the legitimacy of the criminal justice system.

7.15 No provisions of this Act contravene any part of the Constitution and therefore, it is recommended that the Act be retained in the statute books. Section 1(1)(a) of

this Act¹⁷⁷ incorporates by reference the provisions of 92(1)(b) of the Magistrates Court Act 32 of 1944. The SALRC proposes that the designation "Minister of Justice and Constitutional Development" be substituted for the designation "Minister of Justice" in section 1(1)(a) of this Act.

7.16 Lastly, there are various provisions in this Act that make reference to masculine gender, namely "he"¹⁷⁸, "his"¹⁷⁹, "him"¹⁸⁰ and "himself".¹⁸¹ The SALRC proposes that these provisions be amended to read "he or she", "his or her", "him or her" and "himself or herself" as the case may be.

4. Abolition of Corporal Punishment Act 33 of 1997

7.17 The purpose of this Act was to abolish corporal punishment by a court where authorised in legislation in order to bring the law in line with the Constitution of the Republic of South Africa, 1996.¹⁸²

7.18 The entire Act remains intact, with no amendments.

¹⁷⁷ This section entitled "Calculation of maximum fine" reads:

"(1) (a) If any law provides that any person on conviction of an offence may be sentenced to pay a fine the maximum amount of which is not prescribed or, in the alternative, to undergo a prescribed maximum period of imprisonment, and there is no indication to the contrary, the amount of the maximum fine which may be imposed shall, subject to section 4, be an amount which in relation to the said period of imprisonment is in the same ratio as the ratio between the amount of the fine which the Minister of Justice may from time to time determine in terms of section 92 (1) (b) of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the period of imprisonment as determined in section 92 (1) (a) of the said Act, where the court is not a court of a regional division."

¹⁷⁸ See sections 3(1); 4(1); 5(1A)(a); 6(1) and (3); 10; 11(1); 22(3); 33(1); 35(a)(i); 36(2)(a); 38(2); 43(1)(a)-(f); 43(2) and (3); 50(1) and (2); 51; 52(1); 56(2); 60(1)(g)(ii) and 62(1)(b).

¹⁷⁹ See sections 3(3); 4(3); 5(1)(a); 5(1)(c)(i); 6(3); 11(1) and (2); 14(2) and (5); 22(3); 23(2); 31(3); 34(3); 35(a)(i) and (ii); 35(b); 36(2)(a); 37(2); 38(1); 39; 43(2) and (3); 50(1); 51(a) and (b); 53; 54; 55; 56(3); 60(1)(g)(ii) and 61(1)(a).

¹⁸⁰ See sections 6(2); 23(1); 33(2); 35(a)(ii)(cc); 36(2)(b); 38(2); 43(2); and 55.

¹⁸¹ See sections 51; 53; and 60(1)(i).

¹⁸² (*S v Williams* 1995 (3) SA 632 (CC); *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC)).

7.19 Certain provisions of this Act have become redundant. Section 2 amended certain laws in the Schedule that have subsequently been repealed:

- Section 20(2) of the Black Administration Act 38 of 1927 This section has been repealed by section 1(3) of the Repeal of The Black Administration Act and Amendment of Certain Laws Act 28 of 2005 'with effect from 30 December 2009; or such date as national legislation to further regulate the matters dealt with in subsection (2) is implemented, whichever occurs first'.
- Section 13 of the Stock Theft Act 57 of 1959. Section 13 was repealed by section 3 of the Judicial Matters Amendment Act 62 of 2000.
- Section 24 of the National Parks Act 57 of 1976. The whole of this Act other than section 2(1) and Schedule 1 was repealed by the National Environmental Management: Protected Areas Act 57 of 2003.

7.20 The SALRC thus proposes that the Schedule to this Act be amended by the deletion of the Acts referred to above. Other than the issue of redundancy raised above, this Act neither raises any constitutional issues nor contravenes section 9 of the Constitution.

5. Prohibition of Disguises Act 16 of 1969

7.21 The purpose of this Act is to create an offence of wearing disguises in suspicious circumstances and to impose penalties for the offence so created. It also assists in the administration of justice.

7.22 The only remaining provisions of this Act are sections 1, 2 and 4 with section 3 having been repealed. It is recommended that the words "he" in section 1(1) and (2) be amended to read "he or she". Furthermore, section 1(1) contains a penalty

provision.¹⁸³ It is recommended that this provision be amended by deleting specific monetary value and be brought into line with the current penalty provisions which merely refer to a fine or alternatively imprisonment for a particular maximum period, which would mean that the Adjustment of Fines Act of 1991 would be applicable.

7.23 The Act remains relevant as it enables police officers to approach persons in suspicious circumstances, which could prevent crime occurring, for example, masked persons outside a bank. On that basis it should be retained.

7.24 This Act does not contravene section 9 or any other provision of the Constitution.

6. Criminal Law Amendment Act 105 of 1997

7.25 The purpose of this Act is to make provision for the setting aside of all sentences of death and their substitution with lawful punishments. It seeks to amend laws and to repeal provisions dealing with capital punishment. It also provides for minimum sentences for certain serious offences to enhance consistency of sentencing, especially in light of the scourge of violent crime in South Africa.

7.26 Most of the Act's provisions remain valid and serve a relevant purpose, particularly with regard to the need for consistent and transparent sentencing practices. However, it should be noted that this Act was originally meant to be temporary and it would be wise to review it, now that it has been made permanent, to see if any improvements are required after the first 10 years of its operation.

¹⁸³ Section 1(1) of this Act reads:

"(1) Any person found disguised in any manner whatsoever and whether effectively or not, in circumstances from which it may reasonably be inferred that such person has the intention of committing or inciting, encouraging or aiding any other person to commit, some offence or other, shall, unless he proves that when so found he had no such intention, be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment."

7.27 Several provisions have subsequently become redundant. Section 1 deals with the substitution of lawful penalties in place of the death sentence in cases where that sentence had been issued. As the last of these cases has now been considered, the section has become redundant.¹⁸⁴

7.28 Section 25 amends section 30 of the Mental Health Act 18 of 1973, but the latter Act has been repealed in whole save sections 47 – 54.

7.29 Section 26 repeals section 3 of the General Law Amendment Act 94 of 1974, but the latter Act reflects that section 3 was repealed by s 4 of Act 18 of 1996.

7.30 Section 48 substitutes section 3 of the Corruption Act 94 of 1992 but the latter Act has been repealed in whole by Act 12 of 2004.

7.31 This Act differentiates between categories of person on the prohibited grounds of age and disability such as children under 16 years (section 51, schedule 2, part 1, part 111), people living with disabilities (section 51, schedule 2, part 1), mentally challenged people (section 51, schedule 2, part 1, part 111)

7.32 Notwithstanding the apparent discrimination, the groups singled out are extremely vulnerable and the differentiation is for their protection and to enhance their dignity. To that end, this Act does not contravene section 9 of the constitution.

7.33 It is recommended that the Act be retained, less the redundant provisions highlighted above.

¹⁸⁴ *Sibiya and Others V Director of Public Prosecutions, Johannesburg High Court, and And Others* 2007 (1) SACR 347 (CC).

7.34 Several provisions of the Act have been tested. The constitutionality of section 51(1) (mandatory and minimum sentencing) was confirmed in *S v Dodo* 2001 (3) SA 382 (CC). The Court held that section 51(3)(a) (the substantial and compelling circumstances clause) conferred sufficient discretion to judges so that the separation of powers was not breached, neither was the right to freedom and security of the person (section 12(1) Constitution), nor the right to a fair trial (section 35(3) Constitution).

7. Criminal Law (Sentencing) Amendment Act 38 of 2007

7.35 The purpose of this Act was to amend (i) the Criminal Law Amendment Act 105 of 1997 to further regulate the imposition of mandatory and minimum sentences, including: extending the jurisdiction of the regional court to impose life sentences in terms of the Act; specifying circumstances that may not constitute substantial and compelling circumstances in rape cases; adding further offences into schedule 2 to be governed by the Act; (ii) the Criminal Procedure Act of 1977 so as to provide an automatic right of appeal if a person is sentenced to life imprisonment by a regional court; (iii) the National Prosecuting Authority Act of 1998 and (iv) the Prevention of Organised Crime Act of 1998.

7.36 Although the whole of the Act still remains and is relevant, some amendments are necessary as the first 10 years of operation of the mandatory sentencing legislation has revealed some problems in the working of the Act. In addition, it may be necessary to address some gaps in the Act, which was originally intended to be temporary. However, it is recommended that this legislation is not developed in a piecemeal fashion through amendment. Proper research should be conducted on its use and an amended Act should be tabled that takes account of such research findings.

7.37 This Act does not engage section 9 of the Constitution and should be retained in its current form subject to the above observations.

8. Witchcraft Suppression Act 3 of 1957

7.38 The review of this Act is receiving the attention of the SALRC. The SALRC received two submissions from the South Africa Pagan Council and the Traditional Healers' Organisation respectively, requesting that the Witchcraft Suppression Act 3 of 1957 and the proposed Mpumalanga Witchcraft Suppression Bill 2007 be investigated to determine their constitutionality.

7.39 On 1 August 2009 the SALRC approved the inclusion of the investigation into witchcraft in the SALRC's programme. The Minister approved the inclusion of the investigation in the SALRC's programme on 23 March 2010. It will thus not be reviewed as part of this investigation.

9. Sexual Offences Act 23 of 1957

7.40 This Act is currently receiving attention of the SALRC and goes to the core of its investigation into Sexual Offences: Adult Prostitution (Project 107). To avoid duplication of work and in view of the fact that this investigation is at an advanced stage, the preliminary findings and recommendations as regards the constitutionality or redundancy of the provisions of this Act have been forwarded to the officials involved in Project 107 for consideration.

10. Criminal Law Amendment Act 1 of 1988

7.41 The Act was created to close a gap in the criminal law regarding voluntary intoxication created by the judgment of *S v Chretien* 1981 (1) SA 1097 (A). In that case the court held that, in keeping with the general principles of criminal liability, voluntary intoxication can be a complete defence (negating *mens rea*, capacity or voluntary conduct). It was felt contrary to public policy to leave the law in a state where voluntary intoxication can lead to a complete acquittal.

7.42 The purpose of the Act is still relevant in that levels of alcohol and drug abuse are extremely high in South Africa and contribute directly to the high incidence of crime in the country.

7.43 The Act, however does not contravene section 9 or any other provisions of the Constitution. Furthermore, it does not contain redundant or obsolete provisions.

11. Prevention of Organised Crime Act 121 of 1998

7.44 The purpose of this Act is to effectively and aggressively target organised crime, money laundering and criminal gang activities originating from inside and outside the borders of South Africa.

7.45 The whole of this Act remains intact, except for section 7. Furthermore, it still serves its purpose because organised crime and related activities threaten to undermine and destabilise South Africa's hard-won democracy.

7.46 Although this Act does not contravene section 9 of the Constitution, it harbours a number of other constitutional concerns.

7.47 Although the DOJCD is considering various amendments to this Act, the SALRC wants to highlight the following provisions which require attention. First, the vagueness of the racketeering provisions (the requirement of a relationship and continuity) violates the principle of legality. The same provisions in an American context were found to infringe this principle by Justice Scalia in *H.J. Inc v Northwestern Bell Telephone Co.*¹⁸⁵

7.48 The retrospectivity inherent in the definitions of “proceeds of unlawful activities” and “pattern of racketeering” infringe the principle of legality. There are pragmatic reasons for permitting retrospectivity in organised crime offences, which are otherwise very difficult to address. Nonetheless, a South African court might be unwilling to accept retrospectivity in the statute. An indication of this can be found in *NDPP v Carolus* 2000 (1) SA 1127 (SCA), which considered retrospectivity as it pertained to chapter 6 preservation orders. The judgment generally reinforced the rule against retrospectivity in statutes.

7.49 Section 2(2) has implications for the right to a fair trial. According to the section hearsay, similar fact or previous conviction evidence may be admitted to prove a charge of racketeering, as long as the admittance of such evidence would not render the trial unfair. It is difficult to see how tampering with the traditional rules of evidence in criminal trials can ever not render the trial unfair.

7.50 Section 52(2), (2A), (3)(a) create reverse onuses. Considering the Constitutional Courts willingness in recent years to invalidate reverse onuses these provisions should be amended to reflect mere evidential burdens.

¹⁸⁵ *H.J. Inc v Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989) .

7.51 Section 38 has been declared valid by the Constitutional Court in *NDPP v Mohamed* 2003 (4) SA 1 (CC).

12. Dangerous Weapons Act 71 of 1968

7.52 This Act was enacted to provide for certain prohibitions and restrictions in respect of the possession, manufacture, sale or supply of certain objects and to provide for the imposition of prescribed sentences where dangerous weapons or firearms have been used in the commission of offences involving violence. The DOJCD only administers section 4 of this Act which provides for the penalties which are to be imposed when dangerous weapons or firearms are used in the commission of offences involving violence. The other provisions are administered by the Department of Police. In *S v Thunzi*¹⁸⁶ the Constitutional Court considered legislation parallel to the Dangerous Weapons Act which still obtains in the former TBVC states. The legislature has been given until November 2011 to rationalise the Act with specific reference to the former TBVC states legislation dealing with dangerous weapons. Legislative reforms to give effect to the decision of the Constitutional Court are currently being considered.

7.53 The entire Act still remains. However, certain provisions need to be updated. Section 1 of this Act states that "firearm" means an arm as defined in section 1 of the Arms and Ammunition Act, 1969 (Act 75 of 1969). Act 75 of 1969 was repealed by the Firearms Control Act 60 of 2000. The SALRC proposes that the definition of "firearm" be amended so that it makes reference to the Firearms Control Act of 2000. In addition, the definition of "Minister" needs attention. This should not refer to the Minister of Law and Order, but instead the Minister of Justice and Constitutional Development.

¹⁸⁶ Case CCT 81/09 [2010] ZACC 27.

7.54 Otherwise, by and large, this Act does not contravene section 9 or any other provisions of the Constitution. It is therefore recommended that this Act be retained as it is, subject to the proposals for reform made above.

13. Protected Disclosures Act 26 of 2000

7.55 The purpose of this Act is to make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers and to provide for the protection of employees who make a disclosure which is protected in terms of this Act.

7.56 This Act still serves its purpose given that it is an effective legislative tool for encouraging parties in an employment relationship, who are privy to company documents and policies, to report impropriety within the workplace. This is an effective mechanism to combat white-collar crime.

7.57 The Act does not engage the Constitution, and does not contravene section 9 of the Constitution.

14. Drugs and Drug Trafficking Act 140 of 1992

7.58 The purpose of this Act is to provide for the prohibition of the use or possession of, or dealing in, drugs and to create the obligation to report certain information to the police.

7.59 Quite a substantial part of this Act remains valid and relevant given that this is the primary Act that regulates drugs and creates statutory measures to enable the police to effectively combat drug trafficking.

7.60 However, certain provisions have become redundant. Section 1 provides that “‘Minister’ means the Minister of Justice” It is recommended that this definition be amended to read “‘Minister’ means the Minister of Justice and Constitutional Development”. Furthermore, section 1 provides that “‘police official’ means any member of the Force as defined in section 1 of the Police Act, 1958 (Act 7 of 1958).” The Police Act of 1958 was repealed by Proclamation R5 of 27 January 1995. The SALRC recommends that this definition be amended to read “‘police official’ means a member of the South African Police Service as defined in section 1 of the South African Police Service Act 68 of 1995”.

7.61 Section 4 of this Act prohibits the use and possession of any dependence-producing substance and any dangerous dependence producing substance or any undesirable dependence producing substance. Section 4(b)(iii) the Director-General: Welfare from the operation of this provision. The Department of Welfare changed its name in 2000 to the Department of Social Development. The SALRC thus recommends that the words “Department of Social Development” be substituted for the words “Department of Welfare” where ever they occur in the Act.

7.62 Section 8 provides that every commissioned officer of the South African Police Service assigned to the South African Narcotics Bureau shall be a designated officer for the purposes of Chapter III. The South African Narcotics Bureau was disbanded in 2004. And as a result, this section requires amendment.

7.63 Section 9 of this Act provides that any person may disclose to any attorney-general or designated officer such information as he or she may consider necessary for the prevention of combating, whether in the Republic or elsewhere, of a drug

offence. Sections 12(1) and (3), and 15(2) of this Act also make reference to the "attorney-general".¹⁸⁷ Although, section 45 of the National Prosecuting Authority Act 32 of 1998¹⁸⁸ provides that references to attorney-general must be interpreted as a reference to the National Director of Public Prosecutions, the SALRC recommends that section 9 of this Act be amended so that it makes reference to the National Director of Public Prosecutions.

7.64 Section 10(3) of this Act provides that if (a) any stock broker as defined in section 1 of the Stock Exchanges Control Act 1 of 1985; or (b) any financial instrument trader as defined in section 1 of the Financial Markets Control Act 55 of 1989 has reason to suspect that an property acquired by him from any other person in the ordinary course of his business is the proceeds of a defined crime, he shall report his suspicion to any designated officer. Both the Stock Exchanges Control Act of 1985 and the Financial Markets Control Act of 1989 were repealed by the Securities Services Act 36 of 2004. Act 36 of 2004 contains the definition of "stockbroker" and section 10(3)(a) can be amended to read " (a) any stockbroker as defined in section 1 of the Securities Services Act, 2004 (Act 36 of 2004). However, Act 36 does not contain a definition of "financial instrument trader" and the SALRC recommends that section 10(3)(b) be deleted.

¹⁸⁷ These provisions read:

"12 Interrogation of persons under warrant of apprehension

(1) Whenever it appears to a magistrate from information submitted to him on oath by the attorney-general concerned, or by any public prosecutor authorized thereto in writing by that attorney-general, that there are reasonable grounds for believing that any person is withholding any information as to a drug offence, whether the drug offence has been or is being or is likely to be committed in the Republic or elsewhere, from that attorney-general, any such public prosecutor or any police official, as the case may be, he may issue a warrant for the arrest and detention of any such person.

...

(3) Any person arrested and detained under a warrant referred to in subsection (1) shall be detained until the magistrate orders his release when satisfied that the detainee has satisfactorily replied to all questions at the interrogation or that no useful purpose will be served by his further detention: Provided that the attorney-general concerned may at any time direct in writing that the interrogation of any particular detainee be discontinued, whereupon that detainee shall be released without delay."

¹⁸⁸ This section reads:

"45 Interpretation of certain references in laws

Any reference in any law to-

(a) an attorney-general shall, unless the context indicates otherwise, be construed as a reference to the National Director; and

(b) an attorney-general or deputy attorney-general in respect of the area of jurisdiction of a High Court, shall be construed as a reference to a Director or Deputy Director appointed in terms of this Act, for the area of jurisdiction of that Court."

7.65 Section 12(6) of this Act provides that:

“No person, other than an official in the service of the State acting in the performance of his duties-

(a) shall have access to a person detained in terms of this section, except with the consent of the magistrate and subject to such conditions as he may determine: Provided that the Magistrate-

(i) shall refuse such permission only if he has reason to believe that access to a person so detained will hamper any investigation by the police;

(ii) shall not refuse such permission in respect of a legal representative who visits a person so detained with a view to assisting him as contemplated in subsection (4)(c); or

(b) shall be entitled to any official information relating to or obtained from such a detainee.”

7.66 Although this falls outside the scope of the current investigation, the SALRC is of the view that section 12(6)(a) seems to violate section 35(2)(f) of the Constitution which provides that a detained person shall have a right to be visited by a spouse or partner, next of kin, chosen religious counsellor and a chosen medical practitioner. Section 12(6)(a); as it currently stands, imposes a duty on the people listed in section 35(2)(f) of the Constitution to acquire permission of the magistrate before visiting a person detained under section 12 of this Act. Section 12(6)(b) is more stringent in that it completely prohibits access to information relating to or obtained from such a detainee. This prohibition seems to be inconsistent with the right of access to information in section 32 of the Constitution,¹⁸⁹ read in conjunction with the Promotion

¹⁸⁹ The relevant provision of section 32 of the Constitution provides that everyone has the right of access to any held by the State information.

of Access to Information Act 2 of 2000.¹⁹⁰ The SALRC proposes that section 12(6)(a) and (b) of this Act be repealed.

7.67 Although this Act does not contravene section 9 of the Constitution; it raises certain constitutional issues in need of attention. Sections 18 – 24 create various reverse onuses. In *S v Bhulwana; S v Gwadiiso* 1996 (1) SA 388 (CC) the Constitutional Court held that the presumption in s 21 (1)(a)(i) (accused found in possession of more than 115 grams of dagga presumed to be dealing) infringed the presumption of innocence and was not justifiable. It was therefore declared invalid and should be removed from the legislation. Since the rest of the presumptions in this section are of a similar nature they too should be removed as they are unlikely to survive constitutional scrutiny.

7.68 The SALRC also recommends that the words “he”, “his” and “him” be replaced with the words “he or she”, “his or her” and “him or her” wherever they occur in the Act.

15. Riotous Assemblies Act 17 of 1956

7.69 This Act was enacted to consolidate the laws relating to riotous assemblies and the prohibition of the engendering of feelings of hostility between the ‘European and non-European inhabitants of the Republic’.

7.70 Only a couple of provisions of this Act remain in force. These are sections 16 (Special precautions in the interest of public safety as regards explosives), 17 (Acts or

¹⁹⁰ First, section 5 of the Promotion of Access to Information Act (PAIA) provides that PAIA applies to the exclusion of any other legislation which prohibits or restricts access to information. Second, information obtained from a person detained in terms of section 12 of the Act under consideration is not expressly excluded from the operation of PAIA. See section 12 of PAIA for the list of records excluded from the operation of that Act.

conduct which constitute an incitement to public violence) and 18 (Attempt, conspiracy and inducing another person to commit offence).

7.71 The Act has lost its relevance given that its express purpose was to suppress political resistance and to manage interaction between race groups in line with Apartheid objectives. Those provisions of the Act that relate to incitement and conspiracy, while still relevant in South Africa, must be read in respect of these purposes. The Act is quintessentially Apartheid legislation.

7.72 Although section 16 of the Act, which confers extraordinarily wide powers on the President, has been repealed by section 34 of the Explosives Act, 15 of 2003, this Act has not yet been brought into force. Section 16 is therefore still on the statute book.

7.73 Certain provisions are now redundant. Sections 17 and 18 are redundant due to promulgation of the Prevention of Public Violence and Intimidation Act, 139 of 1991 read together with schedules 1 and 2 of the Criminal Procedure Act, 51 of 1977 and the common-law crime of conspiracy and incitement to commit a criminal offence.

7.74 This Act differentiates between people on the basis of race. The purpose of the Act refers to "Europeans and non-Europeans". Since so much of the Act has been repealed, there is no bite left in it. Nonetheless, it is wholly inappropriate that terms so deeply rooted in the racist apartheid state should still appear in legislation, even if they are only by way of reference. The reference to 'Europeans and non-Europeans' is direct, unfair racial discrimination.

7.75 It is recommended that this Act should be repealed in its entirety. It is also recommended that the Riotous Assemblies Amendment Act 30 of 1974, which amended various provisions of the Riotous Assemblies Act of 1956, be repealed

contemporaneously with the principal Act. A cursory review of the Justice Laws Rationalisation Act 18 of 1996 indicates that parallel Riotous Assemblies Acts were enacted by the former TBVC states and self-governing territories. This is bolstered by Schedule II of this Act which repealed the Riotous Assemblies Acts that were in force in the former Transkei and Venda. However, in respect of the former Republic of Ciskei and the self-governing territories of Gazankulu; KaNgwane; KwaNdebele; KwaZulu; Lebowa and Qwaqwa, it appears that only sections 16-18 in the Riotous Assemblies Acts were repealed and not the entire Acts. Schedule I of the Justice Laws Rationalisation Act extended the application of sections 16-18 of the Riotous Assemblies Act of 1956 to every area which immediately before 27 April 1994 formed part of the TBVC states or self-governing territories. In the light of the fact that the Riotous Assemblies Act of 1956 is recommended for repeal, the SALRC also recommended that the Riotous Assemblies Acts that still obtain in areas referred to above be repealed as well.

ANNEXURE A
STATUTES ADMINISTERED BY THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Number	Name of Act, number and year
1.	Indemnity and Trial of Offenders Act 6 of 1922
2.	Natal Conveyancers Act 24 of 1926
3.	Administration Amendment Act (previous title: 'Black Administration Act, 1927, Amendment Act') 9 of 1929
4.	Cape Statute Law Revision Act 25 of 1934
5.	General Law Amendment Act 46 of 1935
6.	Insolvency Act 24 of 1936
7.	Orange Free State Statute Law Revision Act 33 of 1936
8.	Natal Advocates and Attorneys Preservation of Rights Act 27 of 1939
9.	Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act 19 of 1941 (only section 5 remains)
10.	Magistrates' Courts Act 32 of 1944
11.	Commissions Act 8 of 1947
12.	Wills Act 7 of 1953
13.	Matrimonial Affairs Act 37 of 1953
14.	Black High Court Abolition Act 13 of 1954
15.	Criminal Procedure Act 56 of 1955 (only sections 319(3) and 384 remain)
16.	General Law Amendment Act 62 of 1955 (partly)
17.	Vexatious Proceedings Act 3 of 1956
18.	Riotous Assemblies Act 17 of 1956 (only sections 16 to 18 remain – section 16 to be repealed)
19.	Apportionment of Damages Act 34 of 1956
20.	General Law Amendment Act 50 of 1956
21.	Witchcraft Suppression Act 3 of 1957
22.	State Liability Act 20 of 1957
23.	Sexual Offences Act 23 of 1957
24.	Interpretation Act 33 of 1957
25.	State Attorney Act 56 of 1957
26.	General Law Amendment Act 68 of 1957 (only sections 5 and 7 remain)
27.	Trespass Act 6 of 1959
28.	Stock Theft Act 57 of 1959
29.	Inquests Act 58 of 1959
30.	Supreme Court Act 59 of 1959
31.	Indemnity Act 61 of 1961
32.	Conventional Penalties Act 15 of 1962
33.	South African Citizens in Antarctica Act 55 of 1962
34.	Extradition Act 67 of 1962
35.	Foreign Courts Evidence Act 80 of 1962
36.	General Law Further Amendment Act 93 of 1962 (partly)

Number	Name of Act, number and year
37.	Justices of the Peace and Commissioners of Oaths Act 16 of 1963
38.	Reciprocal Enforcement of Maintenance Orders Act 80 of 1963
39.	General Law Further Amendment Act 93 of 1963 (partly)
40.	Admission of Advocates Act 74 of 1964
41.	Prevention of Counterfeiting of Currency Act 16 of 1965 (partly)
42.	Civil Proceedings Evidence Act 25 of 1965
43.	Arbitration Act 42 of 1965
44.	Administration of Estates Act 66 of 1965
45.	Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965
46.	Justices of the Peace and Commissioners of Oaths Amendment Act 21 of 1967
47.	Pre-Union Statute Law Revision Act 78 of 1967
48.	Prize Jurisdiction Act 3 of 1968
49.	Dangerous Weapons Act 71 of 1968 (partly)
50.	Assessment of Damages Act 9 of 1969
51.	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969
52.	Prohibition of Disguises Act 16 of 1969
53.	Formalities in Respect of Leases of Land Act 18 of 1969
54.	Legal Aid Act 22 of 1969
55.	Abolition of Juries Act 34 of 1969
56.	Prescription Act 68 of 1969
57.	Pre-Union Statute Law Revision Act 42 of 1970
58.	Suretyship Amendment Act 57 of 1971
59.	South African Law Reform Commission Act 19 of 1973
60.	Companies Act 61 of 1973 (partly)
61.	General Law Amendment Act 62 of 1973 (partly)
62.	Prescribed Rate of Interest Act 55 of 1975
63.	Petition Proceedings Replacement Act 35 of 1976
64.	Pre-Union Statute Law Revision Act 36 of 1976
65.	Abolition of Civil Imprisonment Act 2 of 1977
66.	Indemnity Act 13 of 1977
67.	Prohibition of the Exhibition of Films on Sundays and Public Holidays Act 16 of 1977
68.	Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977
69.	Pre-Union Statute Law Revision Act 43 of 1977
70.	Criminal Procedure Act 51 of 1977
71.	Dissolution of Marriages on Presumption of Death Act 23 of 1979
72.	Pre-Union Statute Laws Revision Act 24 of 1979
73.	Attorneys Act 53 of 1979
74.	Divorce Act 70 of 1979
75.	Protection of Information Act 84 of 1982
76.	Admiralty Jurisdiction Regulation Act 105 of 1983
77.	Small Claims Courts Act 61 of 1984

Number	Name of Act, number and year
78.	Matrimonial Property Act 88 of 1984
79.	Rules Board for Courts of Law Act 107 of 1985
80.	Special Courts for Blacks Abolition Act 34 of 1986
81.	Justices of the Peace and Commissioners of Oaths Amendment Act 36 of 1986
82.	Sheriffs Act 90 of 1986
83.	Transfer of Powers and Duties of the State President Act 97 of 1986 (partly)
84.	Mediation in Certain Divorce Matters Act 24 of 1987
85.	Intestate Succession Act 81 of 1987
86.	Law of Evidence and the Criminal Procedure Act Amendment Act 103 of 1987
87.	Criminal Law Amendment Act 1 of 1988
88.	Enforcement of Foreign Civil Judgments Act 32 of 1988
89.	Law of Evidence Amendment Act 45 of 1988
90.	Trust Property Control Act 57 of 1988
91.	Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989
92.	Reciprocal Service of Civil Process Act 12 of 1990
93.	Maintenance of Surviving Spouses Act 27 of 1990
94.	Transfer of Powers and Duties of the State President Act 51 of 1991
95.	Adjustment of Fines Act 101 of 1991
96.	Short Process Courts and Mediation in Certain Civil Cases Act 103 of 1991
97.	Game Theft Act 105 of 1991
98.	Decriminalization Act 107 of 1991
99.	Prevention of Public Violence and Intimidation Act 139 of 1991
100.	Domicile Act 3 of 1992
101.	General Law Amendment Act 139 of 1992 (partly)
102.	Drugs and Drug Trafficking Act 140 of 1992
103.	Security by Means of Movable Property Act 57 of 1993
104.	Documentary Evidence from Countries in Africa Act 62 of 1993
105.	Magistrates Act 90 of 1993
106.	Security Forces Board of Inquiry Act 95 of 1993 (not in operation yet)
107.	Recognition of Foreign Legal Qualifications and Practice Act 114 of 1993
108.	Magistrates' Courts Amendment Act 120 of 1993 (not in operation yet)
109.	General Law Third Amendment Act 129 of 1993 (partly)
110.	Prevention of Family Violence Act 133 of 1993
111.	Constitution of the Republic of South Africa 200 of 1993 (certain sections remain in force)
112.	Judicial Service Commission Act 9 of 1994
113.	Public Protector Act 23 of 1994
114.	Human Rights Commission Act 54 of 1994
115.	Constitutional Court Complementary Act 13 of 1995

Number	Name of Act, number and year
116.	Promotion of National Unity and Reconciliation Act 34 of 1995
117.	Right of Appearance in Courts Act 62 of 1995
118.	Judicial Matters Amendment Act 85 of 1995
119.	Justice Laws Rationalisation Act 18 of 1996
120.	National Youth Commission Act 19 of 1996
121.	Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996
122.	Special Investigating Units and Special Tribunals Act 74 of 1996
123.	International Co-operation in Criminal Matters Act 75 of 1996
124.	Constitution of the Republic of South Africa 1996
125.	National Council of Provinces (Permanent Delegates Vacancies) Act 17 of 1997
126.	Abolition of Corporal Punishment Act 33 of 1997
127.	State of Emergency Act 64 of 1997
128.	Contingency Fees Act 66 of 1997
129.	Public Funding of Represented Political Parties Act 103 of 1997
130.	Criminal Law Amendment Act 105 of 1997
131.	National Prosecuting Authority Act 32 of 1998
132.	Magistrates' Courts Amendment Act 67 of 1998
133.	Determination of Delegates (National Council of Provinces) Act 69 of 1998
134.	Maintenance Act 99 of 1998
135.	Witness Protection Act 112 of 1998
136.	Debt Collectors Act 114 of 1998
137.	Domestic Violence Act 116 of 1998
138.	Recognition of Customary Marriages Act 120 of 1998 (partly)
139.	Prevention of Organised Crime Act 121 of 1998
140.	Judicial Matters Second Amendment Act 122 of 1998
141.	Promotion of Access to Information Act 2 of 2000
142.	Promotion of Administrative Justice Act 3 of 2000
143.	Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
144.	Protected Disclosures Act 26 of 2000
145.	Cross-Border Insolvency Act 42 of 2000
146.	Administration of Estates Laws Interim Rationalisation Act 20 of 2001
147.	Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001
148.	Judges' Remuneration and Conditions of Employment Act 47 of 2001
149.	Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002
150.	Reinstatement of Enrolment of Certain Deceased Legal Practitioners Act 32 of 2002
151.	Institution of Legal Proceedings against certain Organs of State Act 40 of 2002

Number	Name of Act, number and year
152.	Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (partly)
153.	Prevention and Combating of Corrupt Activities Act 12 of 2004
154.	Citation of Constitutional Laws Act 5 of 2005
155.	Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005
156.	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
157.	South African Judicial Education Institute Act 14 of 2008
158.	Judicial Service Commission Amendment Act 20 of 2008
159.	Jurisdiction of Regional Courts Amendment Act 31 of 2008

ANNEXURE B**JUSTICE LAWS REPEAL AND AMENDMENT BILL****GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

To repeal the Natal Advocates and Attorneys Preservation of Rights Act, 1939, the Black High Court Abolition Act, 1954, the Riotous Assemblies Act, 1956, the Riotous Assemblies Amendment Act, 1974, the Special Courts for Blacks Abolition Act, 1986, the Indemnity Act, 1961, the Suretyship Amendment Act, 1971, the Indemnity Act, 1977, the Magistrates' Courts Amendment Act, 1993; to amend certain laws so as to substitute or repeal obsolete or discriminatory provisions; and to provide for matters connected therewith.

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

1 Repeal of laws

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

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

2 Short title and commencement

This Act shall be called the Justice Laws Repeal and Amendment Act, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule 1

Number and year of law	Short title	Extent of repeal
Act 27 of 1939	Natal Advocates and Attorneys Preservation of Rights Act, 1939	The whole
Act 13 of 1954	Black High Court Abolition Act, 1954	The whole
Act 17 of 1956	Riotous Assemblies Act, 1956	The whole
Act 30 of 1974	Riotous Assemblies Amendment Act, 1974	The whole
Act 34 of 1986	Special Courts for Blacks Abolition Act, 1986	The whole
Act 61 of 1961	Indemnity Act, 1961	The whole

Act 57 of 1971	Suretyship Amendment Act, 1971	The whole
Act 13 of 1977	Indemnity Act, 1977	The whole
Act 120 of 1993	Magistrates' Courts Amendment Act, 1993	The whole

Schedule 2

Number and year of law	Short title	Extent of repeal or amendment
Act 32 of 1944	Magistrates' Courts Act, 1944	<p>(a) Amendment of section 1-</p> <p>(i) by the substitution for the definition of "Minister" of the following definition:</p> <p>"'Minister' means the Minister of Justice <u>and Constitutional Development</u>;"</p> <p>(ii) by the substitution for the definition of "practitioner" of the following definition:</p> <p>"'practitioner' means an advocate, an attorney, [an articulated clerk] <u>a candidate attorney</u> such as is referred to in section 21 or an agent such as is referred to in section 22;" and</p> <p>(iii) by the repeal of the definition of "province", "Republic" and</p>

		<p>"territory".</p> <p>(b) Amendment of section 4 by the substitution for subsection (4) of the following subsection:</p> <p>"(4) Any process issued out of any court may be served or executed by the [messenger] <u>sheriff</u> of the court appointed for the area within which such process is to be served or executed."</p> <p>(c) Amendment of section 6 by the substitution for subsection (1) of the following subsection:</p> <p>"(1) [Either] <u>Any</u> of the official languages may be used at any stage of the proceedings in any court and the evidence shall be recorded in the language so used."</p> <p>(d) Amendment of section 7-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) Subject to the provisions of section 7A and the rules the records of the court, other than a record with reference to which a direction has been issued under section 153 (2) or 154 (1) of</p>
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		<p>the Criminal Procedure Act, 1977, or with reference to which the provisions of section 154 (2) (a) or 154 (3) of that Act apply, shall be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of the fees prescribed from time to time by the Minister in consultation with the Minister of Finance, and for this purpose and for all other purposes the records of any magistrate's court which has at any time existed within the Republic, shall be deemed to be the records of the court of the district in which the place where such court was held is situated, and such records shall be preserved at the seat of magistracy of that district for such periods as the Director-General: Justice <u>and Constitutional Development</u> may from time to time determine: Provided that the said Director-General may order that the records of a court for any regional division shall be so preserved at such a place or places within that division as he <u>or she</u> may from time to time determine: Provided further that payment of such fees shall not be required from any person who satisfies the magistrate of the district where the records of the court are preserved, or any judicial officer designated by the said magistrate from among the members of his <u>or her</u> staff, that he desires access to the records of the court in connection with research for academic purposes"; and</p>
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		<p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The Director-General: Justice <u>and Constitutional Development</u> may order that after expiry of the periods referred to in subsection (1) the records so preserved be removed to a central place of custody or be destroyed or otherwise disposed of.”</p> <p>(e) Amendment of section 14-</p> <p>(i) by the substitution for subsection (7) of the following subsection:</p> <p>“(7) A [messenger] <u>sheriff</u> receiving any process for service or execution from a practitioner or plaintiff by whom there is due and payable to the [messenger] <u>sheriff</u> any sum of money in respect of services performed more than three months previously in the execution of any duty of his <u>or her</u> office, and which notwithstanding request has not been paid, may refer such process to the magistrate of the court out of which the process was issued with particulars of the sum due and payable by the practitioner or plaintiff; and the magistrate may, if he <u>or</u></p>
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		<p><u>she</u> is satisfied that a sum is due and payable by the practitioner or plaintiff to the [messenger] <u>sheriff</u> as aforesaid which notwithstanding request has not been paid, by writing under his or <u>her</u> hand authorize the messenger to refuse to serve or execute such process until the sum due and payable to the [messenger] <u>sheriff</u> has been paid."; and</p> <p>(ii) by the substitution for subsection (8) of the following subsection:</p> <p>"(8) A magistrate granting any such authority shall forthwith transmit a copy thereof to the practitioner or plaintiff concerned and a [messenger] <u>sheriff</u> receiving any such authority shall forthwith return to the practitioner or plaintiff the process to which such authority refers with an intimation of his or <u>her</u> refusal to serve or execute the same and of the grounds for such refusal."</p> <p>(f) Amendment of section 15 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>"(b) The fees payable in respect of or in connection with any such service to a messenger shall in any such case be chargeable but shall be paid into the [Consolidated Revenue</p>
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		<p>Fund] <u>National Revenue Fund.</u>"</p> <p>(g) Amendment of section 20 by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">"20 Advocates and attorneys An advocate or attorney of any division of the [Supreme Court] High Court may appear in any proceeding in any court."</p> <p>(h) Amendment of section 22-</p> <p style="padding-left: 40px;">(i) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 80px;">"(2) The [Supreme Court] High Court shall possess in respect of any such agent the same powers as it possesses in respect of attorneys of the [Supreme Court] High Court."; and</p> <p style="padding-left: 40px;">(ii) by the substitution for subsection (3) of the following subsection:</p> <p style="padding-left: 80px;">"(3) The law society of any Province may bring to the notice of the [Supreme Court] High Court any facts regarding the conduct of any such agent which, in the opinion of the said</p>
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		<p>Society, ought to be brought to the notice of the [Supreme Court] <u>High Court</u>, in the same manner as if such agent were an attorney of the [Supreme Court] <u>High Court</u>.”</p> <p>(i) Amendment of section 50-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Any action in which the amount of the claim exceeds the amount determined by the Minister from time to time by notice in the Gazette, exclusive of interest and costs, may, upon application to the court by the defendant, or if there is more than one defendant, by any defendant, be removed to the [provincial or local division] <u>High Court</u> having jurisdiction where the court is held, subject to the following provisions-</p> <p>(a) notice of intention to make such application shall be given to the plaintiff, and to other defendants (if any) before the date on which the action is set down for hearing;</p> <p>(b) the notice shall state that the applicant objects to the action being tried by the court or any magistrate’s court;</p> <p>(c) the applicant shall give such security as the court may determine and approve, for payment of the amount</p>
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		<p>claimed and such further amount to be determined by the court not exceeding the amount determined by the Minister from time to time by notice in the Gazette, for costs already incurred in the action and which may be incurred in the said [provincial or local division] <u>High Court</u>.</p> <p>Upon compliance by the applicant with those provisions, all proceedings in the action in the court shall be stayed, and the action and all proceedings therein, shall, if the plaintiff so requires, be as to the defendant or defendants, forthwith removed from the court into the [provincial or local division] <u>High Court</u> aforesaid having jurisdiction. Upon the removal, the summons in the court shall, as to the defendant or defendants, stand as the summons in the division to which the action is removed, the return date thereof being the date of the order of removal in an action other than one founded on a liquid document, and, in an action founded on a liquid document, being such convenient day on which the said division sits for the hearing of provisional sentence cases, as the court may order: Provided that the plaintiff in the action may, instead of requiring the action to be so removed, issue a fresh summons against the defendant or defendants in any competent court and the costs already incurred by the parties to the action shall be costs in the cause."; and</p>
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(ii) by the substitution for subsection (2) of the following subsection:

“(2) If the plaintiff is successful in an action so removed to a **[provincial or local division]** High Court, he or she may be awarded costs as between attorney and client.”

(j) Amendment of section 52 by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his reasonable expenses, calculated in accordance with the tariff prescribed under section 51bis, have been paid or offered to him, impose upon the said person a fine **[not exceeding**

		<p>R300] <u>calculated according to the ratio determined for a period of three months' imprisonment in terms of the Adjustment of Fines Act, 1991</u>, and in default of payment, imprisonment for a period not exceeding three months, whether or not such person is otherwise subject to the jurisdiction of the court."</p> <p>(k) Amendment of section 60 by subsection (2) of the following subsection:</p> <p>"(2) Any person who contravenes any provision of subsection (1), shall be guilty of an offence and on conviction be liable to a fine [not exceeding R4 000] <u>calculated according to the ratio determined for a period of 12 months' imprisonment in terms of the Adjustment of Fines Act, 1991</u>, or, in default of payment, to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment."</p> <p>(l) Amendment of section 65M by the substitution for that section of the following section:</p> <p>"65M Enforcement of certain judgments of [Supreme Court] <u>High Court</u></p> <p>If a judgment for the payment of any amount of money has been given by a division of the [Supreme Court of South</p>
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Africa] High Court, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of section 65A (1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his or her attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate.”

(m) Amendment of section 74S by the substitution for subsection (2) of the following subsection:

“(2) The provisions of the Criminal Procedure Act, **[1955 (Act 56 of 1955)]** 51 of 1977, with regard to periodical imprisonment shall mutatis mutandis apply to periodical

		<p>imprisonment imposed in terms of subsection (1)."</p> <p>(n) Amendment of section 74W by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">"74W Failure of administrator to carry out certain duty Any administrator who fails to carry out the duty assigned to him <u>or her</u> by section 74J (7) shall be guilty of an offence and on conviction liable to a fine [not exceeding R500] <u>calculated according to the ratio determined for a period of six months' imprisonment in terms of the Adjustment of Fines Act, 1991</u> or in default of payment to imprisonment for a period not exceeding six months."</p> <p>(o) Amendment of section 75bis by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">"75bis Review of conditions of sale of immovable property to be sold in execution of a Supreme Court judgment Notwithstanding anything to the contrary in any law contained, the court may, on the application of any interested party, review and confirm, modify or settle the conditions of sale in respect of any immovable property to be sold in execution of any judgment</p>
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of any division of the [**Supreme Court of South Africa**] High Court."

(p) Amendment of section 106A by the substitution for that section of the following section:

"106A Offence by garnishee

Any garnishee who, by reason of an emoluments attachment order having been served on him in respect of the emoluments of a judgment debtor not occupying a position of trust in which he handles or has at his disposal moneys, securities or other articles of value, dismisses or otherwise terminates the service of such judgment debtor, shall be guilty of an offence and on conviction liable to a fine [**not exceeding R300**] calculated according to the ratio determined for a period of three months' imprisonment in terms of the Adjustment of Fines Act, 1991 or, in default of payment, to imprisonment for a period not exceeding three months."

(q) Amendment of section 106B by the substitution for that section of the following section:

"106B Offence by employer

		<p>Any employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee's emoluments, fails or neglects to do so within a reasonable time, or who wilfully or negligently furnishes incorrect relevant particulars, shall be guilty of an offence and on conviction liable to a fine [not exceeding R300] <u>calculated according to the ratio determined for a period of three months' imprisonment in terms of the Adjustment of Fines Act, 1991</u> or, in default of payment, to imprisonment for a period not exceeding three months."</p> <p>(r) Amendment of section 107 by the substitution for the words following subsection (4) of the following words:</p> <p>"shall be guilty of an offence and liable upon conviction to a fine [not exceeding R500] <u>calculated according to the ratio determined for a period of six months' imprisonment in terms of the Adjustment of Fines Act, 1991</u> or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine."</p> <p>(s) Amendment of section 108 by the substitution for subsection (1) of the following subsection:</p>
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“(1) If any person, whether in custody or not, wilfully insults a judicial officer during his sitting or a clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall (in addition to his liability to being removed and detained as in subsection (3) of section 5 provided) be liable to be sentenced summarily or upon summons to a fine **[not exceeding R2 000]** calculated according to the ratio determined for a period of six months’ imprisonment in terms of the Adjustment of Fines Act, 1991 or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine. In this subsection the word 'court' includes a preparatory examination held under the law relating to criminal procedure.”

(t) Amendment of section 114 by the repeal of subsection (3).

Act 8 of 1947	Commissions Act, 1947	<p>(a) The substitution for the long title of the following long title:</p> <p style="text-align: center;">“To make provision for conferring certain powers on commissions appointed by the [Governor-General] <u>President</u> for the purpose of investigating matters of public concern, and to provide for matters incidental thereto.”</p> <p>(b) Amendment of section 1-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p style="text-align: center;">“1 Application of this Act with reference to commissions appointed by the [Governor-General] <u>President</u></p> <p>(1) Whenever the [Governor-General] <u>President</u> has, before or after the commencement of this Act, appointed a commission (hereinafter referred to as a “commission’) for the purpose of investigating a matter of public concern, he <u>or she</u> may by proclamation in the Gazette-“;</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any regulation made under paragraph (b) of subsection (1)</p>
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		<p>may provide for penalties for any contravention thereof or failure to comply therewith, by way of-</p> <p>(a) in the case of a regulation referred to in subparagraph (i), (ii) or (iv) of the said paragraph, a fine not exceeding two hundred rand, <u>or such higher amount as is determined from time to time by the Minister of Justice and Constitutional Development as contemplated in section 1(1)(a) of the Adjustment of Fines Act, 1991 (Act 101 of 1991)</u>, or imprisonment for a period not exceeding six months;</p> <p>(b) in the case of a regulation referred to in subparagraph (iii) of the said paragraph, a fine not exceeding one thousand rand, <u>or such higher amount as is determined from time to time by the Minister of Justice as contemplated in section 1(1)(a) of the Adjustment of Fines Act, 1991,</u> or imprisonment for a period not exceeding one year.</p> <p>(c) Amendment of section 2 by the substitution for that section of the following section:</p> <p>“2 Commission’s sittings</p> <p>A commission may sit at any place in the [Union] <u>Republic</u> for the purpose of hearing evidence or addresses or of</p>
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deliberating”.

(d) Amendment of section 3 by the substitution for subsection (1) of the following subsection:

“(1) For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall in the **[Union] Republic** have the powers which a **[Provincial Division of the Supreme Court of South Africa] High Court** has within its province to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.”

(e) Amendment of section 5 by the substitution for that section of the following section:

“5 Hindering or obstructing a commission
Any person who wilfully interrupts the proceedings of a commission or who wilfully hinders or obstructs a commission in the performance of its functions shall be guilty of an offence and liable on conviction to a fine **[not exceeding fifty pounds]** calculated according to the ratio determined for a period of six months’ imprisonment in terms of the Adjustment of Fines Act,

1991, or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.”

(f) Amendment of section 6 by the substitution for that section of the following section:

“6 Offences by witnesses

(1) Any person summoned to attend and give evidence or to produce any book, document or object before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he is excused by the chairman of the commission from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he has been required by the chairman of the commission to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or object in his possession or custody or under his control, which he has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine **[not exceeding fifty pounds]** calculated according to the ratio determined for a period of six months’

		<p><u>imprisonment in terms of the Adjustment of Fines Act, 1991, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.</u></p> <p>(2) Any person who after having been sworn or having made affirmation, gives false evidence before a commission on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to a fine [not exceeding one hundred pounds] <u>calculated according to the ratio determined for a period of six months' imprisonment in terms of the Adjustment of Fines Act, 1991, or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment."</u></p> <p>(g) Amendment of Act 8 of 1947-</p> <p>(i) by the substitution for the expression "he" of the expression "he or she" wherever it occurs in sections 1(1); 1(1)(a); 1(1)(b)(iii) and (iv); 6(1);</p> <p>(ii) by the substitution for the expression "him" of the expression "him or her" wherever it occurs in section 6(1);</p> <p>(iii) by the substitution for the expression "his" of the expression "his or her" in wherever it occurs in sections 4 and 6(1); and</p>
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		<p>(iv) by the substitution for the expression "chairman" of the expression "chairperson" wherever it occurs in sections 3(2) and (3); 4; and 6(1).</p>
Act 7 of 1953	Wills Act, 1953	<p>(a) Amendment of section 1 –</p> <p>(i) by the substitutions for the definition of "court" of the following definition:</p> <p>"'Court' means a [provincial or local division of the Supreme Court of South Africa] <u>a division of the High Court</u> or any judge thereof; and</p> <p>(ii) by the substitution for the definition of "Master" of the following definition:</p> <p>"'Master' means a Master, Deputy Master or Assistant Master of the [Supreme Court] <u>High Court</u> appointed under section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965)";</p>

		<p>(b) Amendment of section 4A by the substitution for paragraph (b) of subsection (2) of the following paragraph:</p> <p style="padding-left: 40px;">“(b) a person or his spouse <u>or spouses</u> who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse <u>or</u> each of his <u>spouses</u> receives, shall not exceed the value of the share to which that person or his spouse <u>or each of his spouses</u> would have been entitled in terms of the law relating to intestate succession.”</p> <p>(c) Amendment of Act 7 of 1953 by the substitution for the words “he” and “his” wherever they occur in sections 1, 2A-(D), 3bis, 4 and 5 of the words “he or she” or “his or her”.</p>
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Act 62 of 1955	General Law Amendment Act, 1955	<p>Amendment of section 35 by the substitution for that section of the following section:</p> <p>“35 Interim interdicts against the State</p> <p>Notwithstanding anything to the contrary contained in any law, no court shall issue any rule nisi operating as an interim interdict against the Government of the [Union] <u>Republic of South Africa</u> including [the South African Railways and Harbours Administration or] the Administration of any Province, or any Minister, Premier or other officer of the said Government or Administration in his <u>or her</u> capacity as such, unless notice of the intention to apply for such a rule, accompanied by copies of the petition and of the affidavits which are intended to be used in support of the application, was served upon the said Government, Administration, Minister, Premier or officer at least seventy-two hours, or such lesser period as the court may in all the circumstances of the case consider reasonable, before the time mentioned in the notice for the hearing of the application.”</p>
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Act 3 of 1956	Vexatious Proceedings Act, 1956	<p>(a) Amendment of section 1 by the substitution for the definition of "court" of the following definition:</p> <p style="padding-left: 40px;">"court" means any [provincial or local division of the Supreme Court of South Africa] <u>division of the High Court</u>;</p> <p>(b) Amendment of section 2-</p> <p style="padding-left: 40px;">(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">"(a) If, on an application made by the State Attorney or any person acting under his <u>or her</u> written authority, the court is satisfied that any person has persistently and without any reasonable ground instituted legal proceedings in any court or in any [inferior] <u>lower</u> court, whether against the same person or against different persons, the court may, after hearing the person or giving him <u>or her</u> an opportunity of being heard, order that no legal proceedings shall be instituted by him <u>or her</u> against any person in any court or any [inferior] <u>lower</u> court without the leave of that court, or any judge thereof, or that [inferior] <u>lower</u> court, as the case may be, and such leave shall not be granted unless the court or judge or the [inferior] <u>lower</u> court, as the case may be, is satisfied that the proceedings are</p>
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		<p>not an abuse of the process of the court and that there is prima facie ground for the proceedings.”;</p> <p>(ii) by the substitution for paragraph(b) of subsection (1) of the following paragraph:</p> <p>“(b) If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him <u>or her</u> is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any [inferior] <u>lower</u> court, whether against the same person or against different persons, the court may, after hearing that person or giving him <u>or her</u> an opportunity of being heard, order that no legal proceedings shall be instituted by him <u>or her</u> against any person in any court or any [inferior] <u>lower</u> court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.”;</p>
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		<p>(iii) by the substitution of subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">“(2) Any proceedings under subsection (1) shall be deemed to be civil proceedings [within the meaning of paragraph (c) of section three of the Appellate Division Further Jurisdiction Act, 1911 (Act 1 of 1911)].”; and</p> <p>(iv) by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">“(4) Any person against whom an order has been made under subsection (1) who institutes any legal proceedings against any person in any court or any [inferior] lower court without the leave of that court or a judge thereof or that [inferior] lower court, shall be guilty of contempt of court and be liable upon conviction to a fine [not exceeding one hundred pounds] <u>calculated according to the ratio determined for a period of six months’ imprisonment in terms of the Adjustment of Fines Act, 1991 (Act 101 of 1991)</u>, or to imprisonment for a period not exceeding six months.”</p>
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Act 34 of 1956	Apportionment of Damages Act, 34 of 1956	<p>(a) Amendment of section 3 by the substitution for that section of the following:</p> <p style="padding-left: 40px;">“3 Application of provisions of section 2 to liability imposed in terms of [Act 29 of 1942] <u>Act 56 of 1996</u></p> <p style="padding-left: 40px;">The provisions of section two shall apply also in relation to any liability imposed in terms of the [Motor Vehicle Accidents Act, 1986 (Act 84 of 1986)] <u>Road Accident Fund Act, 1996</u>, on the State or any person in respect of loss or damage caused by or arising out of the driving of a motor vehicle.”</p> <p>(b) Amendment of Ac 34 of 1956-</p> <p style="padding-left: 40px;">(i) by the substitution for the expression “he” of the expression “he or she” in section 2(1A); 2(10); and 2(11)(a);</p> <p style="padding-left: 40px;">(ii) by the substitution for the expression “him” of the expression “him or her” in section 2(8)(b) and 2(10); and</p> <p style="padding-left: 40px;">(iii) by the substitution for the expression “his” of the expression “his or her” in section 2(9)(b).</p>
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Act 50 of 1956	General Law Amendment Act, 1956	<p>Amendment of Act 50 of 1956-</p> <p>(i) by the substitution for the expression "he" of the expression "he or she" wherever it occurs in section 1;</p> <p>(ii) by the substitution for the expression "his" of the expression "his or her" wherever it occurs in sections 1 and 5; and</p> <p>(iii) by the substitution for the expression "him" of the expression "him or her" wherever it occurs in sections 1 and 5.</p>
Act 56 of 1957	State Attorney Act, 1957	<p>(a) Amendment of section 2 by the substitution for paragraph (a) of subsection(1) of the following paragraph:</p> <p>"(a) appoint as State Attorney a person admitted and entitled to practise as an attorney in any division of the [Supreme Court of South Africa] <u>high court</u>, who shall be in charge of the office of the State Attorney established under this Act."</p> <p>(b) Amendment of section 3 by the substitution for subsection (2) of the following subsection:</p> <p>"(2) There may also be performed at the State Attorney's office or at any of its branches like functions for or on behalf of the administration of any province, and [the South African</p>

		<p>Railways and Harbours Administration] <u>Transnet</u>, subject to such terms and conditions as may be arranged between the Minister of Justice <u>and Constitutional Development</u> and the Administration concerned.”</p> <p>(c) Amendment of section 4 by the substitution for that section of the following section:</p> <p>“4 Rights, privileges and duties of persons performing functions under Act</p> <p>The rights, privileges and duties of an attorney, notary or conveyancer lawfully performing functions described in section 3, shall, except as is specially provided by this Act, include any of the rights, privileges and duties respectively possessed by or imposed on an attorney, notary or conveyancer practising in the division of the [Supreme Court of South Africa] <u>high court</u> where such functions are being performed.”</p> <p>(d) Amendment of section 5 by the substitution for that section of the following section:</p> <p>“5 Functions of notaries and conveyancers to be performed by notaries and conveyancers only</p>
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		<p>The said functions, in so far as they are functions which by law, custom or practice can be performed by an attorney, a notary or a conveyancer only, shall be performed by an attorney, a notary or a conveyancer (as the case may be) admitted and entitled to practise in the division of the [Supreme Court of South Africa] <u>high court</u> where such functions are being performed.</p> <p>(e) Amendment of section 6 by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">“(4) Any duty, fees and costs recovered shall be paid into the [Consolidated Revenue Fund] <u>National Revenue Fund</u>.”</p> <p>(f) Amendment of section 8 by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">“(2) Any allowances recovered shall be paid into the [Consolidated Revenue Fund] <u>National Revenue Fund</u>, and any such correspondent shall be entitled to accept such employment and make such allowances.”</p> <p>(g) Amendment of Act 56 of 1957-</p>
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		<p>(i) by the substitution for the expression "he" of the expression "he or she" wherever it occurs in sections 2(5); 6(1); 7 and 8;</p> <p>(ii) by the substitution for the expression "his" of the expression "his or her" wherever it occurs in sections 2(5); 3(1) and (3); 7; 8(1); 9(d)(i); and 9(d)(ii);</p> <p>(iii) by the substitution for the expression "him" of the expression "him or her" wherever it occurs in sections 2(5); 7; and 8(3); and</p> <p>(iv) by the substitution for the expression "Minister of Justice" of the expression "Minister of Justice and Constitutional Development" wherever it occurs in sections 1(1); 2(1); 2(4); 3(2); 3(3); and 9.</p>
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Act 68 of 1957	General Law Amendment Act, 1957	<p>Amendment of section 5 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine [not exceeding fifty pounds] <u>calculated according to the ratio determined for a period of three months’ imprisonment in terms of the Adjustment of Fines Act, 1991 (Act 101 of 19991),</u> or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.”</p>
Act 58 of 1959	Inquests Act, 1959	<p>(a) Amendment of section 1-</p> <p>(i) by the substitution for the definition of “judicial officer” of the following definition:</p> <p>“‘judicial officer’ means a judge of the [Supreme Court of South Africa] <u>High Court</u>, a regional magistrate or a magistrate”;</p> <p>(ii) by the substitution for the definition of “Minister” of the following definition:</p> <p>“‘Minister’ means the Minister of Justice <u>and Constitutional Development</u>”; and</p>

		<p>(iii) by the substitution for the definition of “policeman” of the following definition:</p> <p>“[policeman] <u>‘police official’ [includes any member of a force established under any law for the carrying out of police powers, duties and functions] means a member of the police service contemplated in section 205 of the Constitution.</u>”</p> <p>(b) Amendment of section 2 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine [not exceeding R1 000] <u>as determined from time to time by the Minister of Justice and Constitutional Development as contemplated in section 1(1)(a) of the Adjustment of Fines Act, 1991 (Act 101 of 1991).</u>”</p> <p>(c) Amendment of section 3 by the substitution for subsection (6) of the following subsection:</p>
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		<p>“(6) Any person who contravenes the provisions of subsection (5), or who hinders or obstructs a medical practitioner, a [policeman] <u>police official</u> or any person acting on the instructions of a medical practitioner or [policeman] <u>police official</u> in carrying out his powers or duties under this section, shall be guilty of an offence and liable on conviction to a fine [not exceeding R2 000] <u>calculated according to the ratio determined for a period of six months’ imprisonment in terms of the Adjustment of Fines Act, 1991</u>, or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.”</p> <p>(d) Amendment of section 6 by the substitution for paragraph (d) of the following paragraph:</p> <p>“(d) where the Minister has so requested a judge president of a [provincial division of the Supreme Court] <u>High Court</u>, by any judge of the [Supreme Court of South Africa] <u>High Court</u> designated by the judge president concerned, and notwithstanding anything to the contrary in any law contained, such inquest may be held at any place from time to time determined by such judge.”</p>
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		<p>(e) Amendment of section 10 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Any person who fails to comply with a direction under subsection (2) or (3) shall be guilty of an offence and liable on conviction to a fine [not exceeding R4 000] <u>calculated according to the ratio determined for a period of twelve months’ imprisonment in terms of the Adjustment of Fines Act, 1991,</u> or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”</p> <p>(f) Amendment of section 13 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Any person who in any statement in writing under oath or affirmation contemplated in this section makes a false statement knowing it to be false or without reasonable grounds [(the onus of proof of which shall be on him)] for believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for perjury.”</p> <p>(g) Amendment of section 17A by the substitution for subsection (1) of the following subsection:</p>
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		<p>“17A Re-opening of inquest</p> <p>(1) The Minister may, on the recommendation of the [attorney-general] <u>National Director of Public Prosecutions</u> concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a [provincial division of the Supreme Court] <u>division of the High Court</u> to designate any judge of the [Supreme Court of South Africa] <u>High Court</u> to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.”</p> <p>(h) Amendment of section 18-</p> <p>(i) by the substitution of subsection (1) of the following subsection:</p> <p>“(1) Whenever a regional magistrate or magistrate has in the case of an inquest referred to in subsection (1) of section 16 recorded a finding in regard to the matters mentioned in that subsection and in paragraphs (a) and (c) of subsection (2) of that section, such regional magistrate or magistrate shall submit the record of such inquest, together with any comment which he may wish to make, to [any provincial or local division of the Supreme Court of South Africa] <u>a division of the High Court</u> having jurisdiction in the area wherein the inquest was held, for</p>
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		<p>review by the court or a judge thereof.”; and</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2A) Whenever a judicial officer who is a judge of the [Supreme Court of South Africa] High Court has in the case of an inquest referred to in section 16 (1) recorded a finding in regard to the matters mentioned in that subsection and in section 16 (2) (a) and (c), such finding shall have the same effect as if it were an order issued by a [provincial or local division of the Supreme Court of South Africa] High Court having jurisdiction in the area wherein the inquest was held, that the death of the deceased concerned is presumed in accordance with that finding.</p> <p>(i) Amendment of section 20-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Any person who wilfully insults a judicial officer or assessor during his sitting at an inquest, or a clerk or other officer of the</p>
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		<p>court present at the inquest, or wilfully interrupts the proceedings of the inquest or otherwise misbehaves himself in the place where the inquest is being held, shall, in addition to the judicial officer having him removed and detained until after the termination of the sitting, be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.”;</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) In any case in which a magistrate commits or fines any person under subsection (1), the magistrate shall without delay transmit to the registrar of the [provincial or local division of the Supreme Court of South Africa] <u>High Court</u> having jurisdiction in the area wherein the inquest was held, for the consideration and review of a judge in chambers, a statement, certified to be true and correct, of the grounds and reasons for his <u>or her</u> proceedings.”; and</p> <p>(iii) by the substitution for subsection (4) of the following</p>
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		<p>subsection:</p> <p>“(4) Any person who prejudices, influences or anticipates the proceedings or findings at an inquest shall be guilty of an offence and liable on conviction to a fine [not exceeding R2 000] <u>calculated according to the ratio determined for a period of six months' imprisonment in terms of the Adjustment of Fines Act, 1991,</u> or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”</p> <p>(j) Amendment of section 23 by the substitution for subsection (1) of the following subsection:</p> <p>“23 Savings</p> <p>(1) Nothing in this Act contained shall be construed as affecting the provisions of [section eighty-six of the Correctional Services Act, 1959 or of] any other law prescribing an inquiry into an accident attended with loss of human life.”</p> <p>(k) Amendment of Act 58 of 1959-</p> <p>(i) by the substitution for the expression “policeman” of the expression “police official” wherever it occurs in section 2(1), 3(1), 3(5)(a), 3(6) and 4;</p>
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		<p>(ii) by the substitution for the expression "attorney-general" of the expression "Director of Public Prosecutions" wherever it occurs in section 3(4), 6A(1), 8(1), 17(1)(c), 17(2), 17A(1) and 19(1); and</p> <p>(iii) by the substitution for the expression "he", "his", "him" and "himself" for the expression "he or she", "him or her", "his or her" and "himself or herself" , as the case may be, wherever they occur in section 2(1), 3(2), 5 and (6), 4, 5(1) and (2), 6(c), 6A(2) and (3), 8(1), 9(1)-(4), 11(1) and (2), 13(2) and (3), 14, 16(3), 17(1)(a) and (b), 18(1), 20(1), and 21(2).</p>
Act 16 of 1963	Justices of the Peace and Commissioners of Oath Act, 1963	<p>(a) Amendment of section 2-</p> <p>(i) by the substitution for subsection (1) of the following</p> <p>"(1) The Minister of Justice <u>and Constitutional Development</u> (hereinafter referred to as the Minister) or any officer of the Department of Justice <u>and Constitutional Development</u> with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may, subject to the provisions of subsection (2), appoint for any magisterial district so many justices of the peace as the Minister or the delegated officer may deem fit.";</p>

		<p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A member of a body referred to in section [2 of the Electoral Act, 1993 (Act 202 of 1993)] <u>3 of the Electoral Act, 1998 (Act 73 of 1998)</u>, shall not hold the office of justice of the peace.”; and</p> <p>(iii) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Any person who has been nominated as a candidate for the National Assembly, the [Senate] <u>National Council of Provinces</u> or a provincial legislature contemplated in the Electoral Act, [1993] <u>1998</u> shall not, while he <u>or she</u> is thus nominated, exercise or carry out any of the powers or duties attaching to the office of justice of the peace and referred to in section 3.</p> <p>(b) Amendment of section 5 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Minister or any officer of the Department of Justice <u>and Constitutional Development</u> with the rank of director, or an</p>
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		<p>equivalent or higher rank, delegated thereto in writing by the Minister may appoint any person as a commissioner of oaths for any area fixed by the Minister or the delegated officer."</p> <p>(c) Amendment of section 8 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>"(b) Any person appointed as a commissioner of [the Supreme Court of South Africa] a <u>High Court</u> shall for the purpose of the exercise of his powers or the performance of his duties as such commissioner have, at any place outside the Republic, the powers conferred by section seven upon a commissioner of oaths."</p> <p>(d) Amendment of Act 16 of 1963 by the substitution for the words "he", "his" and "him" wherever they occur in section 2(4), 3(a) and (c), 7, 8(1)(a) and (b) and 8(2), of the words "he or she", "his or her" or "him or her", as the case may be.</p>
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Act 80 of 1963	Reciprocal Enforcement of Maintenance Orders Act, 1963	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 4 by the substitution for paragraph (a) of subsection (4) of the following paragraph:</p> <p style="padding-left: 40px;">"(a) Any person aggrieved by an order made under this section may, within such period and in such manner as may be prescribed, appeal against such order to the [provincial or local division of the Supreme Court of South Africa] <u>division of the High Court</u> having jurisdiction."</p> <p>(c) Amendment of Act 80 of 1963 by the substitution for the words "his" wherever it occurs in section 3 and 4 of the words "his or her".</p>
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Act 25 of 1965	Civil Proceedings Evidence Act, 1965	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 9 by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">"9 Incompetency [from insanity or intoxication] <u>due to state of mind</u> No person appearing or proved or to be afflicted with [idiocy, lunacy or insanity] <u>mental illness</u>, or to be labouring under any imbecility of mind arising from intoxication or [otherwise] drugs, [whereby he is] <u>and who is thereby</u> deprived of the proper use of reason, shall be competent to give evidence while so afflicted or disabled."</p> <p>(c) Amendment of section 10 by the substitution for that section of the following:</p> <p style="padding-left: 40px;">"10 Husband and wife <u>or civil union partners</u> not compellable to disclose communications between them</p>
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		<p>(1) No husband shall be compelled to disclose any communication made to him by his wife during the marriage and no wife shall be compelled to disclose any communication made to her by her husband during the marriage.</p> <p><u>(2) no civil union partner as defined in the Civil Union Act, 2006 (Act 17 of 2006) shall be compelled to disclose any information made to him or her by his or her civil union partner during the subsistence of a civil union.</u></p> <p><u>(3) Subsection (1) and (2) shall also apply to a communication made during the subsistence of a marriage, civil union or a putative marriage, as the case may be, which has been dissolved or annulled by a competent court."</u></p> <p>(d) Amendment of section 10A by the substitution for that section of the following section:</p> <p>"10A Status of certain marriages</p> <p>Any [customary marriage or customary union, concluded under the indigenous law and custom of any of the indigenous peoples of the Republic of South Africa or any] marriage concluded under any system of religious law, shall be regarded as a valid marriage for the purposes of the law of evidence."</p>
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(e) Amendment of section 12 by the substitution for that section of the following section:

“12 No witness compellable to testify if husband or wife or civil union partner is not compellable

No person shall be compelled to answer any question or to give any evidence which the husband [**or**], wife or a civil union partner of such person , if under examination as a witness, could not be compelled to answer or give.”

(f) Amendment of section 23 by the substitution for subsection (1) of the following:

“(1) Any person who will, under the circumstances alleged by him or her to exist, become entitled, upon the happening of any future event, to any interest in any asset the right or claim to which cannot be brought to trial by him or her before the happening of such event, may, after notice to every other person who may have an interest in such asset, apply to any division of the **[Supreme Court of South Africa]** High Court having jurisdiction, for an order allowing any evidence which may be material for establishing such right or claim, to be taken

		<p>before a commission appointed by the said division, and the said division may refuse the application or grant it on such conditions as it may think fit to impose.”</p> <p>(g) Amendment of section 25 by the substitution for the definition of “court” in subsection (3) of the following definition:</p> <p>“‘court’ means any division of the [Supreme Court of South Africa] <u>High Court</u> or any judge thereof.”</p> <p>(h) Amendment of section 27 by the substitution for the definition of “bank” of the following:</p> <p>“27 Definition of ‘bank’ In this Part ‘bank’ means a ‘banking institution’ as defined in the [Banks Act, 1965] <u>Banks Act, 1990 (Act 94 of 1990)</u>, and includes the Land and Agricultural Bank of South Africa, and a building society.”</p> <p>(i) Amendment of Act 25 of 1965 by the substitution for the words “he”, “his”, “him” and “himself” wherever they occur in section 7; 10; 14; 19; 20; 22; 23; 24; 25; 34; 39; and 41, of the words “he or she”, “him or her”, “his or her” and “himself or herself”, as the case may be.</p>
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Act 42 of 1965	Arbitration Act 42 of 1965	<p>(a) Amendment of section 1 by the substitution for the definition of "court" of the following definition:</p> <p style="padding-left: 40px;">"court" means [any court of a provincial or local division of the Supreme Court of South Africa] <u>a division of the high court</u> having jurisdiction."</p> <p>(b) Amendment of section 6 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) If any party to an arbitration agreement commences any legal proceedings in any court [(including any inferior court)] <u>(including lower court)</u> against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance but before delivering any pleadings or taking any other steps in the proceedings, apply to that court for a stay of such proceedings."</p> <p>(c) Amendment of section 16 by the repeal of subsection (3).</p> <p>(d) Amendment of Act 42 of 1965-</p>
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		<p>(i) by the substitution for the expression "his" of the expression "his or her" in sections 4(2); 10(1) and (3); 11(2); 12(1)(e); 12(3); 12(4); 12(6); 13(3); 14(1)(a)(ii) and (iii); 19(b), 22(1)(d); 32(4); 33(1)(a), 34(4), 35(6); 37(c);</p> <p>(ii) by the substitution for the expression "him" of the expression "him or her" in sections 4 (3); 5(3); 10(1); 10(2); 10(3); 11(2); 12(1)(b); 12(1)(e); 12(1)(f); 12(6); 13(2)(a); 19(a); 19(b); 22(1)(d); 22(1)(e); 22(1)(f); 33(1)(a); 34(1); 34(4) ; and</p> <p>(iii) by the substitution for the expression "himself" of the expression "himself or herself" in sections 12(6); 22(1)(f); and 33(1)(a).</p>
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Act 66 of 1965	Administration of Estates Act, 1965	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 2 by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">"(4) The Minister may delegate any power conferred on him or her by this section, to the Director-General: <u>Justice and Constitutional Development or a deputy director-general</u> in the Department of Justice <u>and Constitutional Development.</u>"</p> <p>(c) Amendment of section 4 by the substitution for subparagraph (ii) of subsection 2(b) of the following subparagraph:</p> <p style="padding-left: 40px;">"(ii) in the case of any mentally ill person who under the [Mental Health Act, 1973 (Act 18 of 1973)] <u>Mental Health Care Act, 2002 (Act 17 of 2002),</u> has been received or is detained in any place, jurisdiction shall lie with the Master who, immediately prior to such reception or detention, had jurisdiction in respect of his or her property under paragraph (a)</p>
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		<p>or (b)."</p> <p>(d) Amendment of section 6 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) The Minister or any officer of the Department of Justice <u>and Constitutional Development</u> with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may from time to time appoint for any area specified by the Minister or the delegated officer such and so many persons as the Minister or the delegated officer thinks fit, to be appraisers for the valuation of property for the purposes of this Act, and may at any time revoke any appointments so made.”</p> <p>(e) Amendment of section 18 by the substitution for the words appearing after paragraph (f) of subsection (1) of the following words:</p> <p style="padding-left: 40px;">“appoint and grant letters of executorship to such person or persons whom he may deem fit and proper to be executor or executors of the estate of the deceased, or, if he deems it necessary or expedient, by notice published in the Gazette and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the</p>
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		<p>surviving spouse <u>or spouses</u> (if any), the heirs of the deceased and all persons having claims against the estate, to attend before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as executor or executors, a person or a specified number of persons.</p> <p>(f) Amendment of section 72-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“72 Letters of tutorship and curatorship to tutors and curators nominate and endorsement in case of assumed tutors and curators</p> <p>(1) The Master shall, subject to the provisions of subsection (3) and to any applicable provision of [section 5 of the Matrimonial Affairs Act, 1953 (Act 37 of 1953)] <u>the Children’s Act, 2005 (Act 38 of 2005)</u>, or any order of court made under any such provision or any provision of the Divorce Act, 1979, on the written application of any person.”;</p> <p>(ii) by the repeal of subparagraphs (i) and (ii) of subsection (1)(a);</p>
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and

(iii) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) who has been nominated by will or written instrument by any parent of a minor to administer as curator any property which the minor has inherited from such parent or to administer the person as a tutor.”

(g) Amendment of section 73 by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) in any case in which it would, in terms of **[the proviso to section 56 (1) of the Mental Health Act, 1973 (Act 18 of 1973)]** section 59 of the Mental Health Care Act, 2002 (Act 17 of 2002), be competent for a **[judge in chambers]** Master to appoint **[a curator, or in any case in which the Master would be competent to appoint a curator in terms of section 56A of the said Act]** an administrator to care for and administer the property of a mentally ill person or person with severe or profound intellectual disability; or.”

		<p>(h) Amendment of section 77 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“77 Security by tutors and curators (1) Every person appointed or to be appointed tutor or curator as provided in section 72(1)(d) or (2) or under section 73 or 74, shall, subject to [the proviso to section 57 (3) of the Mental Health Act, 1973 (Act 18 of 1973)] <u>section 63(1)(b)(i) and (ii) of the Mental Health Care Act, 2002 (Act 17 of 2002)</u>, before letters of tutorship or curatorship are granted or signed and sealed, or any endorsement is made, as the case may be, and at any time thereafter when called upon by the Master to do so, find security or additional security to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his <u>or her</u> functions.”</p> <p>(i) Amendment of section 87 by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">“87 Moneys in guardian’s fund to be deposits for purposes of Act 45 of 1984 The moneys in the guardian’s fund shall be deemed to be deposits for the purposes of the [Public Investment</p>
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		<p>Commissioners Act, 1984 (Act 45 of 1984)] <u>Public Investment Corporation Act, 2004 (Act 23 of 2004)</u>, and the Master may from time to time pay out of any working balance retained at his or her disposal under the said Act, any amounts due and payable out of the said fund.”</p> <p>(j) Amendment of section 104 by the substitution for paragraph (b) of the following paragraph:</p> <p>“(b) to the property of any person belonging to and serving with any visiting force as defined in section [one] 1_ of the [Defence Act, 1957 (Act 44 of 1957)] <u>Defence Act, 2002 (Act 45 of 2002)</u>, who dies within the Republic while on service with that force, unless it be shown to the satisfaction of the Court or the Master that for the proper liquidation and distribution of that property it is expedient that it be dealt with under this Act.”</p> <p>(k) Amendment of Act 66 of 1965 by the substitution for the expression “he”, “his”, “him” or “himself” , wherever these words occur in this Act, of the expression “he or she”, “his or her”, “him or her” and “himself or herself”, as the case may be.</p>
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Act 94 of 1965	Immovable Property (Removal or Modification of Restrictions) Act, 1965	<p>(a) Amendment of section 1 by the substitution for the definition of "court" of the following definition:</p> <p style="padding-left: 40px;">" 'court' means a [court of a provincial or local division of the Supreme Court of South Africa] <u>High Court</u> having jurisdiction";</p> <p>(b) Amendment of section 4 by the substitution for paragraph (c) of the following paragraph:</p> <p style="padding-left: 40px;">"(c) refer the application to the Master of the [Supreme Court] <u>High Court</u> or to some other person specially appointed by the court for a report thereon or upon some matter arising therefrom."</p> <p>(c) Amendment of section 5 by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">"Appeal</p> <p style="padding-left: 40px;">An appeal from a judgment or order of the court under this Act shall lie direct to the [Appellate Division of the Supreme Court of South Africa] <u>Supreme Court of Appeal</u> without leave first obtained."</p>
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Act 21 of 1967	Justices of the Peace and Commissioners of Oath Amendment Act, 1967	<p>Amendment of section 6 by the substitution for that section of the following section:</p> <p>"6 Justices of the Peace appointed for a ward deemed to be appointed for magisterial district in which ward is situated</p> <p>Any justice of the peace appointed or deemed to have been appointed under the provisions of the principal Act shall, as from the commencement of this Act, be deemed to have been appointed as justice of the peace for the magisterial district in which the ward for which he <u>or she</u> has been or is deemed to have been so appointed, is situated."</p>
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Act 3 of 1968	Prize Jurisdiction Act, 1968	<p>(a) Amendment of section 1 by the substitution for the definition of "division" of the following definition:</p> <p style="padding-left: 40px;">"division" means a [provincial or local division of the Supreme Court of South Africa] <u>division of the High Court.</u>"</p> <p>(b) Amendment of section 5 by the substitution for that section of the following:</p> <p style="padding-left: 40px;">"5 Rules of Court A power to make rules under [the Supreme Court Act, 1959 (Act 59 of 1959)] <u>section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985)</u>, shall be deemed to include also the power to make such rules as the [Chief Justice of South Africa] <u>Board</u> deems necessary or expedient for the adjudication of prize proceedings or the regulation of any matter relating thereto."</p>
Act 16 of 1969	Prohibition of Disguises Act, 1969	<p>Amendment of section 1-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) Any person found disguised in any manner whatsoever and whether effectively or not, in circumstances from which it may reasonably be inferred that such person has the intention of</p>

		<p>committing or inciting, encouraging or aiding any other person to commit, some offence or other, shall, unless he proves that when so found he had no such intention, be guilty of an offence and liable on conviction to a fine [not exceeding two hundred rand] <u>calculated according to the ratio determined for a period of six months' imprisonment in terms of the Adjustment of Fines Act, 1991</u> or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”;</p> <p>(ii) by the substitution for the word “he” of the words “he or she”, wherever it occurs in this section.</p>
Act 68 of 1969	Prescription Act, 1969	<p>(a) Amendment of section 3 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) the person against whom the prescription is running is a minor or is [insane] <u>a person with mental disability</u>, or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4.”</p> <p>(b) Amendment of section 13-</p> <p>(i) by the substitution for paragraph (a) of subsection (1) of the</p>

		<p>following paragraph:</p> <p>“(a) the creditor is a minor or is [insane] <u>a person with mental disability</u> or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15 (1); or”; and</p> <p>(ii) by the substitution for paragraph (g) of subsection (1) of the following paragraph:</p> <p>“(g) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or against an applicant or <u>debtor</u> under the Agricultural Credit Act, 1966 or the <u>Agricultural Debt Management Act, 2001 (Act 45 of 2001)</u>, <u>despite the repeal of these Acts.</u>”</p> <p>(c) Amendment of section 20 by the substitution for that section of the following section:</p> <p>“20 This Act not applicable where [Black law] <u>African customary law</u> applies</p>
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		<p>In so far as any right or obligation of any person against any other person is governed by [Black law] <u>African customary law</u>, the provisions of this Act shall not apply."</p> <p>(d) Amendment of Act 68 of 1969-</p> <p>(i) by the substitution for the expression "he" of the expression "he or she" wherever it occurs in sections 1, 4(2), 6,15(2);</p> <p>(ii) by the substitution for the expression "his" of the expression "his or her" wherever it occurs in sections 1, 4(2), 15(2), (3), (4) and (5); and</p> <p>(iii) by the substitution for the expression "him" of the expression "him or her" wherever it occurs in sections 3(2).</p>
Act 58 of 1971	Apportionment of Damages Amendment Act, 1971	Section 2 is hereby repealed.

Act 19 of 1973	South African Law Reform Commission Act, 1973	<p>(a) Amendment of section 3-</p> <p>(i) by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) The President shall designate one of the persons referred to in paragraph (a) (ii) as [vice-chairman] <u>vice-chairperson</u> of the Commission, and when the [chairman] <u>chairperson</u> is not available, the [vice-chairman] <u>vice-chairperson</u> shall perform the functions assigned to the [chairman] <u>chairperson</u> by or under this Act.”; and</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The President may appoint one or more additional members if he <u>or she</u> deems it necessary for the investigation of any particular matter by the Commission.”</p> <p>(b) Amendment of section 6-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Meetings of the Commission shall be held at the times and</p>
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		<p>places appointed by the [chairman] <u>chairperson</u> of the Commission.”; and</p> <p>(ii) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) If both the [chairman] <u>chairperson</u> and the [vice-chairman] <u>vice-chairperson</u> are absent from a meeting, the members present shall choose one of their number to preside at that meeting.”</p> <p>(c) Amendment of section 7A by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The Commission shall designate the [chairman] <u>chairperson</u> and, if the Commission deems it necessary, the [vice-chairman] <u>vice-chairperson</u> of a committee established under subsection (1).”</p> <p>(d) Amendment of section 9 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) is not such a judge and is not subject to the provisions of</p>
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		<p>the Public Service Act, 1994 (Proclamation 103 of 1994), shall be entitled to such remuneration, allowances (including allowances for reimbursement of travelling and subsistence expenses incurred by <u>him_or_her</u> in the performance of his functions under this Act), benefits and privileges as the Minister in consultation with the Minister of Finance may determine."</p>
Act 40 of 1977	Recognition and Enforcement of Foreign Arbitral Awards Act, 1977	<p>Amendment of section 1 by the substitution for the definition of "court" of the following definition:</p> <p>"'court' means a [court of a provincial or local division of the Supreme Court of South Africa] <u>High Court.</u>"</p>

Act 105 of 1983	Admiralty Jurisdiction Regulation Act, 1983	<p>(a) Substitutes the preamble of the following preamble:</p> <p style="padding-left: 40px;">“To provide for the vesting of the powers of the admiralty courts of the Republic in the [provincial and local divisions of the Supreme Court of South Africa] <u>High Court</u>, and for the extension of those powers; for the law to be applied by, and the procedure applicable in, those divisions; for the repeal of the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, in so far as it applies in relation to the Republic; and for incidental matters.”</p> <p>(b) Amendment of section 1 by the substitution for the definition of “Minister” of the following definition:</p> <p style="padding-left: 40px;">“‘Minister’ means the Minister of Justice <u>and Constitutional Development.</u>”</p> <p>(c) Amendment of section 2 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“2 Admiralty jurisdiction of [Supreme Court] <u>High Court</u> (1) Subject to the provisions of this Act [each provincial and local division, including a circuit local division, of the</p>
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		<p>Supreme Court of South Africa] <u>the High Court</u> shall have jurisdiction (hereinafter referred to as admiralty jurisdiction) to hear and determine any maritime claim (including, in the case of salvage, claims in respect of ships, cargo or goods found on land), irrespective of the place where it arose, of the place of registration of the ship concerned or of the residence, domicile or nationality of its owner.”</p> <p>(d) Amendment of section 3 by the substitution for paragraph (d) of subsection (2) of the following paragraph:</p> <p>“(d) in respect of whom any court in the Republic has jurisdiction in terms of [Chapter IV of the Insurance Act, 1943 (Act 27 of 1943)] <u>Part III of the Short-term Insurance Act, 1998 (Act 53 of 1998).</u>”</p> <p>(e) Amendment of section 4-</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to the provisions of this Act the provisions of the Supreme Court Act, 1959 (Act 59 of 1959), and the rules made</p>
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		<p>under [section 43 of that Act] <u>section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985)</u> shall <i>mutatis mutandis</i> apply in relation to proceedings in terms of this Act except in so far as those rules are inconsistent with the [rules referred to in subsection (2)] <u>Admiralty Rules published in Government Notice R.571 contained in Gazette No. 17926 of 18 April 1997 as amended from time to time.</u>”;</p> <p>(ii) by the repeal of subsection (2); and</p> <p>(iii) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The power of the [Chief Justice] <u>Board</u> to make rules under section 43 of the Supreme Court Act, 1959, shall include the power to make rules prescribing the following...”</p> <p>(f) Amendment of section 5 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) A court may in the exercise of its admiralty jurisdiction permit the joinder in proceedings in terms of this Act of any person against whom any party to those proceedings has a</p>
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claim, whether jointly with, or separately from, any party to those proceedings, or from whom any party to those proceedings is entitled to claim a contribution or an indemnification, or in respect of whom any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between the party and the person to be joined and which should be determined in such a manner as to bind that person, whether or not the claim against the latter is a maritime claim and notwithstanding the fact that he or she is not otherwise amenable to the jurisdiction of the court, whether by reason of the absence of attachment of his or her property or otherwise.”

(g) Amendment of section 6 by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) with regard to any matter in respect of which a court of admiralty of the Republic referred to in the Colonial Courts of Admiralty Act, 1890, of the United Kingdom, had jurisdiction immediately before the commencement of this Act, apply the law which the **[High Court of Justice of the United Kingdom]** Supreme Court of England and Wales in the exercise of its admiralty jurisdiction would have applied with

		<p>regard to such a matter at such commencement, in so far as that law can be applied”.</p> <p>(h) Amendment of section 7</p> <p>(i) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) When in any proceedings before a [provincial or local division, including a circuit local division, of the Supreme Court of South Africa] <u>High Court</u> the question arises as to whether a matter pending or proceeding before that court is one relating to a maritime claim, the court shall forthwith decide that question, and if the court decides that...”; and</p> <p>(ii) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) The Minister may, on the recommendation of the judge president of [any provincial division of the Supreme Court of South Africa] <u>any division of the High Court</u>, submit the question as to whether or not a particular matter gives rise to a maritime claim, to the [Appellate Division of the Supreme Court of South Africa] <u>Supreme Court of Appeal</u> and may</p>
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		<p>cause that question to be argued before that Division so that it may decide the question for future guidance.”</p> <p>(i) Amendment of section 12 by the substitution for that section of the following section:</p> <p>“12 Appeals</p> <p>A judgment or order of a court in the exercise of its admiralty jurisdiction shall be subject to appeal as if such judgment or order were that of a [provincial or local division of the Supreme Court of South Africa] <u>High Court</u> in civil proceedings.”</p> <p>(j) Section 13 is hereby repealed.</p>
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Act 61 of 1984	Small Claims Courts Act, 1984	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 5 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) [Either] <u>Any</u> of the official languages of the Republic may be used at any stage of the proceedings of a court."</p> <p>(c) Amendment of section 6-</p> <p style="padding-left: 20px;">(i) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">"(1) Subject to the provisions of the rules, the documents of a court shall be available for inspection by the public under the supervision of the clerk of the court at the prescribed times and upon payment of the prescribed fees, and those documents shall be preserved at the seat of the magistracy of the district in which the seat of that court is situated for such period as the Director-General: Justice <u>and Constitutional Development</u> may</p>
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		<p>determine."; and</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>"(2) The Director-General: Justice <u>and Constitutional Development</u> may order that after the expiry of the period contemplated in subsection (1) the documents so preserved shall be removed to a specified place of custody or be destroyed or otherwise disposed of."</p> <p>(d) Amendment of section 9-</p> <p>(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>"(a) Subject to the provisions of this section, the Minister or any officer of the Department of Justice <u>and Constitutional Development</u> with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may appoint one or more commissioners for any court."; and</p> <p>(ii) by the substitution for the oath of office in subsection (6) of the following:</p>
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“I, A.B., swear/solemnly affirm that, as a Commissioner of the Small Claims Court/E.F. Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.”

(e) Amendment of section 11 by the substitution for subsection (2) of the following subsection:

“(2) The **[messenger]** sheriff of the court appointed under the **[Magistrates’ Courts Act, 1944 (Act 32 of 1944)]** Sheriffs Act 1986 (Act 90 of 1986), for the magistrate’s court of a district, shall act as messenger of the court for a court in that part of the said district falling within the area of jurisdiction of that court.”

(f) Amendment of section 16 by the substitution for paragraph (a) of the following paragraph:

“(a) in which the dissolution of any marriage **[, or of a customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927),]** is sought.”

		<p>(g) Amendment of section 46 by the substitution for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“The grounds upon which the proceedings of a court may be taken on review before a [provincial or local division of the Supreme Court of South Africa] <u>division of the High Court</u> are...”.</p> <p>(h) Amendment of section 47 by the substitution for the words following paragraph (e) of the following words:</p> <p style="padding-left: 40px;">“shall be guilty of an offence and liable upon conviction to a fine [not exceeding R2 000] <u>calculated according to the ratio determined for a period of six months’ imprisonment in terms of the Adjustment of Fines Act, 1991</u> or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.”</p> <p>(i) Amendment of section 48 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) Any person who wilfully insults a commissioner during the</p>
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		<p>session of his court, or a clerk or messenger or other officer present at that session, or who wilfully interrupts the proceedings of a court or otherwise misbehaves himself in the place where the session of a court is held, shall, without prejudice to the provisions of section 4(3), be liable to be sentenced summarily or upon summons to a fine [not exceeding R500] <u>calculated according to the ratio for a period of six months' imprisonment in terms of the Adjustment of Fines Act, 1991</u> or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine."</p> <p>(j) Amendment of Act 61 of 1984-</p> <p>(i) by the substitution for the expression "he" of the expression "he or she" in section 9(2); 9(7); 14(1)(d); 25(1)(e); 26(3); 32; 34(a); 34(b); 35(1)(b); 35(2)(b); 39(1); 43; 48(2);</p> <p>(ii) by the substitution for the expression "his" of the expression "his or her" in sections 9(5); 9(6); 9(7); 16(c); 18(1); 19; 26(3); 27(1); 28; 29(1)(a); 29(2); 29(3); 30(1); 32; 33(1); 34(a); 34(b); 39(1); 40; 41(1); 41(3); 43; 47(a); 48; and</p> <p>(iii) by the substitution for the expression "him" of the expression "him or her" in sections 9(2)(c); 9(6); 13; 19; 28;</p>
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		35(1); and 48(2).
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Act 107 of 1985	Rules Board for Courts of Law Act, 1985	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 3-</p> <p style="padding-left: 40px;">(i) by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p> <p style="padding-left: 80px;">"(e) two practising attorneys, after consultation with the [Association of Law Societies of the Republic of South Africa] <u>Law Society of South Africa.</u>"; and</p> <p style="padding-left: 40px;">(ii) by the substitution for paragraph (g) of subsection (1) the following paragraph:</p> <p style="padding-left: 80px;">"(g) an officer of the Department of Justice <u>and Constitutional Development.</u>"</p>
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Act 36 of 1986	Justices of the Peace and Commissioners of Oaths Amendment Act, 1986	<p>Amendment of section 3 by the substitution for that section of the following section:</p> <p>"3 Power to complete certain proceedings</p> <p>Any person who has been duly appointed as a justice of the peace but who by virtue of the provisions of this Act becomes incompetent, as from the date of commencement of those provisions, to hold the office of justice of the peace, shall notwithstanding that fact remain competent to complete any proceedings in which he <u>or she</u> took part as a justice of the peace immediately prior to that date and which have at that date not been completed."</p>
Act 90 of 1986	Sheriffs Act, 1986	<p>(a) Amendment of section 1-</p> <p>(i) by the substitution for the definition of "auditor" of the following definition:</p> <p>" 'auditor' means a person registered as an [accountant and] auditor in terms of the [Public Accountants' and Auditors' Act, 1991 (<u>Act 80 of 1991</u>)] <u>Auditing Profession Act, 2005 (Act 26 of 2005).</u>";</p> <p>(ii) by the substitution for the definition of "Minister" of the following definition:</p>

		<p>“Minister” means the Minister of Justice <u>and Constitutional Development.</u>” and</p> <p>(iii) by the substitution for the definition of “superior court” of the following definition:</p> <p>“superior court” means [a provincial or local division of the Supreme Court of South Africa] <u>a division of the high court.</u>”</p> <p>(b) Amendment of section 63 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) delegate to any officer of the Department of Justice <u>and Constitutional Development</u> any power conferred upon the Minister by this Act, excluding the power referred to in section 62 (1), on such conditions as the Minister may determine; or”.</p> <p>(c) Amendment of Act 90 of 1986-</p> <p>(i) by the substitution for the expression “he” of the expression “he or she” wherever it occurs in sections 3(1); 4(1); 5(1A)(a); 6(1) and (3); 10; 11(1); 22(3); 33(1); 35(a)(i);</p>
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		<p>36(2)(a); 38(2); 43(1)(a)-(f); 43(2) and (3); 50(1) and (2); 51; 52(1); 56(2); and 62(1)(b);</p> <p>(ii) by the substitution for the expression "him" of the expression "him or her" wherever it occurs in sections 6(2); 23(1); 33(2); 35(a)(ii)(cc); 36(2)(b); 38(2); 43(2); and 55;</p> <p>(iii) by the substitution for the expression "his" of the expression "his or her" wherever it occurs in sections 3(3); 4(3); 5(1)(a); 5(1)(c)(i); 6(3); 11(1) and (2); 14(2) and (5); 22(3); 23(2); 31(3); 34(3); 35(a)(i) and (ii); 35(b); 36(2)(a); 37(2); 38(1); 39; 43(2) and (3); 50(1); 51(a) and (b); 53; 54; 55; 56(3); and 61(1)(a); and</p> <p>(iv) by the substitution for the expression "himself" of the expression "himself or herself" wherever it occurs in sections 51; 53; and 60(1)(i).</p>
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Act 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	<p>(a) Sections 5, 6, 10 to 26, 29, 30, 31 to 33, 34, 35, 39, 41, 42, 43, and 44 are hereby repealed.</p> <p>(b) Section 47 is hereby repealed, in so far as it relates to the following Acts: Restriction on the Importation of Wine and Spirits Act of 1921, Workmen's Compensation Act of 1941, Land Bank Act of 1944, Water Act of 1956, Sorghum Beer Act of 1962, South African Mint and Coinage Act of 1964, Unemployment Insurance Act of 1966, Designs Act of 1967, Marketing Act of 1968, Orange River Development Project Act of 1969, Egg Production Control Act of 1970, National Roads Act of 1971, Sea Fisheries Act of 1973, Lake Areas Development Act of 1975, Abattoir Industry Act of 1976, National Parks Act of 1976, and the Liquor Act of 1977.</p> <p>(c) Schedule 1 is hereby repealed, in so far as it relates to the following Acts: Vaal River Development Scheme Act of 1934, Livestock and Meat Industries Act of 1934, Workmen's Compensation Act of 1941, Land Bank Act of 1944, South African Reserve Bank Act of 1944, Rand Water Board Statutes (Private) Act of 1950, Mooi River District Adjustment Act of 1954, Mines and Works Act of 1956, Labour Relations Act of 1956, Water Act of 1956, Wage Act of 1957, Wine, Other Fermented Beverages and Spirits Act of 1957, Defence Act of 1957, Police Act of 1958, Electricity Act of 1958, Prisons Act of 1959,</p>
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Act 81 of 1987	Intestate Succession Act, 1987	<p>Amendment of section 1-</p> <p>(i) by the substitution for that subsection (1) of the following subsection:</p> <p>"1 Intestate succession</p> <p>(1) If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and-</p> <p>(a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;</p>

		<p><u>(Aa) is survived by more than one spouse, but not by a descendant, the intestate estate shall be divided equally among the spouses;</u></p> <p>(b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;</p> <p><u>(Bb) is survived by more than one descendant, but not by a spouse, the intestate state shall be divided equally among the descendants;</u></p> <p>(c) is survived by a spouse as well as a descendant-</p> <p>(i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and</p> <p>(ii) such descendant shall inherit the residue (if any) of the intestate estate;</p> <p><u>(Cc) is survived by more than one spouse as well as descendants-</u></p> <p><u>(i) each spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice and Constitutional</u></p>
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		<p><u>Development by notice in the Gazette, whichever is the greater;</u></p> <p><u>(ii) the residue (if any) of the intestate estate shall be divided equally among the descendants; and</u></p> <p><u>(iii) where the intestate estate contemplated in paragraph (Cc)(i) is not adequate to provide each spouse with the amount fixed by the Minister, estate shall be divided equally among the surviving spouses.</u></p> <p>(d) is not survived by a spouse, or descendant, but is survived-</p> <p>(i) by both his parents, his parents shall inherit the intestate estate in equal shares; or</p> <p>(ii) by one of his parents, the surviving parent shall inherit one half of the intestate estate and the descendants of the deceased parent the other half, and if there are no such descendants who have survived the deceased, the surviving parent shall inherit the intestate estate; or</p> <p>(e) is not survived by a spouse or descendant or parent, but is survived-</p> <p>(i) by-</p> <p>(aa) descendants of his deceased mother who are related to the deceased through her only, as well</p>
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		<p>as by descendants of his deceased father who are related to the deceased through him only; or</p> <p>(bb) descendants of his deceased parents who are related to the deceased through both such parents; or</p> <p>(cc) any of the descendants mentioned in subparagraph (aa), as well as by any of the descendants mentioned in subparagraph (bb), the intestate estate shall be divided into two equal shares and the descendants related to the deceased through the deceased mother shall inherit one half of the estate and the descendants related to the deceased through the deceased father shall inherit the other half of the estate; or</p> <p>(ii) only by descendants of one of the deceased parents of the deceased who are related to the deceased through such parent alone, such descendants shall inherit the intestate estate;</p> <p>(f) is not survived by a spouse, descendant, parent, or a descendant of a parent, the other blood relation or blood relations of the deceased who are related to him nearest in degree shall inherit the intestate estate in equal shares.</p> <p>(2) Notwithstanding the provisions of any law or the common or</p>
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		<p>customary law, but subject to the provisions of this Act and sections 40 (3) and 297 (1) (f) of the Children's Act, 2005 (Act 38 of 2005), having been born out of wedlock shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation."; and</p> <p>(ii) by the substitution for subsection (6) of the following subsection:</p> <p>"(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with the surviving spouse <u>or spouses</u> of the deceased, is entitled to a benefit from an intestate estate renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse <u>or spouses, as the case may be.</u>"</p> <p>(b) Amendment of Act 81 of 1987 by the substitution for the words "he", "him" or "his" wherever they occur in section 1 of the words "he or she", "his or her" or "him or her", as the case may be.</p>
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Act 32 of 1988	Enforcement of Foreign Civil Judgments Act, 1988	Amendment of section 1 by the substitution for the definition of "Minister" of the following: "Minister' means the Minister of Justice <u>and Constitutional Development.</u> "
Act 57 of 1988	Trust Property Control Act, 1988	(a) Amendment of section 1- (i) by the substitution for the definition of "banking institution" of the following definition: "banking institution' means an institution registered [otherwise than provisionally] as a bank in terms of the Banks Act, [1965 (Act 23 of 1965)] <u>1990 (Act 94 of 1990)</u> "; (ii) by the substitution for the definition of "building society" of the following definition: "building society' means a [mutual building society registered finally as a mutual building society in terms of the Mutual Building Societies Act, 1965 (Act 24 of 1965)] <u>a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act 124 of 1993)</u> , or a [building society registered finally as a building society in terms of the Building Societies Act, 1986 (Act 82 of 1986)] <u>bank registered in</u>

		<p><u>terms of the Banks Act, 1990 (Act 94 of 1990)";</u></p> <p>(iii) by the substitution for the definition of "court" of the following definition:</p> <p>"court' means [the provincial or local division of the Supreme Court of South Africa] <u>a division of the High Court</u> having jurisdiction";</p> <p>(iv) by the substitution for the definition of "financial institution" of the following definition:</p> <p>"financial institution' means a financial institution as defined in the [Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)] <u>Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001)";</u> and</p> <p>(v) by the substitution for the definition of "Master" of the following definition:</p> <p>"Master', in relation to any matter, means the Master, Deputy Master or Assistant Master of the [Supreme Court] <u>High Court</u> appointed under section 2 of the Administration of Estates Act,</p>
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		<p>1965 (Act 66 of 1965), who under section 3 of this Act has jurisdiction in respect of the matter concerned.”</p> <p>(b) Amendment of section 11 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to the provisions of the [Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)] <u>Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001)</u>, section 40 of the Administration of Estates Act, 1965 (Act 66 of 1965), and the provisions of the trust instrument concerned, a trustee shall-.”</p> <p>(c) Amendment of section 20 by the substitution for paragraph (d) of subsection (1) of the following paragraph:</p> <p>“(d) if he <u>or she</u> has been declared by a competent court to be mentally ill or incapable of managing his <u>or her</u> own affairs or if he <u>or she</u> is by virtue of the [Mental Health Act, 1973 (Act 18 of 1973)] <u>Mental Health Care Act, 2002 (Act 17 of 2002)</u>, [detained] <u>admitted</u> as a patient in an institution or as a State patient; or...”.</p>
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		<p>(d) Amendment of section 24 by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">“24 Regulations The Minister of Justice <u>and Constitutional Development</u> may make regulations regarding any matter which in terms of this Act is required or permitted to be prescribed.”</p> <p>(e) Amendment of Act 57 of 1988 by the substitution for the words “he”, “his” or “him” wherever they occur in sections 3(2); 4(1); 5; 6(2)(a) and (b); 6(3); 7(1) and (2); 9(1) and (2); 11(1)(a); 15; 16(1)-(3); 18; 20(1)-(3); and 22 of the words “he or she”, “his or her” or “him or her”, as the case may be.</p>
Act 6 of 1989	Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989	<p>(a) Amendment of section 1</p> <p style="padding-left: 40px;">(i) by the substitution for the definition of “Director-General” of the following:</p> <p style="padding-left: 40px;">“‘Director-General’ means the Director-General: Justice <u>and Constitutional Development</u>”; and</p> <p style="padding-left: 40px;">(ii) by the substitutions for the definition of “Minister” of the following:</p>

		<p>“Minister’ means the Minister of Justice <u>and Constitutional Development.</u>”</p> <p>(b) Amendment of section 6 by the substitution for paragraph (a) of subsection (5) of the following paragraph:</p> <p>“(a) Any person who is aggrieved by an order made under this section may, within such period and in such manner as may be prescribed, appeal against such order to the [provincial or local division of the Supreme Court of South Africa] <u>High Court</u> having jurisdiction.”</p> <p>(c) Amendment of Act 6 of 1989 by the substitution for the words “his” and “him” wherever they occur in section 6 and 9, of the words “his or her” and “him or her”, as the case may be.</p>
Act 12 of 1990	Reciprocal Service of Civil Process Act, 1990	<p>(a) Amendment of section 1 by the substitution for the definition of “Minister” of the following:</p> <p>“Minister’ means the Minister of Justice <u>and Constitutional Development.</u>”</p> <p>(b) Amendment of section 3-</p> <p>(i) by the substitution for the word “he” in subsection (1) of the</p>

		<p>words "he or she";</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>"(2) Any process [not] drawn up in [the English or the Afrikaans] <u>any of the official languages of the Republic, other than English,</u> shall not be endorsed in terms of subsection (1) unless it is accompanied by a sworn translation thereof in English [or Afrikaans]."</p> <p>(c) Amendment of section 4 by the substitution for that section of the following section:</p> <p>"4 Service of process in designated country</p> <p>Notwithstanding the provisions of any other law relating to the service of any process outside the Republic, any process, other than a process relating to the enforcement of a civil judgment, may be issued by the registrar of any division of the [Supreme Court] <u>High Court</u> or by any clerk of the magistrate's court, as the case may be, without leave of the court in question."</p>
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Act 27 of 1990	Maintenance of Surviving Spouses Act, 1990	<p>(a) Amendment of section 1 by the substitution for the definition of "survivor" of the following definition:</p> <p>"'survivor' means the surviving spouse in a marriage dissolved by death, and includes_</p> <p><u>(a) a spouse of a customary marriage which was dissolved by a civil marriage contracted by her husband in the customary marriage to another woman on or after 1 January 1929 (the date of commencement of sections 22 and 23 of the Black Administration Act, 1927 (Act 38 of 1927)), but before 2 December 1988 (the date of commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988 (Act 3 of 1988)); and</u></p> <p><u>(b) each spouse in a polygynous marriage concluded under any system of religious law."</u></p> <p>(b) Amendment of section 2 by the substitution for subsection (1) of the following subsection:</p> <p>"(1) If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the provision of his <u>or her</u> reasonable maintenance needs until his death or remarriage in so far as he <u>or she</u> is not able to provide therefor</p>
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		from his <u>or her</u> own means and earnings."
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Act 51 of 1991	Transfer of Powers and Duties of the President Act, 1991	<p>(a) Sections 1, 2, 5, 6, 7 and 8 are hereby repealed.</p> <p>(b) Sections 9 and 10 are hereby repealed, in so far as they relate to the following Acts: Land Bank Act, 1944, Defence Act, 1957, Mining Titles Registration Act, 1967 Armaments Development and Production Act, 1968, Mental Health Act 18 of 1973, Civil Protection Act, 1977, Maintenance and Promotion of Competition Act, 1979, Nuclear Energy Act, 1982, Public Investment Commissioners Act, 1984, Auditor-General Act, 1989, Diplomatic Immunities and Privileges Act, 1989 and the Nuclear Energy Act of 1982.</p>
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Act 101 of 1991	Adjustment of Fines Act, 1991	<p>(a) Amendment of section 1 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) If any law provides that any person on conviction of an offence may be sentenced to pay a fine the maximum amount of which is not prescribed or, in the alternative, to undergo a prescribed maximum period of imprisonment, and there is no indication to the contrary, the amount of the maximum fine which may be imposed shall, subject to section 4, be an amount which in relation to the said period of imprisonment is in the same ratio as the ratio between the amount of the fine which the Minister of Justice <u>and Constitutional Development</u> may from time to time determine in terms of section 92 (1) (b) of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and the period of imprisonment as determined in section 92 (1) (a) of the said Act, where the court is not a court of a regional division.”</p> <p>(b) Amendment of Act 101 of 1991 by the substitution for the words “he”, “his”, “him” and “himself” of the words “he or she”, “him or her”, “his or her” and “himself or herself” wherever these words occur in the Act.</p>
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Act 103 of 1991	Short Process Courts and Mediation in Certain Civil Cases Act, 1991	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development</u>;</p> <p>(b) Amendment of section 2-</p> <p style="padding-left: 40px;">(i) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 80px;">"(1) The Minister may appoint one or more mediators for an area or district for which a court has been established from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice <u>and Constitutional Development.</u>"</p> <p style="padding-left: 40px;">(ii) by the substitution for the oath of office in subsection (3) of the following oath:</p> <p style="padding-left: 80px;">"(3) Any person appointed under subsection (1) shall, before commencing with his functions as a mediator for the first time, take an oath or make an affirmation subscribed by him in the</p>
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		<p>form set out below:</p> <p>I,, do hereby swear solemnly and (full name)</p> <p>sincerely affirm and declare that whenever I may be called upon to perform the functions of a mediator in mediation proceedings, I will administer justice to all persons alike without fear, favour or prejudice [and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa applying to the case concerned] <u>in accordance with the Constitution and the law.</u>"</p> <p>(c) Amendment of section 6-</p> <p>(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>"(a) Subject to the provisions of this section and section 7 the Minister may, for a court established by him under section 4 (1), appoint one or more adjudicators from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice <u>and Constitutional Development;</u></p>
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		<p>(ii) by the substitution for the oath of office in subsection (5) of the following oath:</p> <p>“(5) A person appointed under subsection (1) (a) or (c) shall, before commencing with his functions as an adjudicator for the first time, take an oath or make an affirmation subscribed by him in the form set out below:</p> <p>I,, do hereby swear solemnly and sincerely (full name)</p> <p>affirm and declare that whenever I may be called upon to perform the functions of an adjudicator in a court, I will administer justice to all persons alike without fear, favour or prejudice [and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa applying to the case concerned] <u>in accordance with the Constitution and the law.</u>”</p> <p>(d) Amendment of section 12 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding the provisions of section 24 (1) of the Supreme Court Act, 1959 (Act 59 of 1959), the grounds upon which mediation proceedings and the proceedings of a court</p>
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		<p>may be brought under review before a [provincial or local division of the Supreme Court of South Africa] <u>High Court</u> shall be”;</p> <p>(e) Amendment of section 14 by the substitution for that section of the following:</p> <p>“14 Legal representation Any advocate or attorney of any division of the [Supreme Court of South Africa] <u>High Court</u> may appear at any proceedings in any court, including an interview contemplated in section 3 (1) (b), on behalf of any party.”</p> <p>(f) Amendment of Act 103 of 1991 by the substitution for the words “he”, “his” and “him”, wherever they occur in this Act, of the words “he or she”, “his or her” and “him or her”, as the case may be.</p>
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Act 3 of 1992	Domicile Act, 1992	<p>(a) Amendment of section 8 by the substitution for subsection(1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) This Act shall apply subject to the [Aliens Control Act, 1991 (Act 96 of 1991)] <u>Immigration Act, 2002 (Act 13 of 2002)</u>.”</p> <p>(b) Amendment of Act 3 of 1992-</p> <p style="padding-left: 40px;">(i) by the substitution for the expression “he” of the expression “he or she” wherever it occurs in sections 1(1); 2(1) and 3(1); and</p> <p style="padding-left: 40px;">(ii) by the substitution for the expression “his” of the expression “his or her” wherever it occurs in sections 2(2) and 3(1).</p>
Act 139 of 1992	General Law Amendment Act, 1992	Section 8 is hereby repealed.

Act 140 of 1992	Drugs and Drug Trafficking Act, 1992	<p>(a) Amendment of section 1-</p> <p>(i) by the substitution for the definition of "Minister" of the following definition:</p> <p>"'Minister' means the Minister of Justice <u>and Constitutional Development</u>;" and</p> <p>(ii) by the substitution for the definition of "police official" of the following definition"</p> <p>"'police official' means any member of the Force as defined in section 1 of the [Police Act, 1958 (Act 7 of 1958)] <u>South African Police Service Act, 1995 (Act 68 of 1995)</u>."</p> <p>(b) Amendment of section 4 by the substitution for subparagraph (iii) of paragraph (b) of the following subparagraph:</p> <p>"(iii) <u>he or she is</u> the Director-General: [Welfare] <u>Department of Social Development</u> who has acquired or bought any such substance in accordance with the requirements of the Medicines Act or any regulation made thereunder."</p>
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		<p>(c) Amendment of section 9 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) Any person may, notwithstanding anything to the contrary contained in any law which prohibits him or her-</p> <p style="padding-left: 80px;">(a) from disclosing any information relating to the affairs or business of any other person; or</p> <p style="padding-left: 80px;">(b) from permitting any person to have access to any registers, records or other documents which have a bearing on the said affairs or business, disclose to any [attorney-general] <u>Director of Public Prosecutions</u> or designated officer such information as he or she may consider necessary for the prevention or combating, whether in the Republic or elsewhere, of a drug offence.”</p> <p>(d) Amendment of section 10-</p> <p style="padding-left: 40px;">(i) by the substitution for paragraph (a) of subsection (3) of the following paragraph</p> <p style="padding-left: 40px;">“(a) any stock-broker as defined in section 1 of the [Stock Exchanges Control Act, 1985 (Act 1 of 1985)] <u>Securities Services Act, 2004 (Act 36 of 2004)</u>.” and</p>
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		<p>(ii) by the repeal of paragraph (b) of subsection (3).</p> <p>(e) Amendment of section 12 by the repeal of paragraphs (a) and (b) of subsection (6).</p> <p>(f) Amendment of Act 140 of 1992-</p> <p>(i) by the substitution for the words "he", "him" and "his" of the words "he or she", "him or her" and "his or her", as the case may be, wherever they occur in this Act; and</p> <p>(ii) by the substitution for the expression "attorney-general" wherever it occurs in sections 12(1) and (3) and 15(2), of the expression "Director of Public Prosecutions."</p>
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Act 57 of 1993	Security by Means of Movable Property Act, 1993	Amendment of section 5 by the repeal of paragraph (b).
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Act 90 of 1993	Magistrates Act, 1993	<p>(a) Amendment of section 1 by the substitution for the definition of "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 3-</p> <p style="padding-left: 40px;">(i) by the substitution for subparagraph (i) of subsection 1(a) of the following subparagraph:</p> <p style="padding-left: 80px;">"(i) a judge of the [Supreme Court of South Africa] <u>High Court</u>, as chairperson, designated by the President in consultation with the Chief Justice"; and</p> <p style="padding-left: 40px;">(ii) by the substitution for subparagraph (ii) of subsection 1(a) of the following subparagraph:</p> <p style="padding-left: 80px;">"(ii) the Minister or his or her nominee, who must be an officer of the Department of Justice <u>and Constitutional Development.</u>"</p> <p>(c) Amendment of section 8-</p>
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		<p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The chairperson of the Commission or a member of a committee who is a judge of the [Supreme Court] <u>High Court</u> or a member of the Commission designated in terms of section 3 (1) (a) (x) and (xi), may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister may determine with the concurrence of the Minister of [State Expenditure] <u>Finance</u>.”; and</p> <p>(ii) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A member of the Commission or a committee who is not a judge or magistrate or a member of the Commission designated in terms of section 3 (1) (a) (x) and (xi) or who is not subject to the laws governing the public service, may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act, as the Minister may determine with the concurrence of the Minister of [State Expenditure] <u>Finance</u>.”</p>
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		<p>(d) Amendment of section 9 by the substitution for that section of the following section:</p> <p style="padding-left: 40px;">“9 Secretary and staff of Commission</p> <p style="padding-left: 40px;">The work incidental to the performance by the Commission of its functions shall be performed by officers of the Department of Justice <u>and Constitutional Development</u> designated by the Director-General: <u>Justice and Constitutional Development</u>, of whom one shall be designated by him or her as secretary of the Commission.”</p>
Act 74 of 1996	Special Investigating Units and Tribunals Act, 1996	<p>(a) Amendment of section 1 by the substitution for the definition of “state institution” of the following definition:</p> <p style="padding-left: 40px;">“State institution’ means any national or provincial department, any local government, any institution in which the State is the majority or controlling shareholder or in which the State has a material financial interest, or [any public entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act 93 of 1992)] <u>or a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act 1 of 1999)</u>.”</p>

		<p>(b) Amendment of section 7 by the substitution for paragraph (a) of subsection (7) of the following paragraph:</p> <p>“(a) A Special Tribunal must be assisted in the performance of the administrative work incidental to its functions by one or more officials in the Department of Justice <u>and Constitutional Development</u>, designated by the Minister of Justice <u>and Constitutional Development</u> after consultation with the Tribunal President.”</p> <p>(c) Amends Act 74 of 1996-</p> <p>(i) by the substitution for the expression “Minister of Justice” of the expression “Minister of Justice and Constitutional Development” wherever it occurs in sections 3(5)(a) and (b) and 11; and</p> <p>(ii) by the substitution for the expression “Supreme Court” of the expression “High Court” wherever it occurs in sections 7(3)(b); 7(4)(b); 8(7); 9(7) and 14(3).</p>
Act 33 of 1997	Abolition of Corporal Punishment Act, 1997	<p>Amendment of Schedule by deleting references to –</p> <p>(a) Black Administration Act, 1927 (Act 38 of 1927);</p> <p>(b) Stock Theft Act, 1959 (Act 57 of 1959); and</p> <p>(c) National Parks Act, 1976 (Act 57 of 1976).</p>

Act 103 of 1997	Public Funding of Represented Political Parties Act, 1997	<p>Amendment of section 3 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The moneys of the Fund that are not required immediately for making allocations to political parties in terms of section 5, may be invested with the [Public Investment Commissioners contemplated in the Public Investment Commissioners Act, 1984 (Act 45 of 1984)] <u>Public Investment Corporation Act, 2004 (Act 23 of 2004)</u>.”</p>
Act 105 of 1997	Criminal Law Amendment Act, 1997	Amends Act 105 of 1997 by repealing section 25, 26, and 48.
Act 32 of 1998	National Prosecuting Authority Act, 1998	<p>(a) Amendment of section 17 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) the salary of the National Director shall not be less than the salary of a judge of a High Court, as determined by the President <u>and approved by Parliament under [section 2 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989)] 2(a)(i) and (ii) of the Judges' Remuneration and Conditions of Employment , 2001 (Act 47 of 2001)</u>; and</p> <p>(b) Amendment of section 28 by the substitution for paragraph (b) of</p>

		<p>subsection (2) of the following paragraph:</p> <p>“(b) A person so designated shall for the purpose of the investigation concerned have the same powers as those which the Investigating Director has in terms of this section and section 29 of this Act, and the instructions issued by the Treasury under [section 39 of the Exchequer Act, 1975 (Act 66 of 1975), in respect of commissions of inquiry] <u>section 76 of the Public Finance Management Act, 1999 (Act 1 of 1999) applicable to departments or institutions</u> shall apply with the necessary changes in respect of such a person.”</p>
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Act 114 of 1998	Debt Collectors Act, 1998	<p>(a) Amendment of section 1-</p> <p>(i) by the substitution for the definition of "Director-General" of the following definition:</p> <p>"'Director-General' means the Director-General of the Department of Justice <u>and Constitutional Development</u>"; and</p> <p>(ii) by the substitution for the definition of "Minister" of the following definition:</p> <p>"'Minister' means the Minister of Justice <u>and Constitutional Development.</u>"</p> <p>(b) Amendment of section 20 by the substitution for paragraph (a) of subsection (6) of the following paragraph:</p> <p>"(a) cause his or her accounting records to be audited annually by [a public accountant or] <u>an</u> auditor contemplated in the [Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991)] <u>Auditing Profession Act, 2005 (Act 26 of 2005).</u>"</p>
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Act 4 of 2000	Promotion of Equality and Prevention of Unfair Discrimination Act, 2000	<p>Amendment of section 25 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) All Ministers <u>and Members of the Executive Councils of each province</u> must implement measures within the available resources which are aimed at the achievement of equality in their areas of responsibility by-</p> <p>(a) eliminating any form of unfair discrimination or the perpetuation of inequality in any law, policy or practice for which those Ministers <u>or Members of the Executive Councils</u> are responsible; and</p> <p>(b) preparing and implementing equality plans in the prescribed manner, the contents of which must include a time frame for implementation of such plans, formulated in consultation with the Minister of Finance.”</p>
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Act 42 of 2000	Cross-Border Insolvency Act, 2000	<p>Amendment of section 1 by the substitution for the definition of “curator of an institution” in paragraph (b) of the following definition:</p> <p style="padding-left: 40px;">“(b) ‘curator of an institution’ means a curator appointed in terms of [section 6 of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984)] <u>of section 5 of the Financial Institutions (Protection of Funds) Act, 2001 (Act 28 of 2001)</u>, or section 69 of the Banks Act, 1990 (Act 94 of 1990), or section 81 of the Mutual Banks Act, 1993 (Act 124 of 1993).”</p> <p>Amendment of Act 42 of 2000 by the deletion of references to the Companies Act, 1973 (Act 61 of 1973) in the definition of “receiver” in section 1 and in sections 19(2) and 20(2).</p>
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Act 12 of 2004	Prevention and Combating of Corrupt Activities Act, 2004	<p>Amendment of section 1-</p> <p>(a) by the substitution for the definition of “gambling game” of the following definition:</p> <p>“‘gambling game’ means any gambling game as defined in section 1 of the [National Gambling Act, 1996 (Act 33 of 1996)] <u>National Gambling Act, 2004 (Act 7 of 2004).</u>” and</p> <p>(b) by the substitution for the definition of “listed company” of the following definition:</p> <p>“‘listed company’ means a company, the [equity share capital] <u>securities</u> of which [is listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act 1 of 1985)] <u>kept by an exchange as contemplated in section 12 of the Securities Services Act, 2004 (Act 36 of 2004).</u>”</p>
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ANNEXURE C

HUMAN RIGHTS COMMISSION AMENDMENT BILL

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Human Rights Commission Act, 1994, so as to align it with the Constitution of the Republic of South Africa, 1996 and to provide for matters connected therewith.

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

Substitution of long title of Act 54 of 1994

1. The following long title is hereby substituted for the long title in the Human Rights Act, 1994 (hereinafter referred to as the principal Act):

“To regulate the matters incidental to the [establishment of] the Human Rights Commission as contemplated in the Constitution of the Republic of South Africa, [1993]1996; and to provide for matters connected therewith.”

Substitution of Preamble of Act 54 of 1994

2. The following preamble is hereby substituted for the preamble in the principal Act:

“Preamble

WHEREAS sections **[115 up to and including 118]** 181 and 184, read in conjunction with item 20 of Schedule 6 of the Constitution of the Republic of South Africa, [1993 (Act 200 of 1993)] 1996, recognises the **[provide for the establishment of a]** Human Rights Commission; and provide for its functions [the appointment of the members of the Commission; the conferring of certain powers on and assignment of certain duties and functions to the Commission; the appointment of a chief executive officer of the Commission; and the tabling by the President in the National Assembly and the Senate of reports by the Commission];

AND WHEREAS sections 193 and 194 of the Constitution provide a framework for the appointment, removal and suspension of a member of the Human Rights Commission [provides that the Human Rights Commission shall, inter alia, be competent and obliged to promote the observance of, respect for and the protection of fundamental rights; to develop an awareness of fundamental rights among all people of the Republic; to make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law

and the Constitution; to undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions; to request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights; and to investigate any alleged violation of fundamental rights and to assist any person adversely affected thereby to secure redress];

AND WHEREAS the Constitution envisages further powers, duties and functions to be conferred on or assigned to the Human Rights Commission by law[, and that staff of the Commission be appointed on such terms and conditions of service as may be determined by or under an Act of Parliament].”

Amendment of section 1 of Act 54 of 1994

3. Section 1 of the principal Act is hereby amended –

(a) by the substitution for the definition of ‘Chairperson’ of the following definition:

“‘Chairperson’ means the Chairperson of the Commission referred to in section [115(1) and (5) of the Constitution] 1A;”

(b) by the substitution for the definition of “Commission” of the following definition:

“‘Commission’ means the Human Rights Commission [established by section 115(1)] contemplated in section 181(1)(b) of the Constitution;”

(c) by the substitution for the definition of “fundamental rights” of the following definition:

“‘fundamental rights’ includes the fundamental rights contained in [Chapter 3] Chapter 2 of the Constitution”;

(d) by the substitution for the definition of “organ of state” of the following definition:

“‘organ of state’ [includes any statutory body or functionary] means an organ of state as defined in section 239 of the Constitution.”

Insertion of section 1A in Act 54 of 1994

4. The following section is hereby inserted in the principal Act after section 1:

“Establishment and appointment

1A. (1) There shall be a Human Rights Commission, which shall consist of a chairperson and 10 members who are fit and proper persons, South African citizens and broadly representative of the South African community.

(2) The members of the Commission shall be appointed as provided for in section 193 of the Constitution and vacancies in the Commission shall be filled accordingly.

(3) The President shall, whenever it becomes necessary, appoint as a member of the Commission a person in accordance with section 193 of the Constitution.

(4) A Chairperson and a Deputy Chairperson of the Commission shall as often as it becomes necessary be elected by the members of the Commission from among their number.

(5) The Commission shall report to the President at least once every year on its activities, and the President shall cause such report to be tabled promptly in the National Assembly and the National Council of Provinces.”

Amendment of section 3 of Act 54 of 1994

5. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The members of the Commission referred to in section **[115(1)]** 193(4)(a) of the Constitution may be appointed as full-time or part-time members and shall hold office for such fixed term as the President may prescribe at the time of such appointment, but not exceeding seven years: Provided that no less than five members are appointed on full-time basis: Provided further that the President shall remove any member from office **[if] only on-**

(a) [such removal is requested by a joint committee composed as contemplated in section 115 (3) (a) of the Constitution; and] the ground of misconduct, incapacity or incompetence;

(b) [such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting.] on a finding to that effect by a committee of the National Assembly; and

(c) the adoption of a resolution by the National Assembly calling for the removal of that person from office.

(2) A resolution of the National Assembly concerning the removal of a member of the Commission must be adopted with a supporting vote of a majority of the members of the National Assembly.

(3) The President-

(a) may suspend a person from office at any time after the start of the proceedings of the committee of the National Assembly for the removal of that person; and

(b) must remove a person from office upon adoption by the National Assembly of the resolution calling for that person's removal."

Amendment of section 7 of Act 54 of 1994

6. Section 7 of the principal Act is hereby amendment-

(a) by the substitution for subsection (1) of the following subsection:

"(1) In addition to any other powers, duties and functions conferred on or assigned to it by section **[116]** 184 of the Constitution, this Act or any other law, the Commission..."

(b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) shall develop and conduct information programmes to foster public understanding of this Act, Chapter **[3]** 2 of the Constitution and the role and activities of the Commission."

(c) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) shall carry out or cause to be carried out such studies concerning fundamental rights as may be referred to it by the President and the Commission shall include in a report referred to in section **[118 of the Constitution]** 1A a

report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate."

Amendment of section 9 of Act 54 of 1994

7. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Pursuant to the provisions of section **[116 (3)]** 184(2)(a) and (b) of the Constitution, the Commission may, in order to enable it to exercise its powers and perform its duties and functions-

Amendment of section 11 of Act 54 of 1994

8. Section 11 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"A vacancy in the Commission shall-

- (a) not affect the validity of the proceedings or decisions of the Commission; and
- (b) be filled as soon as practicable in accordance with section **[115 (3)]** 193 of the Constitution."

Amendment of section 12 of Act 54 of 1994

9. Section 12 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If the Chairperson is absent from a meeting of the Commission, the Deputy Chairperson referred to in section **[115 (5) of the Constitution]** 1A shall act as chairperson, and if both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the members present shall elect one from among their number to preside at that meeting."

Amendment of section 15 of Act 54 of 1994

10. Section 15 of the principal Act is hereby amended by the substitution of subsection (2) of the following subsection:

“(2) In addition to the report contemplated in section **[118 of the Constitution]** 1A, the Commission shall submit to the President and Parliament quarterly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it during that quarter: Provided that the Commission may, at any time, submit a report to the President and Parliament if it deems it necessary.

Amendment of section 16 of Act 54 of 1994

11. Section 16 of the principal Act is hereby amended-

(a) by substitution for subsection (1) of the following subsection:

“(1) The Commission shall **[at its first meeting or as soon as practicable thereafter]** whenever it becomes necessary appoint a director as chief executive officer of the Commission **[in accordance with section 117 (1) of the Constitution]**, who-;”

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) shall, subject to the **[Exchequer Act, 1975 (Act 66 of 1975)]** Public Finance Management Act, (Act 1 of 1999) -

(i) be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission;

(ii) cause the necessary accounting and other related records to be kept;”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) The defrayal of expenditure in connection with matters provided for in this Act or in sections **[115 up to and including 118]** 184 of the Constitution shall be subject to-

- (a) requests being received *mutatis mutandis* in the form as prescribed for the budgetary processes of departments of State; and
- (b) the provisions of the **[Exchequer Act, 1975]** Public Finance Management Act, 1999, and the regulations and instructions issued in terms thereof, as well as the **[Auditor-General Act, 1989 (Act 52 of 1989)]** Public Audit Act, 2004 (Act 25 of 2004).

12. This Act is called the Human Rights Commission Amendment Act, and comes into operation on a date to be fixed by the President by Proclamation in the *Gazette*.