

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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The South African Law Reform Commission recently released its Report on *International Cooperation in Civil Matters (Project 130)*. For all SALRC Reports or Discussion Papers log on to: <http://salawreform.justice.gov.za>

## Commission Releases Trafficking Report

The South African Law Reform Commission (SALRC) will be releasing its **Report on Trafficking in Persons** and draft legislation on 25 November, 2008.

The investigation forms part of the South African government's response to the phenomenon of trafficking in persons. The South African Law Reform Commission investigated the issue of trafficking in persons for purposes of law reform. More specifically, the initiative seeks to enhance government's compliance with international obligations as a signatory to the United Nations Protocol on Trafficking in Persons. The Protocol provides that States Parties must adopt legislative measures to criminalise the trafficking of persons.

The Report addresses the prevention of trafficking in persons, the prosecution of traffickers and other role-players, and the protection of victims of trafficking. In summary, the Report provides for:

- The establishment of public awareness programmes or other measures for the prevention of trafficking in persons.
- The criminalisation of

trafficking in persons and related acts.

- Protective measures, such as avenues for reporting trafficking and the referral of child and adult victims of trafficking.
- Protective measures in terms of the Children's Act, 2005 apply to all child victims of trafficking.



**New researchers: Tshepang Monare, Nerisha Singh and Linda Mngoma**

Recommendations also cover the right of trafficked victims to apply for a recovery and reflection period. Victims of trafficking who agree to co-operate with law enforcement and prosecuting authorities may be issued with a temporary residence permit.

[Lowesa Stuurman]

## Commission Recommends the Strengthening of Measures to Protect Whistleblowers

The SA Law Reform Commission will be releasing its **Report on Protected Disclosures** and draft legislation on 25 November 2008. The Protected Disclosures investigation (Project 123) was included in the SALRC's programme pursu-

ant to deliberations before the Parliamentary Portfolio Committee on Justice and Constitutional Development on the Open Democracy Bill and the subsequent promulgation of the Protected Disclosures Act 26 of 2000 ("the PDA"). The investigation specifically sought to

address the lacuna left by the fact that the remedies presently provided for in the PDA are confined to the relationship between an employer and an employee in the public and private sectors. Commission recommendations address this gap and legal assistance in civil matters.

[Dellene Clark]

## 2010 READINESS CHECK: PROTECTION OF PERSONAL INFORMATION INVESTIGATION



### Ismail Mahomed Essay Prize

Call for submission of essays to be considered for the Ismail Mahomed Prize.

Interested law students are requested to submit papers by 30 November 2008. Contact Fanyana Mdumbe for further details: fmdumbe@justice.gov.za Tel: 012 392 9560

The focus of the Interim Report on Administration of Estates is the review of requirements and processes for small estates.

Justice Yvonne Mokgoro



The whole country is looking forward to the successful staging of the 2010 FIFA Soccer World Cup. One of the guarantees that Government gave FIFA is that SARS, the Department of Home Affairs and the SA Police Services will facilitate the large numbers of international travelers expected to arrive in South Africa by international airlines.

To ensure effective customs control measures, these departments and entities need to be supplied with electronic Advance Passenger Information (API) from the applicable

international airlines. The API seeks to ensure that the information of travelers is received in advance to expedite risk screening and processing, thus minimizing time spent at customs on arrival.

Acquiring the API from the airlines is regulated by adequacy requirements. For example, an European Union Directive proscribes cross-border transfers of personal information if the recipient country cannot provide adequate protection of the information in line with international prescripts.

The SALRC is in the process of finalising its *Report on Privacy and Data Protection* and a draft Protection of Personal Information Act (POPIA). This will enable the country to obtain an European Union adequacy rating. Such a rating will in future ensure the free flow of all trans-border personal information to and from South Africa.

Facilitating 2010 is not all that there is to POPIA. Ordinary South Africans will also benefit as recommendations seek to regulate the acquisition, storage and usage of all personal information. **[Ananda Louw]**

## Administration of Estates Review

The SALRC will be releasing an *Interim Report on the Administration of Estates* on 25 November, 2008. The Interim Report focuses on the administration of small estates. The Commission's investigation (Project 131) revealed several challenges with regard to the administration of small estates. These cause or contribute to unnecessary suffering for many poor and middle class families, including children.

The administration of "small" estates is currently regulated by section 18(3) of the Administration of Estates Act 66 of 1965, which is the focus of the Interim Report. The Commission's view is that resources should be devoted to safeguarding the interests of minors and incapacitated or other vulnerable persons without undue delays or costs for the beneficiaries. One of the recommendations is that the practice to assist beneficiaries in small estates should be continued.

The Administration of Estates Act grants the Mas-

ter of the High Court wide powers to act against executors, but not to act against persons given directions in terms of section 18(3). The interim report recommends that an executor should be appointed in all cases, but that the Master may dispense with compliance with requirements where circumstances warrant it. A Chief Master's directive for dispensing with requirements must strike a balance between the protection of beneficiaries and the speedy and cost-effective finalisation of estates. The

size of the estate remains a factor, but factors such as accounting by the executor and the sophistication of the beneficiaries should also be taken into account.

The Interim Report recommends the streamlining of the examination of accounts by the Master; the follow-up of requirements after an account has been advertised free of objections; and the removal of executors. A draft Bill is included.

**[Martinus Cronje]**

## SALRC CHAIRPERSON HONOURED

Justice Yvonne Mokgoro, Constitutional Court justice and Chairperson of the South African Law Reform Commission was recently honored with an honorary doctorate in law. The University of Pretoria awarded Justice Mokgoro the LL.D (honoris causa) degree in recognition of her visible contribution to human rights, jurisprudence and the rule of law. The SALRC is proud to be associated with and congratulates Justice Mokgoro. **[Ronel van Zyl]**



# African Law Reform Agencies Meet Near the Vic Falls



ciation of Law Reform Agencies of East and Southern Africa (ALRAESA April 14-18, 2008). An important forum for networking, sharing best practices and collaborating, ALRAESA was established in 2004 at a conference in Windhoek Namibia, in pursuit of a resolution adopted by law reform agencies that had attended a Best Practice Conference in Tanzania, 2000. Comprising law reform agencies from East and Southern Africa, ALRAESA membership currently includes the law reform agencies of South Africa, Namibia, Lesotho, Tanzania, Zambia, Malawi, Kenya and Uganda.

working forum where law reform agencies for East and Southern Africa exchange best practices and ideas that will contribute to effective and responsive law reform proposals. Staged within walking distance from the breathtaking Victoria Falls in the small tourist town, Livingstone, the conference was a serious affair which provided valuable insights on the relationship between law reform and the notions of a developmental state and regional integration. The theme of the Conference was “Law Reform and Economic Development”. Eminent speakers presented papers on topics such as “Windfall taxation”; “Competition law”; “Arbitration”; “Utility regulation”; “Social security law”; “Intellectual property law”; “Securities law”; “Investment legislation”; and “Economic integration in Africa”. The conference provided an excellent opportunity to promote the SALRC and to strengthen relations with law reform agencies in Africa. Useful information was obtained which will assist the SALRC in the current review of its processes.

**T**he Full-time Commissioner, Ms Thuli Madonsela, and the Commission’s new Secretary, Mr Michael Palumbo, attended and participated at the 2008 conference of the Asso-

The long-term objective of ALRAESA is to provide a net-

[Michael Palumbo]

## Project 25: Transport Discussion Paper

**A** Discussion Paper, incorporating a Draft Bill entitled **Repeal of Transport Laws Repeal Bill**, was approved by the SA Law Reform Commission in June 2008 and released as a framework for consultation. This forms part of Project 25 which seeks to remove dead law, obsolete provisions and provisions that are inconsistent with the Constitution, particularly the right to equality. **Discussion Paper 114**,

which contains preliminary proposals for the repeal or amendment of selected legislation currently administered by the Department of Transport, was published for public comments and information.

The Commission has identified a number of statutes or provisions in statutes administered by the Department of Transport which can be repealed on grounds of redundancy, obsolescence or unconstitutionality.

The draft repeal Bill which is attached to the Discussion Paper will, if enacted, repeal 54 statutes and partially repeal 19 statutes. The repealed Acts cover a wide range of subjects and include the Black Transport Services Acts of 1972, 1974 and 1982; Transport Services for Coloured Persons and Indians Amendment Act of 1982; the Railway Construction Acts and the Merchant Shipping (Certificates of Competency) Amendment Act of 1957.

[Fanyana Mdumbe]

*Comments on the Transport Laws Discussion Paper should be submitted to the SALRC. Inquiries should be directed to Fanyana Mdumbe. (Contact details on opposite page)*

## SALRC Commissioner Appointed as Law Dean

**A**nother member of the South African Law Reform Commission who was recently honored is **Professor Pamela (PJ) Schwikkard**, who takes over as the Dean of the Law faculty at the University of Cape Town (UCT) in October 2008. The first woman to occupy this position at UCT, Professor

Schwikkard is the Project Leader of the Commission’s Project on Review of the Law of Evidence (Project 126) and has supervised several other projects. The SALRC is proud to be associated with and congratulates Prof Schwikkard. [Ed]



### COMMISSION SECRETARY APPOINTED

**Mr Michael Palumbo**, who had acted as Commission Secretary for a while, was appointed as Secretary for the SALRC with effect from the 1st of June, 2008.

Congratulations! [Ed]



## Newsletter of the South African Law Reform Commission

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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 issue 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!



# Tracking Current Commission Projects

## Family Law Investigation

Following the recommendations of the Report on the Review of the Child Care Act (Project 110), the SALRC concluded that children affected by the adversarial nature of civil divorce proceedings should be protected by divorce legislation. The investigation seeks to reduce adversarial settlement of child custody and parental access disputes.

The scope of the investigation has since been extended to all marriages and to matters involving children born out of wedlock. Questionnaires were developed and administered and focus groups conducted as part of the research. The SALRC is currently drafting a discussion paper.

[Praveena Sukhraj-Ely]



Other current projects of the SALRC include the following :

- Interpretation Act
- Administration Orders
- Assisted Decision-making
- Hindu Marriages
- Adult Prostitution
- Statutory Law Review
- Law of Evidence
- ADR ( Full list on website)

## EDITORIAL COMMENT

In March we released our first revamped version of the South African Law Reform Commission (SALRC) Newsletter, **SA Law Reform Briefs**. The response was overwhelming. It confirmed that many members of the legal community and society are hungry for law reform updates. This is the main purpose of the SA Law Reform Briefs. We aim to keep society abreast of all key law reform developments, particularly developments relating to projects undertaken by the SALRC. One of the key themes in this issue is international cooperation. As the world increasingly assumes the shape of a global village, international cooperation has become indispensable. Dimensions of this theme are explored in the Report and draft legislation on International Cooperation in Civil Matters, the Trafficking Report and the SALRC's participation in ALRAESA. The SALRC plans to pay more attention to international cooperation as it enhances its relevance to the strengthening of the rule of law. Please engage with us on any matter that you think we should be seized with.

Thuli N. Madonsela -Editor