

THE SA LAW REFORM COMMISSION IS A STATUTORY BODY WHOSE MANDATE IS TO KEEP THE LAW UP TO DATE AND IN TUNE WITH THE NEEDS OF SOCIETY AND THE PROVISIONS OF THE CONSTITUTION

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*Justice Minister, Mrs Brigitte Mabandla fully supports the speedy finalisation of the constitutional alignment aspect of the statutory law revision project. (Project 25)*

Review the past  
Reform the present  
Anticipate the future

## Final Nail on Apartheid Laws

The South African Law Reform Commission's main task is continuous renewal and improvement of the law. This entails a constant review and updating or modernisation of national statutes.

The focus of statutory review generally involves identifying and weeding out laws or statutory provisions that have become obsolete or redundant. These would be laws or statutory provisions that are no longer in use or have been superseded by new legal provisions.

Statutory review also involves simplification of statutes in line with modern usage of language and legal principles.

The advent of democracy in South Africa immediately placed an additional and urgent dimension to law review and the alignment of statutes with the post apartheid Constitution.

Since 1994, the Commission has earnestly tackled the task of statutory review, with a focus on constitutional review. The requirements include alignment of domestic

laws with international treaty obligations.

One of the key outputs of the statutory review process has been the repeal of the Black Administration Act. The outcomes included restoring the dignity of black women through full recognition as persons under the law and recognition of customary marriages.

The new Commission has identified the speedy completion of the review of pre-1994 statutes, with a focus on statutes that blatantly violate section 9 of the Constitution (equality clause), as a priority.

Project execution involves teams from various academic institutions and other civil society entities.



## Change of Guard at the Commission

President Thabo Mbeki appointed a new group of Commissioners at the beginning of January 2007.

Justice Yvonne Mokgoro (Constitutional Court) retained her position as **Chairperson**. Justice Willie Seriti (Pretoria

High Court) was appointed **Vice -Chairperson**. The new **Full-time Commissioner** is Ms Thuli Madonsela (Waweth Law & Policy Research Agency).

**Part-time Commissioners** are:

- Justice Dennis Davis (Cape Town High Court)
- Prof Cathi Albertyn (Wits)
- Mr Thembeka Ngcukaitobi (Attorney)
- Advocate Dumisa Ntsebeza SC (Cape Bar)
- Prof Pamela Schwikkard (UCT)
- Advocate Mahlape Sello (Johannesburg Bar)



Contact the Commission with any ideas that may assist the process review

*Administration orders are abused leading to untold suffering for many poor people.*



## Commission Processes Renewed

In the past year, the South African Law Reform Commission decided to review its research, consultation and reporting processes, within the ambit of the enabling statute.

The main focus of the process review is to enhance public participation, including participation of historically marginalised communities, in law reform processes. This includes the determination of research or legal reform priorities and

meaningful input into the legal solutions and policy options contained in Commission Reports and draft legislation.

The Commission process review also seeks to improve the turnaround time between the referral of an investigation, by the Minister for Justice and Constitutional Development, and the finalisation of the Commission's Report. In summary, the process review involves:

- Aligning the Commission's research
- Ensuring that the process of compiling the Commission's research agenda is inclusive
- Streamlining research processes to reduce turn-around time
- Enhance inclusive participation in research processes

## Abolition of Administration Orders

One of the key projects that the South African Law Reform Commission is currently busy with is the review of administration orders.

Administration orders are issued by Magistrates in cases where a debtor who owes less than R50 000.00 is unable to pay as originally agreed.

The Commission was asked by the Minister for Justice and Constitutional Development to review administration orders.

The handling of administration orders is currently fraught with many problems, which include abuse. Abuses include: Administrators overcharging for remuneration and expenses; administrators failing to dis-

tribute funds regularly; lack of proper regulation for administrators; and the keeping of debtors in bondage for life.

Members of the public are invited to complete a questionnaire to assist the Commission to decide on recommendations on the future of administration orders.

## Ismail Mahomed Essay Prize

The South African Law Reform Commission, in partnership with Juta, established the Ismail Mahomed Law Prize (honouring the late Chief Justice) a few years ago.

The aim of the competition is to encourage criti-

cal legal writing by students while generating ideas for the reform of the law in our new constitutional democracy.

The competition involves essay writing and selection of the winning essay by a panel of judges.

The prizes for 2008 include a lap top val-

ued at R15 000, credit vouchers, year's subscription to South African Law Reports 1947-date on CD-Rom, subscription to Juta Statutes and Regulations of South Africa for one year and Juta Statutes in print. The law faculty and lecturer involved are also recognized. Entries will soon be invited for the 2008 competition.

# Parliament Implements Customary Law of Succession Report



towards the attainment of gender justice and poverty alleviation in South Africa. The first attempt to pass this law was ten years ago (1998) when the National Council of Provinces referred the Bill back to the Department of Justice for further consultation at the insistence of traditional leaders.

sion in *Bhe and Others v Magistrate, Khayelitsha, and Others* (Commission for Gender Equality as Amicus Curiae); *Shibi v Sithole and Others*; *South African Human Rights Commission and Another v President of the Republic of South Africa 2005(1) SA 580 (CC)* recognised the rights of women and non-first born children to inherit family property. This brought an end to the principle of primogeniture which had been superimposed on customary law in a manner that disinherited black women and diminished the rights of non-first born male children.

**T**he passage of the Customary Law of Succession Bill, which is currently before Parliament, will constitute a major milestone

In the meantime the suffering of many poor people, mainly black women, affected by uncertainties in customary law of succession, was alleviated by the Constitutional Court. In 2004 the Constitutional Court, in its deci-

The Customary Law of Succession Bill that is currently before Parliament emanates from the SA Law Reform Commission's investigation on customary law of succession. The Report in question, including the draft Bill, was submitted to the Minister in May 2004.

*The passage of the Customary Law of Succession Act will constitute a major milestone towards achieving gender justice and poverty alleviation*

## Trafficking Legislation on the Way

**T**he Commission is in the process of completing its Report, including draft legislation, on *Trafficking in Persons*. The trafficking investigation seeks to develop specific legislation to combat human trafficking. Currently human trafficking provisions have been integrated in child related laws in so far as children are concerned while trafficking of persons

for sexual exploitation is covered in the new Sexual Offences Act. There is no integrated trafficking statute that covers trafficking offences that transcend children's rights violations and sexual offences. This means that South Africa only partially complies with its international obligations under the Convention for the Suppression of the Trafficking in Persons and of Exploitation of

Prostitution of others, the Palermo Protocol and related international treaties. The Commission's Report, which will be released in the next few months, will include draft legislation and administrative measures which will assist South Africa to achieve a holistic response to human trafficking. This includes facilitated international cooperation.

## Law of Evidence and Other Current Investigations

**T**he South African Law Reform Commission recently completed a Discussion Paper on the Law of Evidence. The Discussion Paper covers matters such as hearsay evidence and relevance. Evidentiary rules relating to hearsay evidence and relevance in court proceedings are technical rules that have an impact on the

outcome of any court case. Members of the public are requested to read the Discussion Paper and an Issue Paper on other evidentiary matters, and make submissions to the Commission on how these matters should be dealt with in the future. The Commission will also soon be releasing Reports on the following:

- Protected Disclosures
- Assisted Decision-making: Adults with Impaired Decision-making Capacity
- Sexual Offences: Adult Prostitution
- Privacy and Data Protection
- Stalking (Submitted)

For other SALRC investigations-visit the Commission's website.





## NEWSLETTER OF THE SA Law Reform Commission

12-13th Floor Sanlam Centre  
Corner Schoeman and Andries Streets  
PRETORIA City of Tshwane  
Gauteng, South Africa

Phone: + 27 (0)12 392 9540  
Fax: + 27 (0)12 320 0936  
E-mail: reform@justice.gov.za

**Review the Past Reform the Present  
Anticipate the Future!**

## Submit Your Law Reform Proposals

It is open to any member of the public, Government Department or judicial officer or civil society entity to request the Commission to investigate any area of the law with a view to law reform.

When the Commission receives requests for investigations (in writing), it conducts a pre-investigation to assess whether the area is worth investigating. If the findings of the pre-investigation support inclusion in the programme, a request is made to the Minister for Justice and Constitutional Development to authorise such inclusion.

**Please submit your requests!**



## Recent Laws Based on Commission Reports

Most of the investigations of the South African Law Reform Commission culminate in an Act of Parliament. Recent statutes and Bills that are based on investigations that were conducted by the Commission include the following:

- **Domestic Partnerships Report** ( Formed the basis of the *Domestic Partnerships Bill, 2007* and the *Civil Unions Act*)
- **Sexual Offences Report** ( Formed the basis of the *Criminal Law (Sexual Offences) Amendment Act*)
- **Child Care Report** ( Formed the basis of the *Children's Act and Children's Amendment Bill*)
- **Juvenile Justice** ( Formed the basis of *Child Justice Bill*)



**The Commission's reports have also formed the basis for laws such as the Repeal of the Black Administration Act and the Traditional Courts Bill.**

Members of the public are encouraged to interact with the Commission and share their views on Project 25, Administration Orders, Rules of Evidence and other current investigations of the Commission.

## Face the Media

On 7 March 2008 a media event was hosted with a view to enhancing public participation and keeping the public aware of current investigations. The media was represented well and gave good coverage of the event. The Chairperson of the Commission submitted publications on the customary law of succession, the law of evidence and administration orders to the Minister for Justice and Constitutional Development (Ms B S Mabandla, MP) who honoured the occasion with her presence and support.. There was a briefing on current organisational renewal efforts and an overview was given of the Commission's project 25 on statutory law revision and other projects. Minister Mabandla expressed full support for the Commission's projects, and thanked it for previous reports that have resulted in important laws.